

DECLARATION OF CONDOMINIUM  
FOR  
PORTSIDE CONDOMINIUM  
PORTLAND, CUMBERLAND COUNTY, MAINE

DECLARANT:  
PORTSIDE RESIDENCES, LLC

**DECLARATION OF CONDOMINIUM  
FOR  
PORTSIDE CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM is made this \_\_\_\_ day of \_\_\_\_\_, 201\_, by PORTSIDE RESIDENCES, LLC, a Maine limited liability company, with a business address of 11 Corporate Drive, Belmont, New Hampshire 03220 (the "Declarant"), for itself, its successors and assigns.

**BACKGROUND**

Declarant is the owner of that certain real property consisting of the Residence Unit, so-called (the "Real Estate"), a condominium unit located in the Hotel, Restaurant and Portside Residences Condominium situated on Franklin Street Arterial, Middle Street and Fore Street in Portland, Cumberland County, Maine, created pursuant to the Declaration of Condominium for the Hotel, Restaurant and Residences Condominium dated August 23, 2010, and recorded in the Cumberland County Registry of Deeds in Book 28022, Page 188 (the "Master Condominium"). The Real Estate is further described in Exhibit "A" attached hereto. Declarant intends to develop the Real Estate as shown on the Plats and Plans (as hereinafter defined) as a residential condominium to be known as "Portside Condominium." Declarant is recording this Declaration to create a condominium with respect to the Real Estate and the improvements constructed and to be constructed therein pursuant to the Maine Condominium Act, 33 M.R.S.A. §§ 1601-101, *et seq.* (the "Act"), subject to all the terms and conditions hereof.

This Declaration will establish a Sub-Condominium (as defined below) within the Master Condominium.

**WITNESSETH:**

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

**ARTICLE I - DEFINITIONS; CONSTRUCTION AND INTERPRETATION**

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

ascribed to them in the Act and, in addition, the specific meanings ascribed to them in this Declaration.

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

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

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

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

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

“Building” - the building that contains the Real Estate, which Building also includes the other condominium units comprising the Master Condominium.

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

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

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

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

“Condominium” - the condominium created hereby, known as “Portside Condominium.”

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

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

“Declarant Control Period” - the period of time beginning on the date the first Unit is conveyed to a Unit Owner other than a Declarant and ending on the earlier of (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Units which may be created to Unit Owners other than the Declarant; or (ii) such shorter period of time as Declarant may elect in accordance with Section 1603-103 of the Act, but in no event exceeding two (2) years from the date the first Unit is conveyed to a Unit Owner other than the Declarant.

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

“Director” - a member of the Executive Board.

“Eligible Mortgage Holder” – an “eligible mortgage holder” as defined in Section 1602-119 (b) of the Act.

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

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

company that may be engaged by the Association to assist the Association in managing, operating or administering the Association or the Common Elements, (viii) the compensation, benefits and other expense of employees of the Association, (ix) amounts paid to the Master Association to satisfy the Master Common Expense Liability of the Residence Unit, and (x) all other expenses and liabilities incurred or that may be incurred by the Association in carrying out or performing its rights, duties and functions, other than those expenses (if any) associated with the maintenance, repair or replacement of Limited Common Elements that are required to be separately accounted for and charged as Limited Common Expenses pursuant to this Declaration.

“Hotel” – the lodging facility operated in the Hotel Unit in the Master Condominium.

“Hotel Unit” – the Hotel Unit in the Master Condominium.

“Hotel Unit Owner” – the owner of the Hotel Unit (other than a person holding such title solely as security for an obligation) and its successors and/or assigns.

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

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

“Master Allocated Interest” - (i) with respect to a Master Unit, the undivided interest in the Master Common Elements allocated to such Master Unit and (ii) with respect to a Unit Owner in a Sub-Condominium, the percentage of undivided interest in the Master Common Elements allocated to such Unit Owner’s Unit in accordance with the terms of the Master Declaration.

“Master Association” – the Hotel, Restaurant and Portside Residences Condominium Owners Association.

“Master Bylaws” - the bylaws of the Master Association, as the same may from time to time be amended and/or restated.

“Master Common Elements” - the common elements of the Master Condominium described in the Master Declaration.

“Master Common Expenses” - all expenditures made by or financial liabilities of the Master Association, together with any allocations to reserves for the payment of expenditures and financial liabilities.

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

“Master Common Profits” - the excess of all receipts of assessments and other payments to the Master Association after deduction of Master Common Expenses.

“Master Condominium” - the Hotel, Restaurant and Portside Residences Condominium.

“Master Condominium Documents” - the Master Declaration, Master Bylaws, Master Plats and Plans, and all exhibits attached thereto and all other documents associated therewith, all as may from time to time be amended and/or restated.

“Master Declaration” - the Declaration of Condominium for the Hotel, Restaurant and Portside Residences Condominium, as the same may from time to time be amended and/or restated, dated August 23, 2010, and recorded in the Cumberland County Registry of Deeds in Book 28022, Page 188.

“Master Executive Board” - those persons appointed from time to time as members of the executive board of the Master Association in accordance with the Master Declaration, the Master Bylaws and/or the Act to act on behalf of the Master Association.

“Master Limited Common Elements” - that portion of the Master Common Elements appurtenant to or associated with or reserved for the use by one or more but fewer than all Master Units, and intended for the exclusive use of such Master Units and which are identified as Master Limited Common Elements in the Master Declaration and/or the Plats and Plans.

“Master Unit” - a physical portion of the Master Condominium designated for separate ownership or occupancy.

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

“Percentage Interest” - the undivided percentage interest in Common Elements appurtenant to each Unit, as shown on Exhibit “D” attached hereto. A Unit’s Percentage Interest is the same as the percentage of Common Expense Liability allocated to that Unit. The Percentage Interest for each Unit is calculated based on the following formula: a ratio of the percentage of the approximate gross floor area square footage of one Unit compared to the approximate gross floor area square footage of all Units (i.e., a 1,000 square foot Unit out of a total of 100,000 square feet of units equals a 1% Percentage Interest allocated to that Unit). If any Unit should be added to or withdrawn from the Condominium, then the Percentage Interest of each Unit shall be recalculated

based on the foregoing formula. Additionally, the Percentage Interests shown on Exhibit "D" may be revised by the Declarant subsequent to construction based upon as-built measurements, provided that in the absence of manifest error in such revisions and/or measurements, no Unit Owner shall have the right to compel or require as-built measurements and all such determinations of Percentage Interest by the Declarant shall be conclusive upon all Unit Owners.

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

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

"Real Estate" – the Residence Unit of the Master Condominium.

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

"Residence Unit" – the Residence Unit in the Master Condominium, which is the Real Estate being submitted to the Act pursuant to this Declaration. Said Real Estate may be referred to herein as the Residence Unit for clarity when the context so dictates.

"Restaurant Unit" – the Restaurant Unit in the Master Condominium.

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

"Special Declarant Rights" - has the meaning given to such term in the Act and includes, without limitation, any rights reserved by Declarant hereunder to (i) complete the improvements shown on the Plats and Plans, (ii) maintain offices, signs and models, (iii) use easements through the Common Elements for the purpose of making improvements within the Real Estate, (iv) convert a Unit into Common Elements, or into two (2) or more Units and Common Elements, or change the boundary lines between Units and/or between Units and Common Elements, (v) to appoint or remove any officer of the Association or any Executive Board Member during the Declarant Control Period, and (vi)

exercise any other rights of the Declarant constituting "Special Declarant Rights" under the Act, whether or not expressly designated as such in this Declaration.

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

"Sub-Association Board" - the Executive Board of a Sub-Association. The Executive Board of this Condominium is a Sub-Association Board.

"Sub-Condominium" - any Master Unit of the Master Condominium that is itself a condominium. This Condominium (i.e., the Portside Condominium) is a Sub-Condominium within the Master Condominium (i.e., the Hotel, Restaurant and Portside Residences Condominium).

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

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

"Unit Owner" - the owner(s) of a Unit (including the Declarant with respect to Units that it owns) other than a Person holding such title solely as security for an obligation. All obligations of a "Unit Owner" hereunder with respect to or arising by virtue of ownership of a Unit, including the obligation to pay Common Expenses, are the joint and several obligations of all Persons who own that Unit, regardless of the manner in which they hold such title. If a Sub-Condominium is created within a Unit within the Master Condominium as permitted under the Master Declaration, the Sub-Association for that Sub-Condominium may be treated as the Unit Owner of the Unit for all purposes under the Master Declaration and the Master Bylaws.

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

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

1.05 Computing Percentages. In determining whether the Declarant Control Period has expired, and in determining whether Unit Owners other than a Declarant are entitled to elect members of the Executive Board under any provision of the Condominium Documents, the percentage of the Units owned by the Declarant shall be calculated based on the number of Units owned by the Declarant and the number of Units the Declarant has reserved the right to build, if any.

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

2.01 Name and Location of Condominium. The Condominium shall be known as "Portside Condominium." The Condominium is located in Portland, Maine. The Condominium consists of the "Residence Unit" in the Master Condominium, which was created by the Master Declaration dated August 23, 2010, and recorded in the Cumberland County Registry of Deeds in Book 28022, Page 188.

2.02 Submission to Act; Applicability of Condominium Documents; Relation to Master Declaration. The Declarant hereby creates a condominium with respect to the Real Estate pursuant to the Act, subject to this Declaration. All present and future Unit Owners, and their respective tenants, subtenants, family members, invitees, agents, servants, employees and any other Persons occupying or using any Unit or the Common Elements, shall be bound by the Condominium Documents (and the Master Condominium Documents). Any mortgage or other lien encumbering a Unit that is recorded after the recording of this Declaration shall be under and subject to this Declaration. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of the Act, the Master Declaration, the other Master Condominium Documents, this Declaration, the Bylaws, the other Condominium Documents and the Rules and Regulations, as these instruments and statutes may be amended and/or restated from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit shall constitute an acceptance by such owner, tenant or occupant of the provisions of such instruments as they may from time to time be amended and/or restated. The provisions contained in such instruments shall be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and fully stipulated in each deed, conveyance or lease thereof. In the event that any of the provisions contained herein conflict with any of the provisions of the Master Declaration or any other Master Condominium Documents, the provisions of the Master Declaration or other Master

Condominium Documents shall control, unless the Master Declaration or other Master Condominium Document expressly states otherwise.

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

### ARTICLE III – THE UNITS

3.01 Number of Units. The Condominium consists of twelve (12) residential dwelling Units which Units are hereby created by the Declarant by the recordation of this Declaration. Any subdivision of Units or relocation of Unit boundaries shall not increase the number of Units above such maximum number.

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

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

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

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

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

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

### 3.03 Contents of Unit; Noncontiguous Parts of a Unit.

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

#### (b) Intentionally Omitted.

(c) Unless specifically included by other provisions hereof, the following are excluded from each Unit: (i) the spaces and improvements lying outside the Unit boundaries described in Section 3.02 hereof, (ii) all chutes, pipes, flues, ducts, wires, conduits, plumbing, electrical and other facilities running through, along or within any interior wall or partition, or otherwise within the space(s) defined by the boundaries described in Section 3.02, that serve other Units and/or the Common Elements, and (iii) any foundations, structural supports, structural columns or any other parts of systems, services or utilities serving multiple Units or other parts of the Real Estate.

### 3.04 Maintenance of Units.

(a) Except as otherwise expressly provided herein, each Unit Owner is solely responsible for the maintenance, repair or replacement of his, her or its Unit, the improvements within and components and equipment that are part of the Unit, and all contents thereof, whether real property, personal property or mixed including, but not limited to, all appliances, doors, windows, interior partitions and walls, HVAC equipment, hot water heater, heat pump, ducts, lighting fixtures, floor coverings, wall coverings, wall board and plumbing, kitchen and bathroom fixtures and appliances.

(b) Notwithstanding the preceding, the Association shall be responsible for:

(i) Periodic repainting and other maintenance of the exterior surface of the doors leading to the Units from the common corridor; and

(ii) Periodic cleaning and maintenance of the outside of the exterior windows of the Units, but only to the extent such cleaning and maintenance is not performed by the Hotel Unit Owner or the Master Association pursuant to the Master Declaration.

3.05 Identifying Numbers. The identifying numbers of the Units are as shown on the Plats and Plans and on Exhibit "D" attached hereto.

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

3.07 Subdivision, Conversion and Combination of Units.

(a) The Declarant shall have the right, without the consent or approval of the Executive Board or the Unit Owners, to subdivide or convert Units it owns into two or more Units or to combine two or more Units it owns into one Unit or into Common Elements or a combination of Units and Common Elements (provided that the exercise of such rights by the Declarant shall not result in the total number of Units exceeding the maximum number of Units permitted by this Declaration or allowed under applicable municipal approvals, regulations or codes). In the event of such subdivision, conversion or combination, the Declarant shall, at its expense, execute and record an amendment to this Declaration, including an amendment to the Plats and Plans, as necessary. In connection therewith, the Declarant may allocate the Percentage Interest, Common Expense Liability and Limited Common Elements allocable to the Units being subdivided or combined (provided that the aggregate Percentage Interest in Common Elements and Common Expense Liability appurtenant to the Units resulting from the subdivision is not less than the Percentage Interest and Common Expense Liability appurtenant to the Unit(s) being subdivided or combined before such subdivision). Such

reallocation shall be made by the amendment to the Declaration recorded by the Declarant pursuant to this Section.

(b) A Unit Owner other than a Declarant may not subdivide Units or combine two or more Units into a single Unit without the approval of the Executive Board and the Hotel Unit Owner, which may be granted or withheld in their sole and unfettered discretion.

### 3.08 Relocation of Boundaries Between Adjoining Units.

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

(b) A Unit Owner other than the Declarant may not relocate boundaries between adjoining Units that such Unit Owner owns without the approval of the Executive Board and the Hotel Unit Owner, which may be granted or withheld in their sole and unfettered discretion.

3.09 Alteration of Units. Subject to the Act and the terms of this Declaration and the Master Declaration, a Unit Owner may alter such Unit Owner's Unit, subject to the approval of the Executive Board, and subject to any approvals that may be required from the Hotel Unit Owner or from the Master Association under the terms of either the Master Declaration or this Declaration.

## ARTICLE IV - DESCRIPTION OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

4.01 Common Elements. The Common Elements consist of all parts of the Real Estate and improvements thereon other than the Units and those improvements or facilities (if any) conveyed to or owned by any public or private utilities or other entities furnishing utility service to the Condominium. Without limiting the generality of the preceding, unless otherwise provided in this Declaration or designated on the Plats and Plans, Common Elements include, without limitation, any and all structural components and common utility systems of or serving the Real Estate and not included within the boundaries of Units, including stairways, corridors, lobbies, common trash collection and/or compaction facilities, and otherwise all portions of the Real Estate not included within the boundaries of the Units themselves. Each Unit is subject to the Master Declaration and the

other Master Condominium Documents and each Unit Owner shall have a percentage of undivided interest in the Master Common Elements. More specifically, the Condominium itself has an undivided interest in the Master Common Elements that is equal to the percentage constituting the Association's Master Allocated Interest. Each Unit Owner has a percentage of undivided interest in that Master Allocated Interest that is equal to the Unit Owner's percentage of undivided interest in this Condominium. If the Association fails to timely pay the Association's Master Common Expense Liability or if the Association shall fail to pay any direct assessment made by the Master Association, the Master Association shall have certain lien rights with respect to the Condominium in accordance with and as provided by the Master Declaration, the other Master Condominium Documents and the Act.

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

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

(b) Mailboxes, if any, assigned to a Unit located in any common mail room or mail delivery facility in the Condominium are Limited Common Elements allocated solely to the Units to which they are assigned.

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

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

#### 4.03 Other Common Elements And Limited Common Elements

(a) Roof of Building Over Sixth Floor. The roof of the Building over the Sixth Floor as shown on the Plats and Plans has been allocated in the Master Declaration as a Master Limited Common Element appurtenant to the Hotel Unit and the Real Estate (Residence Unit) for the limited purpose of installing heating, ventilation and air conditioning systems and other mechanical systems and equipment serving the Hotel Unit and the Real Estate (Residence Unit) in accordance with reasonable rules and

regulations that may be established by the Master Executive Board and/or the Executive Board.

(b) Utility Room. The Utility Room is a Common Element appurtenant to the Real Estate (Residence Unit), but the Hotel Unit has an easement pursuant to Section 9.08(b) of the Master Declaration for installing, maintaining, repairing, upgrading, and replacing any systems and other facilities serving the Hotel Unit that are or in the future may be located in said Utility Room, and also for purposes of accessing the roof through the roof access hatch located in the Utility Room.

4.04 Hotel Elevator Shaft and Hotel Laundry Shaft. The Hotel Elevator Shaft and the Hotel Laundry Shaft are Limited Common Elements appurtenant to the Hotel Unit only pursuant to Section 4.02(a) of the Master Declaration because they serve only the Hotel Unit.

4.05 Intentionally Omitted.

4.06 Use and Enjoyment of Common Elements. Subject to Regulations in effect from time to time, the Common Elements (except the Limited Common Elements) shall be for the exclusive use, enjoyment and benefit of the Unit Owners, their tenants and members of their households and invitees; provided, however, that the Association may suspend the right of any Unit Owner to use Common Elements that are not necessary for the use of the Unit as contemplated by this Declaration if such Unit Owner is delinquent in the payment of Assessments or in material violation of the Condominium Documents after notice and opportunity to cure or contest as provided herein or in the Bylaws. The Limited Common Elements shall be for the exclusive use, enjoyment and benefit of the Unit Owners owning the Unit(s) to which such Limited Common Elements are allocated hereunder and their respective tenants and members of their households and invitees.

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

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

(a) Declarant reserves the right to construct all improvements planned or contemplated for construction within the Condominium.

(b) In accordance with the Act, the Declarant shall complete the Common Elements shown on the Plats and Plans, provided, however, that no provision hereof shall require the Declarant to construct or provide to the Association (i) any facilities or improvements not shown on the Plats and Plans; or (ii) any improvements labeled "Need Not Be Built" on the Plats and Plans.

4.09 Maintenance, Repair and Replacement of Common Elements.

Except as otherwise set forth herein or in the Master Declaration, the Association shall be responsible for the maintenance, repair and replacement of the Common Elements, including the Limited Common Elements, and shall include in its budget (and, if necessary, amend the then-current budget and increase the then-current Common Expense Assessment) such amounts as necessary to pay the estimated costs of maintaining, repairing and insuring the same. In addition, the Association shall have primary responsibility for the lighting fixtures located on any Common Elements. Notwithstanding the preceding, to the extent that any maintenance or ordinary repair of the Limited Common Elements described above would require or may entail damage to, alteration of or interruption of utility service to any Common Element, such repair and/or maintenance shall be undertaken only by or under the direction of the Executive Board, but in either event at the sole cost and expense of the Unit Owner to whom such Limited Common Element is assigned.

4.10 Conveyance and Encumbrance by the Association. Except as hereinafter expressly provided, the Association shall not convey, mortgage, pledge or encumber the Common Elements without the approval of (i) Members entitled to cast at least eighty percent (80%) of the votes that all Members are entitled to cast, including eighty percent (80%) of the votes allocated to Units not owned by the Declarant, (ii) the Declarant, during the Declarant Control Period, and (iii) the required approval of Eligible Mortgage Holders, to the extent required under the Act or otherwise pursuant to this Declaration. Proceeds of any such conveyance, mortgage, pledge or encumbrance shall be assets of the Association.

4.11 Demolition. If any Common Element (other than the Common Elements that are integral to the structural or mechanical integrity of the Building as a complete architectural unit) is determined by the Executive Board to be obsolete or in such state of disrepair so that it is not economically feasible or desirable to repair or replace the same, the Executive Board may call a meeting for the purpose of determining whether such Common Element should be demolished, removed and/or replaced. The determination thereof shall be made by the vote of Unit Owners entitled to cast eighty percent (80%) of the votes that all Unit Owners are entitled to cast, including eighty percent (80%) of the votes allocated to Units not owned by the Declarant, and two-thirds (2/3) of the Eligible Mortgage Holders. Any such determination to demolish, remove and/or replace any Common Element that is part of the exterior of the Building or which otherwise affects the appearance of the Building as viewed from the exterior shall also be subject to the approval of the Hotel Unit Owner, which approval may be withheld in its sole and unfettered discretion. The costs of such demolition, removal, and/or replacement shall be assessed as a General Common Expense.

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

4.13 Warranty. **DECLARANT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE PROVIDED BY SECTIONS 1604-112 AND 1604-113 OF THE ACT (AS SUCH WARRANTIES ARE AFFECTED BY THE TERMS OF THE LIMITED WARRANTY AGREEMENT CONTAINED IN THE PURCHASE AND SALE AGREEMENT ENTERED INTO BETWEEN DECLARANT AND EACH UNIT OWNER) AND SUCH WARRANTIES ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, OR ANY IMPLIED WARRANTY OF HABITABILITY.**

#### ARTICLE V - ASSOCIATION; MEMBERSHIP; VOTING

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

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

5.03 Voting Rights of Unit Owners. There shall be one (1) vote in the Association allocated to each Unit now or hereafter created within the Condominium, regardless of differences in the Percentage Interest and Common Expense Liability appurtenant to the Units. The Executive Board shall have the right to suspend the voting rights of any Unit Owner who is not in good standing. A Unit Owner is not in good standing if (i) the Unit Owner has not paid all Assessments or installments thereof levied against the Unit Owner or against his Units and such sums are overdue by more than thirty (30) days and are not paid in full at least five (5) days before the date of any meeting at which Members are entitled to vote, or (ii) the Unit Owner is otherwise in material violation of this Declaration or any of the other Condominium Documents and has not cured such violation to the reasonable satisfaction of the Executive Board at least five (5) days prior to the date set for any meeting of Members and so long as the Unit Owner is not contesting in good

faith the matter that is the subject of the alleged material violation in accordance with the procedures outlined in this Declaration or in the Bylaws.

#### 5.04 Election of Board.

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

(b) Subject to Section 5.04(c) below, during the Declarant Control Period, all Directors shall be appointed, and may be removed and replaced from time to time, by the Declarant, with or without an actual meeting, without the necessity of obtaining resignations from Directors replaced or removed, and without prior notice to or approval of the other Unit Owners.

(c) Directors shall be elected by the Unit Owners as follows:

(i) Within sixty (60) days after the conveyance of twenty-five percent (25%) of the Units to Unit Owners other than a Declarant, a meeting shall be held at which one of the three Directors appointed by the Declarant shall resign and be replaced with a Director elected by Unit Owners other than the Declarant; and

(ii) Within sixty (60) days after the conveyance of fifty percent (50%) of the Units which may be created to Unit Owners other than the Declarant, another one of the Directors appointed by the Declarant shall resign and be replaced by a Director elected by Unit Owners other than the Declarant; and

(iii) On or before the end of the Declarant Control Period, a meeting of Members shall be held at which all Directors shall be elected by the Unit Owners (including the Declarant) and the Declarant-appointed Directors shall resign. Beginning with that meeting, Directors shall serve for staggered terms, as provided in the Bylaws.

Notwithstanding the preceding, while the Declarant owns any Units, the Declarant shall have the absolute right to appoint a representative of the Declarant as a non-voting *ex officio* member of the Executive Board and each committee thereof with the same right to receive notice of, and to attend and participate in all meetings of the Executive Board and each such committee as any Director or voting member of such committee could do, and to receive all memoranda, correspondence, bulletins and other communications intended for Directors or members of such committee, but without any right to vote on matters coming before the Executive Board or such committee.

(d) The Declarant reserves the right, in its sole and absolute discretion and in accordance with the Act, to surrender voluntarily the right to appoint and remove Directors before the Declarant Control Period ends. The Declarant may, as a

condition thereof, require that specified actions of the Association or the Board be approved by the Declarant before they become effective. Such actions shall be specified in an instrument executed and recorded by the Declarant. The Declarant may conditionally surrender the right to appoint and remove Directors, reserving the right to exercise such rights at a later time upon giving thirty (30) days prior written notice to the Association.

(e) Notwithstanding any provision of this Declaration or the other Condominium Documents to the contrary, the Unit Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Executive Board with or without cause, other than a member appointed by the Declarant.

#### 5.05 Number and Qualification of Directors.

(a) The Board shall consist of three (3) Directors to be selected as set forth in the Bylaws.

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

5.06 Election of Officers. Officers of the Association shall consist of such officers and subordinate officers as may be specified in or provided for in the Bylaws, and shall be elected by the Board in the manner specified in the Bylaws. During the Declarant Control Period, subject to any contrary provisions of the Act, the Declarant may appoint and remove all officers of the Association.

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

#### 5.08 Standard of Conduct.

(a) In the performance of their duties, the officers and Directors of the Executive Board appointed by the Declarant shall stand in a fiduciary relation to the Association, and the officers and Directors of the Executive Board elected by the Unit Owners shall have the duty of care required by Section 1603-103 of the Act, and all officers and Directors shall perform their duties, including duties as members of any committee of the Board upon which they may serve, in good faith, in a manner they reasonably believe to be in the best interests of the Association and with such care, including reasonable inquiry,

skill and diligence, as a person of ordinary prudence would use under similar circumstances.

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

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

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

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

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

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

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

5.10 Indemnification. To the extent permitted under Maine law, each present and former Director or officer, in his capacity as a Director, officer or both, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding in which he may become involved by reason of his being, or having been, a Director and/or officer of the Executive Board, or any settlement of any such proceeding, whether or not he is a Director, officer or both at the time such expenses are incurred, except in such cases where such Director and/or officer is adjudged to have engaged in willful misconduct, recklessness, breach of fiduciary duty (if applicable) or self-dealing; provided that, in the event of a settlement, this indemnification shall apply only if and when the Executive Board (with the affected Director abstaining if he is then a Director) approves such settlement and

reimbursement as being in the best interests of the Association; and provided further that indemnification hereunder with respect to any criminal action or proceeding is permitted only if such Director and/or officer had no reasonable cause to believe his conduct was unlawful. The indemnification by the Unit Owners set forth in this Section 5.10 shall be paid by the Association on behalf of the Unit Owners and shall constitute a Common Expense and shall be assessed and collectible as such. Such right of indemnification shall not be deemed exclusive of any other rights to which such Director and/or officer may be entitled under the Bylaws as a matter of law or agreement or by vote of the Unit Owners or otherwise. Subject to the approval of the Executive Board, the Association may advance expenses incurred by a present or former officer or Director in connection with any suit or proceeding with respect to which he may be entitled to indemnity hereunder, subject to such conditions and limits as Executive Board may prescribe including, but not limited to, the execution of an agreement by which he agrees to reimburse the Association for such expenses advanced if it is ultimately determined that he is not entitled to indemnity hereunder, which may be secured or unsecured at the discretion of the Executive Board.

## ARTICLE VI - COVENANT FOR ASSESSMENTS; LIENS; COLLECTION

### 6.01 Assessments; Allocation of Common Expense Liability.

(a) The Common Expense Liability allocated to each Unit shall be as set forth on Exhibit "D" attached hereto. If two or more Units are combined into a single Unit, a Unit is subdivided, or Unit boundaries are relocated, the Declarant or the Executive Board, as applicable, shall execute and record an amendment to this Declaration and Exhibit "D" attached hereto setting forth the reallocation of Common Expense Liability and Percentage Interests with respect to the affected Units (as well as making any necessary allocation of Limited Common Elements). In the case of a combination of Units, the Common Expense Liability associated with the resulting Unit shall be the sum of the Common Expense Liability appurtenant to the Units so combined, and in the case of a subdivision of Units, the aggregate Common Expense Liability and Percentage Interest allocated to the resulting Units shall not be less than the Common Expense Liability and Percentage Interest of the Unit being subdivided. Additionally, the Percentage Interests shown on Exhibit "D" may be revised subsequent to construction based upon as-built measurements as provided above.

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

(c) Except as may otherwise be required by applicable law, the obligation to pay Assessments is not subject to deduction or set-off and may not otherwise be diminished, discharged, suspended or abated because of: (i) any claim which such Unit Owner(s) may have against the Association or the Declarant; (ii) the failure or purported

failure of the Association to provide services required hereunder; (iii) the fact that the Unit has been demolished, destroyed or removed, in whole or in part, or is unoccupied or uninhabitable for any reason; or (iv) the failure or refusal of any other Unit Owners(s) to pay Assessments.

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

6.02 Damages. Each Unit Owner shall reimburse and indemnify the Association upon demand for any losses, expenses, costs or damages incurred by the Association as a result of any damage to Common Elements caused by the act, omission or negligence of such Unit Owner or his tenants, agents, invitees, family members, licensees, contractors or subcontractors, including without limitation damages to the corridors, Common Element floor coverings and walls, elevators and other Common Elements in connection with the moving of furniture and other belongings into and out of the Building. Such damages may be assessed and collected as a Special Assessment against such Unit Owner. The Executive Board shall have the authority to make Regulations that require (i) advance notice to the Association of move-ins and move-outs and delivery of bulk items, with the identity of any moving company or delivery company that will be used, (ii) the resident moving in or out or arranging for such delivery to pay a fee and/or provide a security deposit in advance to cover possible damage to the Common Elements and other expenses incurred by the Association, and (iii) any moving company or other person delivering or removing furniture or other bulk items to provide a certificate of insurance, in a form satisfactory to the Association, evidencing insurance coverage satisfactory to the Association.

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

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

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

paid in full, both before and after any judgment is entered in favor of the Association, notwithstanding any otherwise applicable "legal rate of interest".

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

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

(d) **THERE SHALL BE A LIEN IN FAVOR OF THE ASSOCIATION AGAINST EACH UNIT FOR THE FULL AMOUNT OF ALL ASSESSMENTS LEVIED AGAINST SUCH UNIT FROM TIME TO TIME, TOGETHER WITH ALL LATE CHARGES, INTEREST AND COLLECTION COSTS (INCLUDING ATTORNEY'S FEES AND EXPENSES AS PROVIDED HEREIN) INCURRED OR CHARGED BY THE ASSOCIATION WITH RESPECT TO DELINQUENT ASSESSMENTS HEREUNDER. SUCH LIEN SHALL HAVE THE PRIORITY AND MAY BE ENFORCED IN THE MANNER PROVIDED FOR IN THE ACT. THE RECORDING OF THIS DECLARATION CONSTITUTES NOTICE AND PERFECTION OF THE ASSOCIATION'S LIEN. THE ASSOCIATION SHALL HAVE THE RIGHT TO COLLECT FROM A UNIT OWNER, AND THE ASSOCIATION'S LIEN SHALL ALSO SECURE, ALL AMOUNTS PAID OR EXPENDED BY THE ASSOCIATION IN ORDER TO PROTECT OR PRESERVE THE UNIT OR THE PRIORITY OF THE ASSOCIATION'S CLAIM OR LIEN INCLUDING, WITHOUT LIMITATION, AMOUNTS PAID OR INCURRED TO DISCHARGE REAL ESTATE TAXES OR OTHER LIENS SENIOR IN PRIORITY TO THE ASSOCIATION'S LIEN, AND INTEREST ON SAID SUMS AT THE RATE SPECIFIED HEREIN.**

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

6.06 Resale Certificates. Within ten (10) business days after a written request by a Unit Owner or the holder of a mortgage of first priority granted with respect to such Unit Owner's Unit, the Association shall furnish to the Unit Owner a certificate containing the information and copies of documents necessary to enable the Unit Owner to comply with Section 1603-116(h) of the Act. The Association may charge a reasonable fee

for supplying such certificate. A purchaser of a Unit shall not be liable for any unpaid Assessment or fee greater than the amount set forth in the certificate prepared by the Association, except for Assessments and charges accruing or coming due after the date the Association prepared such information.

6.07 Initial Contributions by First Time Buyers and Resales.

(a) Each Unit Owner purchasing a Unit from the Declarant shall pay to the Association, at the time of conveyance, a one time initial contribution in an amount equal to the then current monthly Assessment, which is in addition to, and not in lieu of, the regular Assessments payable with respect to the year in which such conveyance takes place. Such payments shall be nonrefundable and will not be returned by the Association if the Unit Owner subsequently sells or conveys its Unit.

(b) Any person purchasing a Unit from a Unit Owner other than a Declarant shall pay to the Association at the time of such purchase a one-time contribution in an amount equal to the then current monthly Assessment, which contribution shall be in addition to the then current Common Expense Assessment allocable to such Unit. The Executive Board shall have the authority to increase such contribution due on re-sales from time to time, by resolution of the Executive Board.

(c) The contributions collected pursuant to this Section 6.07 may be used and allocated by the Executive Board to set up and/or fund operating, repair/replacement or capital improvement reserves, or to defray current Common Expenses, in such manner as the Executive Board shall determine.

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

6.09 Basis and Computation of General Common Expense Assessments.

(a) Approximately forty-five (45) days before the beginning of each fiscal year of the Association, the Board shall adopt a budget for such fiscal year setting forth estimated Common Expenses, segregating (but only to the extent required by this Declaration or by law), General Common Expenses and Limited Common Expenses and otherwise in accordance with the Bylaws. The total regular Common Expense Assessments to be levied on all Units for that fiscal year shall be computed based on:

(i) the total estimated Common Expenses set forth in such budget, after deducting therefrom (i) any surplus from a prior year or years not allocated to

or set aside as reserves by the Board, and (ii) an estimate of any other income the Association expects to receive that will be available to pay Common Expenses; and

(iii) the Association's total Common Expense Liability for the Master Common Expenses.

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

(b) Notwithstanding that certain Common Elements are allocated or may be allocated as Limited Common Elements in this Declaration, the Plats and Plans, by the Act, or by assignment from the Declarant, and notwithstanding the provisions of Section 1603-115(c) of the Act, the expenses incurred and to be incurred by the Association in connection with the maintenance, repair and replacement of Limited Common Elements shall be assessed as General Common Expenses (and need not be segregated in the budget of the Association).

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

(d) Within thirty (30) days after adoption of the proposed budget for a fiscal year, the Board shall provide a summary of the budget to all the Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget, such date to be not less than fourteen (14) nor more than thirty (30) days after the mailing of the summary. Unless at that meeting sixty-six percent (66%) or more of all the Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board. The failure of the Board to adopt a Budget or to adopt a new Common Expense Assessment shall not excuse the Unit Owners from paying Assessments or installments thereof based upon the Budget and Assessment in effect for the preceding year. Once an Assessment has been made by the Board, it shall automatically continue in force for the fiscal year for which it was initially adopted, and during each subsequent fiscal year, until the amount of Assessments is changed by the Board.

(e) Any capital expenditure approved by the Board (other than as part of the annual budget setting process described above) may be rejected only with the

affirmative vote of sixty-six percent (66%) or more of the votes that all Unit Owners are entitled to cast. Such vote shall take place within thirty (30) days after notice of approval of the capital expenditures has been mailed to the Unit Owners.

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

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

6.11 Commencement of Assessments. The first Common Expense Assessment shall be made as and when determined by the Executive Board. Each Unit in existence as of the date on which the first Common Expense Assessment is made shall be subject to Assessments automatically and shall be subject to Assessments at all times thereafter until the Condominium is terminated as provided in the Act. At the time of conveyance of a Unit by the Declarant, the purchaser thereof shall reimburse the Declarant for the prorated amount of the then-current Assessment applicable to that Unit, representing the amount of such Assessments attributable to periods following such conveyance.

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

## ARTICLE VII - INSURANCE; CONDEMNATION; TERMINATION

7.01 Property and Casualty Insurance. Beginning no later than the first conveyance of a Unit to a Unit Owner other than a Declarant, the Association shall maintain, to the extent that such insurance has not been provided by policies maintained by the Master Association, and to the extent reasonably available, all of the following:

(a) “All risk” property and casualty insurance insuring the Common Elements and Units (exclusive of improvements and betterments installed in the Units, and exclusive of personal property and other contents therein) against all common risks of direct physical loss commonly insured against, covering the interests of the Association, the Board and the Unit Owners, as their interest may appear. The total amount of insurance shall be not less than one hundred percent (100%) of the replacement cost of the insured property (exclusive of land, excavations, foundations and other items normally excluded from such casualty policies), subject to such reasonable deductibles as the Board may determine.

(b) Comprehensive general public liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$2,000,000.00 for bodily injury or death arising from a single occurrence, insurance for liability for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements, and any property owned or leased by the Association.

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

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

(e) Notwithstanding any provision hereof or of the Act to the contrary, the expense of all insurance carried by the Association, including insurance on the Units as herein required, shall be assessed as part of the Assessment for Common Expenses in accordance with the Unit’s respective Common Expense Liability, and not in accordance with or in proportion to risk.

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

7.03 Policy Terms; Waiver of Claims.

(a) Property, casualty and liability insurance carried by the Association pursuant to Section 7.01 hereof shall contain any policy terms required by the Act. Each Unit Owner shall be an insured person under the Association’s liability insurance with respect to liability arising out of his ownership of an undivided interest in the Common Elements or membership in the Association. Each policy shall provide that (i) the insurer

waives its right of subrogation under the policy against any Unit Owner or member of the Unit Owner's household, (ii) no act or omission by a Unit Owner (unless acting within the scope of his authority on behalf of the Association) will void the policy or be a condition of recovery under the policy, and (iii) if at the time of a loss under a policy maintained by the Association there is other insurance in the name of Unit Owner covering the same property covered by the Association's policy, the Association's policy shall be primary insurance not contributing with or secondary to the other insurance.

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

7.04 Insurance Obligations of Unit Owners. Each Unit Owner shall be individually and solely responsible for maintaining (a) liability insurance with respect to its Unit, providing coverage in amounts of not less than a combined single limit of \$500,000, or such other amounts as the Executive Board may from time to time reasonably require, and (b) casualty insurance insuring the improvements and betterments in the Unit not covered by insurance maintained by the Association, and insuring the contents thereof and any personal property therein, such coverage to be in an amount sufficient to prevent the Unit Owner from becoming a co-insurer under such policy. The foregoing coverages shall be obtained through a customary condominium unit owner's insurance policy, and upon request will furnish the Association evidence that such coverage is in force. The Association shall have no insurance responsibility with respect to any Unit or the contents thereof except as expressly provided herein. During any period in which construction or remodeling activities are being carried on by or on behalf of a Unit Owner in or about such Owner's Unit which create a Builder's Risk Situation, such Unit Owner (a) with respect to the property insurance otherwise required to be maintained by the Unit Owner hereunder, will maintain Builder's Risk Insurance in the Builder's Risk Amount, at such Unit Owner's sole cost, or (b) with respect to property insurance which the Association would otherwise be required to maintain under Section 7.01(a) above, will, as the Association elects, either (i) maintain Builder's Risk Insurance in the Builder's Risk Amount at such Unit Owner's sole cost, or (ii) pay to the Association on demand, as a Special Assessment, the cost of such insurance maintained by the Association. If a Unit Owner is required to maintain Builder's Risk insurance hereunder, such Unit Owner shall provide to the Association, prior to commencing the activities which render such insurance necessary, a certificate or other evidence, in form and substance satisfactory to the Board, that such insurance is in effect with an insurer licensed in the State of Maine.

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

7.06 Adjustment of Losses. Any losses covered by any casualty insurance policy maintained by the Association shall be adjusted solely by and with the approval of

the Association and proceeds thereof shall be payable to the Association and not to any mortgagee or Unit Owner. The Board shall have full and exclusive power and authority to negotiate, adjust and compromise all claims for insurance coverages, and to execute and deliver releases therefor upon payment of the agreed settlement for such claims. The Association shall hold such proceeds in trust for the benefit of the Association, the Unit Owners and lien holders, as their interests may appear. Subject to Section 7.07 below, such proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements and Units, and no Unit Owners or lien holders shall be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Common Elements and Units have been completely repaired or restored, or the Condominium is terminated.

#### 7.07 Use of Proceeds.

(a) Any part of the Common Elements for which the Association maintains property insurance which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the Condominium is terminated in the manner provided in this Declaration and under the Act or (ii) repair or replacement would be illegal under any state or local health or safety statute, law, regulation or ordinance. The cost of the repair or replacement in excess of available insurance proceeds and reserves shall be a General Common Expense or, with respect to Limited Common Elements repaired or replaced, a Limited Common Expense.

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

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

7.08 Other Insurance. The Association shall maintain any insurance coverages that may be required under applicable law or under applicable guidelines and regulations promulgated by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and/or their successors or assigns. The Board may increase insurance coverages and obtain additional insurance coverages not specifically stated herein as the Board determines from time to time, in its discretion, the premiums for which shall be Common Expenses. Policies of insurance shall be deposited with and shall be maintained by the Board. Nothing herein shall be deemed to preclude the Board from obtaining one or more insurance policies that include the improvements and betterments constructed inside and/or personal property contained within the Units if the Board determines that is in the financial best interests of the Unit Owners to do so, and the

Association may allocate the costs thereof among the Unit Owners as it deems fair and appropriate.

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

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

#### ARTICLE VIII - USE AND OCCUPANCY RESTRICTIONS

8.01 Residential Use. The Units shall be used exclusively for residential purposes and may also be used for "home office" purposes, so long as commercial deliveries are minimal, no commercial signage is used, and no staff, employees, agents, customers, clients, or business associates visit the Condominium in connection therewith. Subject to Section 8.10 hereof, the Board may adopt Regulations further regulating and limiting home office use. Each Unit shall be used as a single-family residence, provided that persons providing assistance to the Owners or tenants of a Unit shall be permitted to reside in such Unit (e.g., live-in housekeeper, nurse or other personal care assistant).

8.02 Appearance; Nuisances; Maintenance. Each Unit Owner shall keep his Unit in a clean, neat, sanitary and safe condition. Each Unit Owner shall refrain from any activity, including unreasonable noise, odor or other disturbance that unreasonably interferes with the quiet and peaceful enjoyment of other Units and other Unit Owners or residents, or any guest or patron of the Hotel Unit or Restaurant Unit. Unit Owners will not cause or allow any fire hazard or refuse, rubbish, garbage or debris to accumulate in any part of the Condominium. Nothing shall be done or kept in any Unit or in any Common Element that will increase the rate or result in the cancellation of insurance of the Condominium or the contents thereof. The Board shall have the power to adopt and amend reasonable Regulations relating to the use and occupancy of the Units for purposes of promoting the residential character of the Condominium and prohibiting activities that impair or interfere with the quiet and peaceful enjoyment of the Condominium by the residents and/or threaten the health, safety and welfare of the residents.

### 8.03 Leasing.

(a) A Unit Owner may lease his Unit (but no less than his entire Unit) at any time and from time to time provided that the following conditions are satisfied (which shall not be applicable to leases entered into by the Declarant with respect to Units owned by the Declarant): (i) such lease is in writing and for a period of not less than six (6) months, (ii) a true copy thereof (and any subsequent amendments or modifications thereto) is delivered to the Association within ten (10) days after it is signed by all parties thereto, and (iii) the lease shall expressly obligate the lessee(s) to comply with the Act, the Master Declaration, the other Master Condominium Documents, this Declaration and the Regulations, as the same may be amended from time to time (which shall be binding on the lessee whether or not the lease so states).

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

### 8.04 Intentionally Omitted.

8.05 Modifications of Units. The architectural integrity of the Units shall be preserved without modification, and therefore, except as may otherwise be expressly and specifically allowed by this Declaration or the Regulations (and then only to the extent not in conflict with the Master Declaration or the other Master Condominium Documents): (a) no Unit shall be structurally modified, altered or changed (either laterally or vertically or any other manner) nor shall any common area or surface be penetrated in any manner; and (b) all maintenance and use by Unit Owners of all Units shall be done so as to preserve the appearance and character of the same, without modifications. Notwithstanding the foregoing, Declarant reserves the right to make changes and alterations to any Units it may own.

8.06 Animals and Pets.

(a) No livestock, fowl, poultry or animals may be raised, bred, kept or allowed in any Unit or the Common Elements, except for pets that are expressly allowed under this Section 8.06

(b) Residents may have the following types and numbers of domesticated animals as pets:

(i) Dogs: two (2) dogs with maximum weight of thirty-five (35) pounds each, or one (1) dog of more than thirty-five (35) pounds. If a Resident has one (1) cat, then the limit is one (1) dog; if a Resident has two (2) cats, then the Resident may not have a dog.

(ii) Cats: two (2). If a Resident has one (1) dog, then the limit is one (1) cat; if a Resident has two (2) dogs, then the Resident may not have a cat.

(iii) Birds: two (2).

(iv) Small caged animals (limited to guinea pigs, gerbils, ferrets, mice, and rats): two (2).

(v) Fish and other aquarium species: one aquarium of not more than twenty-gallon capacity.

No other animals or pets are permitted.

(c) Pets shall not be kept, bred, or used for any commercial purpose. All cats, dogs and ferrets must be spayed or neutered by six months of age unless the procedure is deemed medically unsafe by a veterinarian.

(d) Pets must be confined to the pet owner's Unit and must not be allowed to roam free or be tethered in Common Elements. Pets must not be left unattended in the hallways, lobby area, or any other part of the Master Condominium or the Residential Sub-Condominium. Pets in transit are to be carried, restrained by a leash no longer than five feet in length, or placed in an animal carrier.

(e) Pets may not be exercised or "walked" (e.g., allowed to urinate or defecate) on the premises of the Master Condominium or the Condominium. Persons who exercise and walk pets are responsible for immediately cleaning up after their animals and discarding securely bagged pet droppings in the following designated areas: (a) proper receptacles not on the premises of Master Condominium or the Condominium or (b) if securely double-bagged, in trash receptacles designated by the Executive Board.

(f) Unit Owners are responsible for any damage caused by their pets or those of their tenants or guests. Any damage caused by the use of cleaning chemicals by pet owners or caregivers in an attempt to remedy such damage is also the full responsibility of the Unit Owner.

(g) No pet shall be allowed to become a nuisance or to create any unreasonable noise, odor or other disturbance. Examples of pet behavior that constitutes a nuisance for the purposes of this Section are as follows:

(i) Unruly, aggressive or dangerous behavior that causes personal injury or property damage or places persons in reasonable apprehension of injury.

(ii) Barking, whining, scratching or other noise that can be heard from within any Unit or within any part of the Hotel Unit.

(iii) The presence of pets in Common Elements that are not under the complete physical control of a responsible person and on a hand-held leash not more than five feet in length or in a pet carrier.

(iv) Defecation or urination upon or that otherwise spoils the floors or walls of a Common Element, another Unit, the Restaurant Unit or the Hotel Unit.

(v) Pet odors that can be detected in Common Elements or in another Unit.

(vi) Conspicuous uncleanliness or infestation with parasites.

(h) Unit Owners are responsible for the cost of all damage to Common Elements, to other Units, or the Hotel Unit or Restaurant Unit caused by their pets and those of their tenants and guests, including damage to carpeting in hallways, elevators or foyers, and to all trees and shrubbery or other landscaping, and the Executive Board shall collect the costs for cleaning or replacement as a Special Assessment to the responsible Unit Owner.

(i) Notwithstanding any other provision herein, disabled individuals may keep assistance animals in their Unit.

(j) Unit Owners are responsible for the pets of their tenants and guests; such pets are subject to the same restrictions as the pets of Unit Owners. No pet(s) of guests may stay in a Unit for more than 14 days (consecutive or non-consecutive) in any one year period without prior written permission of the Executive Board.

(k) Unit Owners shall be responsible for and shall indemnify the Association, the other Unit Owners, the Hotel Unit Owner, the Restaurant Unit Owner and the Declarant and hold them each harmless against loss or liability of any kind caused by

their pets or arising out of the presence of their pets in or about the Master Condominium or the Condominium.

(l) The Executive Board shall establish procedures for the enforcement of the animal and pet provisions set forth above consistent with this Declaration and the Act. If the Hotel Unit Owner brings a complaint of a violation of these animal and pet provisions to the attention of the Executive Board, and in the Hotel Unit Owner's sole discretion determines that the Executive Board has failed to enforce these pet provisions, then the Hotel Unit Owner may in writing direct the Board to take appropriate enforcement action, which may include in the sole discretion of the Hotel Owner, requiring permanent removal of the offending pet, and the Hotel Owner may seek any legal remedy in a court of competent jurisdiction, including but not limited to injunctive relief, and to recover from the responsible Unit Owner attorneys' fees and costs in obtaining such remedy.

8.07 Personal Property on Common Elements. No benches, chairs, boxes, bicycles, strollers, or any other personal property shall be placed or left on any part of the Common Elements without the prior consent of the Executive Board.

8.08 Electric Service; HVAC Equipment. No Unit Owner shall overload the electric wiring in the Building, or operate any machines, appliances, accessories, or equipment in such manner as to cause, in the judgment of the Executive Board, an unreasonable disturbance to others, nor shall any Unit Owner connect any machine, appliance, accessory, or equipment to the heating system or plumbing system without the prior written consent of the Executive Board and the Master Executive Board. Installation, removal, reconstruction, or repair of any electrical lighting and power circuits, or electrical outlet box, or terminal device included in such outlet box, or any item or heating, ventilation, air conditioning or heat pump equipment, whether located within or outside of the boundaries of a Unit, may be undertaken by the Unit Owner of such Unit only after application has been made to and written consent has been received from the Executive Board and the Master Executive Board. Such consent shall be granted only if the work performed shall be of similar or superior quality to that present throughout the Building and shall be performed by qualified personnel. The cost of installation, removal, reconstruction or repair whether undertaken by a Unit Owner, or by the Executive Board or the Master Executive Board, (under the same procedures utilized for Common Elements), shall be borne by the Unit Owner of the Unit benefited thereby.

8.09 Aesthetic Integrity of Building. Except with the written approval of the Executive Board, the Master Executive Board, and the Hotel Unit Owner, nothing shall be hung from, displayed in or upon, attached or affixed to, or erected, placed or layed upon any of the windows of a Unit or of any Common Element, or from the exterior walls of the Condominium building or from any other Common Element, including but not limited to the following: awnings, canopies, shutters, screens, antennae, signs, banners, decals, stickers, decorations, clothes, blankets, rugs or any other article, device or item whatsoever. No exterior change, addition, structure, projection, decoration, or other feature shall be erected or placed upon or attached to the building or any part of the Condominium. No addition or change of any exterior light or other exterior hardware shall be made, and no painting,

attaching of decals or stickers, or other decoration shall be done on any exterior surface of the building or any part of the Condominium. No decorative lighting, candles, lighted displays of any sort, signs, posters, decals, flags or any similar decorative items may be placed or displayed in the windows of the Units or the windows or glass entryways of any Common Elements. Because maintaining the exterior aesthetics of the Condominium is of critical importance to the operation of the Hotel, the Hotel Owner shall have the right to enforce this Section 8.09 by seeking injunctive relief or other available remedy in any court of competent jurisdiction and to recover attorneys' fees and costs.

8.10 Regulations. Reasonable Regulations, not in conflict with the provisions of this Declaration, concerning the use and enjoyment of the Condominium, may be promulgated from time to time by the Executive Board, subject to the right of the Association to change such Regulations. After the Declarant Control Period, no Regulation shall be adopted by the Executive Board except by resolution of the Executive Board made at a meeting open to all Unit Owners and the Master Executive Board following written notice to all Unit Owners and the Master Executive Board, which notice shall have set forth the substance of the Regulation(s) proposed for adoption. Any modification of existing Regulations or adoption of new Regulations after the end of the Declarant Control Period shall require the written approval of the Hotel Unit Owner. Copies of the then current Regulations shall be furnished to all Unit Owners by the Executive Board promptly after adoption of such Regulations or any amendments thereto.

8.11 Thermostats; Other Installed Devices.

(a) Unit Owners are required to maintain their thermostats at a temperature within the range of 60 degrees Fahrenheit and 80 degrees Fahrenheit, and the Association shall maintain thermostats for spaces that are Common Elements in the same range.

(b) Certain features, components, and systems have been installed by the Declarant to minimize the potential for undesirable impacts on the Unit, other Units or the Hotel Unit below. The following have been installed and must be maintained in good working order by the Unit Owner:

- (i) Leak detection device in the utility laundry area.
- (ii) Vibration isolating pads beneath laundry equipment.
- (iii) Low/high temperature sensor.

No Unit Owner or tenant or guest shall alter, disable or replace the above-listed devices and systems, and any alteration that would require replacement of any of the above must be approved by the Executive Board and the Master Executive Board. Any alterations that would tend to increase noise or vibration in the Hotel Unit below are subject to the approval of the Hotel Unit Owner. Because the foregoing features, components, and systems are of critical importance to the operation of the Hotel, the Hotel Unit Owner shall have the right to

enforce this Section 8.11 by seeking injunctive relief or other available remedy in any court of competent jurisdiction and to recover attorneys' fees and costs.

8.12 Alterations of or Improvements on Common Elements. No Unit Owner shall construct or cause to be constructed any improvements on or to any of the Common Elements, or alter or cause to be altered any Common Element, without the prior approval of the Executive Board, and with respect to any Master Common Element or any Common Element that is part of or is visible from the exterior of the Condominium building the written approval of the Hotel Unit Owner, which approvals may be granted or withheld in their sole and absolute discretion, or approved subject to such conditions as they may impose.

8.13 Unit Floor Coverings. If a resident wants to replace carpeted floor surfaces with any other flooring material including, but not limited to, tile, stone, vinyl, or wood, an acoustical underlayment material must be applied in a manner approved by the Board before the new floor covering is installed. Such acoustical underlayment must provide a minimum Impact Isolation Class (IIC) rating increase of 18 over and above the IIC rating that exists prior to such change or replacement for the concrete floor assembly and the ceiling beneath the concrete floor.

8.14 Building Roof; Hotel and Restaurant Units. Except as permitted by the Executive Board and the Master Executive Board in writing, no Unit Owner may enter upon the Building roof or place or store anything on or about the Building roof, with the exception of maintenance and repairs in compliance with Section 8.08 above. Unit Owners shall have no rights to use or enter the Hotel Unit or Restaurant Unit except as a patron.

8.15 Rooftop HVAC Units. Each Unit Owner shall be responsible for the maintenance, repair, upkeep and replacement of the roof top heating, ventilation and air conditioning (HVAC) units and related components that exclusively serves his or her Unit. Maintenance and repair of the HVAC units and related components shall be performed only by a qualified, licensed contractor approved by the Executive Board, and the Executive Board shall have the authority by Regulation or otherwise to publish from time to time a list of companies and contractors approved to perform such maintenance or repairs. The Executive Board's approval of a company or contractor shall not create any liability on the part of the Executive Board of the Association for any defect or deficiency in the services performed by any such company or contractor.

8.16 Noise.

(a) Because the Units share common walls with other residential Units, and because guest rooms in the Hotel Unit are located directly below, the control of noise and vibration is critical to the harmonious use and enjoyment of the Condominium and the Master Condominium. Any noise or vibration from a Unit that can be detected by human hearing within another Unit or within the Hotel Unit shall be deemed to be a "Noise Violation," and it shall be the responsibility of the Unit Owner causing the Noise Violation to promptly abate the Noise Violation.

(b) Televisions, audio equipment and the like should be set to a minimum level that will not disturb others between the hours of 10:00 p.m. and 8:00 a.m. Persons with hearing difficulty should utilize headphones or other hearing aids if necessary to avoid unreasonable sound levels from audio sources.

(c) The construction methods and materials of walls, floors, flooring, doors, etc. and the makes and models of appliances and fixtures have been selected to minimize noise and vibration transmission, in accordance with all applicable codes, between Units and to the Hotel Unit. No alterations or modifications shall be made to the Units or the Common Elements that would increase the noise or vibration transmission or reduce the effectiveness of noise or vibration mitigation measures.

(d) Because the abatement of Noise Violations and the permanent preservation of sound-mitigating measures are of critical importance to the operation of the Hotel, the Hotel Owner shall have the right to enforce this Section 8.16 by seeking injunctive relief or other available remedy in any court of competent jurisdiction and to recover attorneys' fees and costs.

8.17 Restrictions Under Master Declaration and the other Master Condominium Documents. All Units Owners shall be subject to, and by accepting a deed to a Unit all Unit Owners agree to bound and to abide by, all restrictions, conditions, limitations, easements and servitudes set forth in the Master Declaration and the other Master Condominium Documents.

8.18 Duration of Restrictions. Said restrictions set forth in this Article XIII shall be for the benefit of the owners of all the Units and the Executive Board, as the persons in charge of the common areas and facilities, and shall be enforceable solely by said Executive Board, whose decision and determination thereof shall be final and binding, and shall remain in full force and effect until the twentieth anniversary of the date of this Declaration and thereafter shall be automatically extended for successive periods of twenty (20) years, unless by vote of the Executive Board and vote of the majority of the then owners of all the Units, as aforesaid, it is agreed to terminate said restrictions, in whole or in part. No Unit Owner shall be liable for any breach of the provisions of this Article XIII except as such occur during such Unit Owner's ownership thereof. Notwithstanding the foregoing, to the extent that any of the restrictions set forth in this Article VIII are expressly or can reasonably be construed as being also for the benefit of the Hotel Unit or the Restaurant Unit, they are enforceable by the Master Executive Board, whose decision and determination thereof shall be final and binding, and shall remain in force for the duration specified in the Master Declaration, or in the other Master Condominium Documents, and they are also enforceable by the Hotel Unit Owner as expressly provided herein.

8.19 Restrictions and other Matters of Record. The Condominium is on the date hereof subject to those recorded restrictions and other matters of record identified on Exhibit "B" attached hereto and made a part hereof, and to those other restrictions, notes, conditions and easements as are set forth herein, on the Plats and Plans, Master

Declaration, any other Master Condominium Document, or on the approved and recorded subdivision or land development plans of the Real Estate.

8.20 Intentionally Omitted.

8.21 Occupancy Plan. No Unit may be used in fact or in effect as part of, or in furtherance of, an Occupancy Plan (as defined below). For purposes of the foregoing requirement, an "Occupancy Plan" means a plan for the use, occupancy, marketing, advertising or promotion of one or more Units under any timeshare or fractional plan, residence, destination or luxury club, equity or non-equity program, interval exchange (whether the program is based on direct exchange of occupancy rights, cash payments, reward programs or other point or accrual systems) or other membership plans or arrangements through which a participant in the plan or arrangement acquires the right to use or occupy such Unit(s) or a portfolio of accommodations including such Unit(s).

## ARTICLE IX - EASEMENTS

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

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

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

(b) An easement for the construction, installation, repair, inspection, alteration and maintenance of surface and subsurface utilities and utility facilities including, without limitation, electrical, telephone, cable television, water, sewer and similar facilities to serve the Condominium and all Units the Declarant reserves the right to construct hereunder;

(c) The right to grant easements through, over, across and under the Common Elements to public or private entities furnishing electric, telephone, cable television, public water, sanitary sewer, storm sewer, natural gas or other utility services, whether such services are being provided to this Condominium or to other property; and

(d) An easement in favor of the appropriate utility companies for such services as are desirable or necessary to adequately serve the Real Estate and all appurtenances thereto; including (by way of illustration and not limitation) the right to install,

lay, maintain, repair, relocate and replace water mains and pipes, steam lines, gas mains and pipes, sewer and drain lines, telephone and other communication wires, cables and equipment, electrical wires and conduits and association equipment, over, under, through, in, along and on the Real Estate (including, without limitation, one or more Units therein).

9.03 Easement for Proper Maintenance and Operation of the Condominium and Master Condominium. The Common Elements (including, but not limited to the Limited Common Elements) shall be and hereby are made subject to an easement in favor of the Declarant, the Hotel Unit Owner, the Association and the agents, employees and independent contractors thereof for the purpose of the inspection, upkeep, maintenance, use, repair and replacement of the Common Elements (including, but not limited to, the Limited Common Elements and any utility, mechanical or other common rooms within the Condominium as shown or designated on the Plats and Plans), and in connection therewith, the Declarant and the Association may grant easements, licenses or permits over the Common Elements for utilities, or other purposes reasonably necessary or useful for the proper maintenance and operation of the Condominium.

9.04 Easement for Inspection and Abatement. The Declarant, the Hotel Unit Owner, and the Association, and their officers and agents, shall have the right and easement to have access to each Unit as may be necessary in order to inspect, maintain, repair or replace any Common Elements therein or accessible therefrom, or to inspect for or abate any violation of the Condominium Documents.

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

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

9.07 Easements Under Master Declaration and the other Master Condominium Documents. All Units and Unit Owners shall be subject to and by accepting a deed to a Unit agree to abide by all restrictions, conditions, limitations, easements and servitudes set forth in the Master Declaration and the other Master Condominium Documents.

9.08 Easements and other Matters of Record. The Condominium is on the date hereof subject to those recorded easements and other matters of record identified on Exhibit "B" attached hereto and made a part hereof, and to those other easements, notes, conditions and restrictions as are set forth herein, on the Plats and Plans, Master

Declaration, any other Master Condominium Document, or on the approved and recorded subdivision or land development plans of the Real Estate.

## ARTICLE X - SPECIAL DECLARANT RIGHTS

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

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

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

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

(d) The right to relocate boundaries between Units owned by the Declarant, and the right to relocate the boundaries between Units and Common Elements, together with the right to prepare, execute and record such amendments to this Declaration and the Plats and Plans as may be necessary to show the altered boundaries, to the fullest extent permitted by the Act;

(e) The right to appoint, remove and replace officers and Directors of the Association during the Declarant Control Period, to the fullest extent permitted hereunder and by the Act;

(f) All restrictions and easements described in Article VII and Article VIII of this Declaration, to the extent such restrictions and easements are stated to be for the benefit of the Declarant;

(g) All other reserved rights of Declarant contained in this Declaration or any of the other Condominium Documents; and

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

The time limit for Declarant's exercise of any of the foregoing Special Declarant Rights shall terminate upon the earlier of ten (10) years from the recordation of this Declaration of such time as the Declarant no longer owns a Unit.

10.02 Intentionally Omitted.

10.03 Models; Sales Offices, Etc. While Declarant owns any Units, Declarant shall be entitled to maintain one (1) or more model units, sales offices and construction offices in such Units that Declarant owns, and to maintain on or about the Common Elements such construction equipment, tools, and building materials as are necessary from time to time in connection with the development of the Condominium and the construction of Units and Common Elements.

10.04 Intentionally Omitted.

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

## ARTICLE XI - COMPLIANCE AND ENFORCEMENT

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

11.02 Enforcement by Unit Owners; Procedures.

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

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

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

(d) Notwithstanding the foregoing or any other provision of this Declaration or the Master Declaration, the Hotel Unit Owner has been expressly granted the right to enforce certain provisions of this Declaration by bringing an action in a court of competent jurisdiction, and with respect to such provisions the Hotel Unit Owner may at its sole option elect to pursue such court action without compliance with any other enforcement or dispute resolution procedures set forth in this Declaration or the Master Declaration.

#### 11.03 Grievance Procedure.

(a) If any Unit Owner alleges that one or more other Unit Owners or occupants of any Unit have violated or are violating the Condominium Documents, before commencing any action relating thereto such Unit Owner shall first give written notice thereof to the Board and the affected Unit Owner(s) specifying with reasonable particularity the name and address of the alleged violator and the nature of the activities constituting a violation of the Condominium Documents. Notwithstanding the preceding, nothing herein shall be deemed to preclude a Unit Owner from commencing an action prior to compliance with the grievance procedures set forth herein if reasonably necessary in order to toll any applicable statute of limitations, provided that the Unit Owner bringing such action promptly thereafter complies with the procedures set forth herein.

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

(c) In all hearings before the Board or any Committee thereof, all parties are entitled to be represented by legal counsel of their choice. The Board or an

applicable committee of the Board shall determine all matters of procedure with respect to hearings before the Board under this Section 11.03, and shall not be bound by the formal rules of evidence.

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

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

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

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

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

(b) Arbitration. If the Parties are unable to resolve and settle all Covered Claims through mediation as provided above, then such Covered Claim shall be submitted to binding arbitration in accordance with the rules of AAA, before a panel of three (3) arbitrators, selected and appointed in accordance with the rules of AAA. The decision of a majority of the arbitrators shall be binding, final and conclusive, shall be unappealable (except as permitted by law) and may be entered as a final judgment in any court of competent jurisdiction, and shall be enforceable as such. All expenses of the arbitration, including the fees of the arbitrators, shall be borne equally by the Parties unless the arbitrators award or impose such costs in some other manner by unanimous agreement. The obligation to arbitrate Covered Claims shall be an absolute bar to the bringing of any action, suit or other proceeding in any state or federal court otherwise having jurisdiction thereof.

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

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

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

(iii) Any claim for indemnity and/or advancement of expenses by a current or former member of the Executive Board, current or former officer of the Association or other person claiming such entitlement pursuant to the terms of this Declaration, the Act or other applicable law, as a result of any action, suit or proceeding to which he is a party or threatened to be made a party, by reason of having acted or served

as a member of the Executive Board, officer or agent of the Association, or in any other capacity, and any claim by a Unit Owner against the Association or the Executive Board (or any present or former member thereof), in either case arising out of or in any way related to the Condominium Documents or the Condominium; and

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

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

(i) Unless the Executive Board so elects, in its sole and exclusive discretion, any suit or action by or on behalf of the Association or the Executive Board to collect Common Expense Assessments from a Unit Owner other than a Declarant, and/or interest, late charges, costs of collection and attorney's fees associated therewith, and any proceedings to foreclose or realize on the Association's lien for such Assessments;

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

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

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

(v) Any claims between Unit Owners, or claims between a Unit Owner and his or her tenant, other than claims arising out of an alleged violation of the Condominium Documents, unless the Association, the Executive Board (or any committee or member or former member thereof) and/or a present or former officer or agent of the Association or Executive Board is or are named or added as parties to such claim, suit or proceeding.

(e) Party(ies). A Party means, as the case may be, the Association, the Declarant, any Affiliate of the Declarant, any Unit Owner, any resident or tenant of the Condominium, the Executive Board (and each individual former and present member thereof), any committee of the Executive Board (and each individual former and present member thereof), and any Eligible Mortgage Holder. With respect to the Declarant, the term "Affiliate" shall mean (i) any general partner or limited partner thereof, and their respective officers, directors, agents, managers, partners, members and shareholders, (ii) any company or entity directly or indirectly controlled by or under common control with, the Declarant or any person described in clause (i), and, (iii) any company or entity of which the Declarant, or any person described in clauses (i) and/or (ii), alone or in combination with one or more other such persons, owns a controlling interest.

## ARTICLE XII - MISCELLANEOUS

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

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

(a) Any amendment to this Declaration may be proposed by the Declarant, the Board or by Unit Owners entitled to cast at least twenty percent (20%) of the votes which all Unit Owners are entitled to cast. The manner of proposing any amendments to this Declaration and giving notice to Unit Owners shall be as set forth in the Bylaws.

(b) Except as otherwise provided herein or in the Act, the Declaration may be amended only with the affirmative vote or agreement of Unit Owners entitled to cast sixty-seven percent (67%) or more of the votes that all Unit Owners are entitled to cast.

(c) No amendment to this Declaration shall make any change that would in any way alter, modify or affect any of the rights, easements or privileges of the Declarant, including Special Declarant Rights, without the consent of the Declarant.

(d) No amendment to this Declaration shall make any change that would in any way alter, modify or affect any of the rights, easements or privileges of owner of the Hotel Unit or the Hotel Unit Owner, without the consent of the Hotel Unit Owner.

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

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

**12.03 Consent of Owner of Hotel Unit to Certain Amendments or Waivers.** Notwithstanding anything to the contrary set forth herein, no amendments to or waivers of the following enumerated Sections and/or Articles of this Declaration shall be effective without the prior written consent of the owner of the Hotel Unit in the Master Condominium, which consent may be withheld in said Hotel Unit owner's sole and exclusive discretion:

Sections 1.02, 2.02, 3.07, 3.08, 4.07, 4.11, Articles VII and VIII in their entirety, Sections 9.03, 9.04, 11.02(d), 12.02(d), and 12.03.

Further reference is made to a certain Agreement by and between the Declarant and 209 Fore Street, LLC, the current owner of Hotel Unit, of even date and recorded herewith, regarding the rights of the owner of the Hotel Unit under this Declaration.

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

**12.05 Corrective Amendments.** If any amendment to the Declaration is necessary in the judgment of the Association to cure any ambiguity, to correct or supplement any provision of this Declaration that is defective, missing or inconsistent with any other provision of this Declaration or with the Act, or to conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages on units in condominium projects, then the Association may, from time to time, effect appropriate corrective amendments without the approval of the Unit Owners or the Eligible Mortgage Holders provided that the Association receives an opinion from independent legal counsel to the Association to the effect that such proposed amendment is permitted by the terms of this Section.

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

provisions shall to the extent permitted by law, reform the same so as to make the same valid and enforceable in accordance with the reasonable intent of the Declarant expressed therein.

12.07 Governing Law; Incorporation of Condominium Act. This Declaration shall be governed and construed in accordance with laws of the State of Maine. All applicable provisions of the Act not already expressed herein are deemed incorporated herein by this reference. In the event of any conflict between the terms of the Act and the terms of this Declaration, the terms of the Act shall control, subject, however to the terms of Section 12.05 hereof.

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

**(Signatures on next page)**

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

WITNESS:

DECLARANT:

PORTSIDE RESIDENCES, LLC

\_\_\_\_\_

By: \_\_\_\_\_  
Mark G. V. Woglom  
Its Manager

STATE OF NEW HAMPSHIRE  
COUNTY OF BELKNAP, SS.

\_\_\_\_\_, 201\_

Before me personally appeared Mark G. V. Woglom, who acknowledged himself to be the Manager of OLD PORT HOSPITALITY, LLC, and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said OLD PORT HOSPITALITY, LLC.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Print name

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

That certain condominium unit designated as the Residence Unit pursuant to that certain Declaration of Condominium for the Hotel, Restaurant and Portside Residences Condominium dated August 23, 2010, and recorded in the Cumberland County Registry of Deeds in Book 28022, Page 188.

Being the same premises conveyed to Portside Residences, LLC by Old Port Hospitality, LLC by Quitclaim Deed with Covenant dated August 23, 2010, and recorded in the Cumberland County Registry of Deeds in Book 28022, Page 251.

## EXHIBIT "B"

### LIST OF TITLE MATTERS

1. Sewer line easement from the Slum Clearance and Redevelopment Authority to the City of Portland dated October 8, 1958, and recorded in the Cumberland County Registry of Deeds in Book 2438, Page 258, as affected by Easement Relocation Agreement by and between Old Port Hospitality, LLC and the City of Portland dated April 28, 2010, and recorded in said Registry of Deeds in Book 27742, Page 26, and letter of David Margolis-Pineo, Deputy City Engineer for the City of Portland, dated August 25, 2010, and recorded in said Registry of Deeds in Book 28028, Page 257, confirming satisfactory completion of work required under Easement Relocation Agreement.
2. Terms and provisions of No Further Action Assurance letter from the Maine Department of Environmental Protection to Jordan's Meats dated April 17, 2003, and recorded in the Cumberland County Registry of Deeds in Book 19244, Page 271.
3. Restrictions, covenants and conditions set forth in Deed from Zemco Industries, Inc. to PME I, Limited Partnership, dated September 23, 2005, and recorded in the Cumberland County Registry of Deeds in Book 23199, Page 107, and repeated in Deed from PME I, Limited Partnership, to Old Port Hospitality, LLC, dated January 29, 2010, and recorded in the Cumberland County Registry of Deeds in Book 27567, Page 40.
4. Matters and General Notes set forth on subdivision plan entitled "Subdivision Plan of Hotel, Restaurant & Portside Residences, 207 & 209 Fore Street, Portland, Maine" dated February 8, 2010, as most recently revised on April 23, 2010, approved by the City of Portland Planning Board on April 13, 2010, and recorded in the Cumberland County Registry of Deeds in Plan Book 210, Page 194.
5. Rights and easements and all terms and conditions relating thereto set forth in Deed from Old Port Hospitality, LLC, to Fore India Middle, LLC, dated January 29, 2010, and recorded in the Cumberland County Registry of Deeds in Book 27850, Page 63, as amended by an Amendment of Deed, Termination of Rights and Easements and Grant of Rights and Easements by and between Old Port Hospitality, LLC and Fore India Middle, LLC dated August 23, 2010, and recorded in the Cumberland County Registry of Deeds in Book 28022, Page 181.
6. Rights and easements and all terms and provisions relating thereto set forth in a Revised and Restated Parking Agreement by and between Old Port Hospitality, LLC and Fore India Middle, LLC, dated August 23, 2010, and recorded in the Cumberland County Registry of Deeds in Book 28022, Page 242, which Revised and Restated Parking Agreement replaced in its entirety a prior Parking Agreement between Old Port Hospitality, LLC and Fore India Middle, LLC dated June 11, 2010, and recorded in the Cumberland County Registry of Deeds in Book 27850, Page 68, provided, however, that the rights and

easements set forth in said Revised and Restated Parking Agreement are not included as Common Elements within the Condominium and no rights and easements set forth in said Agreement regarding the use of parking spaces referred to therein shall be included with the conveyance of any Unit in the Condominium unless such rights and easements are specifically set forth in the deed of said Unit.

7. Rights and easements and all terms and conditions relating thereto set forth in Quitclaim Deed of Easement and Abutter's Agreement from Old Port Hospitality, LLC to 80-90 Corps dated May 3, 2010, and recorded in the Cumberland County Registry of Deeds in Book 27865, Page 179.

8. Terms, conditions, agreements, covenants, restrictions, obligations and easements set forth or referred to in the Declaration of Condominium for the Hotel, Restaurant and Portside Residences Condominium dated August 23, 2010, and recorded in the Cumberland County Registry of Deeds in Book 28022, Page 188, and all matters shown on the Plat and Plans of said Condominium recorded in said Registry of Deeds in Plan Book 210, Pages 273 through 281.

EXHIBIT "C"

PLATS AND PLANS

See "Condominium Plat of Portside Condominium" prepared by Opechee Construction Corporation, dated \_\_\_\_\_, 201\_, as most recently revised dated \_\_\_\_\_, 201\_, consisting of Sheet 1 of 1, and recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_, and the "Condominium Plan of Portside Condominium" prepared by Opechee Construction Corporation, dated \_\_\_\_\_, 201\_, as most recently revised \_\_\_\_\_, 201\_, consisting of Sheet 1 of 4 through Sheet 4 of 4, and recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_.

EXHIBIT "D"

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

Unit Number	Square Footage*	Percentage Interest	Common Expense Liability
Unit 1	1,118	8.42%	8.42%
Unit 2	1,120	8.44%	8.44%
Unit 3	1,099	8.28%	8.28%
Unit 4	1,236	9.31%	9.31%
Unit 5	1,241	9.35%	9.35%
Unit 6	1,099	8.28%	8.28%
Unit 7	1,168	8.80%	8.80%
Unit 8	1,344	10.12%	10.12%
Unit 9	1,063	8.01%	8.01%
Unit 10	912	6.87%	6.87%
Unit 11	792	5.97%	5.97%
Unit 12	1,084	8.17%	8.17%
Total	13,276	100%**	100%**

\* Square footage calculations are approximate and are measured to the centerline of interior walls that separate the Units and to the outside of the exterior walls of the Condominium building.

\*\* Rounded