



# Conditional Use for Planning Board Review Development Review Application Portland, Maine

Planning and Urban Development Department  
Planning Division

Portland's Planning and Urban Development Department coordinates the development review process for site plan, subdivision and other applications under the City's Land Use Code. Attached is the application form for a Conditional Use where the Planning Board is listed as the reviewing authority rather than the Zoning Board of Appeals. Please note that Portland has delegated review from the State of Maine for reviews under the Site Location of Development Act, Chapter 500 Stormwater Permits, and Traffic Movement Permits.

## **A. Conditional Use: Standards and Criteria – Section 14-474 and Zone Related Criteria**

Conditional uses are listed in the Zoning Ordinance for each zone and these proposed uses must address the criteria contained in Section 14-474 in the written application. In addition to the criteria in Section 14-474, each application must address any applicable conditional use standards contained in the applicable zone and the proposed specific use. The Zoning Ordinance specifies when the Planning Board is designated as the reviewing authority rather than the Zoning Board of Appeals. This application is for Planning Board reviews only.

Upon showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the Board determines that:

- a. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone; and
- b. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter; and
- c. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading, deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses or other allowable uses in the zone.

## **B. Site Plan Application: Please submit the Conditional Use Application in addition to the applicable Site Plan Application.**

Portland's development review process and requirements are outlined in the Land Use Code (Chapter 14) which is available on our website:

Land Use Code: <http://me-portland.civicplus.com/DocumentCenter/Home/View/1080>

Design Manual: <http://me-portland.civicplus.com/DocumentCenter/View/2355>

Technical Manual: <http://me-portland.civicplus.com/DocumentCenter/View/2356>

### **Planning Division**

Fourth Floor, City Hall

389 Congress Street

(207) 874-8719

[planning@portlandmaine.gov](mailto:planning@portlandmaine.gov)

### **Office Hours**

Monday thru Friday

8:00 a.m. – 4:30 p.m.



**RIGHT, TITLE OR INTEREST:**

The property is owned by the applicant, property deeds are attached.

(Please identify the status provide documentary evidence, attached to this application, of the applicant’s right, title, or interest in the subject property (ex: deed, option or contract to purchase or lease the property.)

**VICINITY MAP:** (Please attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use.)

**EXISTING USE:** Describe the existing use of the subject property.

The existing use on the property is Institutional: Long Term Care and Intermediate Care Facility

**PROPOSED USE:** Describe the proposed use of the subject property

The proposed uses are an expansion of the existing uses:

Institutional: Long Term Care and Intermediate Care Facility

**TYPE OF CONDITIONAL USE PROPOSED (Refer To Specific Provisions Of Land Use Code Authorizing The Proposed Conditional Use).**

R-3 Zoning District: Section 14-88 (c) 2.a. and 2.b.

R-5 Zoning District: Section 14-118 (b) 2.a. and 2.b.

**SITE PLAN:** Submit a separate site plan application for the proposal that provides a site plan for the property, showing existing and proposed improvements, which meets the submission requirements of the applicable level of site plan review.

**CONDITIONAL USE STANDARDS AND CONDITIONS – 14-474**

Address the following criteria in your written application and any applicable conditional use standards contained in the zoning code for the specific use. Upon showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the Board determines that:

- a. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone; and
- b. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter; and
- c. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading, deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses or other allowable uses in the zone.

**CONDITIONAL USE AUTHORIZED BY: SECTION 14--88 and 14-118**

Address any specific conditional use standards for the specific use contained in the zoning code in the written submission.

**APPLICATION FEES:**

<p>___ Conditional Use Review (\$100.00)</p> <p>(Please submit a separate application for the applicable site plan review. Fees and charges are listed within the application)</p>	<p>The City invoices separately for the following:</p> <ul style="list-style-type: none"><li>• Notices (\$.75 each)</li><li>• Legal Ad (% of total Ad)</li><li>• Planning Review (\$50.00 hour)</li><li>• Legal Review (\$75.00 hour)</li></ul> <p>Third party review fees are assessed separately. Any outside reviews or analysis requested from the Applicant as part of the development review, are the responsibility of the Applicant and are separate from any application or invoice fees.</p>
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**INSTRUCTIONS FOR ELECTRONIC SUBMISSION:**

**Please refer to the application checklist (attached) for a detailed list of submission requirements.**

1. Fill out the application completely and e-mail the **application only** to [planning@portlandmaine.gov](mailto:planning@portlandmaine.gov)  
(Please be sure to designate a person who will be responsible for uploading documents and drawings.)  
This step will generate the project ID number for your project.
2. An invoice for the application fee will be e-mail to you. Payments can be made on-line at [Pay Your Invoice](#), by mail or in person at City Hall, 4<sup>th</sup> Floor. Please reference the Application Number when submitting your payment which is located in the upper left hand corner of the invoice.
3. The designated person responsible for uploading documents and drawings will receive an email from [eplan@portlandmaine.gov](mailto:eplan@portlandmaine.gov) with an invitation into the project. At this time, you will upload all corresponding documents and plans into the project. For first time users you will receive a temporary password which you must change on entry. Make note of your username and password for any future projects.

**Reminder: Before the project can move forward, the application fee shall be paid in full and all required documents and drawings shall be uploaded into e-plan correctly.**

4. Follow the link below (Applying Online Instructions) for step by step instructions on how to do the following:  
Tab 1 - Setting up the appropriate compatibility settings for your PC and getting started in e-plan.  
Tab 2 - Preparing your drawings, documents and photos for uploading using the correct naming conventions  
Tab 3 - Preparing and uploading revised drawings and documents

[Applying Online Instructions](#)

5. When ready, upload your files and documents into the following folders:  
"Application Submittal – Drawings"  
"Application Submittal – Documents"
6. Once a preliminary check has been made of the submittal documents and drawings, staff will move them to permanent folders labeled Drawings and Documents. As the process evolves you will be able to log in and see markups, comments and upload revisions as requested into these folders.

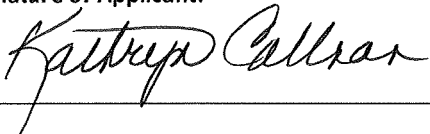

Applicant Checklist	Planner Checklist	# of Copies	GENERAL WRITTEN SUBMISSIONS CHECKLIST
X		1	Completed Application Form
X		1	Cover letter stating the nature of the project.
X		1	Evidence of right, title and interest.
X		1	Written Submittals that address the conditional use standards of Sec. 14-474.
X		1	Written submittals that address any applicable standards of review contained in the zoning code for the specific use.
X		1	A stamped standard boundary survey prepared by a registered land surveyor at a scale not less than one inch to 50 feet and containing the information required for the applicable level of site plan review.
X		1	An accompanying site plan application, as applicable.

**APPLICANT SIGNATURE:**

By digitally signing the attached document(s), you are signifying your understanding this is a legal document and your electronic signature is considered a **legal signature** per Maine state law.

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Planning Authority and Code Enforcement's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

**This application is for a Conditional Use. It is not a permit to begin construction. An approved site plan, a Performance Guarantee, Inspection Fee, Building Permit, and associated fees will be required prior to construction. Other Federal, State or local permits may be required prior to construction, which are the responsibility of the applicant to obtain.**

Signature of Applicant: 	Date: 
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December 21, 2017  
W-P Project No. 13682A

Barbara Barhydt,  
City of Portland  
389 Congress Street, 4<sup>th</sup> Floor  
Portland, ME 04101

Subject: The Cedars – Long Term and Assisted Living Memory Care Facility Expansion  
Conditional Use Permit – Portland, Maine

Dear Ms Barhydt:

The Cedars long term care facility, located at 630 Ocean Avenue in Portland, Maine, is proposing an expansion and redevelopment of a portion of its facilities. The project is largely driven by the evolution of the care model with a shift towards the household model of care delivery and private rooms for residents. The existing long term care facility at the Hoffman Center has semi-private rooms and will be converted to three households with private rooms. The 40 displaced beds will be moved to the proposed new facility and two household will be created, occupying two floors of the building. A new 20 bed assisted living memory care household will occupy the first floor of the new facility as well.

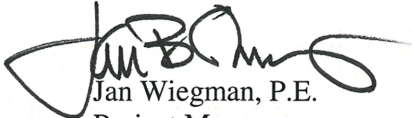
The Assisted Living/Memory care represents an expansion of services and beds for the campus. The new facility will be located on the campus, near the intersection with Ocean Avenue and Rainbow Mall Road, and will have a footprint of approximately 15,000 s.f. The Hoffman Center renovations will not add to the existing building but will be interior renovations.

Parking improvements associated with the proposed project, are designed to accommodate the City Code requirements for the expanded institutional use, the AL Memory Care household, and to replace any parking spaces that are displaced by the new building. Site demolition will include the removal of an administrative building, parking areas, trees, and lawn space.

Landscaping is proposed around the perimeter of the site and other areas adjacent to proposed improvements. Landscaping will include trees, shrubs, ornamental grasses and lawns areas.

The existing drainage system will largely remain in place and in some cases upgraded with new underdrains, structures, and pipe. The drainage upgrades will include revisions to the existing detention basins, new underdrained soil filters and new storm drain structures to accommodate the site revisions and the new facility.

Sincerely,  
WRIGHT-PIERCE



Jan Wiegman, P.E.  
Project Manager  
Jan.wiegman@wright-pierce.com  
JBSW/kos

## **Section 2: Evidence of Right, Title, and Interest**

### **2.0 Existing Deeds**

A list of deeds and easements for the parcels for this project have been attached to this section.

**WARRANTY DEED**  
(Maine Statutory Short Form)

KNOW ALL PERSONS BY THESE PRESENTS, that JHA Properties, Inc., a Maine nonprofit corporation, of Portland, County of Cumberland, and State of Maine, for consideration paid, grants to JHA Assisted Living, Inc., a Maine nonprofit corporation organized and existing under the laws of the State of Maine, and having its principal place of business at Portland, in the County of Cumberland, and State of Maine, whose mailing address is 630 Ocean Avenue, Portland, Maine, with **WARRANTY COVENANTS**, the land in Portland, County of Cumberland, State of Maine, described as follows: The Unit ("Unit") designated as Number 3 of the Cedars Condominium located at 630 Ocean Avenue, Portland, Cumberland County, Maine, ("Condominium"), together with the Unit's undivided percentage interest in the Common Elements of the Condominium as set forth in the Declaration, created pursuant to the provisions of the Maine Condominium Act, Chapter 31 of Title 33 of the Maine Revised Statutes of 1964, as amended, and set forth in Declaration of Cedars Condominiums, dated as of June 30, 2006 and recorded in Cumberland County Registry of Deeds in Book 24129, Page 276, as may be amended, and shown on the related plats and plans recorded in Plan Book 206, Page 430. The Unit is subject to and has the benefit of the Declaration, the Plats, Plans and the Act which are incorporated herein by reference, to which reference is hereby made for a more particular specification of the definition, location and description of the real property hereby conveyed and of the rights, obligations, easements, development rights, special Declarant rights, restrictions, covenants and conditions pertaining thereto.

IN WITNESS WHEREOF, it, the said JHA Properties, Inc., has caused this deed to be signed and sealed in its corporate name by Kathryn Callnan, its President/Chief Executive Officer, thereunto duly authorized, this 1<sup>st</sup> day of May, 2014.

Received  
Recorded Register of Deeds  
May 06, 2014 09:12:50A  
Cumberland County  
Pamela E. Lovley

WITNESS:

JHA Properties, Inc.

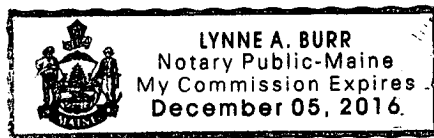
*Holly Nicholson*

By: *Kathryn Callnan*  
Name: Kathryn Callnan  
Title: President/Chief Executive Officer

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

May 1, 2014

Then personally appeared the above named Kathryn Callnan, President/Chief Executive Officer of said Corporation, as aforesaid, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said Corporation, before me,



*[Signature]*  
Attorney at Law/Notary Public

SEAL



**AMENDMENT TO DECLARATION  
OF COVENANTS AND RESTRICTIONS**

THIS AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS is made this 30<sup>th</sup> day of June, 2006 by, Cedars Nursing Care Center, Inc., and JHA Properties, Inc., both Maine non-profit corporations having a place of business at 630 Ocean Avenue, Portland, Cumberland County, Maine, 04103, (herein collectively referred to as the "Declarants") and the State of Maine Department of Environmental Protection, a governmental agency having a place of business in Augusta, Kennebec County, Maine, and a mailing address of 17 State House Station, Augusta, Maine 04333-0017 (referred to as the "MDEP"), pursuant to MDEP Natural Resource Protection Act Project Number 97-441-S (formerly Tier #T-00441-TE-A-N), dated September 26, 1997 (collectively referred to as "Order"), as amended by the MDEP Order #L-22483-TG-B-M, dated February 20, 2006 (hereinafter referred to as "New Order"), relating to preservation of portions of an approximately ten (10) acre parcel of land near 630 Ocean Avenue, Portland, Maine.

**RECITALS**

WHEREAS, the Declarants made a Declaration of Covenants and Restrictions, dated March 27, 1998, recorded in the Cumberland County Registry of Deeds in Book 13709, Page 75 (the "Original Declaration"), pursuant to MDEP Natural Resource Protection Act Project Number 97-441-S (formerly Tier #T-00441-TE-A-N), dated September 26, 1997 (collectively referred to as "Order"), relating to preservation of three certain parcels of land bounded and described as set forth on Exhibits A and A-1 to the Original Declaration and respectively described therein (and herein) as "Mitigation Parcel A," "Mitigation Parcel B" and "Mitigation Parcel C;"

WHEREAS, MDEP Natural Resource Protection Act Project Number 97-441-S (formerly Tier #T-00441-TE-A-N) was amended by MDEP Order #L-22483-TG-B-M, dated February 20, 2006 (hereinafter referred to as "New Order");

WHEREAS, the Site Plan Location Permit issued by the City of Portland, Maine, Permit No. \_\_\_\_\_, dated September 13, 2005, and the application of JHA Assisted Living, Inc. for a MDEP Natural Resources Protection Act permit, Application No. DEP #L-22483-TE-B-M both contemplate (1) that certain portions of the property included in Mitigation Parcel A and Mitigation Parcel B as set forth in the Original Declaration would be released from the Original Declaration by amendment to the legal descriptions of said Mitigation Parcel A and Mitigation Parcel B and (2) that additional mitigation parcels would be created in replacement thereof;

WHEREAS, the Declarants have executed and delivered a Declaration of Covenants and Restrictions of even date herewith creating the two additional mitigation parcels (designated as "Mitigation Parcel A-1" and "Mitigation Parcel D," both as shown on Cedars Condominiums Recording Plat/Condominium Plan ALTA/ACSM Land Title Survey prepared by Titcomb Associates, dated September 8, 2005, revised April 5, 2006, and to be recorded in the Cumberland County Registry of Deeds;

WHEREAS, Declarant Cedars Nursing Care Center, Inc., holds title to Mitigation Parcel A as described in the Original Declaration by virtue of a certain real property situated in Portland, Maine, described in a deed from Sidney J. Haijar to The Jewish Home for the Aged, dated April 24, 1987, and recorded in Book 7732, Page 282 at the Cumberland County Registry of Deeds and to certain real property situated in Portland, Maine, described in a deed from JHA Services, Inc., to Cedars Nursing Care Center, Inc., dated March 27, 1988, and recorded in Book 13696, Page 315 at the Cumberland County Registry of Deeds, all of which real property is subject to a certain Loan Agreement and Mortgage given by Cedars Nursing Care Center, Inc., to the Maine Health and Higher Educational Facilities Authority, dated as of May 1, 1993, recorded in the Cumberland County Registry of Deeds in Book 10717, Page 311;

WHEREAS, Declarant JHA Properties, Inc., holds title to Mitigation Parcel B as described in the Original Declaration by virtue of a deed from JHA Services, Inc., to JHA Properties, Inc., dated March 27, 1998, recorded in Book 13696, Page 317 at the Cumberland County Registry of Deeds, which real property is subject to a certain Loan Agreement and Mortgage given by JHA Properties, Inc., to the Maine Health and Higher Educational Facilities Authority, dated as of March 1, 1998, recorded in the Cumberland County Registry of Deeds in Book 13709, Page 1 and as amended and supplemented by a Mortgage given by JHA Properties, Inc., to the Maine Health and Higher Educational Facilities Authority, dated as of October 9, 1998, and recorded in the Cumberland County Registry of Deeds in Book 14221, Page 222;

WHEREAS, the New Order permits the Declarant to fill 16,018 square feet of forested freshwater wetlands and for the after-the-fact filling of 1,000 square feet of forested freshwater wetlands in order to construct an Independent Living Facility, subject to the conditions set forth therein;

WHEREAS, pursuant to the Natural Resources Protection Act, Title 38 M.R.S.A. Section 480-A et seq. and Chapter 310 of regulations promulgated by the MDEP (the "Wetland Protection Rules") and in satisfaction of the New Order, Declarants desire by this Amendment to Declaration of Covenants and Restrictions, to amend the description of Mitigation Parcel A and Mitigation Parcel B as described in the Original Declaration as more particularly set forth herein and to confirm their agreement that the Original Declaration, as so amended, may be enforced by the MDEP;

NOW, THEREFORE, Cedars Nursing Care Center, Inc., and JHA Properties, Inc., as Declarants, and MDEP, hereby covenant and agree as follows:

1. Declarants and the MDEP hereby AMEND the description of Mitigation Parcel A to read as set forth on Exhibit I attached hereto and made a part hereof and hereby RELEASE from the Original Declaration the following released area from said Mitigation Parcel A as described in the Original Declaration:

A certain easement located northwesterly of, but not adjacent to, Ocean Avenue in the City of Portland, County of Cumberland, State of Maine, bounded and described as follows:

**Beginning at a point**, said point lying N 40°48'48" E a distance of One Hundred Fifty-Three and 38/100 (153.38) feet from the southerly corner of Mitigation Parcel A as described in a deed recorded in the Cumberland County Registry of Deeds in Book 13709, Page 75; **thence, from said point of beginning**, N 38°27'46" W a distance of Eight-Four and 24/100 (84.24) feet to a point; thence N 55°39'58" E a distance of Six and 40/100 (6.40) feet to a point; thence S 83°16'49" E a distance of Thirty-Three and 51/100 (33.51) feet to a point; thence S 58°44'00" E a distance of Eight and 31/100 (8.31) feet to a point; thence S 34°11'12" E a distance of Twenty-Six and 44/100 (26.44) feet to a point; thence S 12°22'27" E a distance of Twenty-Four and 54/100 (24.54) feet to a point; thence S 40°48'48" W a distance Twenty and 47/100 (20.47) feet to the point of beginning.

Bearings are referenced to magnetic north 1924.

The above described released easement area contains 2,121 square feet and lies over a portion of property now or formerly of Cedars Nursing Care Center, Inc. as described in a deed recorded in the Cumberland County Registry of Deeds in Book 7732, Page 282, and is a portion of Mitigation Parcel A as described in a Declaration of Covenants and Restrictions recorded in the Cumberland County Registry of Deeds in Book 13709, Page 75.

2. Declarants and MDEP hereby AMEND the description of Mitigation Parcel B to read as set forth on **Exhibit II** attached hereto and made a part hereof and hereby RELEASE from the Original Declaration the following released area from said Mitigation Parcel B as described in the Original Declaration:

A certain easement located northwesterly of, but not adjacent to, Ocean Avenue in the City of Portland, County of Cumberland, State of Maine, bounded and described as follows:

**Beginning at a point**, said point lying the following two courses and distances from said Ocean Avenue and the easterly corner of land now or formerly of Cedars Nursing Care Center, Inc. as described in a deed recorded in the Cumberland County Registry of Deeds in Book 7732, Page 282: thence N 33°52'30" W by said land of Cedars Nursing Care Center, Inc. a distance of One Hundred Sixty-Four and 46/100 (164.46) feet to a 5/8" capped iron rod ("PLS 509") and land now or formerly of Cedars Nursing Care Center, Inc. as described in a deed recorded in said Registry in Book 13696, Page 315; thence N 52°41'19" W by said land of Cedars Nursing Care Center, Inc. a distance of Fifty-Three and 55/100 (53.55) feet to said point of beginning; **thence, from said point of beginning**, S 35°08'49" W a distance of Nineteen and 01/100 (19.01) feet to a point; thence S 62°52'24" E a distance of Sixteen and 66/100 (16.66) feet to a point; thence S 10°12'08" E a distance of Twenty-Three and 48/100 (23.48) feet to a point; thence N 66°31'23" W a distance of Twenty-One and 47/100 (21.47) feet to a point; thence N 25°23'48" E a distance of Seventeen and 68/100 (17.68) feet to a point; thence N 64°36'12" W a distance of Eighty-Two and 00/100 (82.00) feet

to a point; thence S 25°23'48" W a distance of Eighteen and 39/100 (18.39) feet to a point; thence N 89°17'25" W a distance of Thirty-Six and 41/100 (36.41) feet to a point; thence N 19°30'34" E a distance of Sixty-Eight and 29/100 (68.29) feet to a point; thence N 01°46'29" W a distance of Thirty-Four and 09/100 (34.09) feet to a point; thence N 46°36'49" E a distance of Eighty-Seven and 87/100 (87.87) feet to a point; thence S 82°01'39" E a distance of Seventeen and 23/100 (17.23) feet to a point; thence S 33°39'21" E a distance of Twenty-Three and 77/100 (23.77) feet to a point; thence S 03°35'26" W a distance of Sixty-Three and 84/100 (63.84) feet to a point; thence S 67°26'24" E a distance of Sixty and 83/100 (60.83) feet to a point; thence S 24°08'41" E a distance of Thirty and 34/100 (30.34) feet to a point; thence N 83°22'48" W a distance of Eleven and 21/100 (11.21) feet to a point; thence N 78°14'02" W a distance of Twenty-Eight and 91/100 (28.91) feet to a point; thence S 35°08'49" W a distance of Thirty-Two and 24/100 (32.24) feet to the point of beginning.

Bearings are referenced to magnetic north 1924.

The above described released easement area contains 15,956 square feet and lies over portions of property now or formerly of Cedars Nursing Care Center, Inc. as described in deeds recorded in the Cumberland County Registry of Deeds in Book 7732, Page 282 and Book 13696, Page 315; also lying over a portion of property now or formerly of JHA Properties, Inc. as described in a deed recorded in said Registry in Book 13696, Page 317. The above-described released easement area is a portion of Mitigation Parcel B as described in a Declaration of Covenants and Restrictions recorded in said Registry in Book 13709, Page 75.

Declarants hereby confirm all other covenants and restrictions in the Original Declaration

Any provision contained in the Original Declaration or in this Amendment to Declaration of Covenants and Restrictions may be amended or revoked only by the recording of a written instrument or instruments specifying the amendment or the revocation signed by the owner or owners of all of the Property subject thereto and by the MDEP.

Each provision of the Original Declaration as amended by this Amendment to Declaration of Covenants and Restrictions, and any agreement, promise, covenant and undertaking to comply with each provision of the Original Declaration as amended by this Amendment to Declaration of Covenants and Restrictions, shall be deemed a covenant running with the land as a burden and upon the title to the property subject thereto.

Invalidity or unenforceability of any provision of the Original Declaration as amended by this Amendment to Declaration of Covenants and Restrictions in whole or in part shall not affect the validity of enforceability of any other provision or any valid and enforceable part of a provision of the Original Declaration as amended by this Amendment to Declaration of Covenants and Restrictions.

This Amendment to Declaration of Covenants and Restrictions shall be governed by and interpreted in accordance with the laws of the State of Maine.

IN WITNESS WHEREOF, each of the Declarants has caused this Amendment to Declaration of Covenants to be signed and sealed in its corporate name by its duly authorized officer as of the day and year first above written.

CEDARS NURSING CARE CENTER, INC.

JHA PROPERTIES, INC.

By: *Kathryn J. Callnan*  
Kathryn J. Callnan  
Its President

By: *Kathryn J. Callnan*  
Kathryn J. Callnan  
Its President

STATE OF MAINE  
Cumberland, ss.

*April 24*, 2006

Personally appeared before me the above named Kathryn J. Callnan, President of Cedars Nursing Care Center, Inc., and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said non-profit corporation.

*Sylvia Gill*  
Notary Public  
Print Name: *Sylvia Gill*  
Commission Expires: *10/21/2006*

STATE OF MAINE  
Cumberland, ss.

*April 24*, 2006

Personally appeared before me the above named Kathryn J. Callnan, President of JHA Properties, Inc., and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said non-profit corporation.

*Sylvia Gill*  
Notary Public  
Print Name: *Sylvia Gill*  
Commission Expires: *10/21/2006*

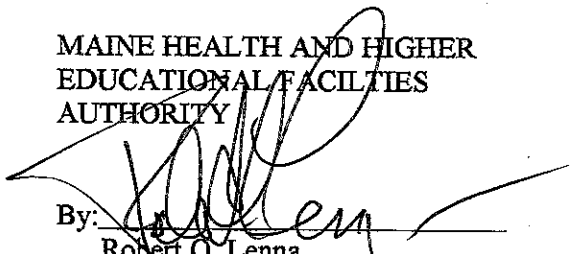
MAINE HEALTH AND HIGHER EDUCATIONAL FACILITIES AUTHORITY (the "Authority") joins herein for purposes of

(1) consenting to the execution and delivery of the foregoing Amendment to Declaration of Covenants and Restrictions, and

(2) agreeing, for itself and its successors and assigns, that the mortgage lien and other rights of the Authority under (a) that certain Loan Agreement and Mortgage, given by Cedars Nursing Care Center, Inc., to the Maine Health and Higher Educational Facilities Authority, dated as of May 1, 1993, recorded in the Cumberland County Registry of Deeds in Book 10717, Page 311 and/or (b) that certain Loan Agreement and Mortgage given by JHA Properties, Inc., to the Maine Health and Higher Educational Facilities Authority, dated as of March 1, 1998, recorded in the Cumberland County Registry of Deeds in Book 13709, Page 1, and as amended and supplemented by a Mortgage given by JHA Properties, Inc., to the Maine Health and Higher Educational Facilities Authority, dated as of October 9, 1998, and recorded in the Cumberland County Registry of Deeds in Book 14221, Page 222, shall be subject and subordinate to the Declaration of Covenants and Restrictions, dated March 27, 1998, recorded in the Cumberland County Registry of Deeds in Book 13709, Page 75, as amended by the foregoing Amendment to Declaration of Covenants and Restrictions.

IN WITNESS WHEREOF, Maine Health and Higher Educational Facilities Authority has caused this Amendment to Declaration of Covenants and Restrictions to be signed and sealed in its corporate name by its duly authorized officer as of the day and year first above written.

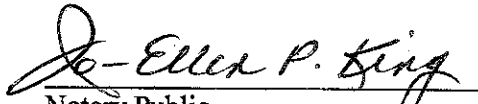
MAINE HEALTH AND HIGHER  
EDUCATIONAL FACILITIES  
AUTHORITY

By:   
Robert O. Lenna  
Its Executive Director

STATE OF MAINE  
Kennebec, ss.

JUNE 29<sup>th</sup>, 2006

Personally appeared before me the above named Robert O. Lenna, Executive Director of Maine Health and Higher Educational Facilities Authority and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Maine Health and Higher Educational Facilities Authority.

  
Notary Public  
Print Name: JO-ELLEN P. KING  
Commission Expires: OCTOBER 27, 2011

**Jo-Ellen P. King**  
**Notary Public, Maine**  
**My Commission Expires**  
**October 27, 20 11**

THE STATE OF MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION HEREBY JOINS IN THE RELEASE AND AMENDMENT AS SET FORTH ABOVE AND HEREBY ACKNOWLEDGES THE FOREGOING:

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: [Signature]  
Name: ANDREW FISK  
Title: BUREAU DIRECTOR

STATE OF MAINE  
Kennebec, ss.

May 26, 2006

Personally appeared before me the above named Andrew Fisk, Director of the Maine Department of Environmental Protection, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of the Maine Department of Environmental Protection.

[Signature]  
Notary Public Lynn Bachtler  
Print Name: \_\_\_\_\_  
Commission Expires: 4/10/11

**EXHIBIT I**

**DESCRIPTION OF MITIGATION PARCEL A - REVISED**

A certain easement located northwesterly of, but not adjacent to, Ocean Avenue in the City of Portland, County of Cumberland, State of Maine, bounded and described as follows:

Beginning at a point, said point being the southerly corner of Mitigation Parcel A as described in a deed recorded in the Cumberland County Registry of Deeds in Book 13709, Page 75;

Thence N 57°43'44" W a distance of Twenty-Four and 95/100 (24.95) feet to a point;

Thence N 20°00'29" E a distance of Sixty-Nine and 06/100 (69.06) feet to a point;

Thence N 88°05'33" W a distance of Thirty-Nine and 67/100 (39.67) feet to a point;

Thence N 52°36'18" W a distance of Thirty-Two and 69/100 (32.69) feet to a point;

Thence N 25°47'25" W a distance of Twenty-Nine and 33/100 (29.33) feet to a point;

Thence N 60°36'26" E a distance of Sixteen and 83/100 (16.83) feet to a point;

Thence N 68°16'52" E a distance of One Hundred and 11/100 (100.11) feet to a point;

Thence N 55°39'58" E a distance of Nineteen and 41/100 (19.41) feet to a point;

Thence S 38°27'46" E a distance of Eighty-Four and 24/100 (84.24) feet to a point;

Thence S 40°48'48" W a distance of One Hundred Fifty-Three and 38/100 (153.38) feet to the point of beginning.

Bearings are referenced to magnetic north 1924.

The above described easement contains 14,972 square feet and lies over a portion of property now or formerly of Cedars Nursing Care Center, Inc. as described in a deed recorded in the Cumberland County Registry of Deeds in Book 7732, Page 282. The above described easement is a portion of Mitigation Parcel A as described in a Declaration of Covenants and Restrictions recorded in the Cumberland County Registry of Deeds in Book 13709, Page 75.

Reference is made to "Mitigation Parcel A—Revised" as shown on the Cedars Condominiums Recording Plat/Condominium Plan ALTA/ACSM Land Title Survey prepared by Titcomb Associates, dated September 8, 2005, to be recorded in the Cumberland County Registry of Deeds, for a depiction of Mitigation Parcel A as revised by this Amendment.



**EXHIBIT I**

**DESCRIPTION OF MITIGATION PARCEL A - REVISED**

A certain easement located northwesterly of, but not adjacent to, Ocean Avenue in the City of Portland, County of Cumberland, State of Maine, bounded and described as follows:

Beginning at a point, said point being the southerly corner of Mitigation Parcel A as described in a deed recorded in the Cumberland County Registry of Deeds in Book 13709, Page 75;

Thence N 57°43'44" W a distance of Twenty-Four and 95/100 (24.95) feet to a point;

Thence N 20°00'29" E a distance of Sixty-Nine and 06/100 (69.06) feet to a point;

Thence N 88°05'33" W a distance of Thirty-Nine and 67/100 (39.67) feet to a point;

Thence N 52°36'18" W a distance of Thirty-Two and 69/100 (32.69) feet to a point;

Thence N 25°47'25" W a distance of Twenty-Nine and 33/100 (29.33) feet to a point;

Thence N 60°36'26" E a distance of Sixteen and 83/100 (16.83) feet to a point;

Thence N 68°16'52" E a distance of One Hundred and 11/100 (100.11) feet to a point;

Thence N 55°39'58" E a distance of Nineteen and 41/100 (19.41) feet to a point;

Thence S 38°27'46" E a distance of Eighty-Four and 24/100 (84.24) feet to a point;

Thence S 40°48'48" W a distance of One Hundred Fifty-Three and 38/100 (153.38) feet to the point of beginning.

Bearings are referenced to magnetic north 1924.

The above described easement contains 14,972 square feet and lies over a portion of property now or formerly of Cedars Nursing Care Center, Inc. as described in a deed recorded in the Cumberland County Registry of Deeds in Book 7732, Page 282. The above described easement is a portion of Mitigation Parcel A as described in a Declaration of Covenants and Restrictions recorded in the Cumberland County Registry of Deeds in Book 13709, Page 75.

Reference is made to "Mitigation Parcel A—Revised" as shown on the Cedars Condominiums Recording Plat/Condominium Plan ALTA/ACSM Land Title Survey prepared by Titcomb Associates, dated September 8, 2005, to be recorded in the Cumberland County Registry of Deeds, for a depiction of Mitigation Parcel A as revised by this Amendment.

**EXHIBIT II**

**DESCRIPTION OF MITIGATION PARCEL B - REVISED**

A certain easement located northwesterly of, but not adjacent to, Ocean Avenue in the City of Portland, County of Cumberland, State of Maine, bounded and described as follows:

Beginning at a point, said point lying N 33°52'30" W by land now or formerly of Cedars Nursing Care Center, Inc. as described in a deed recorded in the Cumberland County Registry of Deeds in Book 7732, Page 282, a distance of One Hundred Thirty-Two and 37/100 (132.37) feet from said Ocean Avenue and the easterly corner of said land of Cedars Nursing Care Center, Inc.;

Thence S 58°09'19" W a distance of Eleven and 06/100 (11.06) feet to a point;

Thence N 66°31'23" W a distance of Forty-Six and 92/100 (46.92) feet to a point;

Thence N 10°12'08" W a distance of Twenty-Three and 48/100 (23.48) feet to a point;

Thence N 62°52'24" W a distance of Sixteen and 66/100 (16.66) feet to a point;

Thence N 35°08'49" E a distance of Fifty-One and 25/100 (51.25) feet to a point;

Thence S 78°14'02" E a distance of Twenty-Eight and 91/100 (28.91) feet to a point;

Thence S 83°22'48" E a distance of Eleven and 21/100 (11.21) feet to a point;

Thence S 24°08'41" E a distance of Forty-One and 40/100 (41.40) feet to a point;

Thence S 03°56'26" E a distance of Thirty and 30/100 (30.30) feet to a point;

Thence S 58°09'19" W a distance of Nineteen and 47/100 (19.47) feet to the point of beginning.

Bearings are referenced to magnetic north 1924.

The above described easement contains 5,277 square feet and lies over portions of property now or formerly of Cedars Nursing Care Center, Inc. as described in a deeds recorded in the Cumberland County Registry of Deeds in Book 7732, Page 282 and book 13696, Page 315; also lying over a portion of property now or formerly of JHA Properties, Inc. as described in a deed recorded in said Registry in Book 13696, Page 317. The above described easement is a portion of Mitigation Parcel B as described in a Declaration of Covenants and Restrictions recorded in said Registry in Book 13709, Page 75.

Reference is made to "Mitigation Parcel B—Revised" as shown on the Cedars Condominiums Recording Plat/Condominium Plan ALTA/ACSM Land Title Survey prepared by Titcomb Associates, dated September 8, 2005, to be recorded in the Cumberland County Registry of Deeds, for a depiction of Mitigation Parcel B as revised by this Amendment.

Received  
Recorded Register of Deeds  
Jun 30 2006 01:31:55P  
Cumberland County  
John B O'Brien

DECLARATION OF CONDOMINIUM

OF

CEDARS CONDOMINIUMS

Portland, Maine

June 30, 2006

DECLARATION OF CONDOMINIUM  
OF  
CEDARS CONDOMINIUMS  
PORTLAND, MAINE

THIS DECLARATION OF CONDOMINIUM is made this 30th day of June 2006, by and between JHA Properties, Inc. a Maine non-profit corporation, its successors and assigns ("JHA Properties"), and Cedars Nursing Care Center, Inc., a Maine non-profit corporation, its successors and assigns ("Cedars"; together with JHA Properties, the "Declarants"), each with a place of business at 630 Ocean Avenue, Portland, Maine 04103, as the owners in fee simple of the Real Estate (as hereinafter defined).

ARTICLE I  
SUBMISSION

Section 1.1. Property. Declarants hereby submit the real estate described in Exhibit A attached hereto and made a part hereof (the "Real Estate") situated in the City of Portland, County of Cumberland and State of Maine, together with and subject to all easements, rights and appurtenances thereto belonging and the Buildings (as hereinafter defined) thereon (collectively, the "Property") to the provisions of Chapter 31 of Title 33 of the Maine Revised Statutes Annotated, as the same may be amended from time to time, known as the Maine Condominium Act (the "Act") and hereby creates with respect to the Property a condominium to be known as "Cedars Condominiums" (the "Condominium"). The Condominium consists of the land described in Exhibit A and those Units (as hereinafter defined) listed in Exhibit B, attached hereto and made a part hereof, and depicted on the Plat (as hereinafter defined).

The submission of the Real Estate to the Condominium shall create three (3) Condominium Units, as more particularly described herein, which upon recording of the Declaration shall be owned in fee by the Declarants as follows:

(a) Unit No. 1 shall be owned in fee by Cedars, its successors and assigns, and JHA Properties, for itself and its successors and assigns, hereby **grants and releases** to Cedars, its successors and assigns all right, title and interest JHA Properties may have in and to Unit No.1 and the development rights associated therewith.

(b) Unit No. 2 shall be owned in fee by Cedars, its successors and assigns, and JHA Properties, its successors and assigns, as tenants in common, in the following percentages:

- (i) Cedars 33.6% ("Cedars' Tenancy-in-Common Interest"); and
- (ii) JHA Properties 66.4% ("JHA Properties' Tenancy-in-Common Interest").

JHA Properties, for itself and its successors and assigns, hereby **grants and releases** to Cedars, its successors and assigns all right, title and interest JHA Properties may have in and to Cedars' Tenancy-in-Common Interest in Unit No.2 and the development rights associated therewith. Cedars, for itself and its successors and assigns, hereby **grants and releases** to JHA Properties, its successors and assigns all right, title and interest Cedars may have in and to JHA Properties' Tenancy-in-Common Interest in Unit No.2 and the development rights associated therewith.

(c) Unit No. 3 shall be owned in fee by JHA Properties, its successors and assigns, and Cedars, for itself and its successors and assigns, hereby **grants and releases** to JHA Properties, its successors and assigns all right, title and interest Cedars may have in and to Unit No.3 and any development rights associated therewith.

(d) In consideration of the rights and easements created under this Declaration each of the Declarants, for itself and its successors and assigns, hereby **grants and releases** to the other all right, title and interest it may have in and to the following easements of record with respect to the Real Estate:

(i) Utility and Access Easement described as Parcel B in easement deed from Cedars Nursing Care Center, Inc., to JHA Services, Inc., dated May 25, 1990, and recorded in the Cumberland County Registry of Deeds, Book 9188, Page 115, as amended and modified Short Form Quitclaim Deed from Cedars Nursing Care Center, Inc., to JHA Properties, Inc., dated March 17, 1998, and recorded in the Cumberland County Registry of Deeds, Book 13696, Page 319, and by Easement Modification, between JHA Services, Inc. and Cedars Nursing Care Center, Inc., dated April 1, 1998, and recorded in the Cumberland County Registry of Deeds, Book 13708, Page 305 (said deed dated May 25, 1990, as so modified being the "Granting Deed");

3 ref

(ii) Emergency Access Road Easement described as Parcel C in the Granting Deed;

(iii) Parking Easement, Utility and Access Easement and Loop Road Easement retained as Items 1, 2 and 3 of Parcel C in the Granting Deed;

(iv) Access Easement in easement deed from JHA Properties, Inc., to Cedars Nursing Care Center, Inc., dated March 27, 1998 and recorded in the Cumberland County Registry of Deeds, Book 13696, Page 321;

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(v) Access Easement in easement from Cedars Nursing Care Center, Inc., to JHA Properties, Inc., dated March 27, 1998 and recorded in the Cumberland County Registry of Deeds, Book 13696, Page 325; and

reference

(v) Agreement and Reciprocal Easement Deed, between Cedars Nursing Care Center, Inc., and JHA Properties, Inc., dated as of March 27, 1998 and recorded in the Cumberland County Registry of Deeds, Book 13696, Page 331.

reference

Section 1.2. Maximum Number of Units. The maximum number of Units the Declarants reserve the right to create is three (3).

Section 1.3. Address of Condominium. The address of the Condominium is:

Cedars Condominiums  
630 Ocean Avenue  
Portland, Maine 04103

## ARTICLE 2 DEFINITIONS

Section 2.1. Terms Defined in the Act. Capitalized terms not otherwise defined in this Declaration or in the Plat, shall have the meanings specified or used in the Act.

Section 2.2. Terms Specifically Defined in this Declaration. In addition to the terms defined above, the following terms shall have the following meanings in this Declaration, the Bylaws, and the Plat:

- (a) "Act" has the meaning set forth in Section 1.1.
- (b) "Association" means the Unit owners' association of the Condominium, which shall be known as the Cedars Condominiums Owners Association.
- (c) "Budget" has the meaning set forth in Section 13.1(a).
- (d) "Buildings" (or in the singular, a "Building") means any residential, commercial, long term care, service or recreational structure or other improvement now existing or hereafter constructed on the Real Estate.
- (e) "Bylaws" means the document having that name and providing for the governance of the Association, pursuant to Section 1603-106 of the Act, as such document may be amended from time to time.
- (f) "Cedars" has the meaning set forth in introductory paragraph of this Declaration.
- (g) "Cedars' Tenancy-in-Common Interest" has the meaning set forth in Section 1.1(b).
- (h) "Common Elements" (or in the singular, a "Common Element") means those parts of the Property either described in the Act as being common elements or described in this Declaration or in the Plat as being common elements.
- (i) "Common Expenses" means expenditures made by or financial liabilities of the Association together with any allocations to reserves.

- (j) "Condominium" means the condominium described in Section 1.1.
- (k) "Condominium Documents" means the Declaration, the Plat, Bylaws and Rules and Regulations.
- (l) "Declarants" has the meaning set forth in introductory paragraph of this Declaration.
- (m) "Declaration" means this document, as the same may be amended from time to time.
- (n) "Development Rights" means those rights, if any, which the Declarants have reserved to themselves as set forth in Article 14 and elsewhere in this Declaration.
- (o) "Eligible Mortgage Holder" means the holder of a recorded first mortgage on a Unit which has requested in writing that the Association notify it of actions by the Association upon which such mortgage holders are entitled to vote or whose consent is required under this Declaration.
- (p) "Executive Board" means the executive board of the Association.
- (q) "JHA Properties" has the meaning set forth in introductory paragraph of this Declaration.
- (r) "JHA Properties' Tenancy-in-Common Interest" has the meaning set forth in Section 1.1(b).
- (s) "Identifying Number" means the number assigned to a Unit in the Plat.
- (t) "Insurance Trust Agreement" means that certain agreement, if any, between the Association and the Insurance Trustee providing for the management and disbursement of insurance proceeds in accordance with Section 9.2 hereof.
- (u) "Insurance Trustee" means that certain entity responsible for the management and disbursement of insurance proceeds pursuant to the Insurance Trust Agreement, if any.
- (v) "Limited Common Elements" (or in the singular, a "Limited Common Element") means those parts of the Property either described in the Act as being limited common elements or described herein or in the Plat as being limited common elements.
- (w) "Monthly Assessment" means the Unit owner's share of the anticipated Common Expenses, allocated by Unit, for each month of the Association's fiscal year as reflected in the budget adopted by the Executive Board for such year.



(x) "Mortgagee" means the holder of any recorded first mortgage encumbering one or more of the Units.

(y) "Percentage Interest" means the undivided interest in the Common Elements appurtenant to a Unit, as set forth on Exhibit B attached hereto, as the same may be amended from time to time.

(z) "Plat" means the Cedars Condominiums Recording Plat/Condominium Plan/ALTA/ASCM/Land Title Survey, made for JHA Properties, Inc., & Cedars Nursing Care Center, Inc., JHA Assisted Living, Inc., prepared by Titcomb Associates, dated September 8, 2005, and revised April 5, 2006, recorded in the Cumberland County Registry of Deeds in Plan Book 206 at Page 430 as the same may be amended from time to time, reduced photocopies of which are attached hereto as Exhibit C.

(aa) "Property" has the meaning set forth in Section 1.1.

(bb) "Real Estate" has the meaning set forth in Section 1.1.

(cc) "Record" means to record in the Cumberland County Registry of Deeds.

(dd) "Rules and Regulations" means such rules and regulations as are promulgated by the Declarants or the Executive Board from time to time with respect to the use of all or any portion of the Property.

(ee) "Special Assessment" means a Unit owner's share of any assessment made by the Executive Board in addition to the Monthly Assessment.

(ff) "Special Declarant Rights" means those rights which the Declarants have reserved to themselves as set forth in Article 14 and elsewhere in this Declaration.

(gg) "Unit" means a physical portion of the Condominium created by this Declaration or any amendment thereto and designated for separate ownership or occupancy, the boundaries of which are described in Article 3 or in any amendment creating such Unit.

Section 2.3. Provisions of the Act. The provisions of the Act shall apply to and govern the operation and governance of the Condominium, except to the extent that contrary provisions, not prohibited by the Act, are contained in one or more of the Condominium Documents.

### ARTICLE 3 UNIT BOUNDARIES AND MAINTENANCE RESPONSIBILITIES

#### Section 3.1. Unit Boundaries.

(a) The boundary lines of each Unit are formed by the following planes:

(1) the upper boundary shall be a horizontal plane at an elevation of one hundred and thirty-five feet (135) above sea level (determined by reference to City of Portland datum: masonry nail in Utility Pole #82 located on Ocean Avenue (elevation=70.90) as shown on the Plat),

(2) the lower boundary shall be a horizontal plane at an elevation of forty-five (45) feet above sea level; and

(3) the vertical boundaries shall be perpendicular planes located three (3.00) feet outside the perimeter of the footprint of the building located or to be located within said Unit as shown on the Plat, each projected (A) horizontally to meet the projection of the adjacent vertical planes and (B) downward and upward to meet the upper and lower horizontal boundaries; except that, at those locations where the outside surface of an exterior wall of a Building in one Unit is adjacent to the outside surface of an exterior wall of a Building in another Unit, the vertical boundary of each Unit shall be a vertical plane that is equidistant between the outside of the finish material forming the exterior walls of the Buildings in question, except that in the case of Unit No. 1, Unit No. 1 shall also include:

(i) The enclosed triangular structure on the first floor at the intersection of the north-facing exterior surfaces of the two Building wings at the north end of the Building in Unit No. 1, one wing that extends in a northwesterly direction and the other wing that extends in a northeasterly direction;

(ii) The enclosed triangular structure on the first floor at the intersection of the south-facing exterior surfaces of the two Building wings at the south end of the Building in Unit No. 1, one wing that extends in a southwesterly direction and the other wing that extends in a southeasterly direction; and

(iii) The enclosed vestibule at the entrance of Unit No. 1 on the east side of the Building in Unit No. 1.

NOTE: Although the foundations of each Building will be located as shown on the Plat, the vertical boundaries for each Unit described above are located outside of the perimeter of such foundations in order to accommodate roof eaves and overhangs and other building features that extend beyond such foundation perimeter.

(b) Each Unit consists of all portions of any Building that is located within the aforesaid boundary lines, except the air space displaced Common Elements extending into or within such Unit which serve other Unit(s) and/or the Common Elements, including without limitation chutes, flues, chases, ducts, wires, conduits and pipe runs as described in clause (a)(3) of this section. The finish material, such as plaster or drywall, and furring around chutes, flues, chases, ducts, conduits, pipe runs and similar structures containing wires, vents, pipes, utilities or services that serve another Unit or Units and/or the Common Elements, the Unit to include the thickness of such finish material around chutes, flues, chases, ducts, conduits, pipe runs and

similar structures but not the cavity within such wires, vents, pipes, utilities or services are located.

- (c) Each Unit's Identifying Number is shown on the Plat.

Section 3.2. Relocation of Unit Boundaries; Subdivision of Unit. The owners of any Unit shall be permitted to (i) relocate boundaries between Units or (ii) subdivide a Unit in accordance with the procedures for an amendment of this Declaration as set forth in Article 16 below.

Section 3.3. Maintenance Responsibilities.

(a) The Association, through the Executive Board and as determined by the Unit owners, shall be responsible for (i) maintenance, repair and replacement of the Common Elements, but excluding the Limited Common Elements, and (ii) maintenance, repair and replacements as may be required for the functioning of or for the bringing of utilities, such as water, gas, electricity and sewer to all of the Units, all of which maintenance, repair and replacement shall be furnished by the Association as part of the Common Expenses.

(b) The Association, through the Executive Board and as determined by the Unit owners, shall be responsible for maintenance, repair and replacement of the Limited Common Elements at the cost and expense of the owners of the Unit or Units to which such Limited Common Elements are allocated.

(c) If damage is caused to (i) the Common Elements or (ii) any other part of the Condominium, in each case by any Unit owner, or guests, tenants, or invitees of such Unit owner for which maintenance, repairs and replacements shall be required that would otherwise be a Common Expense, such Unit owner shall pay for such damage and such maintenance, repairs and replacement as may be determined necessary or advisable by the Association. Each Unit owner shall be responsible for the cleanliness, including, but not limited to, ice and snow removal, of any Limited Common Element allocated to such Unit owner's Unit. In addition to the maintenance, repair and replacement of the Common Elements, the Association, through the Executive Board and upon the request of the Unit owners, shall arrange for or provide to each Unit owner trash and garbage removal service on a regular basis. The Executive Board, in its discretion, may provide the maintenance and other services described in this Section 3.2(a) either through its own employees or through independent contractors or both. The cost of the provision of such services shall be a Common Expense.

(d) Each Unit owner is responsible for the maintenance, repair and replacement of such Unit owner's Unit, including, without limitation, exterior glass windows, roofs, skylights, garage doors and other doors included within the Unit. Each Unit owner shall afford to the Association, and other Unit owners, and to their agents and employees, access through such Unit owner's Unit reasonably necessary for the maintenance, repair and replacement of the Common Elements and the shared Limited Common Elements.

(e) Charges for electric, sewer, water service, telephone and cable television service will be separately metered and each Unit owner will be responsible for the cost of such services furnished to such owner's Unit. Utilities that are not separately metered or billed by the respective utility companies and that are used by all of the Units shall be treated as part of the Common Expenses. Electricity for lighting of the Common Elements may be provided by the Association as part of the Common Expenses.

ARTICLE 4  
DESCRIPTION AND ALLOCATION OF COMMON ELEMENTS AND  
LIMITED COMMON ELEMENTS

Section 4.1. Description of Common Elements. Common Elements shall include:

(a) Within Unit Boundaries. The following portions of any Building within the boundaries of a Unit that are not Limited Common Elements:(i) the portion of any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture within the designated boundaries of a Unit that serve, in whole or in part, another Unit or Units and/or the Common Elements, (ii) all driveways on the Property providing access to and from any public way, (iii) those parking areas not designated as Limited Common Elements on the Plat, (iv) any signage not physically attached to a Unit; (v) those portions identified and designated as Common Elements on the Plat, in each case including, by way of description but not limitation, and, if applicable, within the Units' boundaries to the extent that they are constructed:

(b) Land. All lands submitted to the Condominium as described herein, except land (i) directly under a Unit, which land shall be a Limited Common Element allocated to such Unit, and (ii) other Limited Common Elements, all subject to the easements set forth in Article 6 of this Declaration.

(c) Improvements. All improved surfaces, drives, driveways, curbs, sidewalks and parking spaces that are not Limited Common Elements, subject to the easements and provisions set forth in Article 6 of this Declaration.

(d) Ornamentals, Drainage System and Utilities. Lawn areas, drainage systems located on the Property, shrubbery, and waterways, and all conduits and utility lines over, on or under the Land that are not Limited Common Elements, subject to the easements and provisions set forth in Article 6 of this Declaration.

(e) Utilities. Connections for gas, electricity, light, telephone and water not owned by the public utility or other agencies providing such services, provided that any portion of such connections that serves only one or two of the Units shall be a Limited Common Element allocated with the Unit or Units so served.

(f) Lighting. Any exterior lighting or other facilities necessary to the upkeep and safety of the grounds.

(g) After-Constructed Improvements. All other improvements that may be constructed on the property except those improvements that are part of a Unit or a Limited Common Element.

(h) Certain Other Buildings and Improvements. The so-called "White House" located near Ocean Avenue and northeasterly of the entrance drive to the Condominium from Ocean avenue shall be a Common Element.

(i) Other Elements. All other elements of the Condominium rationally of common use and necessary to the existence, upkeep and safety thereof and, in general, all other devices or installations existing for common use that are not Limited Common Elements.

Section 4.2. Description of Limited Common Elements. Limited Common Elements shall include (i) at those locations where the outside surface of an exterior wall of a Building in one Unit is adjacent to the outside surface of an exterior wall of a Building in another Unit, any expansion joints connecting such exterior walls, and any expansion joints connecting the roofs of such Units, all of which shall be a Limited Common Element associated with both of such Units; (ii) the portion of any chute, flue, chase, duct, wire, conduit, bearing wall, bearing column or any other fixture lying within the designated boundaries of a Unit that serves less than all of the Units, which shall be Limited Common Elements associated with the Unit or Units so served, (iii) the portion of any connections for gas, electricity, light, telephone and water not owned by the public utility or other agencies providing such services that serves only one or two of the Units, which shall be a Limited Common Element associated with the Unit or Units so served or (iv) any structure, improvement or other property that is identified and designated as Limited Common Elements on the Plat, including, without limitation, the garages that are assigned as Limited Common Elements to Unit 3. Those portions of the Limited Common Elements serving only the Unit adjacent to such Limited Common Element are Limited Common Elements allocated only to the Unit which they serve. This allocation shall not be changed without the consent of the Unit owners served or benefited by such Limited Common Elements.

Section 4.3. [Intentionally Omitted.]

Section 4.4. [Intentionally Omitted.]

Section 4.5. Reserved Common Elements. The Executive Board shall have the power in its discretion from time to time to grant revocable licenses in designated Common Elements to the Association or to any Unit owners and to establish a reasonable charge to such Unit owners for the use and maintenance thereof. Such designation by the Executive Board shall not be construed as a sale or disposition of the Common Elements.

Section 4.6. Alteration of Common Elements by the Declarant. The Declarants reserve the right to modify, alter, remove or improve portions of the Common Elements, including without limitation, any equipment, fixtures and appurtenances, when in the Declarants' judgment it is necessary or desirable to do so, until the completion of all Units. Such rights do not include rights to add or remove real estate not deemed to be fixtures.

Section 4.7. Allocation of Common Elements. Each Unit owner shall acquire, as an appurtenance to each Unit, its Percentage Interest in the Common Elements as set forth on Exhibit B attached hereto, as the same may be amended from time to time. The said Percentage Interest shall not be divisible from the Unit to which it appertains and shall be deemed to be conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Except as otherwise permitted under the Act or this Declaration, the Percentage Interest of each Unit owner shall not be altered without the consent of all of the Unit owners expressed in an amendment to this Declaration duly recorded. Said Percentage Interests shall be used to allocate the division of proceeds, if any, resulting from any casualty, loss, eminent domain proceedings, common surplus, or from any other disposition of the Property.

Section 4.8. Allocation of Parking Spaces. The Declarant reserves the right, until the construction of all Units is completed, to allocate to particular Units as Limited Common Elements the parking spaces shown on the Plat that are not otherwise designated Limited Common Elements on said Plat. Such right shall be deemed a Development Right and shall be subject to the terms and conditions set forth in Article 14 of this Declaration. After the expiration of such Development Right pursuant to Article 14 of this Declaration, the Executive Board shall have the power in its discretion from time to time to so allocate those parking spaces.

ARTICLE 5  
ALLOCATION OF PERCENTAGE INTERESTS IN COMMON  
EXPENSES AND VOTING RIGHTS

Section 5.1. Percentage Interests. Attached as Exhibit B hereto is a list of all Units by their Identifying Number and the Percentage Interest appurtenant to each Unit, together with an explanation of the formula by which such Percentage Interest is determined. All calculations on Exhibit B shall be conclusive and binding on all Unit owners, the Executive Board, the Association and any Mortgagees.

Section 5.2. Common Expenses. The liability allocated to each Unit for the Common Expense of the Condominium shall be the same percentage share as the Percentage Interest allocated to such Unit on Exhibit B.

Section 5.3. Allocation of Unit Owner's Voting Rights. Each Unit owner shall be entitled to one (1) vote for each Unit owned by such person to permit equality of voting power among the Units.

ARTICLE 6  
EASEMENTS

Section 6.1. Utility Easements. The Units, Common Elements and Limited Common Elements shall be, and hereby are, made subject to easements in favor of the

Declarants, other Unit owners, appropriate utility and service 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. The easements created by this Section 6.1 shall include, without limitation, rights of the Declarants, any Unit owner or the providing utility or service company, or governmental agency or authority to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, drainage ditches and pump stations, telephone wires and equipment, television equipment and facilities (cable or otherwise), electrical wires, conduits, and equipment and ducts and vents over, under, through, along and on the Units and Common Elements. Notwithstanding the foregoing provisions of this Section 6.1, 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 the completion of the initial construction of the Buildings and other improvements within the affected Unit or so as not to materially interfere with the use or occupancy of such Buildings and other improvements by its occupants. With respect to any utility lines or equipment serving only the Condominium and located upon the Common Elements, the Executive Board shall have the right and power to assign the easement related to such Common Elements to any private or public utility company. The Executive Board shall also have the right and power to convey to any private or public utility company permits, licenses and easements over the Common Elements for the installation, maintenance, repair and replacement of utility poles, lines, wires and other equipment. In addition, the Executive Board shall have the right to grant permits, licenses and easements over the Common Elements for the building and maintenance of roads and for other purposes necessary for the proper operation of the Condominium.

Section 6.2. Maintenance of Surface Water Drainage. Declarants reserve for themselves and the Association an easement on, over and under those portions of the Common Elements not located within a Unit for the purpose of maintaining and/or correcting drainage of surface water in order to maintain reasonable standards of health, safety and appearance and to comply with and observe any conservation easement or declaration now or hereafter recorded with respect of the Property or any portion thereof. The easement created by this Section 6.2 expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil, or to take any other action reasonably determined to be necessary and otherwise in compliance with applicable standards of health, safety and appearance conservation easements or declarations. The Declarants or the Association, as the case may be, shall restore the affected property as closely to its original condition as is practicable.

Section 6.3. Common Elements Easements. The Common Elements (other than the Limited Common Elements) shall be, and hereby are, made subject to an easement in favor of the Unit owners and their invitees, employees, tenants and servants, the Association and the agents and employees of the Association for access, egress and ingress over, through and across each portion thereof, pursuant to such requirements and subject to such charges as the Executive Board may from time to time prescribe; *provided* that nothing contained herein shall create any access easement in favor of Unit owners with respect to such portions of the Common Elements that are not needed in order to gain access to one or more Units and as to which the Executive Board may from time to time determine it to be necessary or desirable to limit or control access

by Unit owners or the occupants of Units, or both, including, by way of illustration and not limitation, machinery and equipment rooms; *provided, further*, that every Unit owner shall have an unrestricted right of ingress and egress to such Unit owner's Unit.

Section 6.4. Declarant's Easements for Maintenance Repair and Renovation. The Units, Common Elements and Limited Common Elements are subject to an easement in favor of the Declarants for the purposes of construction, reconstruction, maintenance, repair, renovation, replacement or correction of the Common Elements or Limited Common Elements.

Section 6.5. Association's Easements for Maintenance, Repair and Renovation. The Units, Common Elements and the Limited Common Elements shall be and hereby are made subject to an easement in favor of the Association and the agents, employees and independent contractors thereof for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements and the Limited Common Elements.

Section 6.6. Easements Burdening Common Elements and Limited Common Elements. The Common Elements and the Limited Common Elements shall be and hereby are made subject to the following easements in favor of the Units benefited:

(a) For the installation, repair, maintenance, use, removal and/or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone and other communication wiring and cables and all other utility lines and conduits which are part of or exclusively serve a single Unit and which pass across or through a portion of the Common Elements;

(b) For the installation, repair, maintenance, use, removal and/or replacement of overhead lighting fixtures, electrical receptacles and the like which are located in a portion of the ceiling, wall or floor adjacent to a Unit which is a part of the Common Elements; *provided that* the installation, repair, maintenance, use, removal or replacement of such fixtures, receptacles and the like does not unreasonably interfere with the common use of any part of the Common Elements or impair or structurally weaken any Building;

(c) For the maintenance of the encroachment of any lighting devices, outlets, exhaust fans, ventilation ducts, registers, grilles and similar fixtures which serve only one Unit but which encroach into any part of any Common Element or Limited Common Element; and

(d) For the construction of improvements upon Limited Common Elements as such construction may be approved in writing by the Executive Board. Each Unit owner shall be liable to the Association for any damage to the Common Elements as the result of such Unit owner's exercise of the easement rights described in this paragraph (e).

Section 6.7. Structural Support Easements. To the extent necessary, each Unit shall have an easement for structural support over every other Unit, the Common Elements and the Limited Common Elements, and each Unit and the Common Elements shall be subject to an



easement for structural support in favor of every other Unit, the Common Elements and the Limited Common Elements.

Section 6.8. Easements Burdening Units and Limited Common Elements. The Units and the Limited Common Elements are hereby made subject to the following easements:

(a) In favor of the Association and its agents, employees and independent contractors, (i) for inspection of the Units and Limited Common Elements in order to verify the performance by Unit owners of all items of maintenance and repair for which they are responsible, (ii) for inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in or accessible from such Units or Limited Common Elements or both, (iii) for correction of emergency conditions in one or more Units or Limited Common Elements, or both, or casualties to the Common Elements, the Limited Common Elements and/or the Units, and (iv) to do any other work reasonably necessary for the proper maintenance of the Condominium, it being understood and agreed that the Association and its agents, employees and independent contractors shall take reasonable steps to minimize any interference with a Unit owner's use of his Unit resulting from the Association's exercise of any rights it may have pursuant to this Section 6.8; and

(b) In favor of the Unit owner benefited thereby and the Association, and their respective agents, employees and independent contractors, for the installation, repair, maintenance, use, removal and/or replacement of pipes, ducts, electrical, telephone, telegraph or other communication systems and all other utility lines and conduits which are part of the Common Elements and which pass across or through a portion of one or more Units.

(c) In favor of the Unit owner or owners benefited thereby and the Association and their respective patients, residents, tenants, invitees, agents, employees and independent contractors to the full extent from time to time required in order that the Units and the Buildings conform with all applicable life safety and other governmental and licensing requirements (i) for egress from Unit No. 1 through adjacent first floor corridors and hallways of the so-called "Service Connector" portion of Unit No. 3 to exterior exits located in said "Service Connector"; (ii) for egress from Unit No. 2 through adjacent first floor corridors and hallways in Unit No. 1 to exterior exits located in Unit No. 1; (iii) for egress from the exterior court yard area enclosed by the Buildings in Unit No. 1, Unit No. 2 and Unit No. 3, through the first floor corridors and hallways in the "Service Connector" portion of Unit No. 3 to exterior exits located in said Service Connector; and (iv) for egress from any Unit through adjacent corridors and hallways in any other for purposes of providing access to exits or other life safety features now or hereafter required for compliance with applicable life safety and other governmental and licensing requirements.

(d) In favor of the Unit owners benefited thereby and the Association and their agents, employees and independent contractors, for the installation, repair, maintenance, use, removal and/or replacement of walls, doors, jambs and doorframes in any corridor providing passage from one Unit to another in order to regulate or restrict passage between the Units

through such corridor (a "Corridor Separation Structure"), *provided that* (i) the Association shall be required to install a Corridor Separation Structure only at the written request of the Unit owner and Mortgagee of at least one of the Units in question; (ii) the costs of design and installation of a Corridor Separation Structure shall be born by the Unit owner or Unit owners requesting such Corridor Separation Structure; (iii) a Corridor Separation Structure shall be designed, installed, maintained and operated so that the requirements of all applicable life safety and other governmental and licensing requirements are satisfied; (iv) each Corridor Separation Structure shall be a Limited Common Element with the costs of maintenance, operation, repair, replacement and removal thereof allocated to the Units in question; and (v) a Corridor Separation Structure shall be removed only at the written request of the Unit owners and Mortgagees of both of the Units in question.

Section 6.9. Easements for Encroachments. If construction, reconstruction, repair, shifting, settlement or other movement of any portion of the Condominium results either in the Common Elements encroaching on any Unit, or in any Unit encroaching on the Common Elements or on any other Unit, a valid easement shall exist during the period of the encroachment for the encroachment and for the maintenance thereof.

Section 6.10. Duration of Easements. All easements, rights and restrictions described and mentioned in this Declaration are easements appurtenant, running with the land and the Property, including by way of illustration but not limitation, the Units, the Common Elements and the Limited Common Elements, and (except as expressly may be otherwise provided herein or in the instrument creating the same) shall continue in full force and effect until the termination of this Declaration.

Section 6.11. Certain Other Easements. The Property is subject to, and benefited by, the following easements:

(a) Snow Plowing Easement given by Cedars Nursing Care Center, Inc. to the City of Portland, dated April 17, 1990, and recorded in the Cumberland County Registry of Deeds, Book 9260, Page 236;

(b) Utility Easements given by Cedars Nursing Care Center, Inc. to Central Maine Power Company and New England Telephone and Telegraph Company, dated May 7, 1990 and September 5, 1990, and recorded in the Cumberland County Registry of Deeds respectively in Book 9162, Page 206 and Book 9306, Page 219;

(c) Utility Easements given by JHA Properties, Inc. to Central Maine Power Company, dated July 26, 1990, and recorded in the Cumberland County Registry of Deeds, Book 14382, Pages 187 and 188;

(d) Declaration of Covenants and Restrictions made by Cedars Nursing Care Center, Inc. and JHA Properties, Inc. dated March 27, 1998, and recorded in the Cumberland County Registry of Deeds, Book 13709, Page 75, as amended by Amendment to Declaration of Covenants and Restrictions, among the Maine Department of Environmental Protection, Cedars

Nursing Care Center, Inc. and JHA Properties, Inc., dated June \_\_\_, 2006, to be recorded in the Cumberland County Registry of Deeds;

(e) Declaration of Covenants and Restrictions made by Cedars Nursing Care Center, Inc. and JHA Properties, Inc., dated June \_\_\_, 2006, to be recorded in the Cumberland County Registry of Deeds;

(f) Certificate of Variance Approval, dated February 6, 1998, and recorded in the Cumberland County Registry of Deeds, Book 13595, Page 182;

ARTICLE 7  
RESTRICTIONS ON USE, SALE AND LEASE OF UNITS

Section 7.1. Use. The following restrictions shall apply to the use of the Condominium:

(a) The Units shall be used as part of an integrated campus providing skilled nursing care, assisted living residences and independent living residences, and such other uses as shall be determined from time to time by the Association through the Executive Board.

(b) No Unit owner may obstruct the Common Elements in any way. No Unit owner may store anything in or on the Common Elements other than in or on any Common Element storage area without the prior written consent of the Executive Board.

(c) No Unit owner may carry on any practice, or permit any practice to be carried on, which unreasonably interferes with the quiet enjoyment of the occupants of any other Unit. The Property is to be maintained in a clean and sanitary condition, and no Unit owner may place any garbage, trash or rubbish anywhere in the Property other than in a Unit owner's own Unit and in or on such parts of the Common Elements as may be designated for such purpose by the Executive Board.

(d) No Unit shall be used, occupied or kept in a manner that in any way increases the fire insurance premiums for the Property without the prior written consent of the Executive Board.

(e) The Executive Board may from time to time promulgate reasonable Rules and Regulations, not in conflict with the provisions of this Declaration, concerning the use and enjoyment of the Property. Copies of the then current Rules and Regulations and any amendments thereto shall be furnished to all Unit owners by the Association promptly after the adoption of such Rules and Regulations and any amendments thereto.

(f) The owner of a Unit shall be responsible for maintaining such Unit in good order and repair, at the expense of such owner, including (but not limited to) cleaning and replacing glass panes in any window serving such Unit.

(g) The owner of a Unit shall be responsible for the cleanliness of any Limited Common Element serving such Unit, at the expense of such Unit owner.

(h) Without the prior written consent of the Executive Board, the owner of a Unit shall not alter in any way any portion of such Unit owner's Unit that is part of the exterior facade of the Units, including by way of example, but not by way of limitation, roofing materials or design, exterior doors, siding type and color, and windows.

Section 7.2. Sale and Lease of Units.

A Unit owner, including but not limited to any Declarant, may sell or lease such Unit owner's Unit at any time and from time to time, *provided* that each tenant and lease shall be subject to and be bound by all of the covenants, restrictions and conditions set forth in the Condominium Documents.

ARTICLE 8  
RIGHTS OF MORTGAGE HOLDERS, INSURERS AND GUARANTORS

Section 8.1. Subject to Declaration. Whether or not it expressly so states, any mortgage constituting a lien against a Unit and an obligation secured thereby shall provide generally that the mortgage and the rights and obligations of the parties thereto shall be subject to the terms and conditions of the Act, the Declaration, the Plat and any Rules and Regulations.

Section 8.2. Rights of Eligible Mortgage Holders.

(a) The Association shall send reasonable prior written notice by prepaid United States mail to Eligible Mortgage Holders of the consideration by the Association of the following proposed actions:

- (1) The termination of the Condominium pursuant to Section 1602-118 of the Act;
- (2) A change in the allocated interest of a Unit, a change in the boundaries of a Unit or a subdivision of a Unit;
- (3) The merger or consolidation of the Condominium with another condominium;
- (4) The conveyance or subjection to a security interest of any portion of the Common Elements;
- (5) The proposed use of any proceeds of hazard insurance required to be maintained by the Association under Section 1603-113(a) of the Act for purposes other than the repair or restoration of the damaged property;

(6) The adoption of any proposed budget by the Executive Board under Section 1603-103(c) of the Act, and of the date of the scheduled Unit owners meeting to consider ratification thereof, which notice shall be accompanied by a summary of the proposed Budget; and

(7) Any default in the performance or payment by a Unit owner of any obligations under this Declaration, including, without limitation, default in the payment of Common Expense liabilities.

(b) In the event of any proposed actions described in clauses (1) through (5) of paragraph (a) of this Section 8.2, an Eligible Mortgage Holder shall have the right, but not the obligation, in place of the Unit owner to cast the votes allocated to that Unit or give or withhold any consent required of the Unit owner for such action by delivering written notice to the Association with a copy to the Unit owner prior to or at the time of the taking of the proposed action, which notice shall be sent by prepaid United States mail, return receipt requested, or by delivery in hand. Failure of the Eligible Mortgage Holder to so exercise such rights shall not constitute a waiver thereof and shall not preclude the Unit owner from exercising such right. In the event of any default described in subsection (a), paragraph (7) of this Section 8.2, the Eligible Mortgage Holder shall have the right, but not the obligation, to cure such default.

(c) An Eligible Mortgage Holder, or its representative, shall have the right to attend Association and Executive Board meetings for the purposes of discussing the matters described in paragraphs (1) through (6) of Section 8.2 (a).

Section 8.3. Rights of Mortgage Holders, Insurers or Guarantors.

(a) The Association shall send timely prior written notice of the following matters by prepaid United States mail to holders, insurers and guarantors of a mortgage on any Unit:

(1) Any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing the mortgage;

(2) A lapse, cancellation or material modification of any insurance policy maintained by the Association; and

(3) Any proposed action that requires the consent of fifty-one percent (51%) of the Eligible Mortgage Holders.

(b) To receive such notice, the mortgage holder, insurer or guarantor shall send a written request therefor to the Association, stating its name and address and the Unit identifying number or address of the Unit on which it holds, insures or guarantees the mortgage.

Section 8.4. Liability for Use and Charges. Notwithstanding any term in Section 10.1 hereof to the contrary, any Mortgagee who obtains title to a Unit pursuant to the remedies provided in a mortgage for foreclosure of such mortgage or a deed in lieu of foreclosure shall not

be liable for such Unit owner's unpaid assessments or charges which accrue prior to the acquisition of title to such Unit by the Mortgagee, except to the extent otherwise provided for in the Act and except to the extent that such Mortgagee is liable as a Unit owner for the payment of such unpaid assessment or charge that is assessed against the Mortgagee as a result of all Unit owners being reassessed for the aggregate amount of such deficiency.

Section 8.5. Condemnation Rights. No provision of this Declaration shall give a Unit owner, or any other party, priority over any rights of the Mortgagee of a Unit pursuant to its mortgage in the case of a distribution to such Unit owner of insurance proceeds or condemnation award for loss to or a taking of one or more Units and/or Common Elements.

Section 8.6. Books and Records. Any Mortgagee shall have the right, exercisable by written notice to the Executive Board, to examine the books and records of the Association and to require that it be provided with a copy of each annual report of the Association and other financial data of the Association reasonably requested by such Mortgagee.

## ARTICLE 9 INSURANCE

Section 9.1. Types and Amounts. The Association shall maintain at a minimum, as a Common Expense and to the extent reasonably available, the following types and amounts of insurance:

(a) Property insurance on the Common Elements, insuring against all risks of direct physical loss commonly insured against under the fire and extended coverage endorsement and such other insurance as the Executive Board deems necessary or desirable. The total amount of any insurance after application of any deductions shall not be less than 80% of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date exclusive of land, foundations, excavation and other items normally excluded from property policies. The loss payable clause of such policy shall show the Association or the Insurance Trustee, if any, as a trustee for each Unit owner and each Mortgagee of a Unit. Such policy may also contain the standard mortgagee clause, naming each Mortgagee, its successors and assigns. If the Executive Board fails within sixty (60) days after the date of an insured loss to initiate a claim for damages recoverable under the policy or policies obtained pursuant to this paragraph (a), any Mortgagee may initiate such a claim on behalf of the Association.

(b) Liability insurance, including medical payments insurance, complying with the requirements of Section 9.2 hereof, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such insurance policy shall contain a "severability of interest endorsement" or equivalent coverage which precludes the insurer from denying the claim of a Unit owner because of the negligent acts of the Association or another Unit owner. The amount of such liability insurance shall be at least \$1,000,000.00 for bodily injury and property damage for any single occurrence. The scope and amount of coverage of all liability insurance policies shall be reviewed at least once each year by the Executive Board and may be changed in

its discretion, *provided* that such policies shall continue to comply with the requirements of this Section 9.1 and Section 9.2 hereof.

(c) If the insurance described in paragraphs (a) and (b) of this Section 9.1 is not reasonably available, the Association shall provide notice of the same to the Unit owners and shall carry any other insurance that will provide similar coverage that can be reasonably obtained.

(d) Such worker's compensation insurance as applicable laws may require.

(e) Insurance to satisfy the indemnification obligation of the Association set out in Section 10.2 hereof, if and to the extent reasonably available, including but not limited to insurance coverage commonly referred to as "directors and officers insurance".

(f) If at any time it is determined that all or any part of the Property lies within a special flood hazard area, a master or blanket policy of flood insurance covering the Property, including but not limited to, all Common Elements and Limited Common Elements, the Units and all improvements, fixtures and appliances contained within the Unit as of the date of settlement on the Unit or the value thereof, and building service equipment and common equipment, fixtures, personal property and supplies owned by the Association, but excluding any improvements or appliances subsequently added by a Unit owner and all other personal property of the Unit owner. The amount of any such flood insurance obtained pursuant to this paragraph (f) shall be equal to the lesser of one hundred percent (100%) of the insurable value of the property insured or the maximum coverage available under the appropriate National Flood Insurance Administration program. Such flood insurance policy may, at the option of the Association, contain a "deductible" provision in an amount not to exceed the lesser of \$5,000 or one percent (1%) of the policy face amount. Funds to cover this amount shall be included in the Association reserve fund.

Section 9.2. Required Provisions. Insurance obtained by the Association shall be in accordance with the following provisions:

(a) Exclusive authority to adjust losses under policies hereafter in force on the Common Elements and the Limited Common Elements shall be vested in the Executive Board or its authorized representative.

(b) Each Unit owner may obtain additional insurance at his own expense; *provided, however,* that: (1) such policies shall not be invalidated by the waivers of subrogation required to be contained in policies required by this Declaration; and (2) no Unit owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association may realize under any insurance policy which the Association may have in force on the Property at any particular time.

(c) With respect to the insurance policies described in paragraphs (a) and (b) of Section 9.1 issued to the Association and covering all or any part of the Property, the Association shall cause such policies to provide that:

(1) Each Unit owner is an insured person under such policies with respect to liability arising out of such Unit owner's ownership of an undivided interest in the Common Elements or membership in the Association.

(2) The insurer waives its right to subrogation under the policy against any Unit owner or members of such Unit owner's household.

(3) No act or omission by any Unit owner, unless acting within the scope of his authority on behalf of the Association, will void such policies or be a condition to recovery under such policies.

(4) If at the time of a loss under such policies there is other insurance in the name of a Unit owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

(5) The liability of the insurer shall not be affected by, and the insurer shall not claim, any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Unit owner.

(6) An insurer that has issued an insurance policy under this Article shall issue certificates or memoranda of insurance to the Association and, upon request, to any Unit owner or Mortgagee. Such policies may not be canceled nor may coverage thereunder be substantially changed (whether or not requested by the Executive Board) except by the insurer giving at least twenty (20) days prior written notice thereof to the Executive Board, the Insurance Trustee, if any, Unit owners, each holder of a first mortgage on a Unit, and every other party in interest who shall have requested such notice of the insurer;

(7) The insurer will recognize any Insurance Trust Agreement entered into by the Association.

Section 9.3. Additional Insurance. Nothing in this Declaration shall be construed to limit the authority of the Executive Board to obtain additional insurance which it deems advisable.

## ARTICLE 10

### UNITS SUBJECT TO CONDOMINIUM DOCUMENTS; EMINENT DOMAIN

Section 10.1. Applicability of Condominium Documents. Each present and future owner, tenant, occupant and holder of a mortgage on a Unit shall be subject to and shall comply with the provisions of the Act, and with the covenants, conditions and restrictions as set forth in the Condominium Documents and the deed to such Unit; *provided that*, nothing contained herein shall impose upon any tenant or holder of a mortgage on a Unit any obligation which the Act or one or more of the Condominium Documents, or both, make applicable only to Unit owners (including, without limitation, the obligation to pay assessments for Common Expenses). The acceptance of a deed or mortgage to any Unit, or the entering into of a lease or the entering into



occupancy of any Unit shall constitute an agreement that the provisions of the Act and the covenants, conditions and restrictions set forth in the Condominium Documents and the deed to such Unit are accepted and ratified by such grantee, holder of a mortgage on a Unit or tenant. All of such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance mortgage or lease thereof. Failure to comply with the covenants, conditions and restrictions set forth in the Condominium Documents and the deed to such Unit shall be grounds for an action to recover damages or for injunctive relief, or both, maintainable by the Executive Board on behalf of the Association or by an aggrieved Unit owner.

Section 10.2. Eminent Domain. Whenever all or part of the Common Elements shall be taken, injured or destroyed by eminent domain, each Unit owner shall be entitled to notice thereof and to participate in the proceedings incident thereto; *provided, however*, that the Association shall officially represent the Unit owners in such proceedings. In any proceedings for the determination of damages, such damages shall be determined for such taking, injury or destruction as a whole and not for each Unit owner's interest therein and any award for such damage shall be payable to the Association for the benefit of the Unit owners and of the Mortgagees.

## ARTICLE 11

### ASSOCIATION; EXECUTIVE BOARD OF THE ASSOCIATION

Section 11.1. The Association. The Association is the governing body for all Unit owners with respect to the administration, maintenance, repair, replacements, cleaning and management of the Common Elements. The membership of the Association shall at all times consist exclusively of all Unit owners. Each Unit owner shall automatically become and be a member of the Association as long as such person is a Unit owner and upon the termination of the interest of a Unit owner in the Condominium, such Unit owner's membership and any interest in the common funds of the Association shall thereupon automatically terminate and transfer and inure to the next Unit owner or Unit owners succeeding such Unit owner in interest. The Association shall have all of the powers granted pursuant to Section 1603-102 of the Act, including the powers to assign its right to future income.

#### Section 11.2. Members of the Executive Board.

- (a) The initial Executive Board shall consist of three (3) members.
- (b) There shall be no Declarant control period. The Unit owners (including the Declarants to the extent of any Units owned by a Declarant at that time) shall each have the right to appoint one person to be its designated representative on and a member of the Executive Board in accordance with the Bylaws. The members of the Executive Board so appointed shall serve until the first regular election of the Executive Board held at the next annual meeting of the Association held in accordance with the Bylaws; thereafter, members of the Executive Board shall be elected in accordance with the Bylaws. The Bylaws may provide for the members of the Executive Board to serve staggered terms.

(c) Subject to the terms and provision of the Act, this Declaration or the Bylaws, the Executive Board shall have the power to act on behalf of the Association. The Executive Board shall possess all of the duties and powers granted to the Executive Board by the Act.

Section 11.3. Disputes. In the event of any dispute or disagreement between any Unit owners relating to the Property, or any questions of interpretation or application of the provisions of the Condominium Documents, the determination thereof by the Executive Board shall be final and binding on each and all such Unit owners. The Executive Board shall have the authority to seek a declaratory judgment or other appropriate judicial relief in order to assist it in carrying out its responsibilities under this Section 11.3. All costs of obtaining such judgment shall be borne by the disputants, or in the absence of disputants, by the Association as a Common Expense.

Section 11.4. Abating and Enjoining Violations by Unit Owners. The violation of any Rules and Regulations adopted by the Executive Board, the breach of any provision contained in the Condominium Documents, the deed to any Unit, or the Act by any Unit owner or any tenant of such Unit owner, shall give the Executive Board the right, in addition to any other rights to which it may be entitled, to enjoin, abate or remedy by appropriate legal proceedings, either by law or in equity, the continuance of any such violation or breach.

Section 11.5. Limited Liability of the Executive Board. To the maximum extent permitted by applicable law, the Executive Board, and its members in their capacity as members, officers and employees:

(a) Shall not be liable for the failure of any service to be obtained by the Executive Board and paid for by the Association, or for injury or damage to persons or property caused by the elements or by another Unit owner or person on the Property, or resulting from electricity, gas, water, rain, dust or sand which may leak or flow from the outside or from any part of the Units, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless in each such instance such injury or damage has been caused by the willful misconduct or gross negligence of the Association or the Executive Board;

(b) Shall not be liable as a result of the performance of the Executive Board members' duties for any mistakes of judgment, negligence or otherwise, except for the Executive Board members' own willful misconduct or gross negligence;

(c) Shall have no personal liability in contract to a Unit owner or any other person or entity under any agreement, check, contract, deed, lease, mortgage, instrument or transaction entered into by them on behalf of the Executive Board or the Association in the performance of the Executive Board members' duties;

(d) Shall not be liable to a Unit owner, or such Unit owner's tenants, employees, agents, customers or guests, for loss or damage caused by theft of or damage to personal property left by such Unit owner or his tenants, employees, agents, customers or guests in a Unit, or in or

on the Common Elements or Limited Common Elements, except for the Executive Board members' own willful misconduct or gross negligence;

(e) Shall have no personal liability in tort to a Unit owner or any other person or entity, direct or imputed, by virtue of acts performed by or for them, except for the Executive Board members' own willful misconduct or gross negligence in the performance of their duties; and

(f) Shall have no personal liability arising out of the use, misuse or condition of the Buildings, or which might in any other way be assessed against or imputed to the Executive Board members as a result of or by virtue of their performance of their duties, except for the Executive Board members' own willful misconduct or gross negligence.

Section 11.6. Indemnification. Each member of the Executive Board in his capacity as an Executive Board member, officer or both, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon the Executive Board Member in connection with any proceeding in which the Executive Board member may become involved by reason of the Executive Board member being or having been a member and/or officer of the Executive Board, or any settlement of any such proceeding, whether or not the Executive Board member is an Executive Board member, officer or both at the time such expenses are incurred, except with respect to any matter as to which such Executive Board member shall have been finally adjudicated in any action, suit or proceeding not to have acted in good faith in the reasonable belief that his or her action was in the best interests of the corporation or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful; *provided that*, in the event of a settlement, this indemnification shall apply only if and when the Executive Board (with the affected member abstaining if still an Executive Board member at the time of settlement) approves such settlement and reimbursement as being in the best interests of the Association. The indemnification by the Unit owners set forth in this Section 11.6 shall be paid by the Association on behalf of the Unit owners and shall constitute a Common Expense and shall be assessed and collectible as such. Such right of indemnification shall not be deemed exclusive of any other rights to which such Executive Board member and/or officer may be entitled as a matter of law or agreement or by vote of the Unit owners or otherwise.

Section 11.7. Defense of Claims. Complaints brought against the Association, the Executive Board or the officers, employees or agents thereof in their respective capacities as such, or the Condominium as a whole, shall be directed to the Executive Board of the Association, which shall promptly give written notice thereof to the Unit owners and the Eligible Mortgage Holders and such complaints shall be defended by the Association. The Unit owners and the Eligible Mortgage Holders shall have no right to participate other than through the Association in such defense. Complaints of a nature specified in Section 3.3. hereof against one or more but less than all Unit owners shall be defended by such Unit owners who are defendants themselves and such Unit owners shall promptly give written notice of the institution of any such suit to the Association and to the holders of any mortgages encumbering such Units.

Section 11.8. Storage; Disclaimer of Bailee Liability. Neither the Executive Board, the Association, any Unit owner nor the Declarant shall be considered a bailee of any personal property stored on the Common Elements (including property located in storage areas on the Common Elements, including the Limited Common Elements), whether or not exclusive possession of the particular area is given to a Unit owner for storage purposes, and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

## ARTICLE 12 MANAGEMENT

The Association shall have the right to employ a professional, experienced managing agent who shall oversee the daily operation of the Condominium in accordance with the provisions of the Act and the Condominium Documents.

## ARTICLE 13 ASSESSMENTS; LIABILITY OF UNIT OWNERS

### Section 13.1. Power to Assess.

(a) The Association, acting through the Executive Board in accordance with the Bylaws, shall have the power to fix and determine, from time to time, the sums necessary and adequate to provide for the Common Expenses (based on the Budget for such fiscal period), including, but not limited to, such amounts as are necessary for (i) the maintenance, repair and replacement of the Common Elements and the Limited Common Elements, as set forth in Section 3.3(a) hereof, (ii) uncollectable assessments, (iii) budget deficits, (iv) such other reserves as are hereinafter described, (v) such additional reserves as the Executive Board shall deem necessary or prudent, and (vi) such other expenses as are specifically provided for in the Act, this Declaration, and the Bylaws. The Association may establish an adequate reserve fund for maintenance, repair and replacement of those Common Elements and Limited Common Elements for which the Association is responsible that are anticipated to require replacement, repair or maintenance on a periodic basis, and to cover any deductible amount for insurance policies maintained by the Association. If such reserve fund is established by the Association, the Association may fund it by the Monthly Assessments. Common Expenses, to the extent they are imposed, shall be assessed against each Unit in accordance with the allocation set forth in Section 5.2 above and Section 1602-107 of the Act. Charges incurred by the Association and related to Limited Common Elements shall be assessed against only those Units benefiting from the Limited Common Elements. After the adoption of the first annual proposed budget by the Executive Board, the Executive Board shall annually adopt a proposed budget (the "Budget"), and, within thirty (30) days of adoption shall provide a summary of the proposed Budget to all Unit owners, *provided that* the Association shall have no obligation to adopt the first Budget unless requested to do so by all of the Unit owners. The Executive Board shall also schedule a meeting of the

Unit owners to consider ratification of the Budget not less than fourteen (14) days nor more than thirty (30) days after the mailing of such summary. Unless at that meeting a majority of all of the Unit owners reject the Budget, the Budget is ratified, whether or not a quorum is present. In the event the Budget is not ratified, the current Monthly Assessment, if any, shall continue until the adoption of a new Budget is made at a meeting of the Association called for that purpose no sooner than fifteen (15) days nor later than thirty (30) days after the initial ratification meeting of the Unit owners. The Declarant shall pay the Monthly Assessment for Units owned by the Declarant in the same manner as the other Unit owners, beginning with the first Monthly Assessment as provided in Section 13.3 hereof.

(b) In addition to paragraph (a) of this Section 13.1, the following shall apply:

(1) Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Unit or Units to which that Limited Common Element is assigned.

(2) Any payments, fees or charges for the use, rental or operation of any Common Element shall be applied first, to reduce the Common Expense relating to such Common Element and, second, any excess shall be applied to Common Expenses generally.

(3) Assessments to pay a judgment against the Association shall be a lien only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense liability.

(4) If any Common Expense is caused by the misconduct of any Unit owner, the Association may assess that expense exclusively against such Unit owner's Unit.

(5) If Common Expense liabilities are reallocated, Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

(6) Any Common Expense that is to be reimbursed by Unit owners according to use shall be paid as part of the Common Expense installment billed at the same time as the reimbursable expense, and for all purposes except allocation by Percentage Interest in the Common Elements, all such reimbursable expenses shall be treated as Common Expenses.

Section 13.2. Special Assessments. If the cash requirement estimated at the beginning of any fiscal year shall prove to be insufficient to cover the actual Common Expenses for such fiscal year for any reason (including by way of illustration and not limitation, any Unit owner's non-payment of its assessment or municipal assessments not yet assessed), the Executive Board shall have the power, at any time it deems necessary and proper, to levy one or more Special Assessments against each Unit owner. Special Assessments shall be due and payable in the manner and on the date set forth in the notice thereof.

Section 13.3. Payment of Assessments. Each Unit owner, including each Declarant to the extent a Declarant owns a Unit, shall pay all Monthly Assessments and Special Assessments levied by the Association in accordance with this Declaration and the Bylaws. Liability for such assessments shall be determined in accordance with Section 5.2 hereof. Such assessments shall begin accruing at the time of the creation of the Condominium and they shall be due and payable on a monthly basis as and if designated by the Executive Board. Assessments that are unpaid for over fifteen (15) days after the due date shall bear interest at the rate determined from time to time by the Executive Board from the due date until paid. In the sole discretion of the Executive Board, a late charge may be assessed against the delinquent Unit owner.

Section 13.4. New Assessments. After the initial assessment has been made by the Association, subsequent assessments shall be made by the Association annually on or before the anniversary date of the initial assessment or such other date as the Association may choose, based on the Budget adopted by the Association not later than sixty (60) days prior to the assessment. If the Executive Board shall fail to fix new Monthly Assessments for Common Expenses for the subsequent fiscal year before the expiration of any fiscal year, the Unit owners shall continue to pay the same sums they were paying for such Monthly Assessments during the fiscal year just ended and such sum shall be deemed to be the new Monthly Assessments for the succeeding fiscal year. If the Executive Board shall change the Monthly Assessment at a later date, the difference between the new Monthly Assessment, if greater, and the previous year's Monthly Assessment up to the effective date of the new Monthly Assessment shall be treated as if it were a Special Assessment under Section 13.2. hereof; thereafter each Unit owner shall pay the new Monthly Assessment. In the event the new Monthly Assessment is less than the previous year's Monthly Assessment, in the sole discretion of the Executive Board, the excess shall either be refunded to the Unit owners, credited against future Monthly Assessments or retained by the Association for reserves.

Section 13.5. No Exemption by Waiver. No Unit owner may exempt himself from liability for the Common Expenses by waiver of the enjoyment of the right to use any of the Common Elements or by the abandonment of such Unit owner's Unit or otherwise.

Section 13.6. Personal Liability of Unit Owners. All sums assessed by the Association as a Monthly Assessment or Special Assessment shall constitute the personal liability of the owner of the Unit so assessed and also, until fully paid, shall constitute a lien against such Unit pursuant to Section 1603-116 of the Act. Multiple owners of a Unit shall each be jointly and severally liable for all unpaid Monthly Assessments and Special Assessments. The Association may take such actions as are permitted by Section 1603-116 of the Act for failure to pay any assessment or other charges. The delinquent owner shall be obligated to pay (a) all expenses of the Executive Board, including reasonable attorneys' fees, incurred in the collection of the delinquent assessment by legal proceedings or otherwise, and (b) any amounts paid by the Executive Board for taxes or on account of superior liens or otherwise to protect its lien, which expenses and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessment and shall be collectible as such.

Section 13.7. Liability of Purchaser of Unit for Unpaid Assessments.

(a) Upon the voluntary sale, conveyance or any other voluntary transfer of a Unit or any interest therein, the grantee thereof shall not be personally liable with the grantor thereof for all unpaid assessments for Common Expenses which are a charge against the Unit as of the date of consummation of the sale, conveyance or transfer, unless such grantee agrees to assume the obligation therefor; *provided, however*, except as provided in clause (b), 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.

(b) Prior to or at the time of any conveyance of a Unit by Unit Owner, all unpaid assessments shall be paid in full. Any purchaser of a Unit shall be entitled to a written statement by the Association setting forth the accrued assessments for Common Expenses that are then unpaid, and such purchaser shall not be liable for, nor shall the Unit conveyed be subject to a lien for, accrued but unpaid assessments in excess of the amount therein set forth.

Section 13.8. Subordination of Certain Charges. The lien for any Monthly Assessments or any fees, charges, late charges, fines and interest that may be levied by the Association pursuant to Section 1603-102 of the Act shall be subordinate to any first mortgage lien recorded before or after such Monthly Assessment, fee, charge, late charge, fine or interest was due.

ARTICLE 14

SPECIAL DECLARANT RIGHTS AND DEVELOPMENT RIGHTS

Section 14.1. Special Declarant Rights and Development Rights. In addition to the easement rights reserved in Article 6, the Declarants reserve to themselves and for the benefit of their respective successors and assigns, and subjects the Property to, the right:

(a) to effect the construction of the Building and other improvements constituting Unit No. 2, in accordance with the description thereof set forth on the Plat.

(b) to effect an expansion of Unit No. 1, by (i) modifying the vertical boundaries thereof in the area of the single story structure attached to the west side of the Building constituting Unit No. 1 between the wing of said Building that extends southwesterly and the wing of said Building that extends in a northwesterly direction (the "Loading Structure"), as follows: (A) projecting in a northwesterly direction the vertical boundary that is three feet outside the southwest facing exterior wall of the Loading Structure that extends in a northwesterly direction from the northwest side of the southwesterly wing of said Building to the intersection of such projected vertical boundary with the extended vertical boundary described in clause (B); and (B) projecting the vertical boundary that is three feet outside the northwest facing fascia of overhanging roof of the Loading Structure that extends in a southwesterly direction from the westerly side of the Loading Structure to the intersection of such projected vertical

boundary with the projected vertical boundary described in clause (A); and (ii) constructing within the boundaries so modified additions to the Building and other improvements constituting Unit No. 1.

(b) until the construction of all Units is completed, to connect with and make use of utility lines, wires, pipes and conduits located on the Property for construction and sales purposes;

(c) until the construction of all Units is completed, to use the Common Elements for ingress and egress, for the repair and construction of Units and Common Elements, including, but not limited to, the movement and temporary storage of construction materials and equipment, and for the installation of signs and lighting for sales and promotional purposes; and

(d) to use easements through the Common Elements for the purposes of making improvements within the Condominium.

The real estate subject to these Development Rights and Special Declarant Rights is the Property.

Section 14.2 Amendment. This Article 14 shall not be amended without the written consent of the Declarants duly recorded in the Cumberland County Registry of Deeds.

#### ARTICLE 15 ASSIGNABILITY OF DECLARANT'S RIGHTS

The Declarants may assign any or all of their respective rights or privileges reserved or established by this Declaration or the Act in accordance with the provisions of the Act.

#### ARTICLE 16 AMENDMENT OF DECLARATION

Section 16.1. Amendments to Declaration. Except as otherwise provided herein or in Section 1602-117 of the Act, this Declaration may be amended only by unanimous vote or agreement of the Unit owners.

Section 16.2. Rights of Mortgagees. Approval of amendments of a material nature must be obtained from Eligible Mortgage Holders representing at least 51% of the votes of Units that are subject to mortgages held by Eligible Mortgage Holders. A change to any of the following, except where such change may be effected by the Declarants, the Association or certain Unit owners under the Act or this Declaration, are deemed to be material:

- (a) voting rights;
- (b) reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use;



- (c) boundaries of any Unit;
- (d) convertibility of Units into Common Elements or Common Elements into Units;
- (e) expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- (i) insurance;
- (j) restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (k) any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or
- (l) any provisions that expressly benefit holders of mortgages on the Units.

The approval of an Eligible Mortgage Holder may be assumed when that Eligible Mortgage Holder has failed to submit a response to any written proposal for an amendment within thirty (30) days after the proposal is made. No amendment to the Condominium Documents shall diminish or impair the rights of the Declarants under the Condominium Documents without the prior written consent of the Declarants. No amendment may modify this Article 16 or the rights of any person hereunder. Except as specifically provided in the Condominium Documents, no provision of the Condominium Documents shall be construed to grant to any Unit owner, or to any other person, any priority over any rights of mortgagees of any Unit owner.

#### ARTICLE 17 TERMINATION

The Condominium may be terminated only by agreement of the Unit owners representing one hundred percent (100%) of the Percentage Interests. Termination of the Condominium will be governed by the provisions of Section 1602-118 of the Act.

#### ARTICLE 18 GENERAL PROVISIONS

Section 18.1. Headings. The headings used in this Declaration and any 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.

Section 18.2. Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability of any provision or portion

thereof shall not affect the validity or enforceability of any other provision or portion hereof unless such deletions shall destroy the uniform plan of development and operation of the Condominium which this Declaration is intended to create.

Section 18.3. Applicable Law. This Declaration shall be governed by and construed according to the laws of the State of Maine.

Section 18.4. Interpretation. The provisions of this Declaration shall be liberally construed in order to effect Declarants' desire to create a uniform plan for development and operation of the Condominium. In the event of any conflict or discrepancy between this Declaration, the Bylaws and the Plat, the provisions of this Declaration shall govern.

Section 18.5. Effective Date. This Declaration shall become effective when it and the Plat have been recorded.

Section 18.6. Notices. All notices and other communications required or permitted to be given under or in connection with this Declaration shall be in writing and shall be deemed given when delivered in person or on the second business day after the day on which mailed by certified mail, return receipt requested, addressed to the address maintained in the register of current addresses established by the Association.

Section 18.7. Exhibits. All exhibits attached to this Declaration are hereby made a part of this Declaration.

Section 18.8. Pronouns. Wherever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders.

[The balance of this page is left blank intentionally. Signature page follows.]

IN WITNESS WHEREOF, the Declarants have caused this Declaration to be executed by their duly authorized representatives as of this 21 day of June, 2006.

JHA PROPERTIES, INC.

Holly Nicholson  
Witness

By: Kathryn J. Callnan  
Kathryn J. Callnan, President

CEDARS NURSING CARE CENTER, INC.

Holly Nicholson  
Witness

By: Kathryn J. Callnan  
Kathryn J. Callnan, President

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

June 21, 2006

Personally appeared the above-named Kathryn J. Callnan, President, of JHA PROPERTIES, INC., a Maine non-profit corporation, and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said JHA PROPERTIES, INC.

Before me,

[Signature]

Lynne A. Burr, Notary Public  
State of Maine  
My Commission Expires 12/5/2009

Notary Public/Attorney at Law  
Print Name: Lynne Burr  
My commission expires: 2009

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss

June 21, 2006

Personally appeared the above-named Kathryn J. Callnan, President, of CEDARS NURSING CARE CENTER, INC., a Maine non-profit corporation, and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said CEDARS NURSING CARE CENTER, INC.,

Before me,

[Signature]

Lynne A. Burr, Notary Public  
State of Maine  
My Commission Expires 12/5/2009

Notary Public/Attorney at Law  
Print Name: Lynne Burr  
My commission expires: 2009

LIMITED JOINDER AGREEMENT OF MORTGAGEE

The undersigned, MAINE HEALTH AND HIGHER EDUCATIONAL FACILITIES AUTHORITY, a public body corporate and politic of the State of Maine, created and existing under the Constitution and the laws of the State of Maine, with a place of business at 3 University Drive, P.O. Box 2268, Augusta, Maine 04330 (herein called the "Mortgagee"), as holder of and mortgagee under the following instruments:

1. A certain Loan Agreement and Mortgage by JHA Properties, Inc., a Maine nonprofit corporation ("JHA Properties"), to the Mortgagee, dated as of March 1, 1998 and recorded in the Cumberland County Registry of Deeds in Book 13709, Page 1, and a certain Mortgage by JHA Properties, Inc., to the Mortgagee, dated as of October 9, 1998 and recorded in the Cumberland County Registry of Deeds in Book 14221, Page 222 (the "JHA Properties Mortgage"); and

2. A certain Loan Agreement and Mortgage by Cedars Nursing Care Center, Inc., a Maine nonprofit corporation ("Cedars"), to the Mortgagee, dated as of May 1, 1993 and recorded in the Cumberland County Registry of Deeds in Book 10717, Page 311 (the "Cedars Mortgage");

(herein the instruments described in paragraphs 1 and 2 above are sometimes collectively called the "Mortgages"), for itself and its successors and assigns, hereby

- (i) **joins with** JHA Properties and Cedars (herein collectively called the "Declarants") in submitting the Property, as defined and described in this Declaration, separate portions of which are subject to the lien of one or the other of the Mortgages, to the provisions of the Maine Condominium Act, 33 M.R.S.A. Chapter 31, §§ 1601-101, et seq., as amended, for the sole and limited purposes of evidencing Mortgagee's consent as owner and holder of the Mortgages to the submission of the Property under this Declaration and to the creation and granting of those easements, uses, rights and privileges described in this Declaration and granting and releasing the liens, rights and interests described in clauses (ii) through (vi);
- (ii) **grants and releases** to Cedars, its successors and assigns, all of Mortgagee's right, title and interest under the JHA Properties Mortgage in and to Unit No. 1 as created by this Declaration;
- (iii) **grants and releases** to Cedars, its successors and assigns, and Properties, its successors and assigns, all of Mortgagee's right, title and interest under the Mortgages in and to Unit No. 2 as created by this Declaration and all Development Rights related to the construction of the Building and other improvements constituting Unit No. 2 in accordance with the description thereof set forth on the Plat;

- (iv) **grants and releases** to JHA Properties, its successors and assigns, all of Mortgagee's right, title and interest under the Cedars Mortgage in and to Unit No. 3 as created by this Declaration;
- (v) **grants and releases** to JHA Properties and Cedars, their respective successors and assigns, all of Mortgagee's right, title and interest under either of the Mortgages in and to the following easements of record:
  - (A) Utility and Access Easement described as Parcel B in easement deed from Cedars Nursing Care Center, Inc., to JHA Services, Inc., dated May 25, 1990, and recorded in the Cumberland County Registry of Deeds, Book 9188, Page 115, as amended and modified Short Form Quitclaim Deed from Cedars Nursing Care Center, Inc., to JHA Properties, Inc., dated March 17, 1998, and recorded in the Cumberland County Registry of Deeds, Book 13696, Page 319, and by Easement Modification, between JHA Services, Inc. and Cedars Nursing Care Center, Inc., dated April 1, 1998, and recorded in the Cumberland County Registry of Deeds, Book 13708, Page 305 (the "Granting Deed");
  - (B) Emergency Access Road Easement described as Parcel C in the Granting Deed ;
  - (C) Parking Easement, Utility and Access Easement and Loop Road Easement retained as Items 1, 2 and 3 in the Granting Deed;
  - (D) Access Easement in easement deed from JHA Properties, Inc., to Cedars Nursing Care Center, Inc., dated March 27, 1998 and recorded in the Cumberland County Registry of Deeds, Book 13696, Page 321;
  - (E) Access Easement in easement from Cedars Nursing Care Center, Inc., to JHA Properties, Inc., dated March 27, 1998 and recorded in the Cumberland County Registry of Deeds, Book 13696, Page 325; and
  - (F) Agreement and Reciprocal Easement Deed, between Cedars Nursing Care Center, Inc., and JHA Properties, Inc., dated as of March 27, 1998 and recorded in the Cumberland County Registry of Deeds, Book 13696, Page 331; and
- (vi) **expressly retains, excepts and reserves**, for itself and its successors and assigns, the lien of and all other rights under the Cedars Mortgage in and to Unit No. 1; and

- (vii) **expressly retains, excepts and reserves**, for itself and its successors and assigns, the lien of and all other rights under the JHA Properties Mortgage in and to Unit No. 3;

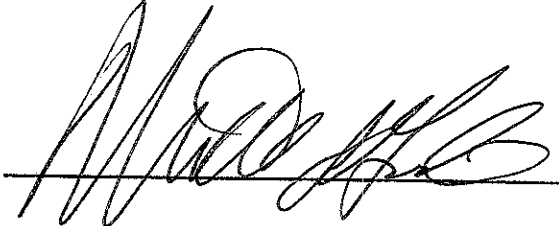
*PROVIDED*, that such joinder and consent shall not be construed to make said Mortgagee, its successors and assigns, as mortgagee, the Declarant or to impose on it any of the obligations or liabilities of the Declarant under this Declaration, including, without limitation, any obligation or liability of any kind to any purchaser(s) of any condominium unit(s), and said Mortgagee makes no warranties or covenants to any person or party, express or implied, as to title, merchantability, fitness for any particular purpose, physical condition or otherwise as to the Condominium premises.

The Mortgagee hereby agrees that its lien on Unit No. 1 under the Cedars Mortgage and its lien on Unit No. 3 under the JHA Property Mortgage, all as excepted and reserved herein, shall be subject to the provisions of said Maine Condominium Act and shall attach to the Units and Percentage Interests created by this Declaration, as it may be amended. The Mortgagee further agrees that, in the exercise of its rights as mortgagee under the aforesaid Mortgages, the Mortgagee will recognize the establishment of a condominium by this Declaration of Condominium.

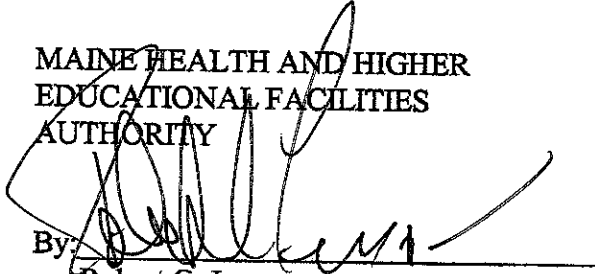
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IN WITNESS WHEREOF, the Mortgagee has caused this instrument to be executed and sealed in its corporate name by its officer thereunto duly authorized as of the date of the foregoing Declaration.

WITNESS:



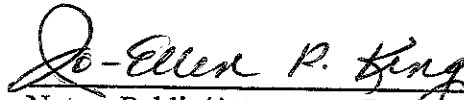
MAINE HEALTH AND HIGHER  
EDUCATIONAL FACILITIES  
AUTHORITY

  
By: \_\_\_\_\_  
Robert O. Lenna  
Its Executive Director

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

JUNE 29<sup>th</sup>, 2006

Personally appeared before me the above-named Robert O. Lenna, Executive Director of Maine Health and Higher Educational Facilities Authority, and acknowledged the foregoing instrument to be his free act and deed in said capacity, and the free act and deed of said Maine Health and Higher Educational Facilities Authority.

  
Notary Public/Attorney-at-Law  
Print Name: JO-ELLEN P. KING  
My Commission Expires: OCTOBER 27, 2011

**Jo-Ellen P. King**  
**Notary Public, Maine**  
**My Commission Expires**  
**October 27, 2011**

**EXHIBIT A****PROPERTY DESCRIPTION**

A certain lot or parcel of land lying on the northwesterly side of Ocean Avenue and the northeasterly terminus of Byfield Road in the City of Portland, County of Cumberland, State of Maine, bounded and described as follows:

Beginning at a point and the intersection of the northeasterly terminus of said Byfield Road with the northwesterly sideline of said Byfield Road;

Thence S 50°04'08" W by the northwesterly sideline of said Byfield Road a distance of Thirty and 45/100 (30.45) feet to a point and the easterly corner of land now or formerly of Christopher J. King and Elizabeth C. King as described in a deed recorded in the Cumberland County Registry of Deeds in Book 20322, Page 332;

Thence N 39°56'15" W by said land of King a distance of Ninety-Nine and 20/100 (99.20) feet to a point;

Thence S 52°11'01" W by said land of King; by land now or formerly of Barry E. Scott and Mary A. Scott as described in a deed recorded in said Registry in Book 2809, Page 26; and by land now or formerly of N. Penrose Hallowell IV as described in a deed recorded in said Registry in Book 15501, Page 236, a distance of Two Hundred Thirty-Nine and 65/100 (239.65) feet to a point and the northeasterly corner of land now or formerly of Brian R. Sheets and Gaye L. Sheets as described in a deed recorded in said Registry in Book 13242, Page 35;

Thence N 37°59'05" W by said land of Sheets a distance of Sixty and 00/100 (60.00) feet to a point and the southeasterly line of land now or formerly of John Tevanian and Thelma M. Tevanian as described in a deed recorded in said Registry in Book 3627, Page 59;

Thence N 52°11'01" E by said land of Tevanian a distance of One Hundred and 04/100 (100.04) feet to a point;

Thence N 37°52'24" W by said land of Tevanian a distance of Sixty-Four and 64/100 (64.64) feet to a point and the southerly corner of land now or formerly of Old Port Realty Corp. as described in a deed recorded in said Registry in Book 4013, Page 113;

Thence N 52°11'01" E by said land of Old Port Realty Corp. a distance of Six Hundred Sixty-Eight and 07/100 (668.07) feet to a point and land now or formerly of Ledgewood Owners Association as described in a deed recorded in said Registry in Book 4446, Page 125;

Thence S 58°38'42"E by said land of Ledgewood Owners Association a distance of Zero and 97/100 (0.97) feet to a point, said point herein designated as "Point A";



Thence Southeasterly by said land of Ledgewood Owners Association following a non-tangent curve to the right having a radius of Two Hundred Fifty-Two and  $54/100$  (252.54) feet an arc distance of Two Hundred Fifteen and  $57/100$  (215.57) feet to a point, said point being located S  $69^{\circ}09'08''$  E a distance of Two Hundred Nine and  $08/100$  (209.08) feet from said "Point A";

Thence S  $44^{\circ}41'54''$  E by said land of Ledgewood Owners Association a distance of One Hundred Thirty-Nine and  $56/100$  (139.56) feet to a capped  $5/8''$  rebar (PLS #199);

Thence S  $44^{\circ}27'57''$  E by said land of Ledgewood Owners Association a distance of Two Hundred Ninety-Nine and  $33/100$  (299.33) feet to a 1" iron pipe;

Thence S  $43^{\circ}59'21''$  E by said land of Ledgewood Owners Association a distance of Seventy and  $26/100$  (70.26) feet to a point and the northwesterly sideline of said Ocean Avenue;

Thence S  $35^{\circ}36'51''$  W by said Ocean Avenue a distance of Fifty-One and  $28/100$  (51.28) feet to a point;

Thence S  $40^{\circ}42'51''$  W by said Ocean Avenue a distance of Four Hundred Twenty-Six and  $00/100$  (426.00) feet to a point and the easterly corner of land now or formerly of David H. Littlefield and Bonnie S. Littlefield as described in a deed recorded in said Registry in Book 4458, Page 44;

Thence N  $47^{\circ}24'30''$  W by said Littlefield a distance of One Hundred and  $58/100$  (100.58) feet to a capped  $5/8''$  rebar (PLS #509);

Thence S  $45^{\circ}36'30''$  W by said land of Littlefield a distance of One Hundred and  $00/100$  (100.00) feet to a point and land now or formerly of Domenico Floridino and Anna Floridino as described in a deed recorded in said Registry in Book 3029, Page 521;

Thence N  $47^{\circ}19'15''$  W by said land of Floridino; by land now or formerly of Peter J. Molloy and Elizabeth D. Molloy as described in a deed recorded in said Registry in Book 16537, Page 279; by land now or formerly of Elizabeth F. Searles and Harold E. Searles as described in a deed recorded in said Registry in Book 3122, Page 381; by land now or formerly of Leslie E. Conley and Avis J. Conley as described in deeds recorded in said Registry in Book 2640, Page 412 and Book 2649, Page 394; and by the northeasterly terminus of said Byfield Road a distance of Four Hundred Eighty and  $78/100$  (480.78) feet to the point of beginning.

Bearings are based on magnetic north 1924.

The above described parcel contains 10.57 acres.

Reference is herein made to a plan entitled "Cedars Condominiums Recording Plat/Condominium Plan, ALTA/ACSM Land Title Survey Cedars Plan/ALTA/ASCM/Land Title Survey" made for JHA Properties, Inc., Cedars Nursing Care Center, and JHA Assisted Living, Inc. dated September 8, 2005, and revised April 5, 2006, made by Titcomb Associates.

**EXHIBIT B**

<u>Unit Identifying Number</u>	<u>Percentage Interest</u>
Unit 1	33.333%
Unit 2	33.333%
Unit 3	33.333%

Formula Calculating Percentage Interest

All Units shall have an equal Percentage Interest to be calculated by (i) dividing one (1) by three (3).



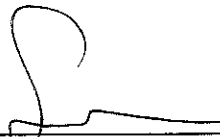
**QUIT CLAIM DEED WITH COVENANT**

KNOW ALL MEN BY THESE PRESENTS, that, CEDARS NURSING CARE CENTER, INC., a Maine non-profit corporation with a principal place of business in Portland, Cumberland County, Maine, for consideration paid grants to JHA ASSISTED LIVING, INC., a Maine non-profit corporation having a mailing address of 630 Ocean Avenue, Portland, Maine 04103, WITH QUIT CLAIM COVENANT its 33.6% (Thirty-Three and Six-Tenths Percent) tenancy-in-common interest in the following described property:

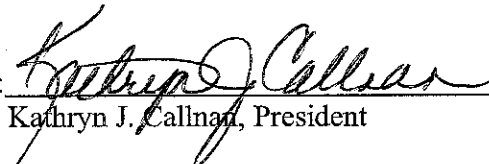
SEE EXHIBIT A ATTACHED HERETO  
AND INCORPORATED HEREIN

WITNESS my hand and seal this 6<sup>th</sup> day of July, 2006.

Signed, Sealed and Delivered  
in the presence of

  
\_\_\_\_\_  
Witness

CEDARS NURSING CARE CENTER, INC.

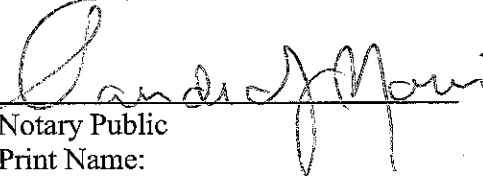
By:   
\_\_\_\_\_  
Kathryn J. Callnan, President

State of New Hampshire  
County of Hillsborough

July 6, 2006

Personally appeared the above-named Kathryn J. Callnan, President, of Cedars Nursing Care Center, Inc., duly authorized, and acknowledged the foregoing instrument to be her free act and deed, and the free act and deed of Cedars Nursing Care Center, Inc.

Before me,

  
\_\_\_\_\_  
Notary Public  
Print Name:  
Commission Expires:

SEAL

SANDRA J. MORIN  
Notary Public  
My Commission Expires April 3, 2007

MAINE REAL ESTATE TAX PAID

**EXHIBIT A**

The Unit ("Unit") designated as Number 2 of the Cedars Condominiums located at 630 Ocean Avenue, Portland, Cumberland County, Maine, ("Condominium") created pursuant to the provisions of the Maine Condominium Act, Chapter 31 of Title 33 of the Maine Revised Statutes of 1964, as amended, and set forth in Declaration of Cedars Condominiums, dated as of June 30, 2006, and recorded in Cumberland County Registry of Deeds in Book 24129, Page 276, as may be amended, and shown on the related plats and plans recorded in Plan Book 206, Page 430. The Unit is subject to and has the benefit of the Declaration, the Plats, Plans and the Act which are incorporated herein by reference, to which reference is hereby made for a more particular specification of the definition, location and description of the real property hereby conveyed and of the rights, obligations, easements, development rights, special Declarant rights, restrictions, covenants and conditions pertaining thereto.

Received  
Recorded Register of Deeds  
Jul 10, 2006 02:40:15P  
Cumberland County  
John E OBrien

**QUIT CLAIM DEED WITH COVENANT**

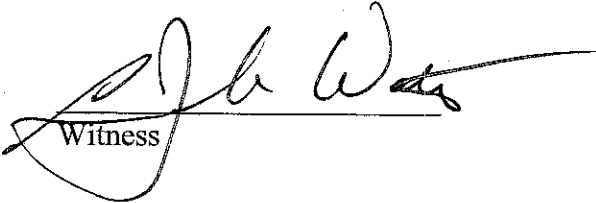
KNOW ALL MEN BY THESE PRESENTS, that, JHA PROPERTIES, INC., a Maine non-profit corporation with a principal place of business in Portland, Cumberland County, Maine, for consideration paid grants to JHA ASSISTED LIVING, INC., a Maine non-profit corporation having a mailing address of 630 Ocean Avenue, Portland, Maine 04103, WITH QUIT CLAIM COVENANT its 66.4% (Sixty-Six and Four Tenths Percent) tenancy-in-common interest in the following described property:

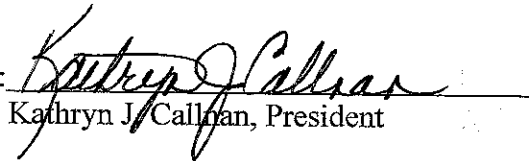
SEE EXHIBIT A ATTACHED HERETO  
AND INCORPORATED HEREIN

WITNESS my hand and seal this 27<sup>th</sup> day of September, 2006.

Signed, Sealed and Delivered  
in the presence of

JHA PROPERTIES, INC.

  
Witness

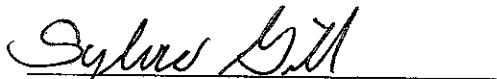
By:   
Kathryn J. Callnan, President

State of Maine  
County of Cumberland

September 27, 2006

Personally appeared the above-named Kathryn J. Callnan, President, of JHA Properties, Inc., duly authorized, and acknowledged the foregoing instrument to be her free act and deed, and the free act and deed of JHA Properties, Inc.

Before me,

  
Notary Public  
Print Name:  
Commission Expires:

**SYLVIA GILL**  
Notary Public, Maine  
My Commission Expires October 21, 2013

MAINE REAL ESTATE TAX PAID

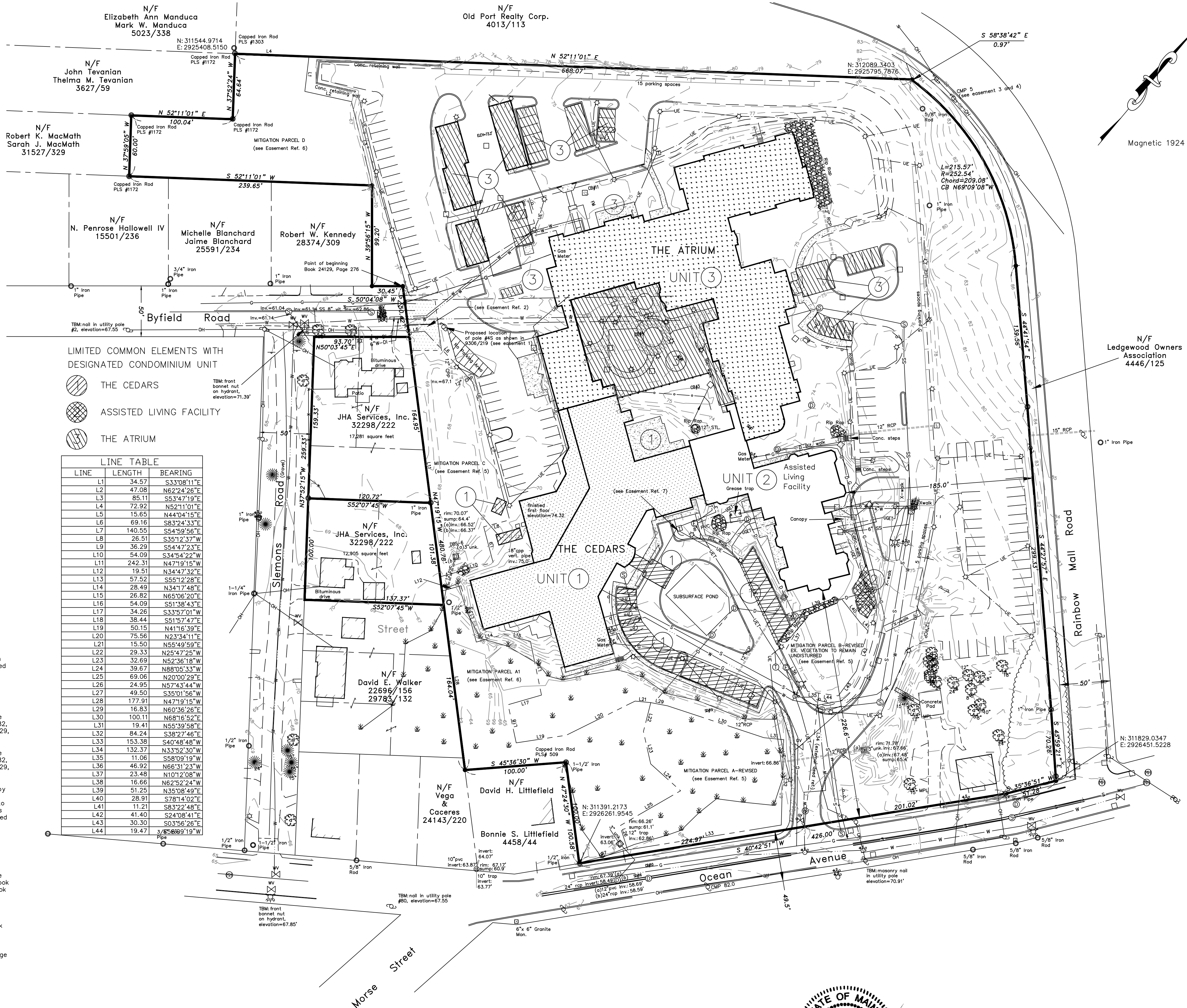
**EXHIBIT A**

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Received  
Recorded Register of Deeds  
Oct 10 2006 11:34:34A  
Cumberland County  
John B O'Brien

**LEGEND**

- 5/8" Capped iron rod set
- Iron pin found
- Monument found
- Catch basin
- Sewer manhole
- Drain manhole
- Gas valve
- Water shutoff
- Fire hydrant
- Utility pole
- Light pole
- Elec. manhole
- Tel. manhole
- Sign
- Edge of pavement
- Curb
- Abutter's line
- Property line
- Easement line
- Sanitary sewer
- Storm drain
- Water line
- OH Overhead utility wires
- G Underground gas
- UET Underground tel./elec.
- UGET Underground tel./elec./cable
- Fence
- 1' contour
- 5' contour
- Concrete pad or walk
- Existing building
- Concrete pad or surface
- Elec. Transformer
- Existing Unit 3
- Existing Unit 1



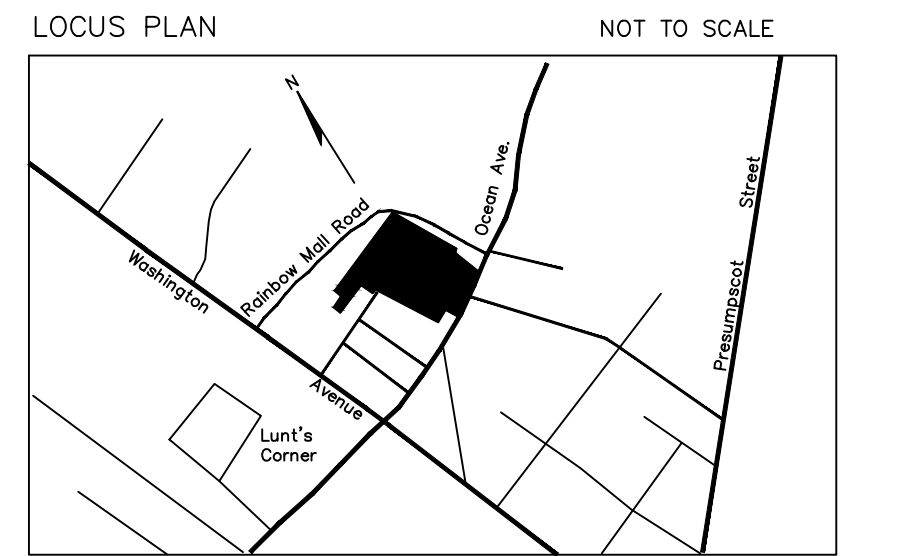
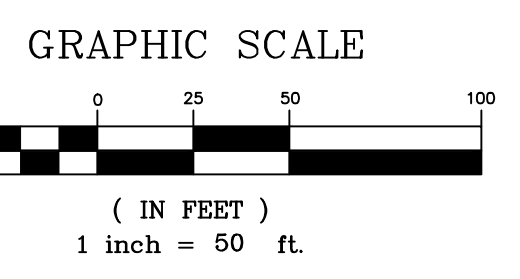
**LIMITED COMMON ELEMENTS WITH DESIGNATED CONDOMINIUM UNIT**

- THE CEDARS
- ASSISTED LIVING FACILITY
- THE ATRIUM

LINE	LENGTH	BEARING
L1	34.57	S33°08'11"E
L2	47.08	N62°24'26"E
L3	85.11	S53°47'19"E
L4	72.92	N52°11'01"E
L5	15.65	N44°04'15"E
L6	69.16	S83°24'33"E
L7	140.55	S54°59'56"E
L8	26.51	S35°12'37"W
L9	36.29	S54°47'23"W
L10	54.09	S34°54'22"W
L11	242.31	N47°19'15"W
L12	19.51	N34°47'32"E
L13	57.52	S55°12'28"E
L14	28.49	N34°17'48"E
L15	26.82	N65°06'20"E
L16	54.09	S51°38'43"E
L17	34.26	S33°57'01"W
L18	38.44	S51°57'47"E
L19	50.15	N41°16'39"E
L20	75.56	N23°34'11"E
L21	15.50	N55°49'59"E
L22	29.33	N25°47'25"W
L23	32.69	N52°36'18"W
L24	39.67	N88°05'33"W
L25	69.06	N20°00'29"E
L26	24.95	N57°34'44"W
L27	49.50	S35°01'58"W
L28	177.91	N47°19'15"W
L29	16.83	N60°36'26"E
L30	100.11	N68°16'52"E
L31	19.41	N55°39'58"E
L32	84.24	S38°27'46"E
L33	153.38	S40°48'48"W
L34	132.37	N33°52'30"W
L35	11.06	S58°09'19"W
L36	46.92	N66°31'23"W
L37	23.48	N10°12'08"W
L38	16.66	N62°52'24"W
L39	51.25	N35°08'49"E
L40	28.91	S78°14'02"E
L41	11.21	S83°22'48"E
L42	41.40	S24°08'41"E
L43	30.30	S03°56'26"E
L44	19.47	S75°08'19"W

**EASEMENTS AND ENCUMBRANCES**

- (1) Utility Easement conveyed to Central Maine Power Company and New England Telephone and Telegraph Company by Cedars Nursing Care Center, Inc. described in Book 9306, Page 219. The proposed utility pole mentioned in description was not found on premises.
- (2) Snow Plowing Easement conveyed to the City of Portland by Cedars Nursing Care Center, Inc. and Jewish Home for the Aged described in Book 9260, Page 236.
- (3) Underground Line Easement conveyed to Central Maine Power Company by JHA Properties described in Book 14382, Page 187; encumbers the property described in Book 24129, Page 276.
- (4) Underground Line Easement conveyed to Central Maine Power Company by JHA Properties described in Book 14382, Page 187; encumbers the property described in Book 24129, Page 276.
- (5) The Declaration of Covenants and Restrictions made by Cedars Nursing Care Center, Inc. and JHA Properties, Inc. described in Book 13709, Page 75, and the Amendment to Declaration of Covenants and Restrictions made by Cedars Nursing Care Center, Inc. and JHA Properties, Inc. described in Book 24129, Page 254. The amended and unamended Mitigation Parcels have been delineated on plan.
- (6) Declaration of Covenants and Restrictions made by Cedars Nursing Care Center, Inc. and JHA Properties, Inc. described in Book 24129, Page 265.
- (7) Underground Line Easement conveyed to Central Maine Power Company by Cedars Nursing Care Center, Inc. in Book 9162, Page 206; encumbers the property described in Book 24129, Page 276.
- (8) Certification of Variance Approval granted to Cedars Nursing Care Center, Inc., JHA Properties, Inc., and JHA Services, Inc. by the City of Portland in Book 13595, Book 182.
- (9) Department of Environmental Protection Stormwater Standards and Conditions as set forth in Book 26415, Page 50.



- NOTES**
- (1) Book and Page references are to the Cumberland County Registry of Deeds, unless otherwise specified.
  - (2) Bearings are referenced to magnetic north 1924.
  - (3) All utility locations shown on this plan are approximate, based on location of visible features and information provided by others. Dig Safe and/or the appropriate utilities should be contacted prior to any construction.
  - (4) According to the Flood Insurance Rate Map for the City of Portland (FIRM Panel 230051 0007 B, effective date July 17, 1986), this parcel is not located within a flood hazard area.
  - (5) Coordinate values shown are based on the Morse and Kidder Street CSO project provided to the City of Portland by Titcomb Associates.
  - (6) Elevations are based on the City of Portland datum.
  - (7) Simons Road is an unaccepted, continued street.
  - (8) Wetlands delineated by others, field located by Titcomb Associates.

**AREA**  
TOTAL PROJECT AREA = 460,350 square feet / 10.57 acres

**PLAN REFERENCES**

- (1) Plan of Lots Number 3 & 4 made for the Estate of Mary S. Lunt by Edwin C. Townsend dated March 8, 1877 recorded in Plan Book 4, Page 4.
- (2) Plan of Land made for Dorothy S. True and Heirs of F.W.H. Smith dated October 1929, recorded in Plan Book 25, Page 50.
- (3) Revised Final Plan of Ledgewood Subdivision made for the Dartmouth Company by Land Use Consultants dated April 27, 1979, recorded in Plan Book 123, Page 61.
- (4) Plan of Property made for Jewish Home for the Aged made by H.I. and E.C. Jordan dated July 17, 1987.
- (5) Plan of Property/Land Title Survey of the Cedars made by H.I. and E.C. Jordan dated March 29, 1930, recorded in Plan Book 186, Page 14.
- (6) Record Drawing of Cedars Nursing Care Center, Inc. made by Owen Haskell, Inc. dated August 23, 1991.
- (7) Layout and Utilities Plan of the Atrium at Cedars (drawing number C202) made by Tsomides Associates dated May 27, 1997.
- (8) Topographic Site Survey made for JHA Properties, Inc. by Daniel J. Dalphonso dated February 28, 1997.
- (9) Plan Showing Proposed Property Lines made for JHA Properties, Inc. by Daniel J. Dalphonso dated November 4, 1997.
- (10) Plan Showing Standard Boundary Survey made for JHA Properties, Inc. by Daniel J. Dalphonso dated July 14, 1997, recorded in Plan Book 198, Page 325.
- (11) Plan of Cedars Phase 3—Wetland Mitigation Areas made by Land Use Consultants dated August 24, 2004.
- (12) ALTA/ACSM Land Title Survey made for JHA Properties, Inc. & Cedars Nursing Care Center, Inc. dated November 4, 2004, by Titcomb Associates.
- (13) Cedars Condominiums Recording Plat/Condominium Plan ALTA/ACSM Land Title Survey made for JHA Properties, Inc., Cedars Nursing Care Center, Inc. and JHA Assisted Living, Inc. by Titcomb Associates dated September 8, 2005 and revised through April 5, 2006, recorded in the Cumberland County Registry of Deeds in Plan book 206, Page 430.

**OWNERS OF RECORD**

Unit 1 Cedars Nursing Care Center, Inc.; Book 24129, Page 276  
 Unit 2 JHA Assisted Living, Inc.; Book 24446, Page 225 and Book 24155, Page 29  
 Unit 3 JHA Assisted Living, Inc.; Book 31484, Page 147

Rev. 1 08/29/16 Wetlands, building addition nse

**Boundary Survey**

630 Ocean Avenue Portland, Maine

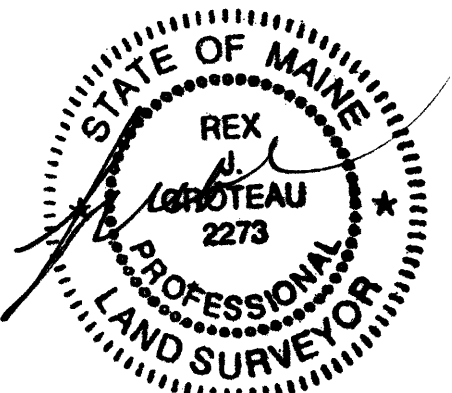
MADE FOR

**Inn at Cedars, Inc. (JHA Assisted Living, Inc)**

630 Ocean Avenue Portland, Maine

JOB# 204089	DATE: August 4, 2016	SCALE: 1"=50'
BOOK# 837		
DWG: 204089_2016		
FILE# 8847		

**Titcomb Associates**  
133 Gray Road, Falmouth, Maine 04105  
(207)797-9199 www.titcombsurvey.com



**CERTIFICATION**  
This survey conforms to the current standards of practice set forth by the Maine State Board of Licensure for Land Surveyors.

Rev J. Croteau, P.L.S. #2273



## Section 3: Compliance with Conditional Use Standards and Conditions

### 3.0 Conditional Use Standards

R-3:

Use: Institutional use as a long-term care facility is a conditional use in this zone. The applicant requests that the conditional use be granted for the proposed building on the basis that the use is consistent with the existing site and in compliance with the conditional use standards found in Section 14-474 and Section 14-88 (c) of the ordinance as demonstrated below.

Section 14-474 (c) 2.

- a. The volume of traffic will be very similar to the current levels. The proposed facility will be adding approximately 8 to 9 staff during the daytime shift and there will be 20 additional beds at the facility. This will result in approximately 16 additional trips during the peak hour. The site will continue to be served by the single entrance on Ocean Avenue. Because the small increase in beds for the site we do not anticipate any changes in the deliveries to the site.
- b. The proposed use will not create unsanitary or harmful conditions. The building will have mechanical systems located on the roof of the building and trash will be collected and stored at the dumpsters on the site behind the Hoffmann Building. Please see Section 15 for additional information regarding solid waste.
- c. The orientation of the building is such that operational access to the building is from the main campus access drive which is internal to the site. There will be an activity area for residents along Rainbow Mall Road, but this area will be screened by a retaining wall, fence and landscaping. The parking lot will be screened from Rainbow Mall Road by landscaping. The portion of the building facing Ocean Avenue will be landscaped.

Section 14-88 (c)

- b. The proposed use will displace a residential structure, the “White House” that has been used as offices by the Cedars since approximately 1991. It is not clear when it was last used as a residence. The proposed building cannot be located elsewhere on the Cedars campus without causing significant environmental impacts in the remaining undeveloped portions of the site. The wetland areas are subject to mitigation easements for prior wetland impacts, and they will not be impacted by the proposed redevelopment.

Section 14-91 (a) off street parking: Parking shall be provided as required by Division 20. There will be an additional 14 spaces to accommodate the increase in staff during the day time shift and the 20 assisted living beds as required in Division 20.

R-5:

Use: Institutional use as a long-term care facility is a conditional use in this zone. The applicant requests that the conditional use be granted for the proposed building on the basis that the use is consistent with the existing site and in compliance with the conditional use standards found in Section 14-474 and Section 14-118 (b) of the ordinance. The following responses

Section 14-474 (c) 2.

- d. The volume of traffic will be very similar to the current levels. The proposed facility will be adding approximately 7 to 8 staff during the daytime shift and there will be 20 additional beds at the facility. This will result in approximately 14 additional trips during the peak hour. The site will be served by the single entrance on Ocean Avenue. Because the small increase in beds for the site we do not anticipate any changes in the deliveries to the site.
- e. The proposed use will not create unsanitary or harmful conditions. The building will have mechanical systems located on the roof of the building and trash will be collected in the garage and stored at the dumpsters on the site.
- f. The orientation of the building is such that operational access to the building is from the main campus access drive which is internal to the site. There will be an activity area for residents along Rainbow Mall Road, but this area will be screened by a retaining wall, fence and landscaping. The parking lot will be screened from Rainbow Mall Road by landscaping. The portion of the building facing Ocean Avenue will be landscaped.

Section 14-118 (b)

- b. The proposed use will displace a residential structure, the “White House” that has been used as offices by the Cedars since 1991. It is not clear when it was last used as a residence. The proposed building cannot be located elsewhere on the Cedars campus without causing significant environmental impacts in the remaining undeveloped portions of the site. The wetland areas are subject to mitigation easements for prior wetland impacts, and no wetland impacts are proposed as part of the redevelopment.

Section 14-91 (a) off street parking: Parking shall be provided as required by Division 20. There will be an additional 13 spaces to accommodate the increase in staff during the day time shift and the 20 assisted living beds as required in Division 20.

## Section 4: Compliance with Applicable Zoning Requirements

### 4.0 Existing Zones

The site exists within a R-3 and R-5 Zones. Compliance within these zones is indicated below:

R-3:

Use: Institutional use as a long-term care facility is a conditional use in this zone. The applicant requests that the conditional use be granted for the proposed building on the basis that the use is consistent with the existing site and in compliance with the conditional use standards found in Section 14-474 and Section 14-88 (c) of the ordinance as demonstrated below.

Section 14-474 (c) 2.

- a. The volume of traffic will be very similar to the current levels. The proposed facility will be adding approximately 8 to 9 staff during the daytime shift and there will be 20 additional beds at the facility. This will result in approximately 16 additional trips during the peak hour. The site will continue to be served by the single entrance on Ocean Avenue. Because the small increase in beds for the site we do not anticipate any changes in the deliveries to the site.
- b. The proposed use will not create unsanitary or harmful conditions. The building will have mechanical systems located on the roof of the building and trash will be collected and stored at the dumpsters on the site behind the Hoffmann Building. Please see Section 15 for additional information regarding solid waste.
- c. The orientation of the building is such that operational access to the building is from the main campus access drive which is internal to the site. There will be an activity area for residents along Rainbow Mall Road, but this area will be screened by a retaining wall, fence and landscaping. The parking lot will be screened from Rainbow Mall Road by landscaping. The portion of the building facing Ocean Avenue will be landscaped.

Section 14-88 (c)

- b. The proposed use will displace a residential structure, the “White House” that has been used as offices by the Cedars since approximately 1991. It is not clear when it was last used as a residence. The proposed building cannot be located elsewhere on the Cedars campus without causing significant environmental impacts in the remaining undeveloped portions of the site. The wetland areas are subject to mitigation easements for prior wetland impacts, and they will not be impacted by the proposed redevelopment.

Section 14-91 (a) off street parking: Parking shall be provided as required by Division 20. There will be an additional 14 spaces to accommodate the increase in staff during the day time shift and the 20 assisted living beds as required in Division 20.

R-5:

Use: Institutional use as a long-term care facility is a conditional use in this zone. The applicant requests that the conditional use be granted for the proposed building on the basis that the use is consistent with the existing site and in compliance with the conditional use standards found in Section 14-474 and Section 14-118 (b) of the ordinance. The following responses

Section 14-474 (c) 2.

- d. The volume of traffic will be very similar to the current levels. The proposed facility will be adding approximately 7 to 8 staff during the daytime shift and there will be 20 additional beds at the facility. This will result in approximately 14 additional trips during the peak hour. The site will be served by the single entrance on Ocean Avenue. Because the small increase in beds for the site we do not anticipate any changes in the deliveries to the site.
- e. The proposed use will not create unsanitary or harmful conditions. The building will have mechanical systems located on the roof of the building and trash will be collected in the garage and stored at the dumpsters on the site.
- f. The orientation of the building is such that operational access to the building is from the main campus access drive which is internal to the site. There will be an activity area for residents along Rainbow Mall Road, but this area will be screened by a retaining wall, fence and landscaping. The parking lot will be screened from Rainbow Mall Road by landscaping. The portion of the building facing Ocean Avenue will be landscaped.

Section 14-118 (b)

- b. The proposed use will displace a residential structure, the “White House” that has been used as offices by the Cedars since 1991. It is not clear when it was last used as a residence. The proposed building cannot be located elsewhere on the Cedars campus without causing significant environmental impacts in the remaining undeveloped portions of the site. The wetland areas are subject to mitigation easements for prior wetland impacts, and no wetland impacts are proposed as part of the redevelopment.

Section 14-91 (a) off street parking: Parking shall be provided as required by Division 20. There will be an additional 13 spaces to accommodate the increase in staff during the day time shift and the 20 assisted living beds as required in Division 20.

### Cedars Site Plan Dimensional Requirements

Code	Item	Proposed	Conditions R-5	Conditions R-3
14-87, 14-88(c)2.a.	Permitted Uses	Institutional	Allowed with conditional permit	Allowed with conditional permit
14-90	Dimensions			
a	Lot Size	10.5 acres	2 acres	2 acres
c	Frontage	578 feet	50	50 Feet
d	Front Setback	25	20	25
	Side Setback (Street)	20	20	20
	Side Setback	Variable	14	16
	Rear Setback	No Change		25
e	Max. Lot Cover	20.3%	40%	35%
f	Min Lot Width	Varies; over 400'	90 feet	65 feet
g	Max Str. Height	35'	35 feet	35 feet
h	Units/Building	N/A	12 max	2 max
i-q	N/A	N/A		N/A
14-91	Others			
a	Parking	0	(See Div 20)	(See Div 20)
c	N/A	N/A	N/A	N/A
14-92-6	N/A	N/A	N/A	N/A
	N/A	N/A	N/A	N/A
<b>Parking</b>			<b>From Division 20</b>	
Off-Street	Residential Use	N/A	2/Dwelling Unit	
	LT Care	4	4; 1/5 Beds	
	LT Care	9	9; 1/Employee during day shift	
14-526A	Bike Parking	4	2.6; 2/10 new required parking spaces	
	Motor/Scooter	1	1	