

ATTACHMENT L

Declaration of Easements, Covenants and Restrictions

Draft –June 23, 2015

**DECLARATION
OF
EASEMENTS, COVENANTS AND RESTRICTIONS
dated as of
_____, 2015**

**Declarant: FOREFRONT PARTNERS I, LP
501 Danforth Street
Portland, Maine 04102**

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**DECLARATION OF EASEMENTS,
COVENANTS AND RESTRICTIONS**

THE FOREFRONT AT THOMPSON POINT

WITNESS THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (hereinafter referred to as this “Declaration”) made as of this ____ day of _____, 2015, by FOREFRONT PARTNERS I, LP, and its successors and assigns, a Maine limited partnership, of Lewiston, Maine, and having a mailing address of 501 Danforth Street, Portland, Maine 04102 (hereinafter referred to as the “Declarant”).

RECITALS

A. Declarant is the owner of certain parcels of land and improvements thereon situated off Thompson’s Point Road in the City of Portland, County of Cumberland and State of Maine, being more particularly described in that certain Quitclaim Deed with Covenant from Thompson’s Point Incorporated (a/k/a Thompson’s Point Inc.), a Maine corporation, to Declarant dated June 19, 2013 (the “Deed”) and recorded on June 27, 2013 in the Cumberland County Registry of Deeds in Book 30781, Page 282 (the “Property”).

B. Declarant has subdivided a portion of the Property into certain Lots of land for a commercial development of mixed uses, including, without limitation, work studios, retail businesses, offices, hotels, residential facilities, health clubs and facilities, restaurants and/or banquet facilities, sports facility, theaters (film and performing), public meeting places and/or convention facilities and/or parking garages and facilities to be known as “The Forefront at Thompson Point” (the “Subdivision”).

C. The Subdivision is more particularly depicted on a plan entitled “Amended Subdivision Plan / The Forefront at Thompson’s Point”, prepared for the Declarant by Fay, Spofford & Thorndike Inc., dated September 2014 and approved for Subdivision and Site Plan Review by the City of Portland Planning Board on December 17, 2013 and last approved by the City’s Planning Authority on December 12, 2014, and the said Subdivision Plan is recorded in the Cumberland County Registry of Deeds in Plan Book _____, Page ____ (as amended from time to time, the “Plan”).

D. The Declarant is the owner of all of the Lots (as hereinafter defined) depicted on the Plan, being Lots 1 through 19, inclusive (except for Lots 14 and 15 which are under contract), and the roadways that circumvent the Subdivision and the Common Areas (as hereinafter defined), excluding approximately one hundred thirty-nine and eighty-seven hundredths (139.87) feet of roadway (9,155^{+/-} square feet) at the entrance of the Subdivision and depicted on the Plan as “conveyance to MDOT as additional land for Sewall Street”, which entrance roadway area is currently owned by the State of Maine Department of Transportation by virtue of a deed dated June 27, 2013 from Declarant, recorded in said Registry of Deeds in Book 30781, Page 288 (the

“Public Road”). Other than the Public Road, the roadways of the Subdivision are, and shall be, private roads.

E. The Declarant desires to provide for the improvement of the Property in accordance with a harmonious plan for the relative location of commercial structures, accessory structures, garages, rights-of-way, easements, roads, railroad crossing rights, common areas, roadways and walkways providing ingress and egress to the Subdivision and general land use, all to assure the owners of Lots, their successors and assigns, that the use, benefit and enjoyment of the individual Lots, Common Areas, facilities, easements and roads will not conflict with the harmonious plan of the proposed commercial development (the “Development”).

F. The various components and improvements of the Property have been operated as a single integrated parcel of land over the years, and in order to facilitate the separate operation of the Lots within the Property the Declarant desires to create a Development providing for the greatest possible degree of health, safety, environmental beauty and amenity for the Lot Owners and commercial tenants thereof, and to effect the foregoing purposes, desires to subject the Property to protective covenants, restrictions and common easements and to provide for the administration and enforcement of same, the maintenance and improvement of certain common facilities, and the establishment, collection and disbursement of assessments, all as set forth hereinafter, each and all of which are for the benefit of the Subdivision and of each Lot maintaining and improving certain rights-of-way and other common facilities, and otherwise carrying out the provisions and objectives of this Declaration.

NOW, THEREFORE, the Declarant hereby declares that the Property shall be held, occupied, improved, transferred, sold, leased and conveyed subject to the protective covenants and restrictions, the reservations and exceptions, the common rights and easements and the provisions hereinafter set forth, all of which are declared to be in furtherance of a uniform scheme for the development of the Property and that said protective covenants, reservations, common easements and provisions are intended to enhance and protect the value and desirability of the Property as a whole, to mutually benefit each of the Lots located thereon, to create mutual equitable servitudes upon each of the Lots in favor for each and all other Lots therein and to create reciprocal rights and privities of contract and estate between all persons and entities acquiring or owning any interest in any portion of the Property, including the Declarant, with such protective covenants, restrictions, and easements deemed to run with the land and be a burden and benefit to and enforceable by all such persons, including the Declarant and the Declarant’s grantees, successors, administrators and assigns, and by the Association (as hereinafter defined).

ARTICLE I DEFINED TERMS

1.1. Defined Terms. The following terms which are not otherwise defined in this Declaration shall have the following specific meanings in this Declaration:

1.1.1. “Allocated Interests” mean (a) the Common Area Interest, (b) the Common Expense Liability, and (c) the Votes in the Association, allocated to each Lot pursuant to this Declaration.

1.1.3. “Association” means the association of the Lot Owners organized as a nonprofit corporation under the Maine Nonprofit Corporation Act. Subsequent to the Declarant Control Period, if applicable, references herein to the Declarant shall mean the Association as successor in interest to the Declarant.

1.1.4. “Building” means any building erected on the Property within a Lot, as well as other improvements comprising a part of a Building or intended to be used for purposes incidental to the use of a Building.

1.1.5. “Bylaws” mean such governing regulations for the Association as are adopted pursuant to this Declaration for the regulation and management of the Property, including such amendments thereof as may be adopted from time to time.

1.1.6. “Common Areas” mean the outdoor plazas, sidewalks, roadways, public street entrances and exits, service roads, boat docks, landscaped areas, utility structures, and other areas located on the Property and identified as “Common Area” on the Plan, and other portions of the Property hereafter designated as Common Areas pursuant to this Declaration from time to time. In addition, “Common Areas” shall include all storm water facilities situated on the Property, whether or not included in the “Common Area” shown on the Plan, and all utility structures situated on the Property that are not owned and serviced by the utility company and serve multiple Lots or adjacent properties.

1.1.7. “Common Area Interest” means the percentage of undivided interest in the Common Areas appurtenant to each Lot.

1.1.8. “Common Expenses” mean and include, but are not limited to, (a) the cost of maintenance, management, operation, repair, renovation, restoration and replacement of the Common Areas and such parts of the Lots as to which pursuant to this Declaration it is the responsibility of the Association to maintain, repair and replace, (b) the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board of Directors pursuant to the provisions of this Declaration, (c) such amounts as the Board of Directors may deem necessary to provide for general operating reserve funds, reserve funds for replacements and contingencies, and such other reserve funds as may be required by the Bylaws or as the Board of Directors may periodically establish, (d) sums that the Board of Directors may deem necessary to compensate for any deficits in receipts over expenses for the previous fiscal year, (e) the charges and fees for energy, heat, water, electricity, gas and sewer services, including stormwater impact fees if applicable, furnished to the Development to the extent not separately metered to individual Lots and charged to individual Lot Owners, and (f) such other

costs and expenses that may be declared by this Declaration, the Bylaws or resolution or agreement by the Board of Directors, Lot Owners, or any of the foregoing, to be Common Expenses of the administration, operation, maintenance and repair of the Development and the Property and the rendering to Lot Owners of all related services.

1.1.9. “Common Expense Liability” means the allocation to each Lot of the respective liability for Common Expenses. The Common Expense Liability allocated to the Lot is a percentage equal to the Common Area Interest appurtenant to the respective Lot.

1.1.10 “Convertible Real Estate” shall mean the land designated as Lots 14 and 15 on the Plan abutting the Development and on the southwesterly side of the railroad tracks that may be acquired by the Declarant during the Declarant Control Period and added to the Development. Any Convertible Real Estate added to the Development shall thereafter be included in the term “Property”. Until such time as Lot 14 and/or Lot 15 are added to the Development, the provisions of this Declaration relating to Lots or Lot Owners shall not be applicable to such Convertible Real Estate.

1.1.11. “Declarant” shall mean the Declarant originally named herein and any successor to the Development Rights (as hereinafter defined), and, if applicable, subsequent to the Declarant Control Period (as hereinafter defined), the Association as successor in interest to the Declarant.

1.1.12. “Declarant Control Period” shall be the period prior to the transition election to Association control described in Section 9.2 hereof.

1.1.13. “Development Documents” mean this Declaration, the Plan, the Governmental Approvals, the Bylaws and any Rules and Regulations adopted pursuant thereto by the Board of Directors or a committee designated by the Board of Directors, and all amendments to each of the same.

1.1.14. “Development rights” means any right or combination of rights reserved by the Declarant in this Declaration to add real estate to the Development; to create Lots or Common Areas within the Development; to subdivide Lots or convert Lots into Common Areas; or to withdraw real estate from the Development.

1.1.15. “Eligible Mortgage Holder” means the holder of record of a recorded first Mortgage encumbering a Lot in the Development which has delivered written notice to the Association by prepaid United States Mail, return receipt requested, or by delivery in hand securing a receipt therefor, stating the name and address of the holder of a Mortgage, the name and address of the Owner of the Lot encumbered by such Mortgage, the identifying number of such Lot, and containing a statement that such Mortgage is a recorded first Mortgage.

1.1.16. “Governmental Approvals” means any authorization, consent, approval, license or exemption of, registration or filing with, or report to, any governmental or regulatory unit having jurisdiction over the Property to develop the Development.

1.1.17. “Lot” means a part of the Property designated for any type of separate ownership or occupancy, the boundaries of which are described in Article III. For purposes of determining Allocated Interests, the “size” of each Lot is the number of square feet therein determined by reference to the dimensions shown on the latest version of the Plan approved by the City of Portland and recorded in the Cumberland County Registry of Deeds.

1.1.18. “Majority Vote” or “Majority of Lot Owners” shall mean a vote by the Owners of those Lots to which are allocated more than fifty percent (50%) of the Votes in the Association that are cast in person or by proxy at any meeting of the Association at which a quorum (as defined in the Bylaws) is present in person or by proxy. Except as otherwise provided, any specified percentage of Lot Owners means a vote by the Owners of those Lots to which are allocated the same specified percentage of the Votes in the Association that are cast in person or by proxy at any meeting of the Association at which a quorum is present in person or by proxy, and for all voting purposes, each Lot Owner shall have a vote equal to the Votes in the Association allocated to its Lot. The approval by a specified percentage of Eligible Mortgage Holders is based upon one (1) vote for each Mortgage held.

1.1.19. “Mortgage” means a recorded mortgage encumbering a Lot in the Development held by a Mortgagee or an Eligible Mortgage Holder. “Mortgagee” means the holder of a Mortgage.

1.1.20. “Recorded” means that an instrument has been duly entered of record in the Registry of Deeds in and for Cumberland County, Maine.

1.2. Interpretation. In the event of any conflict or discrepancy between this Declaration, the Bylaws and the Plan, the provisions of this Declaration shall govern the Bylaws and the Plan.

ARTICLE II DESCRIPTION OF PROPERTY

2.1. Description of the Property. A legally sufficient description of the Property included in the Development is set forth in Schedule A attached hereto, and the location and dimensions of the Property included in the Development is depicted on the Plan, a reduction of a true copy of which is attached to this Declaration as Schedule B.

2.2. Location and Dimension of Each Lot. The location and dimension of each Lot is depicted on the Plan.

ARTICLE III
DESCRIPTION OF UNITS, ETC.

3.1. Maximum Number of Lots. The Declarant has created pursuant to the Plan, and the Subdivision approved, nineteen (19) Lots as identified on Schedule C. The Declarant reserves the right to add to the Development Lots 14 and 15 on the Convertible Real Estate.

3.2. Creation of Lots. Reference is made to Schedule C and the Plan for the identifying number of each Lot, including the locations and dimensions of the horizontal boundaries of each Lot, the Common Areas to which the Lot has direct access, the specific formula for determining the Common Expense liability for each Lot, and any other information necessary to identify the Lot.

3.3. Lot Boundaries. The boundaries of each Lot are shown on the Plan and are described as follows:

3.3.1. Vertical Boundaries: The Lots shall have no vertical boundaries.

3.3.2. Horizontal (Parametric) Boundaries: The horizontal boundaries of each Lot are as shown on the Plan.

3.3.3. Inclusions: Each Lot will include the spaces and improvements lying within the boundaries described in subparagraphs 3.3.2 above.

3.3.4. Exclusions: Except when specifically included by other provisions of this Paragraph 3.3, the following are excluded from each Lot: the spaces and improvements lying outside of the Lot boundaries described in subparagraphs 3.3.2 and 3.3.3 above.

3.4. Allocated Interests. The Allocated Interests allocated to each Lot are listed and allocated to the Lots in Schedule C. Each Common Area Interest and Common Expense Liability has been rounded to the nearest one thousandth of one percent (0.001%). The Common Area Interests and Common Expense Liabilities appurtenant to each respective Lot are each a percentage determined on the basis of "size" (as defined in Paragraph 1.1.17 above) by multiplying by one hundred (100) the quotient resulting from dividing the "size" of each respective Lot by the aggregate "size" of all the Lots in the Development, excluding from such calculation Common Areas, and excluding Lots 14 and 15 until such time as they are added to the Development. The Votes in the Association allocated to each respective Lot is a sum rounded to the nearest whole number determined by multiplying by one thousand (1,000) the quotient resulting from dividing the "size" of each said Lot by the aggregate "size" of all the Lots in the Development, excluding from such calculation Common Areas, and excluding Lots 14 and 15 until such time as they are added to the Development. The Allocated Interests stated for each Lot in Schedule C are subject to change in the circumstances stated in this Declaration, e.g., change in a Lot size, change in Common Areas, or addition of Convertible Real Estate. The

Table depicted in Schedule C shows the current Allocated Interests of each Lot as of the date of this Declaration. From time to time, so long as the formula for determination of Allocated Interest as set forth in Section 3.4 and Schedule C does not change, the recalculation of Allocated Interest created by changes in Lot size, number of Lots or other changes shall be kept with the records of the Board of Directors and such updated record shall control in the determination of Allocated Interests. Nothing in this Section 3.4 shall affect the requirements for Amendments to this Declaration as set forth in Article XI hereof.

3.5. Structures. No Building (or auxiliary structure) shall be erected or placed within any Lot, or the exterior of any Building altered, until its design, siting within the Lot, utility siting, exterior siding, roofing and trim materials, all auxiliary structures and exterior colors are approved by the Declarant, which approval shall not be unreasonably withheld, delayed or conditioned if such erection, placement or alteration is otherwise consistent with the Site Plan for the Development approved by the City of Portland Planning Board.

3.6. Time of Construction. When the construction of a Building on a Lot is once begun by a Lot Owner, work thereon must be prosecuted diligently and the enclosed shell of such Building must be completed within two (2) years, unless otherwise consented to by the Association, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, in the event construction begins on a “pad” site, so-called, and not a Building, so that site work, foundations, utilities, etc. can be done, it shall not be deemed to trigger the two (2) year period so long as completion of the “pad” site is completed to a “pad ready” status within eight (8) months from commencement to the satisfaction of the Declarant or Board of Directors, as applicable.

3.7. Compliance with Ordinances. All construction activities, including the siting of a Building and erection of signs, shall be in accordance with all local, state and federal laws, codes, ordinances and regulations and subject to the existing Site Plan Review approvals, Subdivision approvals and this Declaration.

3.8. Maintenance of Lots. Each Lot Owner shall be solely responsible for the maintenance, replacement and repair of its Lot, excluding Common Areas, and shall keep its Lot free from rubbish and trash of any kind. Each Lot Owner shall keep trash, garbage and other waste in sanitary containers and any sand, gravel, salt or similar materials in appropriate locations within the boundaries of a Lot, and in accordance with all local, state and federal laws, codes, ordinances and regulations, and any Rules and Regulations established by the Association’s Board of Directors. Each Lot in the Development is situated on private property with street frontage on private roads, and the City of Portland shall not have any responsibility for trash removal or for road maintenance on the said private roads of the Development.

3.9. Nuisances. No Owner shall do or permit to be done any act in the Development or within a Lot which may be, or is, or may become a nuisance as defined by state or local ordinances or regulations.

ARTICLE IV

COMMON AREAS AND APPLICABLE PROVISIONS

4.1. Association Rights to Reserve Areas. “Reserved Common Areas” are those parts of the Common Area which the Declarant (or the Board of Directors as successor to the Declarant) may designate from time to time for use by less than all Lot Owners or by non-Lot Owners for specified periods of time. The Declarant (or the Board of Directors of the Association) shall have the power in its discretion from time to time to grant revocable licenses in designated Reserved Common Areas and to establish a reasonable charge for the use and maintenance thereof, but the designation of such Reserved Common Areas shall not affect the Allocated Interests of the Lot Owners.

4.2. Common Areas to Remain Undivided. The Common Area Interest of a Lot shall be inseparable from each Lot, and any conveyance, lease, devise or other disposition or mortgage or other encumbrance of any Lot shall extend to and include the Common Area Interest, whether or not expressly referred to in the instrument effecting such transfer. The Common Areas shall remain undivided and no action for partition or division of any part thereof shall be permitted, unless otherwise provided by law and permitted by this Declaration.

4.3. Use of Common Areas. Except as their use may otherwise be limited by this Declaration or the Bylaws or otherwise by the Declarant (or the Board of Directors, as applicable) pursuant to its powers, each Lot Owner, tenant and occupant of a Lot, and guests, customers, clients, agents and employees of such Lot Owner, tenant and occupant, may use the Common Areas in common with all other Lot Owners and tenants or occupants of other Lots, and their respective guests, customers, clients, agents and employees, in accordance with the purposes for which they are intended without hindering or encroaching upon the lawful rights of the other Lot Owners, subject to the following terms:

4.3.1. Except for such signs as may be posted by the Declarant for promotional or marketing purposes, no exterior or Building signs of any character shall be erected, posted or displayed upon, in, from or about any Lot or Common Areas without the prior written approval of the Board of Directors or a committee designated by the Board of Directors, which approval shall not be unreasonably withheld, delayed or conditioned. All signs must be in compliance with the City of Portland Ordinances, Regulations and Permits. Notwithstanding the foregoing, (i) any tenant identification sign to be installed on a Building or on a monument sign for a Lot shall not require the approval of the Board of Directors or the committee if such sign complies with the Portland Ordinances, Regulations and Permits, and (ii) Declarant’s right to post signs for promotional or marketing purposes shall be limited to (A) such Lots and those Common Areas that are unimproved, (B) those Lots on which the construction of a Building or other improvements have not yet been completed, and (C) those Lots whose Owner(s) have consented to the posting thereof.

4.3.2. No Lot Owner shall obstruct any of the Common Areas nor shall any Lot Owner place or cause or permit anything to be placed on or in any of the

Common Areas (except those areas designated for such storage by the Development Documents or the Board of Directors) without the approval of the Board of Directors, which approval shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, the approval of the Board of Directors shall not be required in connection with the installation of any outside fuel tanks, trash compactors, coolers, compressors, electrical transformers and other equipment which exclusively serves a Building so long as such installation does not eliminate any parking spaces or obstruct ingress and/or egress.

4.3.3. The Board of Directors, the Association, any Lot Owner and the Declarant shall not be considered a bailee of any personal property stored on the Common Areas (including property located in storage cubicles and vehicles parked on the Common Areas), whether or not exclusive possession of the particular area is given to a Lot Owner for storage or parking 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 V
EASEMENTS AND LICENSES

5.1. Recorded Easements and Licenses. The Property is on the date hereof subject to and benefited by those recorded easements and licenses and other matters of record, including those easements, notes, conditions and restrictions as are set forth herein and on the Plan, each as may be amended, modified, approved and recorded from time to time.

ARTICLE VI
NOTICES TO LOT OWNERS BY ASSOCIATION

6.1. To Lot Owners. All notices, demands, bills and statements or other communications affecting the Development shall be given to Lot Owners by the Association in writing and shall be deemed to have been duly given if delivered personally securing a receipt therefor or sent by United States mail, postage prepaid, or if such notification is of a default or lien, sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the Lot Owner at the address which the Lot Owner shall designate in writing and file with the Secretary of the Association, or if no such address is so designated, the address of the Lot of such Lot Owner who is the record owner thereof.

6.2. To the Association. All notices, demands, statements or other communications affecting the Development given by the Lot Owners to the Association shall be in writing and shall be deemed to have been duly given to the Association if delivered personally securing a receipt therefor, or sent by United States mail, postage prepaid, return receipt requested, addressed to the Association at the principal office of the managing agent, or if there shall be no managing agent, then to the Secretary of the Association at the address of the Lot of which the

Secretary is the record Lot Owner.

6.3. To Eligible Mortgage Holder. All notices, demands, statements or other communications affecting the Development given by the Association to any Eligible Mortgage Holder shall be in writing and shall be deemed to have been duly given by the Association if delivered personally securing a receipt therefor, or sent by United States mail, postage prepaid, addressed to the Eligible Mortgage Holder at the address identified pursuant to Article I by virtue of which it became an Eligible Mortgage Holder.

ARTICLE VII EASEMENTS

7.1. Utilities, Pipes and Conduits. Subject to the terms of Section 10.1.7 hereof, each Lot Owner shall have an easement in common with all other Lot Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Areas serving its Lot and located in any of the other Lots or Common Areas. Each Lot shall be subject to an easement in favor of all other Lot Owners to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Areas serving such other Lots and located in such Lot. The Declarant (and the Association and its Board of Directors as successor to the Declarant) shall have the right to grant to third parties additional permits, licenses and easements over and through the Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Development.

7.2. Ingress, Egress and Regress. Each Lot Owner, and the clients, customers, guests, employees, tenants, subtenants, invitees, agents, contractors and licensees of Lot Owners shall have an easement, subject to any rules and regulations established by the Board of Directors, in common with all other Lot Owners to use the entrances, exits, corridors and other Common Area roadways as a means of ingress, egress and regress to and from the Property and the adjoining public streets. The Board of Directors shall not and cannot establish any rules and regulations depriving any Lot Owner of reasonable ingress, egress and regress to and from its Lot, the Property and Common Areas and the adjoining public streets. Notwithstanding the foregoing, use of the entrances, exits, corridors and roadways as a means of ingress, egress and regress to and from the Property and the adjoining public streets, and to parking spaces and areas located on the Property shall be subject to the Event Management Plan generally described in Schedule D attached hereto and the Transportation Demand Management Program generally described in Schedule E attached hereto, which Event Management Plan and Transportation Demand Management Program shall be incorporated into the Rules and Regulations as adopted by, and amended from time to time, by the Board of Directors.

7.3. Development Association and Board of Directors Access. The Declarant reserves in favor of itself, the Association and its Board of Directors, officers, agents and employees, and the managing agent and every other person authorized by the Board of Directors, the irrevocable right and easement to have access to each Lot as may be necessary for the inspection, maintenance, repair or replacement of any of the Common Areas therein or accessible therefrom or the making of any addition or improvements thereto; or to make repairs

to any Lot or the Common Areas if such repairs are reasonably necessary for public safety or to prevent damage to any other Lot or Lots or the Common Areas; or to abate any violation of law, orders, rules or regulations of the Association or of any governmental authorities having jurisdiction thereof. In case of an emergency, such right of entry shall be immediate whether or not the Lot Owner is present at the time.

7.4. Declarant's Easement for Marketing. Prior to the completion of the Development, the Declarant reserves the right with respect to its marketing of Lots to use the Common Areas for the ingress and egress of itself, its officers, employees, agents, contractors and subcontractors and for prospective owners or tenants of Lots, including the right of such prospective owners or tenants to park in parking spaces. The Declarant further reserves the right to maintain on the Property such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of the Declarant. The Declarant shall have the right to erect on the Common Areas temporary offices for construction, management, and similar purposes, which may be relocated or removed, all at the sole discretion of the Declarant and which may be of such types and sizes as the Declarant may deem appropriate. Notwithstanding the foregoing, Declarant's rights set forth in this Section 7.4 shall be limited to those Common Areas that are part of any Lot under construction, to those Common Areas that are unimproved, to those Lots that are unimproved, to those Lots on which the construction of a Building or other improvements have not yet been completed, and to those Lots whose Owner(s) have consented to the activity thereon.

7.5. Declarant's Easement for Construction. The Declarant reserves the easement, right and privilege without delay or hindrance with respect to the construction of the Lots, Common Areas and other improvements of the Development, to go upon any and all of the Property for purposes of construction, reconstruction, maintenance, repair, renovation, replacement or correction of the Lots or Common Areas. This easement shall include, without limitation, the right of vehicular and pedestrian ingress and egress, the right to park motor vehicles and to engage in construction and marketing activities of any nature whatsoever, including the movement and storage of building materials and equipment. This easement also expressly includes the right to cut and remove any trees, bushes or shrubbery, to grade and remove the soil, to undertake any work in the tidal area and the embankment areas in or near the shoreland setbacks, including the areas which may be under license or easement with others for the purposes of maintaining the public bicycle and pedestrian trails, or to take any other action reasonably necessary to achieve this purpose, following which the Declarant shall restore the affected property as closely to its original condition as practicable. The Declarant reserves the rights to sell the removed timber and soil and retain the proceeds thereof. Furthermore, the Declarant reserves an easement in the Lots and Common Areas for the purpose of discharging the Declarant's obligations and exercising the Development Rights and other special rights reserved pursuant to this Declaration or on the Plan. The easements, powers or rights reserved by the Declarant in Paragraphs 7.4, 7.5, 7.6, 7.8, 7.9 and 7.14 shall continue until the Declarant has conveyed to a third party grantees all Lots in the Development which the Declarant has reserved the Development Rights to create. These Paragraphs shall not be amended until that time without the written consent of the Declarant.

7.6. Declarant's Easement to Correct Drainage. The Declarant (and the Association as successor to the Declarant) reserves an easement on, over and under those portions of the Property for the purpose of maintaining, correcting, upgrading, and improving drainage of surface water in order to maintain reasonable standards of health, safety and appearance. The reservation of this right does not and shall not result in the imposition of an obligation.

7.7. Encroachments. Each Lot shall have an easement to the extent necessary for structural and subjacent support over the Common Areas, and the Common Areas shall be subject to an easement for structural and lateral support in favor of every other Lot. If any portion of the Common Areas hereafter encroaches upon any Lot, or if any Lot hereafter encroaches upon any other Lot or upon any portion of the Common Areas, as a result of settling or shifting of any Building or Buildings within a Lot or otherwise than as a result of the purposeful or negligent act or omission of the Lot Owner, or of the Association in the case of encroachments by the Common Areas, a valid easement appurtenant to the encroaching Building or Common Areas for the encroachment and for the maintenance of the same shall exist for so long as the encroachment shall exist. Subject to the express terms of any written lease controlling the occupancy of any Building, in the event that any Building or Buildings shall be partially destroyed as a result of fire or other casualty or as a result of a taking by the power of, or in the nature of, eminent domain or by an action or deed in lieu of condemnation, and then is rebuilt, encroachments of a portion or portions of the Common Areas upon any Lot or of any Lot upon any portion of the Common Areas, due to such rebuilding, shall be permitted, and valid easements appurtenant to the encroaching Lots, Common Areas for such encroachments and the maintenance thereof shall exist so long as that Building as so rebuilt shall stand.

7.8. Declarant's Right to Connect with Utilities. The Declarant further reserves an easement to connect with and make use of utility lines, wires, pipes and conduits located or to be located on the Property for construction purposes on the Property, provided that the Declarant shall be responsible for the cost of service so used, and to use the Common Areas for ingress and egress and construction activities and for the storage of construction materials and equipment used in the completion of the Lots and Common Areas.

7.9. Declarant's Right to Grant Easements. The Declarant shall have the right, until the Declarant has transferred all Lots in the Development which the Declarant has reserved the Development Rights to create, to grant and reserve easements and rights-of-way through, under, over and across the Property for construction purposes, and for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone and other utilities. The Lots and Common Areas shall be and are hereby made subject to easements in favor of the Declarant, appropriate utility and service 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 in this Paragraph shall include, without limitation, rights of the Declarant, or the providing utility or service company, or governmental agency or authority, to install, lay, maintain, repair, relocate and replace pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise) over, under, through,

along and on the Lots and Common Areas. The Declarant hereby covenants that in its exercise of the easements rights reserved in this Section 7.9, any such construction, crossing or work associated with the foregoing will be done so as to minimize any nuisance or interference with any occupied Lot or Common Area within the Development.

7.10. Common Areas Easement in Favor of Lot Owners. The Common Areas shall be and is hereby made subject to the following easements in favor of the Lots benefited:

7.10.1. 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 a part of or serve any Lot and which pass across or through a portion of the Common Areas.

7.10.2. For the installation, repair, maintenance, use, removal and/or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Lot but which encroach into a part of a Common Area adjacent to such Lot; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Areas.

7.10.3. For driving and removing nails, screws, bolts and other attachment devices into the surface of the concrete slab or subflooring below the Lot, to the extent such nails, screws, bolts and other attachment devices may encroach into a part of a Common Area adjacent to such Lot; provided that any such action will not unreasonably interfere with the common use of any part of the Common Areas.

7.11. Rental Operations by Declarant. The Declarant shall have the right to operate any real estate subject to Development Rights as a rental project. The Declarant may establish and maintain all offices, signs and other accoutrements normally used in the operation of such rental properties in the sole discretion of the Declarant. The Declarant may, in its sole discretion, lease portions of any real estate subject to Development Rights so long as the Declarant pays the expenses attributable to such rental operations and such operations shall be for the benefit of the Declarant, and neither the Association nor any Lot Owner (other than the Declarant) shall have any right or interest in the profits or losses thereof.

7.12. Alteration of Common Areas by Declarant. The Declarant reserves the right to modify, alter, relocate, remove or improve defective, obsolete or nonfunctional portions of the Common Areas, including, without limitation, any equipment, fixtures and appurtenances when, in the Declarant's judgment, it is necessary or desirable to do so.

7.13. Easements or Licenses for Walking Trails. The Declarant or the Association, as applicable, promptly following the substantial completion of the construction of the Development and subject to the terms of the applicable Governmental Approvals, shall enter into negotiations for the purpose of providing a license or easement as determined in the sole

discretion of the Declarant or the Association, as applicable, with Portland Trails, or any successor to Portland Trails or similar entity whether now existing or hereafter created, to provide to the public a non-exclusive walking trail or foot path across Common Areas to and near the waterfront on the Property at specifically designated locations, which locations may be changed, modified or relocated from time to time by the Declarant or the Association, as applicable, with such walking trail or foot path also providing access to a launch site for access into the Fore River for small kayaks and canoes. Notwithstanding the foregoing, (i) the Declarant or the Association, as applicable, at all times hereby reserves the right to restrict public access to the Property and/or portions of the Property, and (ii) nothing in this Section 7.13 or elsewhere in this Declaration shall be deemed or interpreted to create or establish a license or easement for walking trails, foot paths or access to the Fore River, and any such access as contemplated by this Section 7.13 shall not be effective unless and until a separate, written license or easement agreement, upon such terms and conditions agreed to by the parties has been signed and delivered by the Declarant or the Association, as applicable. Prior to the issuance of any Certificates of Occupancy in the Development and subject to the terms of the applicable Governmental Approvals, the Declarant shall execute and deliver, in recordable form, a separate instrument granting the walking trail and water access rights described in this Section 7.13. See that certain Trail Easement by and between the Declarant and the City dated September 2, 2014 and recorded in the Cumberland County Registry of Deeds in Book 31762, Page 29.

7.14. City of Portland Easement for Public Vehicles Declarant hereby grants to the City of Portland a right of way easement for City of Portland owned vehicles for ingress and egress over and across the Common Areas paved roads and driveways of the Property for the specific purpose of a safe and reasonable “turn-around” to return to the Public Road and for access by the City’s emergency vehicles. Prior to the issuance of any Certificates of Occupancy in the Development and subject to the terms of the applicable Governmental Approvals, the Declarant shall execute and deliver to the City, in recordable form, a separate instrument granting the easements described in this Section 7.14.

ARTICLE VIII

ASSESSMENTS FOR COMMON EXPENSES AND MAINTENANCE OF PROPERTY

8.1. Allocation and Payment of Assessments of Common Expenses. The total amount of Common Expenses shall be assessed against the Lots in the following proportions:

8.1.1. The Common Expenses shall be assessed against all the Lots in proportion to the relative Common Expense Liabilities of all the Lots, as the Common Expense Liabilities may be changed as provided in Paragraph 3.4 and Schedule C.

8.1.2. [Omitted]

8.1.3. Assessments to pay a judgment against the Association shall be made as a Common Expense against the Lots included in the Development at the time the judgment was entered.

8.1.4. Water servicing the Lots shall be supplied by the Portland Water District to the Development and the water district will own and be responsible for the water line up to the meter. Upon substantial completion of a Building, said Building will be separately metered, if permitted by the water district, or otherwise sub-metered; and for each Lot that is not separately metered for water, the Board of Directors shall pay or cause to be paid as an assessment against the Lot Owners so served, the charges for water services consumed together with all related water charges associated with the Lot's water use promptly after the bills from the water district are rendered. Such assessment against a Lot Owner so served by a sub-meter shall not be included in the Common Expenses. Likewise, water supplied to the Common Areas shall be supplied by the water district serving the area to the Common Areas through one or more separate meters or sub-meters, and the Board of Directors shall pay or cause to be paid as a Common Expense assessable to all the Lot Owners the charges for water services consumed on the Common Areas, together with all related water charges arising therefrom promptly after the bills therefor are rendered. The Board of Directors shall assess such charges for water consumed in the Lots against the various Lots in proportion to usage, it being presumed that the proportionate usage of water in each Lot is based on the number and efficiency of water fixtures in the Lot. Sewer services shall be supplied by the sewer district serving the area to the Lots and the Common Areas on the same basis as the water services shall be supplied. The sewer charges, and related utility fees and charges, including but not limited to stormwater utility fees that may be assessed by the municipality or water district, shall be paid and assessed as Common Expenses on the same basis as the water charges are paid and assessed as Common Expenses.

8.1.5. Gas, electricity and telecommunication services shall be supplied by such utility company serving the area directly to each Lot through a separate meter, and each Lot Owner shall be required to pay the bills for gas, electricity and telecommunication services consumed or used in its Lot promptly after the bills therefor are rendered. The electricity serving the Common Areas shall be separately metered, and the Board of Directors shall pay or cause to be paid promptly after the bills therefor have been rendered all bills for the electricity consumed in the Common Areas as a Common Expense.

8.1.6. Except as otherwise provided in subparagraphs 8.1.4 and 8.1.5, the costs of utilities serving the Development not individually metered to a Lot shall be assessed solely against the Lots benefited in proportion to the relative Common Expense Liabilities of such Lots as between themselves as the Board of Directors shall periodically compute.

8.1.7. The cost of insurance coverage obtained and maintained by the Association as provided in Article XIV shall be assessed as a Common Expense

except to the extent that the Board of Directors may periodically determine that the costs of insurance shall be assessed against Lots in proportion to risk.

8.2. Payment of and Lien for Assessments; Budget; Limitation on Expenditures; Taxes; Etc.

8.2.1. Each Lot Owner shall pay to the Association or its authorized representative (1) on the first day of each month one-twelfth (1/12th) (or such other fraction that the Board of Directors may determine in writing) of the Common Expenses and revised Common Expenses assessed on an annual basis against its Lot (or on such other date or at a greater or lesser frequency as the Board of Directors may determine in writing); and (2) on the first day of the next month which begins more than ten (10) days after delivery to the Lot Owner of notice of special assessment or levy, all special assessments, any other sum duly levied against the Lot pursuant to this Declaration, the Bylaws or the Act, including expenses assessed against Lot Owners for maintenance, repair or replacement; and (3) all interest thereon and charges for late payment thereof and legal fees and other costs of collection thereof, and fines, penalties and fees as provided by this Declaration, the Bylaws or the Act.

If for any reason the Association shall revise the annual budget of the Association whereby the Common Expenses or any component thereof may be increased (or decreased), then commencing on the first day of the first month subsequent to the adoption of such revised budget, each Lot Owner shall pay to the Association or its authorized representative such revised annual Common Expenses assessed against its Lot.

8.2.2. The following shall constitute the personal liability of the Owner of the Lot so assessed and also shall, until fully paid, constitute a lien against the Lot in favor of the Association (1) the total annual assessment levied against each Lot for Common Expenses; (2) revised Common Expenses, including any special assessment; (3) any other sums duly levied against the Lot pursuant to this Declaration, the Bylaws or the Act, including special assessments assessed against Lots for maintenance, repair or replacement pursuant to Paragraph 8.5; and (4) all interest thereon and charges for late payment thereof, legal fees and other costs of collection thereof, and fines, penalties and fees as provided in this Declaration or the Bylaws. Such lien shall, with respect to annual assessments and revised annual assessments, be effective on the first day of each fiscal year of the Association as to the full amount of the annual assessment or revised annual assessment, and, as to special assessments and other sums duly levied, including assessments against a Lot Owner for maintenance, repair or replacement pursuant to Paragraph 8.5, interest, charges for late payment, legal fees, costs of collection, fines, penalties and fees as described in subparagraph 8.2.1, on the first day of the next month which begins more than ten (10) days after delivery to the Lot Owner of notice of such special assessment or levy. Such lien is prior to all other liens and encumbrances

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

8.2.3. In the event of a default by a Lot Owner in paying any sum assessed against its Lot which continues for a period in excess of thirty (30) days, interest shall be imposed on the principal amount unpaid from the date when due until paid at a rate of interest to be established annually by the Board of Directors which shall not exceed the lower of the maximum interest rate allowed by law which may be charged by the Association at such time or eighteen percent (18%) per annum. If the Board of Directors shall fail to set such rate, it shall be deemed to have been set at the rate of eighteen percent (18%) per annum. The Association shall have the right to establish and impose charges for late payment of assessments. In any case where an assessment against a Lot Owner is payable in installments, upon a default by such Lot Owner in the timely payment of any two consecutive installments, the maturity of the remaining total of the unpaid installments of such assessments may be accelerated at the option of the Board of Directors, and the entire balance of the assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting Lot Owner by the Board of Directors or its representative.

8.2.4. The lien for assessments described in subparagraph 8.2.2 may be enforced and foreclosed by the Association in like manner as a mortgage on real estate or by any other means presently or hereafter provided by law or in equity. A suit to recover a money judgment for unpaid assessments, interest, penalties and costs of collection may be maintained against the Lot Owner personally without foreclosing or waiving the lien securing such assessments, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment. During the pendency of any such suit, the Lot Owner shall be required to pay a reasonable rental for the Lot for any period prior to sale pursuant to any judgment or order of any Court having jurisdiction over such sale.

8.2.5. No Lot Owner may exempt itself from Common Expense Liability with respect to the payment of assessments for Common Expenses by waiver of the enjoyment of the right to use any of the Common Areas or by abandonment of its Lot or otherwise. The obligation to pay assessments for Common Expenses is absolute and unconditional and shall not be subject to set-offs or counterclaims.

8.2.6. Within thirty (30) days after adoption by the Board of Directors of any proposed budget for the Development, the Board of Directors shall provide a summary of that budget in reasonably itemized form to each Lot Owner. The

Board of Directors shall set a date for a meeting of the Lot Owners and Eligible Mortgage Holders to consider ratification of such proposed budget not less than fourteen (14) days nor more than thirty (30) days after mailing of said summary of budget or notice. Unless at that meeting a majority in voting interest of all the Lot Owners rejects the proposed budget, that budget is ratified irrespective of whether a quorum is present at said meeting. In the event such proposed budget shall be rejected at the meeting, the budget last ratified with respect to the period covered by the proposed budget shall be continued as the budget for the Development until such time as the Lot Owners ratify a subsequent budget proposed by the Board of Directors upon the same conditions as are provided with respect to the original proposed budget.

The failure of the Board of Directors to conform to the schedules above stated shall not invalidate any budget adopted by the Board of Directors and ratified by the Lot Owners.

8.2.7. If the Board of Directors votes to levy a Common Expense assessment not included in the current budget in an amount greater than fifteen percent (15%) of the current annual operating budget, the Board of Directors shall submit such Common Expense to the Lot Owners and Eligible Mortgage Holder for ratification in the same manner as a budget under subparagraph 8.2.6 of this Declaration.

8.2.8. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Lot Owner's obligation to pay its allocable share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Lot Owner shall continue to pay each monthly installment at the monthly rate established for the previous fiscal year until the new annual or adjusted budget shall have been adopted.

8.2.9. Any provision or limitation on expenditures contained in the Development Documents to the contrary notwithstanding, the Board of Directors or the manager may, on behalf of the Association and the Owners without prior notice or consent, expend any amount, or incur a contractual obligation in any amount, required to deal with emergency conditions which may involve a danger to life or property or may threaten the safety of the Development or the owners or occupants of Lots or may threaten the suspension of any necessary service to the Development or may involve the immediate damage to or destruction of the Common Areas.

8.3. Reduction of Expenses and Surplus Funds. Subject to the following sentence, all receipts from payments, fees or charges for the use, rental, operation or allocation as a Reserved Common Area located within any and all Common Areas shall be applied first to reduce the Common Expense relating to the use of that Common Area giving rise to such Common

Expense, and any excess thereof shall be applied to Common Expenses generally; and all receipts from any special assessments shall be applied first to reduce the expense relating to the service afforded to the Lot benefited, and any excess shall then be applied to Common Expenses generally. Any amounts accumulated from assessments for Common Expenses, income from interest on reserves, and income from the operation of the Common Areas to which such Common Expenses pertain in excess of the amount required for actual Common Expenses and provision for Common Expenses and any payment of reserves shall be credited to each Lot Owner in proportion to their respective Common Expense Liabilities to reduce until exhausted the next monthly installments due from Lot Owners.

8.4. Real Estate Subject to Development Rights, if Any. Any income or proceeds from any real estate subject to Development Rights inures and is payable to the Declarant.

8.5. Maintenance of Common Areas. The Association shall be responsible for the maintenance, management, operation, repair, renovation, restoration and replacement, including snow and ice removal, as needed, of (i) the Common Area sidewalks, roadways and public street entrances (unless, in the reasonable opinion of the Board of Directors, such expense was necessitated by the negligence or misuse of a Lot Owner or the persons or entities responsible for any special events, as such term is used in the Event Management Plan, on the Development) and (ii) all of the other Common Areas, the cost of which shall be charged to the Lot Owners as a Common Expense to the extent permitted under this Declaration. The maintenance, management, operation, repair, renovation, restoration and replacement of Common Areas to the extent required for the functioning of or for connecting utilities to the Property and the Lots shall be furnished by the Association as part of the Common Expenses to the extent permitted under this Declaration or, if fewer than all of the Lots are benefited, as a special assessment against such benefitted Lots.

8.6. Maintenance of Lot. Unless otherwise set forth in this Declaration, each Lot Owner shall keep and maintain its Lot (other than the Common Areas located thereon) and its Building, equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition, whether such maintenance and repair shall be structural or nonstructural, ordinary or extraordinary, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of its Lot. No Lot Owner shall sweep or throw, or permit to be swept or thrown, from its Lot any dirt, debris or other substance. In addition, each Lot Owner shall be responsible for all damage to any other Lots or to the Common Areas resulting from its failure or negligence to make any of the repairs required by this Article. Each Lot Owner shall perform its responsibility in such manner as shall not unreasonably disturb or interfere with the other Lot Owners. Each Lot Owner shall promptly report to the Board of Directors or the managing agent any defect or need for repairs for which the Association is responsible.

8.7. Liability of Owner. Each Lot Owner shall be liable, and the Association shall have a lien against its Lot for, the expense of maintenance, repair or replacement of any damage to the Common Areas or of another Lot caused by such Lot Owner's act, neglect or carelessness or by that of any member of such Lot Owner's guests, employees, agents or lessees or their

respective guests, employees or agents, which the Association shall have the right to cure, correct, maintain, repair or replace. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy, or abandonment of any Lot or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation against such Lot Owner.

ARTICLE IX
ASSOCIATION OF LOT OWNERS; VOTING; DECLARANT CONTROL

9.1. The Association, Powers. The membership of the Association at all times shall consist exclusively of all Lot Owners, or following any termination of the Development, of all former Lot Owners entitled to distributions of proceeds, or their heirs, successors or assigns, but shall not include persons having an interest in a Lot solely as security for an obligation. Each Lot Owner shall automatically become and be a member of the Association as long as it continues as a Lot Owner, and upon the termination of the interest of the Lot Owner in the Development, its membership and any interest in the common funds of the Association shall thereupon automatically terminate and transfer and inure to the next Lot Owner or Owners succeeding it in interest.

9.2. Board of Directors Powers, Declarant Control Period. The Board of Directors may act on behalf of the Association, shall have all of the powers necessary for the administration of the affairs of the Association and may do all such acts and things as are not by this Declaration or the Bylaws required to be exercised and done by the Association. The affairs of the Association shall be governed by a Board of Directors composed of no less than three (3) and no more than seven (7) natural persons. Prior to the transition election to Association control provided for by subparagraph 9.2.1, the Board of Directors shall be composed of three (3) natural persons appointed by the Declarant. The Declarant shall have the right during the Declarant Control Period (as described below) to appoint, remove and replace from time to time any and all members of the Board of Directors and officers of the Association, without the necessity of obtaining resignations. The appointees of the Declarant need not be Lot Owners. After the transition election, at least a majority of the members of the Board of Directors shall be Lot Owners, or in the case of a Lot Owner which is a corporation, partnership, limited liability company, trust or estate, a designated agent thereof. The transition from Declarant-appointed members of the Board of Directors to Lot Owners other than the Declarant shall occur as follows:

9.2.1. No later than the earlier of (a) sixty (60) days after the transfer of seventy-five percent (75%) of the Lots to grantees or (b) fifteen (15) years following transfer of the first Lot to a grantee, or at such earlier date as the Declarant in its sole discretion shall specify, the transition meeting of the Association and transition election shall be held at which all of the members of the Board of Directors and the officers of the Association shall all resign, and the Lot Owners, including the Declarant if the Declarant owns one or more Lots, shall thereupon elect successor members of the Board of Directors to act in the place and stead of those resigning.

9.2.2. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Declarant Control Period, but in that event it may require, for the duration of the Declarant Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before such actions can become effective. In determining whether the Declarant Control Period has terminated, the percentage of the Lots conveyed or transferred is presumed to be that percentage which would have been conveyed if all the Lots were included in the Development that the Declarant has created or reserved in this Declaration the Development Rights to create.

9.3. Voting. The Votes in the Association allocated to a Lot can only be cast as a unit and cannot be split. If a Lot is owned of record by one person, that Lot Owner's right to vote shall be established by the record title to the Lot. If ownership of a Lot is in more than one person, the person who shall be entitled to cast the Votes allocated to that Lot shall be the person named in a certificate executed by all of the Owners of such Lot and filed with the Secretary of the Association. If ownership of a Lot is in a corporation, partnership, limited liability company, trust or estate, the officer or employee of that corporation, partner of that partnership, manager or member of that limited liability company, trustee of that trust, or agent of that estate, entitled to cast for the corporation, partnership, limited liability company, trust or estate the Votes allocated to such Lot shall be designated in a certificate for that purpose executed by the president or a vice president of that corporation, and attested to by the secretary or clerk of that corporation, executed by all the partners of that partnership, by all of the members of that limited liability company, or executed by all the beneficiaries of that trust, or executed by either all the devisees of that estate or by order of the probate court and filed with the Secretary of the Association. Such certificates of multiple owners, corporations, partnerships, limited liability companies, trusts or estates shall be valid until revoked by a subsequent certificate similarly executed and filed with the Secretary of the Association. Wherever the vote, approval or disapproval of a Lot Owner is required by this Declaration, such vote, approval or disapproval shall be made only by the person who would be entitled pursuant to such certificate to cast at any meeting of the Association the Vote allocated to such Lot. If the person named or designated in said certificate for a particular Lot shall be absent from a meeting of the Association, no person may cast the Vote allocated to that Lot at the meeting, although the presence at the meeting of a non-named or non-designated co-Owner or member, officer or employee of such Owner shall be counted in determining whether a quorum is present. If a multiple Owner of a Lot (that is not a partnership, limited liability company, trust, estate or corporation) has failed to file said certificate with the Secretary of the Association and only one of the multiple Owners is present at a meeting of the Association, he or she shall be entitled to cast at the meeting all the Votes allocated to that Lot without establishing the concurrence of the absent Owner just as though that person were the sole Owner of the Lot. If a multiple Owner of a Lot (that is not a partnership, trust, limited liability company, estate or corporation) has failed to file said certificate with the Secretary and if more than one Owner of that Lot is present at the meeting, the Votes allocated to that Lot may be cast only in accordance with the agreement of a majority of the multiple Owners

present at the meeting. Such majority agreement shall be conclusively presumed if any one of those multiple Owners shall cast the Vote allocated to the Lot without protest being promptly made to the person presiding over the meeting by any other Owners of that Lot.

ARTICLE X
RESTRICTIONS ON USE, OCCUPANCY AND ALIENATION OF LOTS

10.1. Use and Occupancy Restrictions on Lots. Each Lot shall be occupied and used subject to the following restrictions:

10.1.1. No Lot shall be used or occupied for other than professional, business or commercial purposes or for residential purposes, and in compliance with all applicable land use laws, ordinances and regulations, it being expressly understood that the use of a Lot by a hotel shall not, regardless of any guest's length of stay, constitute a residential use. Nothing in this Declaration or the Bylaws shall be construed to prohibit the Declarant from exercising any easements and Special Declarant Rights reserved by the Declarant pursuant to Article VII for purposes permitted by this Declaration, including promotional, marketing or display purposes, from using any appropriate portion of the Common Areas for exercising these reserved rights, settlement of sales of Lots and for customer service purposes, or from leasing Lots owned by the Declarant as permitted in this Declaration, and in each case subject to any limitations set forth elsewhere in this Declaration.

10.1.2. Nothing shall be done or kept in any Lot or in the Common Areas which will increase the rate of insurance for the Property or any part thereof applicable without the prior written consent of the Board of Directors. No Lot Owner shall permit anything to be done or kept in its Lot or in the Common Areas which will result in the cancellation of insurance on the Property or any part thereof or which would be in violation of any law, regulation or administrative ruling. No waste will be committed on the Common Areas.

10.1.3. No Lot shall be used so as to create a nuisance or an unreasonable interference with the peaceful possession and occupation or proper use of any other Lot or the Common Areas; provided, however, it shall not be deemed a nuisance so long as a Lot is being used in compliance with the Rules and Regulations of the Development, if any, and as permitted under the terms of its lease.

10.1.4. No owner or occupant of any Lot shall carry on, or permit to be carried on, any practice which unreasonably interferes with the quiet enjoyment and proper use of another Lot or the Common Areas by the Owner or occupant of any other Lot, or which creates or results in a hazard or nuisance on the Property.

10.1.5. The maintenance, keeping, boarding and/or raising of animals, laboratory animals, livestock, poultry or reptiles of any kind, regardless of number, shall be and is prohibited within any Lot or upon the Common Areas.

10.1.6. Trash, garbage, recycling, and other waste shall be kept only in sanitary containers and shall be disposed of in such manner as may be prescribed from time to time in the Rules and Regulations established by the Board of Directors. No articles of personal property belonging to any Lot Owner shall be stored in any portion of the Common Areas except in a storage area specifically designated by the Board of Directors or the managing agent, if any.

10.1.7. No Lot Owner shall make any alterations, repairs or modifications to or connections with the common lines and appurtenances for water, sewer, drainage, gas, electricity, telephone and other utilities serving the Property without the prior written consent of the Board of Directors or a committee designated by the Board of Directors, as appropriate, which consent shall not be unreasonably withheld, delayed or conditioned.

10.2. Voluntary Resale of Lots. No Lot Owner, including the Declarant, shall be liable for the payment of any part of the Common Expenses assessed against its Lot subsequent to the date of recordation of a conveyance in fee of such Lot by the Owner. In a voluntary transfer of a Lot, the grantee of the Lot shall be jointly and severally liable with the grantor for all unpaid assessments and special assessments for Common Expenses made by the Board of Directors against the latter up to the time of the recordation of the grantor's transfer, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

10.3. Title. Every Lot Owner shall promptly cause to be duly recorded the deed, lease, assignment or other conveyance to it of its Lot or other evidence of its title thereto and file such evidence of its title with the Board of Directors through the Secretary or Manager.

ARTICLE XI AMENDMENTS

Except in the case of amendments to this Declaration that may be executed and recorded by the Declarant pursuant to the provisions of this Declaration granting the Declarant the right to unilaterally amend the same, and except in cases of amendments to this Declaration that may be unilaterally executed and recorded by the Association and subject to the other provisions of this Declaration, this Declaration and the Plan may be amended as follows:

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

11.2. After First Conveyance. After the first conveyance of a Lot by the Declarant as contemplated in the preceding Paragraph, the terms of the following subparagraphs shall apply to the amendment of this Declaration:

11.2.1. Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the Board of Directors or the Association in which a proposed amendment is considered, and shall be served upon all Lot Owners and upon all Eligible Mortgage Holders.

11.2.2. Resolution. An amendment may be proposed by either the Board of Directors or by Lot Owners holding in the aggregate no less than twenty percent (20%) of the votes in the Association. No resolution of the Board of Directors adopting a proposed amendment or the proposed amendment itself shall be effective unless it has been adopted by the affirmative vote, written consent, or any combination thereof, of at least sixty-seven percent (67%) in voting interest of the Lot Owners and then executed and recorded as provided in subparagraph 11.2.6.

11.2.3. Agreement. In the alternative, an amendment may be made by an agreement signed by the record Owners of Lots to which are allocated one hundred percent (100%) of the Votes in the Association in the manner required for the execution of a deed and acknowledged by at least one of them, and such amendment shall be effective when certified and recorded as provided in subparagraph 11.2.6.

11.2.4. Proviso. During the Declarant Control Period, no amendment of this Declaration shall make any change which would in any way affect any of the rights, privileges, powers and options of the Declarant, its successors or assigns, unless the Declarant, or its successors or assigns, shall join in the execution of such amendment.

11.2.5. Exception to Consent. Subject to such applicable provisions otherwise set forth in this Declaration, the Declarant may amend this Declaration and the Plan without Board of Director or Association approval so long as such amendment is for the sole purpose of moving the boundary lines of a Lot, provided the Declarant has obtained the written approval of the Lot Owners affected by such boundary line change and such amendment does not increase the Allocated Interests of the other Lots.

11.2.6. Execution and Recording. A copy of each amendment shall be attached to or included with a certificate, certifying that the amendment was duly adopted, which certificate shall be executed and acknowledged by such officer or officers of the Association and/or member or members of the Board of Directors designated for that purpose by the Bylaws. The amendment shall be effective when such certificate and copy of the amendment are recorded.

11.2.7. Notice and Challenge. No action to challenge the validity of an amendment to this Declaration adopted by the Association pursuant to this Article may be brought more than one (1) year after such amendment is recorded. After each amendment to this Declaration adopted pursuant to this Article has been recorded, notice thereof shall be sent to all Lot Owners and to all Eligible Mortgage Holders at the address last furnished to the Board of Directors, but failure to send such notices shall not affect the validity of such amendment.

ARTICLE XII TERMINATION OF DEVELOPMENT

12.1. Termination. The Development shall not be terminated except by agreement of Owners of Lots to which at least sixty-seven percent (67%) of the Votes in the Association are allocated. Termination shall not bar the subsequent re-creation of the Development or another project with respect to the Property.

ARTICLE XIII INSURANCE

13.1. Policies. Commencing no later than the time of the first conveyance of a Lot other than as security for an obligation to a person other than the Declarant, the Board of Directors on behalf of the Association shall obtain, or cause to be obtained, and shall maintain, the policies of insurance described in Paragraphs 13.3 and 13.4 to the extent such policies shall be reasonably available from reputable insurance companies. To the extent that said insurance described in Paragraphs 13.3 and 13.4 is not reasonably available as described in the preceding sentence, the Board of Directors on behalf of the Association shall give written notice of that fact to the Lot Owners and the Eligible Mortgage Holders of Mortgages of their Lots by hand delivery securing a receipt therefor, or by prepaid United States mail, return receipt requested. To the extent that any of the insurance described in Paragraphs 13.3 and 13.4 shall become in the future no longer available, the Association shall obtain in substitution therefor such comparable insurance as shall then be available. The Board of Directors of the Association is hereby irrevocably appointed as attorney-in-fact for each Lot Owner and for each Mortgagee and Eligible Mortgage Holder and for each owner of any other interest in the Property for the purpose of purchasing and maintaining the insurance described in Paragraphs 13.3 and 13.4, the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to accomplish such purposes.

13.2. Property Insurance. Each Lot Owner shall keep the Building and other improvements upon the Lot insured against loss or damage by fire and any of the casualties included from time to time in the special form all-risk, extended coverage or supplementary contract endorsements, and with such coverages and endorsements as Lot Owner's mortgagee may require, in an amount equal to the full replacement value thereof, exclusive of excavation costs, foundations and footings, without deduction for depreciation.

13.3. Liability Insurance. The Board of Directors shall obtain and maintain as a Common Expense commercial general public liability insurance (including medical payments insurance) and property damage insurance in such limits as the Board may from time to time determine, insuring each Board of Directors member, the managing agent, each Lot Owner (and if requested by the Lot Owner, one or more of the Lot Owner's lessees) and the Declarant against any liability to the public or to the Lot Owners (and their invitees, agents and employees) covering all occurrences commonly insured against for death, bodily injury or property damage arising out of, or incident to, the maintenance, ownership or use of the Common Areas and/or relating to any legal liability resulting from suits or actions related to employment contracts to which the Association is a party. Such insurance shall be issued on a comprehensive liability basis and shall contain (a) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to its action against another named insured; (b) hired and non-owned vehicle coverage; (c) a "severability of interest" endorsement which shall preclude the insurer from denying liability to a Lot Owner because of negligent acts of the Association or of another Lot Owner or a tenant of a Lot Owner; and (d) a broad form liability extension endorsement including "personal injury," contractual liability, host liquor liability and other coverage commonly included in such broad form. In further clarification of the foregoing, the Board of Directors shall maintain and keep in full force and effect a Commercial General Liability Insurance policy that includes coverage for all of the Development, including the rail operations at the railway crossing, and named peril/time element pollution liability coverage with a limit of not less than \$15,000,000 per occurrence. The policy(ies) shall name Pan Am Railways and its parent, subsidiaries, directors, officers, agents, employees, and its successors and assigns as additional insureds. Such coverage shall be primary and not contributory with any other insurance maintained by Pan Am Railways. The policy will be endorsed to waive subrogation against Pan Am Railways. The Board of Directors shall provide to Pan Am Railways certificates of insurance showing evidence of all of the coverage and endorsements required above on an annual basis. The certificates shall state that the insurers agree to provide Pan Am Railways with not less than thirty (30) days' prior written notice of any cancellation. All policies must be written with insurance companies with A.M. Best Ratings of not less than "A". Certificates must be delivered to Pan Am Railways at 1700 Iron Horse Park, North Billerica, MA 01862, attention Law Department."

13.4. Other Insurance. The Board of Directors shall obtain and maintain as a Common Expense:

13.4.1. To the extent available at reasonable cost, "directors' and officers'" liability insurance to satisfy indemnification obligations of the Association provided in Paragraph 16.2.

13.4.2. Workers' compensation insurance if and to the extent necessary to meet the requirements of law.

13.4.3. Such other insurance as the Board of Directors may determine or as may be requested from time to time by a majority in voting interest of the Lot Owners.

13.5. Memoranda, Cancellation, Additional Required Provisions. All insurers that shall issue an insurance policy or policies under this Article shall issue certificates or memoranda of insurance to the Association, and, upon request, to any Lot Owner, lessee of a Lot Owner, or Mortgagee. All such insurers issuing the policy may not cancel (including cancellation for non-payment of premium), substantially modify or refuse to renew such policy or policies until twenty (20) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, the managing agent, each Lot Owner and each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. All policies under Paragraphs 13.2 and 13.3 shall in addition contain the following provisions or features:

13.5.1. The insurer waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the managing agent or the Lot Owners, and their respective agents, employees, tenants and guests.

13.5.2. The Declarant, so long as the Declarant shall own a Lot, shall be protected by all such policies as a Lot Owner.

13.5.3. Each Lot Owner is an insured person under the policy with respect to liability arising out of its ownership of an undivided interest in the Common Areas or membership in the Association.

13.5.4. No act or omission by any Lot Owner, unless acting within the scope of its authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

13.5.5. If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

ARTICLE XIV
CREATION OF ADDITIONAL LOTS, COMMON AREAS ON CONVERTIBLE REAL ESTATE

14.1. Reservation. Declarant reserves the Development Rights and options until the fifteenth (15th) anniversary date of the recording of this Declaration to add Convertible Real Estate to the Development and to create and construct from time to time additional Common Areas, on any or all portions of the Convertible Real Estate and this Declaration without the consent of any Lot Owner or Mortgagee. Convertible Real Estate and additional Common Areas created on the Convertible Real Estate shall be deemed included in the Development immediately upon the recording of an Amendment to this Declaration so stating. The

Development Right to add Convertible Real Estate or create and construct additional Common Areas within the Convertible Real Estate may be terminated prior to such anniversary date only upon the recording by the Declarant of an appropriate amendment to this Declaration. The Declarant reserves the rights to add Convertible Real Estate and to create and construct Common Areas on any or all portions of the Convertible Real Estate at any time, at different times, in any order, without limitation and without any requirement that any other Development Right reserved by the Declarant be exercised at any time. The Declarant reserves the rights to designate Common Areas on the Convertible Real Estate.

14.2. Assurances. The Declarant makes no assurances as to the boundaries of the portions of the Convertible Real Estate on which the Declarant will create and construct additional Common Areas, the order in which the Declarant will create and construct Common Areas on those portions of the Convertible Real Estate, and whether Declarant will create and construct Common Areas on any portion of the Convertible Real Estate. The Declarant makes no assurances as to whether it will create any Common Areas on any portion or portions of the Convertible Real Estate if the Declarant exercises any other Development Right or Rights reserved in this Declaration. The Declarant makes no assurances as to what improvements may be constructed on the Convertible Real Estate, but the improvements on the Convertible Real Estate originally included in the Development will be reasonably compatible with existing improvements in the Development in terms of quality of construction and principal materials, provided that Declarant may substitute construction materials of equal or better quality. The Declarant makes no assurances as to the location of any improvements that may be made on the Convertible Real Estate.

14.3. Alteration of Lots by Declarant. During the construction of the Development, to the fullest extent permitted by law and applicable zoning, land use and environmental ordinances, regulations and statues, but subject to limitations provided in Paragraph 11.2 and in Paragraph 14.2, the Declarant reserves the right without the vote or consent of the Board of Directors, any Lot Owner or any Mortgagee, to change the size, number, arrangement and location of Lots and any other improvements. Any single such change or all such changes in the aggregate shall not be substantial. Notwithstanding the foregoing, for those changes that consists of changing the size or boundary lines of Lot(s), the Declarant shall obtain the written consent of the Lot Owners of the Lots being changed, which consent shall not be unreasonably withheld, delayed or conditioned.

ARTICLE XV

APPLICABILITY; COMPLIANCE AND DEFAULT; EMINENT DOMAIN

15.1. Applicability. This Declaration shall be applicable to the Property. All present and future Owners and tenants, their guests, licensees, servants, agents, employees and any other person or persons that shall be permitted to use a Lot or the Common Areas shall be subject to this Declaration, the Bylaws and to the Rules and Regulations as may be issued by the Board of Directors from time to time to govern the conduct of its members and the use and occupancy of the Property. Ownership, rental or occupancy of any of the Lots in the Development (other than possession by a Mortgagee prior to either of the completion of foreclosure or the acceptance

of a deed to the Lot subject to the Mortgage held by such Mortgagee) or the acceptance of a deed or conveyance (other than as security) or the entering into of a lease or occupancy of any Lot shall signify that the provisions of this Declaration and the Bylaws, the Rules and Regulations of the Development and the decisions of the Board of Directors are accepted and ratified by such Owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Lot, as though such provisions were recited and stipulated at length in each and every deed, conveyance or lease thereof.

15.2. Compliance.

15.2.1. Each Lot Owner shall be governed by and shall comply strictly with the terms, covenants, conditions and restrictions of this Declaration, the Bylaws and the Rules and Regulations adopted pursuant thereto, and the same as they may be amended from time to time.

15.2.2. The Board of Directors shall have the power to adopt, amend and enforce compliance with, such reasonable Rules and Regulations relative to the operation, use and occupancy of the Lots and the Common Areas consistent with the provisions of this Declaration, including, but not limited to, the appointment of such committees and the enactment and enforcement of such enforcement procedures and penalties for violations as the Board of Directors shall deem appropriate. Any such Rules and Regulations shall be adopted or amended, from time to time, by means of appropriate resolutions duly approved by the Board of Directors in accordance with the Bylaws. A copy of such Rules and Regulations and copies of any amendment thereto shall be delivered or mailed to each Owner or occupant of a Lot promptly after the adoption thereof and shall become binding upon all Owners, their successors in title and assigns, and occupants.

15.2.3. Failure by a Lot Owner to comply with the terms of this Declaration, the Bylaws and the Rules and Regulations adopted pursuant thereto, as the same may be amended from time to time, shall entitle the Board of Directors to (a) sue for the recovery of damages, (b) sue for injunctive relief, and/or (c) to enter the Lot in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Lot Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass. Such relief shall not be exclusive of other remedies provided by law. In any proceeding arising because of an alleged failure of a Lot Owner to comply with the terms of the Development Documents and Rules and Regulations adopted pursuant thereto, as the same may be amended from time to time, the Board of Directors or such committee, if the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees.

15.2.4. The failure of the Board of Directors to enforce any covenant, restriction or other provision of the Development Documents or the Rules and Regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

15.3. Eminent Domain. If all or part of the Common Areas shall be taken or condemned by any authority having the power of eminent domain, the Association shall notify the Owners and the Eligible Mortgage Holders of the Lots affected and shall represent the Lot Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority, and the award shall be paid to the Association for the restoration and repair of the remaining Common Areas to a usable condition and for the use and benefit of the Lot Owners and their Mortgagees as their interests may appear. The Association shall divide any portion of the award not used for any restoration or repair among the Lot Owners and their Mortgagees, as their interests may appear, in proportion to their Allocated Interests in the Common Areas prior to such taking or condemnation. Each Lot Owner appoints the Association as attorney-in-fact for the purposes described in this Paragraph. Notwithstanding anything to the contrary in this Paragraph 15.3, lien holders on any Lot or Common Area shall have a lien on any such awards in order of priority of their respective liens.

ARTICLE XVI LIMITATION OF LIABILITY

16.1. Limited Liability of the Board of Directors. The Board of Directors, and its members in their capacity as members, officers and employees:

16.1.1. Shall not be liable for the failure of any service to be obtained by the Board of Directors and paid for by the Association, or for injury or damage to persons or property caused by the elements or by another Lot 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 Buildings, 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 Board of Directors.

16.1.2. Shall not be liable to the Lot Owners as a result of the performance of the Board of Directors members' duties for any mistake of judgment, negligence or otherwise, except for the Board of Directors members' own willful misconduct or gross negligence.

16.1.3. Shall have no personal liability in contract to a Lot 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 Board of Directors or the Association in the performance of the Board of Directors members' duties.

16.1.4. Shall not be liable to a Lot Owner, or such Lot Owner's tenants, employees, agents, customers or guests, for loss or damage caused by theft of or damage to personal property left by such Lot Owner or its tenants, employees, agents, customers or guests in a Lot, or in or on the Common Areas, except for the Board of Directors members' own willful misconduct or gross negligence.

16.1.5. Shall have no personal liability in tort to a Lot Owner or any other person or entity, direct or imputed, by virtue of acts performed by or for them, except for the Board of Directors members' own willful misconduct or gross negligence in the performance of their duties.

16.1.6. 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 Board of Directors members as a result of or by virtue of their performance of their duties, except for the Board of Directors members' own willful misconduct or gross negligence.

16.2. Indemnification. Each member of the Board of Directors, in its capacity as an Board of Directors member, officer or both, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon its in connection with any proceeding in which he or she may become involved by reason of he or she being or having been a member and/or officer of the Board of Directors, or any settlement of any such proceeding, whether or not he or she is an Board of Directors member, officer or both at the time such expenses are incurred, except in such cases wherein such Board of Directors member and/or officer is adjudged guilty of willful misconduct or gross negligence in the performance of its duties; provided that, indemnification hereunder with respect to any criminal action or proceeding is permitted only if such Board of Directors member and/or officer had no reasonable cause to believe its conduct was unlawful. The indemnification by the Lot Owners set forth in this Paragraph shall be paid by the Association on behalf of the Lot 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 Board of Directors member and/or officer may be entitled as a matter of law or agreement or by vote of the Lot Owners or otherwise.

16.3. Defense of Claims. Complaints brought against the Association, the Board of Directors or the officers, employees or agents thereof in their respective capacities as such, or the Development as a whole, shall be directed to the Board of Directors of the Association, which shall promptly give written notice thereof to the Lot Owners and the Eligible Mortgage Holders and the Mortgagees of Lots, and such complaints shall be defended by the Association. The Lot Owners shall have no right to participate in such defense other than through the Association.

ARTICLE XVII
INTENTIONALLY OMITTED

ARTICLE XVIII
TAXATION

18.1. Lots Not Yet Separately Assessed. In the event that for any year real estate taxes assessed by the City of Portland are not separately taxed and assessed to each separate Lot Owner but are taxed on the Property as a whole, then each Lot Owner shall pay its proportionate share thereof in accordance with its respective Common Expense Liabilities, or in the event some but not all of the Lots are separately taxed and assessed, then those Lots not separately taxed and assessed shall pay their proportionate share thereof as allocated by the Board of Directors through a special assessment.

18.2. Taxes on Lots and on Property Outside of Lots. Each Owner is obligated to pay when due all real estate taxes assessed against its Lot, as well as all other taxes and assessments which in the event of non-payment may give rise to a lien on the real estate. In the event that a certificate of lien is filed against a Lot containing Common Areas as a result of unpaid taxes or assessments, or if forfeiture of such Common Areas is otherwise threatened due to non-payment of any taxes or assessments, the Association may elect to pay such taxes on behalf of the Lot Owner and assess the Owner therefor, which assessment shall constitute a lien in favor of the Association in the manner described in Section 8.2.2 hereof. In the event that those portions of the Property located within the Common Areas, including the open space and the roadways that circumvent the Property, are separately assessed for real estate taxes by the City of Portland, then such taxes shall be paid by the Association and assessed as Common Expenses against each Lot in proportion to its Common Area Interest.

ARTICLE XIX
EXPENSES OF CONVERTIBLE REAL ESTATE, ETC.

19.1. Convertible Real Estate, Etc. To the extent that the Declarant (a) has not added Lots on the Convertible Real Estate to the Development, or (b) until such Development Rights have expired, the Declarant shall be solely responsible for the maintenance, repair, and restoration of, and for the payment of real estate taxes upon and the insurance premiums attributable to, each portion of the Convertible Real Estate upon which Lots have not been added to the Development. To the extent that it is not practical or possible to segregate the responsibilities of the Association and the responsibilities of the Declarant for payment of costs of maintenance, repair and restoration of, and the payment of real estate taxes upon and the insurance premiums attributable to, each portion of the Convertible Real Estate upon which Lots have not been added to the Development, any item of maintenance, repair or restoration paid by the Association upon the Convertible Real Estate, and any real estate taxes and insurance premiums paid by the Lot Owners upon the Convertible Real Estate, shall be partially reimbursed by the Declarant by paying the amount of each of such sums to the Association on the basis of (a) the aggregate area of the portions of the Convertible Real Estate upon which Lots have not been added to the Development relative to, (b) the aggregate area of (1) the Lots, and

(2) the portions of the Convertible Real Estate and the remainder of the Property upon which Lots have been added to the Development or in which the Declarant no longer retains said Development Rights. The Association shall not undertake any maintenance, repair or restoration of the Convertible Real Estate on which Lots have not been added to the Development except to the extent set forth in the preceding sentence. Upon the sale of Convertible Real Estate, prior to such Convertible Real Estate being added to the Development, to a person other than the Declarant, such real estate's status as Convertible Real Estate shall immediately terminate.

ARTICLE XX
GENERAL PROVISIONS

20.1. No Obligation to Complete. Nothing contained in this Declaration or the Plan do, or shall be deemed to, impose upon the Declarant, or any successor Declarant, any liability or obligation to build, construct or provide any Buildings, amenities or other improvements to the Property.

20.2. Captions. The headings in this Declaration are for purposes of reference only and shall not limit or otherwise affect the meaning of this Declaration. Any tables of contents or indices are attached to this Declaration for purposes of reference and convenience only and shall neither limit nor otherwise affect the meaning hereof nor be deemed as part of this Declaration. References in this Declaration to Articles, Paragraphs, subparagraphs and Schedules without references to the document in which they are contained are references to this Declaration. Schedules are attached to and incorporated by reference into this Declaration and are an integral part of this Declaration. Any Exhibits are attached to this Declaration for purposes of identification only and shall not for any purposes or reasons be deemed as part of this Declaration.

20.3. Gender, Number, Etc. The use of the singular number in this Declaration shall be deemed to include the plural, the plural the singular, and the use of any one gender shall be deemed applicable to all gender.

20.4. Severability. The invalidity of any provisions of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

[Signature Page Follows]

IN WITNESS WHEREOF, FOREFRONT PARTNERS I, LP, as the Declarant, has caused this Declaration to be executed and sealed in its company name by its Manager hereunto duly authorized as of the date and year first above written.

Signed, Sealed and Delivered
in presence of

FOREFRONT PARTNERS I, LP
By: Forefront GP, LLC, its General
Partner

By: _____
Christopher M. Thompson
Its Manager

“Declarant”

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

On _____, 2015, personally appeared before me the above-named Christopher M. Thompson as the duly authorized Manager of Forefront GP, LLC, the General Partner of said Forefront Partners I, LP and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Forefront Partners I, LP.

Before me,

Notary Public

MORTGAGEE CONSENT_

ANDROSCOGGIN SAVINGS BANK, a Maine banking corporation (“Lender”), holder of a certain Mortgage Deed, Security Agreement and Financing Statement from FOREFRONT PARTNERS I, LP, a Maine limited partnership (the “Borrower”), dated as of June 27, 2013 and recorded in the Cumberland County Registry of Deeds in Book 30781, Page 292; a Collateral Assignment of Leases and Rentals dated as of June 27, 2013 and recorded in said Registry of Deeds in Book 30781, Page 312; a Mortgage Deed, Security Agreement and Financing Statement dated as of August 30, 2013 and recorded in said Registry of Deeds in Book 31014, Page 166; a Collateral Assignment of Leases and Rentals dated as of August 30, 2013 and recorded in said Registry of Deeds in Book 31014, Page 185; and an Equal Priority Agreement dated as of August 30, 2013 and recorded in said Registry of Deeds in Book 31014, Page 194 (collectively the “Loan Documents”), each with respect to certain property located at or near Thompson’s Point in Portland, Cumberland County, Maine, as more particularly described therein (the “Mortgaged Property”) hereby consents to, and subordinates the liens of the Loan Documents to the foregoing Declaration of Easements, Covenants and Restrictions dated _____, 2014 (the “Declaration of ECR”). The undersigned mortgagee hereby agreeing that its lien under the Loan Documents shall be subject to the provisions of the said Declaration of ECR, and agreeing that in the event of the foreclosure of the Loan Documents, or other sale of the Mortgaged Property under judicial or non-judicial proceedings, the same shall be sold subject to the said Declaration of ECR.

Dated as of _____, 2014

ANDROSCOGGIN SAVINGS BANK

By: _____
Christopher P. DeMerchant
Its Vice President

STATE OF MAINE
County of Cumberland

_____, 2014

Personally appeared the above-named Christopher P. DeMerchant in his capacity as Vice President of Androscoggin Savings Bank and acknowledged the foregoing to be his free act and deed and the free act and deed of Androscoggin Savings Bank.

Before me,

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

SCHEDULE A – Property Description

PARCEL ONE:

A. Lot One

A certain tract or parcel of uplands and flats, with the buildings thereon, known as Thompson's Point and situated in the City of Portland, in the County of Cumberland and State of Maine, and more particularly bounded and described as follows:

Beginning at a stake in the division line between land now or formerly owned by P.H. and J.M. Brown Company and land formerly owned by the Portland and Ogdensburg Railway (now owned by Maine Central Railroad), which said division line extends in a direct course from Congress Street to the location of said Railway (hereinafter called "said location"), and crosses said location to and into the flats adjoining the above described land and which above described point of beginning is in the southwesterly side line of said location and is twenty-eight (28) feet southwesterly from and measured at right angles to the center line of the east bound main track of said Railway; thence South fifteen degrees twenty-four minutes ($15^{\circ} 24'$) West on said division line four hundred ninety-eight (498) feet to a stake in the flats; thence South fifty-eight degrees forty-six minutes ($58^{\circ} 46'$) East three hundred eighty-three and four tenths (383.4) feet to a stake in the flats; thence South six degrees thirty-six minutes ($6^{\circ} 36'$) East five hundred and seventy-eight (578) feet to a stake in the flats; thence South thirteen degrees thirty-three minutes ($13^{\circ} 33'$) West four hundred (400) feet, more or less, to the channel of a creek running into Fore River, so-called; thence in a general southeasterly direction by said channel of said creek five hundred (500) feet, more or less, to the point of intersection of said channel of said creek with a line drawn parallel to and one hundred (100) feet northwesterly from and measured at right angles to the prolongation southwesterly of the northwesterly side line of Frederick Street; thence northeasterly on said line drawn parallel to and one hundred (100) feet northwesterly from and measured at right angles to said prolongation southwesterly of said northwesterly side line of Frederick Street fifteen hundred (1,500) feet, more or less, to a point in the southwesterly side line of said location distant forty-nine and five tenths (49.5) feet, more or less, southwesterly from and measured at right angles to the center line of said east bound main track of said Railway; thence northwesterly by the southwesterly side line of said location eighty-five (85) feet, more or less, to a point; thence northeasterly at right angles by said location twenty-one and five tenths (21.5) feet to the southwesterly sideline of said location and a point twenty-eight (28) feet southwesterly from and measured at right angles to the center line of said east bound main track of said Railway; thence North fifty-four degrees thirty-six minutes ($54^{\circ} 36'$) West by the southwesterly side line of said location and on a line parallel to and twenty-eight (28) feet southwesterly from and measured at right angles to the center line of said east bound main track of said Railway seventeen hundred seventy-five (1,775) feet, more or less, to the point of beginning.

Together with a right of way in common with others over the way as now traveled from the

intersection of Sewall and Hooper Streets southerly to the above described premises.

Together with a right of way fifteen (15) feet in width over land reserved by Suburban U.D.I. Co. of Maine as described below adjacent to and northerly of the southerly bounds of the reserved parcel described below. The southerly bounds are described as N 54° 1-1/2' W, two hundred twenty-two and fifty-five hundredths (222.55) feet; N 60° 57-1/2' W, sixty and twelve hundredths (60.12) feet; and N 53° 54-1/2' W, one hundred seventy-five and nineteen hundredths (175.19) feet.

Together with a right to use as presently located over the land reserved by Suburban U.D.I. Co. of Maine all sewers, water mains, and utility lines useful for the conduct of business, including the right to enter the land reserved by Suburban U.D.I. Co. of Maine when necessary for the maintenance and repair of said sewers, water mains, and utility lines.

Together with an easement for access and utilities as reserved in a deed from Forefront Partners I, LP to the State of Maine, acting by and through its Department of Transportation, dated June 27, 2013 and recorded in the Cumberland County Registry of Deeds in Book 30781, Page 288.

B. Lot Two

A certain lot or parcel of land situated in the City of Portland, County of Cumberland State of Maine being that certain parcel of land conveyed by Suburban Propane Gas Corporation to Mecaw Industries by deed dated October 22, 1965 and recorded in the Cumberland County Registry of Deeds in Book 2935, Page 239, more particularly bounded and described as follows:

Beginning at an iron pipe that is distant S 35° 31' W forty one and eighty-two hundredths (41.82) feet from the point of beginning of a parcel of land that is excepted and reserved from the conveyance in a quit claim deed from Suburban U.D.I. Co. of Maine to Peter A. Anderson and E. Martin Anderson dated August 18, 1953 and recorded in Cumberland County Registry of Deeds in Book 2146, Page 304. Thence, from said point of beginning and by a private road leading from Sewall Street, on the same course of S 35° 31' W thirty six and fifty-nine hundredths (36.59) feet to a spike at land now or formerly of Mecaw Industries; Thence by said land now or formerly of Mecaw Industries S 37° 32' E two hundred twenty five and eighteen hundredths (225.18) feet to an iron; Thence through said excepted parcel N 7° 58' W seventy and ninety-four hundredths (70.94) feet to an iron; Thence continuing through said excepted parcel N 37° 32' W one hundred seventy four and fourteen hundredths (174.14) feet to the point of beginning. Said above described courses are magnetic and of the date of 1953.

EXCEPTING from Parcel One above a certain lot or parcel of land and any buildings thereon as reserved in a deed from Suburban U.D.I. Co. of Maine to Peter A. Anderson and E. Martin Anderson dated August 18, 1953 and recorded in the Cumberland County Registry of Deeds in Book 2146, Page 304, and further bounded and described as follows:

Beginning at a stake on the southerly side line of the right of way of the Mountain Division of the Maine Central Railroad (formerly the Portland and Ogdensburg Railway), said stake being fifteen (15) feet easterly from the center line of a private road leading from Sewall Street to and over land conveyed by Suburban U.D.I. Co. of Maine to said Andersons, said stake being approximately opposite Station 42+96.45, of said railroad; thence by said railroad right of way S 37° 32' E, two hundred six and one tenth (206.1) feet to a stake in the line of a fence; thence by said fence and on a course of S 32° 21' E, two hundred eighty-two and six hundredths (282.06) feet to the end post of said fence; thence S 32° 50' E, eighteen and sixty-nine hundredths (18.69) feet to a stake; thence S 22° 35' E, fifty (50) feet to a stake; thence S 20° 06' E, fifty (50) feet to a stake; thence S 13° 06' E, fifty (50) feet to a stake; thence S 02° 18' E, fifty (50) feet to a stake; thence S 07° 40' W, fifty (50) feet to a stake; thence S 17° 43-1/2' W, fifty (50) feet to a stake; thence S 27° 11-1/2' W, fifty (50) feet to a spike in the center line of a thirty (30) foot right of way hereinafter described, said spike being distant N 54° 01-1/2' W, three and ninety-two hundredths (3.92) feet from the westerly gauge of a railway spur line; thence by the center line of said aforementioned thirty (30) foot right of way, N 54° 01-1/2' W, two hundred twenty-seven and fifty-five hundredths (227.55) feet to a spike marking an angle in said right of way, said last mentioned course passing 15 feet northerly of and parallel to the northerly side line of a projection of a building on land conveyed by Suburban U.D.I. Co. of Maine to said Andersons; thence by the center line of said aforementioned thirty (30) foot right of way, N 60° 57-1/2' W, sixty and twelve hundredths (60.12) feet to a spike marking an angle therein; thence by the center line of said aforementioned thirty (30) foot right of way, N 53° 54-1/2' W, one hundred seventy-five and nineteen hundredths (175.19) feet to a spike, said last mentioned course passing twenty-two (22) feet southerly of and parallel to the brick line of a three story office building known as Building 7-G on land reserved to Suburban U.D.I. Co. of Maine; thence parallel to and five (5) feet from a building on land reserved to Suburban U.D.I. Co. of Maine, N 36° 16-1/2' E, three hundred and fifty-two hundredths (300.52) feet to a stake; thence N 37° 32' W, two hundred twenty-five and eighteen hundredths (225.18) feet to a stake distant fifteen (15) feet from the center line of said private road leading from Sewall Street to and over land conveyed by Suburban U.D.I. Co. of Maine to said Andersons, said last mentioned course being parallel to and seventy-five (75) feet from the first described course; thence by said private road leading from Sewall Street, N 35° 31' E, seventy-eight and forty-one hundredths (78.41) feet to the point of beginning. Said above described courses are magnetic and of the year 1953.

ALSO EXCEPTING from Parcel One above a small parcel of land conveyed by Mecaw Industries to Suburban Propane Gas Corporation by deed dated November 24, 1965 and recorded in the Cumberland County Registry of Deeds in Book 2935, Page 236.

ALSO EXCEPTING from Parcel One a small parcel of land conveyed by Mecaw Industries to Portland Water District by deed dated March 19, 1976 and recorded in the Cumberland County Registry of Deeds in Book 3821, Page 2.

ALSO EXCEPTING from Parcel One above that portion of the premises taken by the State of Maine for highway purposes and described in a Notice of Taking dated July 26, 1967 and recorded in the Cumberland County Registry of Deeds in Book 3005, Page 432.

ALSO EXCEPTING from Parcel One above that portion of the premises and rights and easements taken by the Northern New England Passenger Rail Authority by Notice of Condemnation dated August 20, 2001 and recorded in the Cumberland County Registry of Deeds in Book 16667, Page 204.

ALSO EXCEPTING from Parcel One above that portion of the premises taken by Langdon Street Real Estate by its Notice dated November 10, 1997 and recorded in the Cumberland County Registry of Deeds in Book 13459, Page 202.

ALSO EXCEPTING from Parcel One above that portion of the premises and rights and easements taken by the Northern New England Passenger Rail Authority by Notice of Condemnation dated February 2, 2010, and recorded in the Cumberland County Registry of Deeds in Book 27577, Page 53.

ALSO EXCEPTING from Parcel One above that portion of the premises conveyed by Forefront Partners I, LP to the State of Maine acting by and through its Department of Transportation by deed dated June 27, 2013 and recorded in the Cumberland County Registry of Deeds in Book 30781, Page 288.

PARCEL TWO:

A certain lot or parcel of land situated in the City of Portland, County of Cumberland and State of Maine and conveyed by The Dartmouth Company to Thompson's Point, Inc. by deed dated January 31, 1985 and recorded in the Cumberland County Registry of Deeds in Book 6676, Page 287, further bounded and described as follows:

Commencing at a point on a line of land being the southeasterly sideline of land now or formerly of The Dartmouth Company and further being the last described course (i.e., the 2,066-foot course) in the fourth described parcel in a deed from John Marshall Brown to P.H. and J.M. Brown Company, dated January 3, 1894, and recorded in the Cumberland County Registry of Deeds in Book 609, Page 364, said point being at the intersection of the aforesaid line with the line of land formerly of the Portland and Ogdensburg Railway, now of the Portland Terminal Company; thence northwesterly along the line of land of said Portland Terminal Company approximately three hundred (300) feet to a northerly corner of the land now or formerly of the Dartmouth Company; thence South 70° West by said The Dartmouth Company sideline approximately fifty (50) feet to the high water mark of an inlet on the Fore River; thence in a generally southerly direction along the high water mark and westerly, southerly and easterly around a finger of land extending into said inlet, in all cases along the high water mark, to the northwesterly sideline of the land of Thompson's Point Inc.; thence northeasterly along the northwesterly sideline of the land of the said Thompson's Point Inc. approximately four hundred fifteen (415) feet to the point of beginning.

The Property subject to this Declaration of ECR is also subject to the following easements:

1. A certain Drainage Easement from Forefront Partners I, LP to the State of Maine

acting by and through its Department of Transportation by instrument dated October 11, 2013 and recorded in the Cumberland County Registry of Deeds in Book 31099, Page 185.

2. A certain Construction and Maintenance Easement from Forefront Partners I, LP to Northern New England Passenger Rail Authority by instrument dated October 11, 2013 and recorded in the Cumberland County Registry of Deeds in Book 31099, Page 188.

3. A certain Trail Easement by and between Forefront Partners I, LP and the City of Portland, Maine dated September 2, 2014 and recorded in said Registry of Deeds in Book 31762, Page 29.

SCHEDULE B – Reduced Copy of Plan

SCHEDULE C - Common Area Interest and Common Expense Liability

Identifying Number	Lot Size in Sq. Feet – <u>see</u> § 1.1.17 hereof	Common Area Interest and Common Expense Liability	Votes in the Association
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
TOTALS			

Each Common Area Interest and Common Expense Liability has been rounded to the nearest one thousandth of one percent (0.001%) so that the sum of the Common Area Interests and Common Expense Liabilities allocated at any time to all the Lots may not equal one hundred percent (100%). The Common Area Interest and Common Expense Liability appurtenant to each respective Lot are each a percentage determined on the basis of “size” (as defined in Paragraph 1.1.17 above) by multiplying by one hundred (100) the quotient resulting from dividing the “size” of each respective Lot by the aggregate “size” of all the Lots in the Development, excluding from such calculation Common Areas, and excluding Lots 14 and 15 until such time as they are added to the Development. The “size” of each Lot is the number of square feet therein determined by reference to Section 1.1.17 of the Declaration and the latest version of the Plan recorded in the Cumberland County Registry of Deeds. The Votes in the Association allocated to each respective Lot is a sum rounded to the nearest whole number determined by multiplying by one thousand (1,000) the quotient resulting from dividing the “size” of each respective Lot by the aggregate “size” of all the Lots in the Development, excluding from such calculation Common Areas, and excluding Lots 14 and 15 until such time as they are added to

the Development. In the event of a discrepancy between the stated Allocated Interests and the result derived from the foregoing formulas, the stated Allocated Interests shall prevail. The Allocated Interests stated for each Lot in this Schedule C are subject to change in the circumstances stated in this Declaration, e.g., change a Lot size, change in Common Areas, or addition of Convertible Real Estate. This Schedule C shall be amended and restated by the Declarant or Association, as applicable, without the consent of the Lot Owners each time such a change occurs.

SCHEDULE D – Copy or Summary of Event Management Plan

SCHEDULE E – Copy or Summary of Transportation Demand Management Program