

# DECLARATION OF RISBARA CLEARVIEW CONDOMINIUM

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# DECLARATION OF RISBARA CLEARVIEW CONDOMINIUM

## ARTICLE 1

### DECLARATION OF CONDOMINIUM PROPERTY

THIS DECLARATION OF RISBARA CLEARVIEW CONDOMINIUM ("Declaration") is executed by RISBARA CLEARVIEW DEVELOPMENT LLC, a Maine limited liability company ("Declarant"), pursuant to the Maine Condominium Act, chapter 31 of Title 33 of the Maine Revised Statutes of 1964 as amended ("Condominium Act").

**§1.1 Declaration.** The Declarant as the owner in fee simple of the land and buildings located on Clearview Drive off Portland Farms Road in the Town of Scarborough, County of Scarborough and State of Maine described in Exhibit A, the buildings and improvements located thereon and subject to and together with all easements, rights, privileges and appurtenances thereto (collectively the "Property"), HEREBY SUBMITS the Property to the Condominium Act in accordance with this Declaration, and establishes a condominium as defined in Section 1601-103(7) of the Condominium Act ("Condominium") known as Risbara Clearview Condominium. The name of the Unit Owners' association is the Risbara Clearview Condominium Association, a Maine nonprofit corporation (the "Association"). The Condominium consists of the Property and 3 buildings containing twenty four (24) Units as identified Exhibit D. No additional Units will be created

As set forth in this Declaration, the Declarant reserves various Special Declarant Rights and easements.

**§1.2 Applicability.** This Declaration shall govern the Property. All present and future owners, occupants and tenants, their guests, licensees, invitees, employees, agents, and any other person entering on the Property shall be subject to this Declaration, the Bylaws of the Association and to such Rules and Regulations of the Association, all of which shall be deemed to be covenants running with the land, and shall bind any person having at any time any interest in or entering upon the Property.

**§1.3 Defined Terms.** Capitalized terms not otherwise defined in this Declaration or on the Plat and Plans shall have the meanings specified in the Condominium Act.

**§1.4 Interpretation.** In the event of any conflict or discrepancy between this Declaration, the Bylaws, the Rules and Regulations, and the Plat and Plans, the provisions of this Declaration shall govern.

## ARTICLE 2

### DESCRIPTION OF PROPERTY

**§2.1 Description of the Property.** A legal description of the Property included in the Condominium is set forth in Exhibit A. The location and dimensions of the Property included in the Condominium are depicted on the Condominium Plat entitled "Condominium Plat of Risbara Clearview Condominium" dated \_\_\_\_\_, 2006 by Titcomb Associates recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Plat"), a reduced copy of which is attached hereto as Exhibit B.

**§2.2 Location and Dimensions of Buildings and Units.** The term "Building" means the three buildings located on the Property each containing eight Units, the three garage buildings, as well as other improvements comprising a part of a building or intended to be used for purposes incidental to the use of a building. The location and dimensions of the Buildings and other improvements on the Property, including Common Elements, are shown on the Plat as depicted on Exhibit B.

The proposed location and dimensions of each Unit together with its appurtenant Limited Common Elements are depicted on the Plat Floor Plans entitled "Risbara Clearview Condominiums" dated \_\_\_\_\_, 2006 by \_\_\_\_\_ and recorded in said Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Plans"), reduced copies of which are attached hereto as Exhibit C. The proposed location and dimensions of each Building and Unit are subject to change by the Declarant until such time as each Unit is legally created, and such improvements need not be built or may be built with configurations and locations different than those shown on the Plat and Plans, as further appears in Article 5 below.

**§2.3 Recorded Plat and Plans.** The original Plat and Plans and any amendments thereto shall be recorded with this Declaration in the Cumberland County Registry of Deeds.

**§2.4 Condominium Documents.** "Condominium Documents" means this Declaration, the Plat, the Plans, the Bylaws of the Association, and the Rules and Regulations adopted by the Board of Directors, and any amendments to any of the foregoing adopted from time to time.

### **ARTICLE 3 CONDOMINIUM UNITS**

**§3.1 Creation of Subsequent Units.** Twenty Four Units are created under this Declaration as set forth in Exhibit D. No additional units will be created. Each Unit's identifying number, the locations and dimensions of the vertical boundaries and horizontal boundaries of each Unit, the Common Elements to which the Unit has direct access, and any other information necessary to identify the Unit are shown on the Plat and Plans.

**§3.2 Description of the Units.** "Unit" means a part of the Property designated for separate ownership or occupancy which has a direct exit to Limited Common Elements and Common Elements. For each Unit created from time to time pursuant to this Declaration, the identification number and approximate area are shown on the Plat and Plans of the Property as amended from time to time. Any internal room configuration shown on the Plans is illustrative only, and is not binding on an owner, except that the structural support of the Building must be preserved.

Each Unit includes the following items:

- (a) All interior partitions (excepting those portions thereof which are load-bearing), interior doors and interior stairways wholly within the Unit;

- (b) Finish flooring, floor coverings, carpeting and the like, and finish wall and ceiling coverings (including paint, wallpaper, furring, gypsum board, moldings, and any other materials constituting any part of the finished surfaces thereof);
- (c) Windows and doors providing access to the Common Elements including their locks, hardware and glass, but excluding their frames, thresholds and sills;
- (d) Plumbing, kitchen and bathroom fixtures, kitchen appliances, heating and ventilating equipment, natural gas boiler and accessories, electric water heaters, bathroom exhaust fans, dryer ducts, electric intercom systems, smoke detectors and the components thereof serving only a single Unit, if any, even if located outside of a Unit's boundaries, and;
- (e) Electrical wiring, equipment outlets and lighting devices and fixtures and from the point where the feed wire enters the Unit's circuit breaker distribution box inwards, and portions of water and sewer utility lines, pipes and equipment serving only that Unit, all regardless of whether or not located within its general boundary lines as herein described.

A Unit generally does not include: the exterior walls, the roof, rafters and foundation, land; the pipes, wires, conduits, flues, ducts, pipes, or other heating and utility lines running through a Unit which serve more than one Unit or which serve the Common Elements or which serve another Unit.

Each Unit and the Common Elements shall have any easement for lateral and subjacent support from every other Unit and the Common Elements, and shall have the easement for encroachments established under Section 1602-114 of the Condominium Act. In addition, each Unit Owner has an unrestricted, perpetual right of ingress and egress to his or her Unit, which automatically transfers with a transfer of title to the Unit. Any conveyance, encumbrance, judicial sale, or other transfer (whether voluntary or involuntary) of an interest in the Common Elements shall be void unless the Unit to which that Common Element interest is allocated is also transferred.

**§3.3 Unit Boundaries.** The boundaries of each Unit subsequently created under this Declaration shall be shown on the Plat and Plans, and shall consist of:

(a) *Horizontal Boundary:* The upper and lower boundaries of each Unit are generally the following boundaries extended to an intersection with the vertical (perimeter) boundaries:

1. Upper Boundary: The planes at the lower surfaces of the ceiling joists, including the upper (outside) side of the gypsum board of the ceiling and any other materials constituting any part of the finished surfaces thereof, if any, extending to the intersection with the vertical boundaries.

2. Lower Boundary: The horizontal plane at the upper surface of the undecorated surface of the subflooring or floor slab extending to the intersection with the vertical boundaries.

(b) *Vertical Boundaries:* The vertical boundaries of each Unit shall be the vertical planes at the stud line at the exterior or outer-most surface of the gypsum-board, sheetrock, or other wall

materials forming its exterior or common walls, extended to the intersections with each other and with the horizontal boundaries.

(c) *Interior Finishes.* The Unit shall include all wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, wallpaper, carpeting, finished flooring and any other materials constituting any part of the finished surfaces thereon located within the boundaries of the Unit.

(d) *Interior Space.* All other spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

(e) *Relocation.* Relocation of boundaries between Units is permitted by amendment to the Declaration in compliance with the provisions of the Condominium Act. The subdivision of Units is not permitted.

**§3.4 Allocated Interests.** The term "Allocated Interests" means the Common Element Interest, the Common Expense Liability and the voting rights in the Association allocated to each Unit pursuant to this Declaration. The term "Common Element Interest" means the percentage of undivided interest in the Common Elements appurtenant to each Unit. The term "Common Expense Liability" means the allocation to each Unit of the respective liability for Common Expenses. Generally the Common Expense Liability allocated to a Unit is a percentage equal to the Common Element Interest appurtenant to such Unit. The Allocated Interests of each Unit are set forth in **Exhibit D**.

The percentage of each Unit's Common Element Interest and Common Expense Liability is allocated by a formula represented by a fraction wherein the numerator is 1 and the denominator is the total number of Units which have been created in the Condominium subject to rounding in order to permit ease of administration, provided however that the percentage stated in Exhibit D (as it may be amended) shall prevail in any event. Each Unit shall each have one vote in the Association on a formula of one vote per Unit to permit equality among Units.

**§3.5 Alterations by Unit Owner.** Subject to this Declaration, the Bylaws and the Rules and Regulations of the Association as amended from time to time, a Unit Owner may make nonstructural improvements and alterations within the interior of the Unit. However, no Unit Owner may make any improvements or alterations or do any work whatsoever which would impair the structural integrity or mechanical systems, or the walls separating units or life safety systems of a Building, lessen the support of any portion of the Condominium, or jeopardize the soundness or safety of the Property.

No Unit Owner shall alter any of the Common Elements or paint or otherwise change the appearance of the Common Elements (including without limitation the Limited Common Elements) or paint or otherwise change the exterior appearance of the Unit (including, but not limited to, the exterior surfaces of doors or windows leading to or facing on a Common Element or a Limited Common Element) or any other portion of the Condominium, without the prior written approval of the Board of Directors of the Association.

## ARTICLE 4 COMMON ELEMENTS, LIMITED COMMON ELEMENTS

**§4.1 Common Elements.** The term "Common Elements" means the entire Property other than the Units, and includes:

- i. The land, together with the benefit of and subject to all the accompanying rights and easements described in Exhibit A, and all landscaping, vegetation, trees and drives;
- ii. The foundations, roof, exterior walls, and all structural and load bearing portions of the buildings;
- iii. All utility lines, pipes, wires, electrical and transmission wires and conduits, any life safety systems, distribution pipes, pumping station, and water and sewer utility lines which serve more than one Unit or which serve the Common Elements (excepting lines and equipment owned by public and municipal utilities or installed pursuant to easements serving other persons); and
- iv. All other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use, except as otherwise expressly provided in this Declaration.

**§4.2 Limited Common Elements.** The term "Limited Common Elements" means those portions of the Common Elements where the exclusive use is reserved to one or more, but fewer than all, of the Units in accordance with this Declaration. Limited Common Elements, consist of the following:

- i. For each Unit, a garage space as shown and assigned as Limited Common Elements on the Plat and/or Plans;
- ii. For each Unit, an exterior parking space in front of the garage as shown and assigned as Limited Common Elements on the Plat and/or Plans;
- iii. Water, sewer or other utility lines, water heaters, electrical circuit breaker boxes and other fixtures designed to serve a single Unit but which are not a defined part of the Unit are Limited Common Elements allocated exclusively to that Unit;
- iv. Any door steps, stoops, thresholds, doors and windows and their frames and sills and any other fixture designed to serve a single Unit but located outside its boundary; and
- v. the portions of the Property shown on the Plat and Plans or as described as Limited Common Elements pursuant to Section 1602-102(2) and (4) of the Condominium Act.

The allocation of Limited Common Elements cannot be altered except in compliance with the Condominium Act, and with the written consent of the Owners and Mortgagees of record of the Units affected by the reallocation of Limited Common Elements.

**§4.3 Common Elements to Remain Undivided.** The Common Element Interest of a Unit shall be inseparable from each Unit, and any conveyance, lease, devise or other disposition and any mortgage or other encumbrance of any Unit shall include the Common Element Interest, whether or not expressly referred to in the instrument making such transfer. The Common Elements shall remain undivided and no action for partition or division of any party shall be permitted, unless otherwise provided by law and permitted by this Declaration.

**§4.4 Connection of Adjoining Units and Limited Common Areas.** If the record owners of the subject Unit(s) affirmatively elect, with the written approval of the Board of Directors of the association based on each owner's compliance with the standards set forth hereinafter, all to be evidenced by a recorded instrument duly executed and acknowledged, that portion of the Common Elements located between the boundary lines of adjoining Units or located between a Unit and an adjoining Limited Common Element (with the consent of any other Units sharing the same), may be thereby subjected to an easement in favor of each such Unit respectively running to the midpoint of the space between each Unit or to the Limited Common Element for the removal and alteration of any intervening partition and the creation of apertures therein for passage back and forth between the two Units or to the Limited Common Element, and for the installation of stairs, doors, windows and frames appurtenant thereto. The owners shall be strictly liable for any resulting damage. At all times after such election each Unit Owner: shall preserve and maintain the structural integrity and architectural style, the mechanical and utility systems, and the support of all portions of the Property; and shall strictly comply with all fire, building code and other governmental laws, ordinances and requirements. Any such Unit Owner or his respective heirs, mortgagees or assigns, may at any time revoke such election by instrument duly executed and acknowledged served on the other such owners and duly recorded, and thereafter may seal up passageways and/or remove the stairs, doors and their frames, and/or install a permanent wall, floor ceiling or other partitions, at all times preserving the structural integrity, the mechanical and utility systems and support of all portions of the Property. Nothing contained herein shall be deemed to merge or otherwise affect the separate identity, configuration or the boundaries of said Units.

**§4.5 Alteration of Common Elements by the Declarant.** Until all Units have been sold and the Declarant's obligations under purchase and sale agreements for all Units have been satisfied, the Declarant reserves the right to modify, alter, repair or improve portions of the Common Elements, including without limitation, any equipment, fixtures and appurtenances, and further reserves an easement over the Common Elements in order to discharge its obligations and to exercise any Declarant Rights, whether arising hereunder or under the Condominium Act.

## **ARTICLE 5 DECLARANT'S RIGHTS**

**§5.1 Special Declarant Rights.** The Declarant reserves the rights:

(a) Until the marketing and sale of all Units is completed, to locate in the Common Elements and Units of the Property, even though not depicted on the Plat and Plans, and grant and reserve easements and rights-of-way for the installation, maintenance, repair, replacement and inspection of public utility lines, wires, pipes, conduits and facilities servicing or burdening the Property including, but not limited to, water, electric, telephone, cable television, fuel, sewer,

and surface and subsurface drainage, and to grant parking and access easements over land located on the eastern side of Portland Farms Road, provided however that no such easement shall be effective until of record, that no such easements may be granted through Units sold by Declarant to third party who is not a successor Declarant and that the Common Elements shall be promptly restored upon installation and repair;

(b) Until the marketing and sale of all Units is completed, to connect with and make use of utility lines, wires, pipes and conduits located on the Property for construction and sales purposes, provided that the Declarant shall be responsible for the cost of services so used;

(c) Until the marketing and sale of all Units is completed, to use the Common Elements for ingress and egress, for the reconstruction, repair, renovation, replacement or correction of the Units or Common Elements including without limitation the movement and temporary storage of construction materials and equipment, the right of vehicular and pedestrian access, the right to park motor vehicles, and for the installation of signs and lighting for sales and promotional purposes;

(d) Until the marketing and sale of all Units is completed, to operate and relocate sales, leasing and management offices; permit prospective tenants, purchasers, lenders, appraisers, and others to visit the offices and use the Common Elements and use unsold Units for sales, leasing and display purposes;

(e) Appoint and remove members of the Board of Directors and Officers of the Association in accordance with Section 6.2 of this Declaration;

(f) Until the marketing and sale of all Units is completed, to approve of the creation of easements between adjoining Units or between a Unit and an adjoining limited common element in accordance with Section 4.4 of the Declaration in accordance with the standards set forth therein;

(g) Until the expiration of any applicable warranty established by law or agreement, the Declarant, its contractors, agents and employees shall have the right of entry into a Unit to perform warranty-related work, whether for the benefit of than Unit or any other Unit;

(h) Those rights established under Section 4.5 of the Declaration;

(i) Those rights established under the Condominium Act.

**§5.2 Assignment.** All or any part of the rights, powers or reservations of Declarant contained in this Declaration may be assigned by Declarant to any person or entity which will assume the duties and obligations of Declarant related to the rights, powers or reservations assigned. Upon the recording of an assignment of such rights, powers or reservations pursuant to which the assignee assumes the duties and obligations of Declarant related thereto, the assignee shall become a successor Declarant as to such rights, powers or reservations assigned and shall have the same rights and powers and be subject to the same duties and obligations as are given to and assumed by Declarant herein, and Declarant shall be relieved from all liability with respect to the rights, powers, reservations, duties and obligations hereunder which are assumed by the assignee.

### **§5.3 Amendment, Waiver, Etc.**

ARTICLE 5 and Section 4.5 shall not be amended or waived without the consent of the Declarant duly recorded in said Registry of Deeds.

The rights and benefits of ARTICLE 5 and all other rights of Declarant set forth in this Declaration, the Bylaws or otherwise, as amended from time to time, may be transferred in whole or part by recorded instrument specifically referring to this Section and executed by Declarant and its successor or assignee.

The Declarant shall have the right to waive the Development and Special Declarant Rights reserved hereunder in whole or part by an written instrument provided that such waiver shall only be effective upon recording in said Registry of Deeds and such waiver shall be subject to the limitations of Section 1603-103(d) of the Act regarding Declarant Control of the Association.

## **ARTICLE 6 CONDOMINIUM ASSOCIATION**

**§6.1 The Association.** The term "Association" means the association of the Unit Owners organized pursuant to Section 1603-101 of the Condominium Act as a nonprofit corporation under the Maine Non Profit Corporation Act. The membership of the Association at all times shall consist exclusively of all Unit Owners, or in the event of a termination of the Condominium as provided in the Condominium Act, of all former Unit Owners entitled to distributions of proceeds, or their heirs, successors or assigns. Persons having an interest in a Unit solely as security for an obligation shall not be considered members.

Each Unit Owner shall automatically become a member of the Association, which membership shall continue as long as she or he continues as a Unit Owner, and upon the termination of the interest in the Condominium, his or her membership and any interest in the assets of the Association shall be automatically transferred and inure to the next Unit Owner or Owners succeeding him in interest.

The Association shall have all the powers granted pursuant to its Bylaws, the Condominium Act and the Maine Non Profit Corporation Act.

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

During the Declarant Control Period, the Board of Directors shall be composed of three (3) natural persons. The term "Declarant Control Period" means the period which extends from the date of the recording of this Declaration until the earlier of (a) five (5) years following the conveyance of the first Unit to a Purchaser or (b) sixty (60) days after the conveyance of seventy-five percent (75%) of the Units, other than a conveyance to a successor Declarant. The

Declarant shall have the right during the Declarant Control Period to appoint, remove and replace from time to time any and all members of the Board of Directors, and officers of the Association, without the necessity of obtaining resignations. The directors appointed by the Declarant need not be Unit Owners.

Following the expiration of Declarant Control Period, the affairs of the Association shall be governed by a Board of Directors composed of no less than three (3) and no more than seven (7) natural persons, the exact number of which shall be established by the Bylaws of the Association. A majority of the members at the Board of Directors shall be Unit Owners or spouses of Unit Owners or in the case of a Unit Owner which is a corporation, limited liability company, partnership, trust or estate or other legal entity, a designated agent thereof.

The transition from Declarant-appointed members of the Board of Directors to the Unit Owners generally shall occur no later than the earlier of (a) sixty (60) days after the conveyance of 75% of the Units to purchasers other than a successor Declarant, or (b) five (5) years following conveyance of the first Unit to a Purchaser, or (c) at such earlier date as the Declarant in its sole discretion shall specify. Prior to the expiration of the Declarant Control Period, a transition meeting of the Association and a transition election shall be held at which all of the members of the Board of Directors and officers of the Association appointed by the Declarant shall resign, and the Unit Owners, including the Declarant if the Declarant owns any Units, shall thereupon elect a Board of Directors to act in the place and stead of those resigning.

By written notice duly recorded in said Registry of Deeds specifically referring to this Section, the Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors prior to the termination of the Declarant Control Period, but in that event the Declarant may require, for the duration of the Declarant Control Period that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before such action can become effective.

**§6.3 Bylaws.** The initial bylaws of the Association are attached hereto as **Exhibit E**.

**§6.4 Rules and Regulations.** The Board of Directors shall have the power from time to time to adopt, amend and enforce Rules and Regulations relative to the operation, use and occupancy of the Units and the Common Elements, consistent with the provisions of this Declaration, Bylaws and the Condominium Act including, but not limited to, the appointment of such committees and the enactment and enforcement of such enforcement procedures and penalties for violations as the Board of Directors shall deem appropriate. Any such Rules and Regulations shall be adopted or amended, by means of appropriate resolutions duly approved by the Board of Directors. Notice of such Rules and Regulations and any amendment thereto shall be sent to each Owner or occupant of a Unit promptly after the adoption thereof, and shall bind all Owners, their heirs and assigns, any all tenants, invitees, guests and other persons entering upon the Property.

## **ARTICLE 7 COMMON CHARGES AND ASSESSMENTS**

**§7.1 Common Expenses and Service Charges.** The term “Common Expenses” include, but are not limited to, such costs and expenses established by the Condominium Act, by this Declaration, by the Bylaws, or by the Board of Directors in connection with the administration, operation, maintenance and repair of the Condominium and the Property and the rendering to Unit Owners of all related services.

The term "Limited Common Expenses" mean the Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element, which shall be assessed against the Units to which the appurtenant Limited Common Element is assigned in proportion to the relative Common Expense Liabilities of such Units, as the Board of Directors may periodically establish and determine. If all Units have similar Limited Common Elements, then all Units shall pay such expenses in accordance with their Common Expense Liabilities.

The term “Service Charges” shall mean charges for services benefiting fewer than all the Units, which area assessed exclusively against the Unit or Units benefited in accordance with the use of such services as permitted by Section 1603-115(c) of the Condominium Act and the Bylaws.

All expenses for the administration, operation, maintenance and repair of the condominium and the Property shall be borne by the Unit Owners, by means of assessments as set forth herein. In accordance with the requirements of Town of Scarborough Planning Board, the Town of Scarborough shall have no responsibility whatsoever to provide services in connection with Clearview Drive, trash collection and the lighting.

**§7.2 Allocation and Payment of Assessments of Common Expenses.** The total amount of Common Expenses shall be assessed to the Units as follows.

(a) The Common Expenses that are not otherwise assessed as Limited Common Expenses or Service Charges shall be assessed against all the Units in proportion to the relative Common Expense Liabilities as set forth herein.

(b) If the Board of Directors determine that a Limited Common Expense benefits more than a single Unit in a manner which is not uniform among all Units, then such Limited Common Expense shall be assessed solely against the benefited Units benefited in proportion to the relative Common Expense liabilities of such Units as between themselves, all as the Board of Directors may periodically determine. If a Limited Common Expense only benefits a single Unit, that Limited Common Expense shall be assessed solely against the Unit benefited, as the Board of Directors shall determine.

(c) For electricity, telephone and cable television services, and, if separately metered, water and sewer, each Unit Owner shall promptly pay the bills for such services consumed or used in his or her Unit. Any electricity serving the Common Elements, and water and sewer if not separately metered shall be assessed to each Unit as a Common Expense, subject of the right of the Association to submeter and then separately charge for water and sewer services supplied to the Units as Service Charges.

(d) Each Unit is subject to a lien in favor of the Association for the unpaid Common Expenses, Limited Common Expenses, Service Charges and penalties, fines, interest and costs of

collection including reasonable attorneys' fees, all as provided in the Condominium Act, the Declaration and the Bylaws.

(e) In any event no later than 60 days after the first Unit is conveyed, all Units owners including the Declarant shall commence paying monthly common charges to the Association for all Units which have been legally created and submitted to the Condominium.

**§7.3 Service Charges.** The Association shall have the express power to separately assess a Unit and the owner thereof as a "Service Charge" for services rendered to that Unit. Such Service Charge assessments shall constitute a lien on the Unit with the same status as a lien for Common Expense liability assessments under the Condominium Act, this Declaration and Bylaws, which lien for service charges may be foreclosed in like manner as a mortgage on real estate. The recordation of this Declaration constitutes record notice of the lien. Service Charges shall include without limitation:

(i) If a Unit Owner, members of his family, guests or tenants requests the Association or its agent to perform repair and maintenance work on his Unit, or damages the Common Elements or safety systems or fails to perform maintenance and repair work required, the expense thereof as determined by the Board of Directors or its designee may be assessed as a Service Charge.

(ii) Fees, if any, which may be established by the Board of Directors for the use and maintenance of water, sewer and/or other utility services and equipment, and gas if provided by a central system and not billed directly to the Unit by the utility or other supplier. Likewise, water and sewage services and gas if supplied to each Unit may be measured separately by such methods and systems established by the Board of Directors in their discretion. The expense of public utility charges for water and sewer services, for gas if provided by an on site central system and not by the utility, and of associated equipment maintenance and repair and reasonable reserve allowances may also be calculated by the Board of Directors in their discretion and assessed monthly as a service charge to each Unit. For budgeting and working capital purposes, the Board of Directors may charge Unit Owners monthly in advance for such expenses based on its reasonable estimate thereof, subject, however, to such periodic reconciliation as the Board in its discretion may deem appropriate based on the measuring system adopted by the Board. At the election of the Board of Directors, the expense of capital improvements, major repairs or renovations to the water and sewer supply systems may be assessed either as a common expense or as a service charge. The expense of water and sewer services for the Common Elements may be assessed as a common expense or as a service charge at the election of the Board of Directors.

(iii) Insurance premiums for permanent improvements to Units installed by Unit Owners and insured by the request of the Unit Owner with the Association's hazard insurance carrier.

**§7.4 Payment of and Lien for Assessments, Service Charges, Fines, Etc.**

(a) Each Unit Owner shall pay to the Association or its designee the following amounts:  
(i) on the first day of each month or on such other date that the Board of Directors may

determine, one-twelfth (1/12<sup>th</sup>) of the common charges for Common Expenses including Limited Common Expenses, and Service Charges and revised Common Expenses including revised Limited Common Expenses, assessed against his Unit; (ii) all special assessments and any other sums duly levied against the Unit pursuant to this Declaration, the Bylaws, the Rules and Regulations or the Condominium Act which are assessed against Unit Owners; and (iii) fines, penalties and fees as provided by this Declaration, the Bylaws or the Condominium Act, all interest and late charges and legal fees and other costs of collection thereof.

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

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

Such lien is prior to all other liens and encumbrances on a Unit except (a) liens and encumbrances recorded before the recordation of this Declaration, (b) a first priority mortgage recorded before or after the date on which the assessment sought to be enforced becomes delinquent, and (c) statutory liens for real estate taxes and other governmental assessments or charges against the Units.

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

(c) The lien for assessments described in subparagraph (b) may be enforced and foreclosed by the Association in like manner as a mortgage on real estate, as provided in the Condominium Act, or by any other means presently or hereafter provided by law or in equity. A suit to recover a money judgment for unpaid assessments, interest, fines, penalties, and costs of collection may be maintained against the Unit Owner personally without foreclosing or waiving the lien securing such assessments, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

(d) Upon a default in the payment of any amount due the Association or a violation of any provision of the Condominium Act, this Declaration, the Bylaws, or the Rules and Regulations of the Association, which violation continues after reasonable notice from the Association to the Unit Owner, then that Unit and its occupants may be excluded from the use and enjoyment of any and all of the Common Elements not essential to access to the Unit, in addition to all other remedies available to the Board of Directors.

**§7.5 Liability.** Multiple owners of a Unit shall each be jointly and severally liable for all Common Expenses, Limited Common Expenses, special assessments, Service Charges, interest, fees, penalties and costs of collection. A grantee shall not be prevented from exercising any right to recover from the grantor such amounts paid for those assessments, common charges, etc. arising prior to the conveyance. A grantee or proposed purchaser for a Unit under a purchase and sale contract may obtain a statement from the Association setting forth the amount of unpaid common charges, assessments and service charges, late fees, interest and costs of collection against the Unit and such other items required by the Condominium Act, upon payment of such fee as may be established from time to time by the Board of Directors,. The grantee shall not be liable for, and the Unit conveyed shall not be subject to a lien for any unpaid amounts due from the grantor before the statement date in excess of the amount set forth in the statement except interest, late fees and costs of collection accruing thereafter.

**§7.6 Budget.** The proposed budget adopted by the Association's Board of Directors shall be adopted unless rejected by a two-thirds (2/3) vote of all Unit Owners.

**§7.7 Working Capital Fund.** Each Unit purchaser at the initial transfer of title by the Declarant to the purchaser shall pay the Association an amount equal to two (2) months common charges to be used in accordance with such purposes approved by the Board of Directors from time to time, including without limitation, to cover any operating deficit, to meet unfunded expenditures or to purchase any additional equipment or services. Such fund shall be owned by the Association and held at a Maine financial institution insured by the Federal Deposit Insurance Corporation or other equivalent federally sponsored insurance. No purchaser shall be entitled to a refund of such monies from the Association upon any subsequent transfer of a Unit.

## **ARTICLE 8 MAINTENANCE AND USE**

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

**§8.2 Maintenance of Common Elements.** Generally the Association shall be responsible for the maintenance, repair and replacement of the Common Elements, including but not limited to snowplowing, street lighting and trash pickup (unless provided by the municipality), all as determined by the Board of Directors. If such repair or replacement of the Common Elements shall be necessitated by the negligence, neglect or misconduct of fewer than all of the Unit Owners, such cost shall be assessed to the Unit Owners responsible as a Service Charge.

**§8.3 Maintenance of Limited Common Elements.** Generally the Association shall maintain, repair and replace the Limited Common Elements, all as determined by the Board of Directors.

The Association may assess the costs of maintenance, repair and replacement of the Limited Common Expenses applicable to particular Unit(s) to such Unit(s) if the item giving rise to the expense shall be uniquely for the benefit of such Unit(s) only. If such repair or replacement of the Limited Common Elements shall be necessitated by the negligence, neglect or misconduct of fewer than all of the Unit Owners, in which case such cost shall be assessed to the Unit Owners responsible as a Service Charge.

Provided however that each Unit Owner shall maintain the interior and exterior glass surfaces of door and window glass, but the Association may elect to maintain, repair and wash exterior windows and doors, and may assess the Units therefore as a Service Charge or as a part of the general Common Charges.

**§8.4 Maintenance of Unit/Repair Responsibility.** Each Unit Owner shall keep and maintain her or his Unit and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition, whether such maintenance and repair shall be structural or non-structural. Each Unit Owner shall do all redecorating, painting and varnishing which at any time may be necessary to maintain the good appearance and condition of such Unit. No Unit Owner shall deposit any trash, dirt, debris or other substance from the Unit onto the Common Elements or Limited Common Elements, except in designated trash disposal areas.

The Board of Directors may adopt Rules and Regulations requiring the Unit Owners periodically to replace water heaters and washing machine hoses or which may limit potential casualties and damage to the Units and Common Elements.

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

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

**§8.5 Liability of Owner.** Each Unit Owner shall be liable, and the Association shall have a lien against his Unit for, all costs of maintaining, repairing or replacing any portion of another Unit or of the Common Elements including Limited Common Elements to the extent that such costs are caused by or attributable to such Unit Owner's act, neglect or carelessness or by that of such Unit Owner's guests, employees, agents, lessees, invitees, or their pets. The Association shall have the right to repair any damage so caused, to cure or correct the cause of the damage and to maintain or replace such damaged Unit or Common Element to the extent the Association deems necessary and appropriate. Such liability shall include any increase in insurance rates occasioned by uses, misuse, occupancy, or abandonment of any Unit or its

appurtenances. Nothing herein contained, however, shall be construed to modify any waiver by insurance companies of rights or subrogation against such Unit Owner.

**§8.6 Use and Occupancy Restrictions on Units.** Each Unit shall be occupied and used subject to the following restrictions:

(a) *Single Family Residential Use.* No Unit shall be used or occupied for any purpose other than for single family residential purposes, provided, however, that an occupant of a Unit may conduct business activities within the confines of such Unit so long as no signs are displayed, the Unit is not used for meeting with customers or third parties, and there is no noticeable increase in deliveries. Provided however that nothing in this Declaration or the Bylaws shall be construed to prohibit the Declarant from exercising any easements and Special Declarant Rights reserved by the Declarant, including without limitation promotional, marketing or display purposes, sales of Units and for customer service purposes, or from leasing Units owned by Declarant as provided in this Declaration.

(b) *Insurance.* No activities shall be carried on or materials used or kept in any Unit or any in the Common Elements that will increase the rate of insurance for the Property, or any part thereof, without the prior written consent of the Board of Directors. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on the property, or any part thereof, or which would be in violation of any law, regulation or administrative ruling. No waste may be committed on or to the Common Elements.

(c) *Nuisance/Hazard.* No Unit shall be used so as to create a nuisance or an unreasonable interference with the peaceful possession or proper use of any other Unit or the Common Elements.

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

(d) *Pets and Animals.* Except for household pets permitted below, the maintenance, keeping, boarding and/or raising of animals, including without limitation laboratory animals, livestock, poultry or reptiles of any kind, regardless of number, is prohibited within any Unit or upon the Common Elements. A Unit Owner may keep within such Unit one (1) dog (two dogs if both dogs are under 25 pounds), two cats, and a reasonable number of other ordinary household pets in a Unit, subject to such additional Rules and Regulations as established from time to time by the Board of Directors.

In any event all pets and animals shall be well behaved and shall be restrained so as not to become noisome, bothersome or offensive to other persons, as determined by the Board of Directors. No dogs, cats or other pets shall be permitted outside of a Unit except on a leash attended by a responsible person. Pet owners shall promptly clean up the droppings left by their pets.

The Association shall have the power to further regulate the keeping of pets and animals under the Bylaws or Rules and Regulations of the Association as promulgated or amended from time to time. Upon notice and opportunity to be heard, the Board of Directors may expel any offending pets and animals from the Property.

(f) *Fire Safety and Noise Control.* No person shall impair nor remove the any acoustical, sound-deadening, or fire-resistant material from the walls, floors or ceilings of a Unit without replacing the same with materials of equal or greater such qualities.

(g) *Trash.* Trash, garbage and other waste shall be kept only in sanitary containers and shall be disposed of in such manner as may be prescribed in Rules and Regulations established by the Board of Directors. No articles of personal property belonging to any Unit Owner shall be stored in any portion of the Common Elements.

(h) *Electrical.* No Unit Owner shall overload the electrical wiring in the Condominium. No Unit Owner shall operate any machinery, appliances, accessories or equipment in such a manner as to cause, in the judgment of the Board of Directors, as appropriate, an unreasonable disturbance or make any alterations, repairs or modifications to or connection with the electrical or plumbing systems without the prior written consent of the Board of Directors, as appropriate.

Additional major appliances may not be installed in a Unit without the prior written consent of the Board of Directors.

(i) *Governmental Requirements.* All Unit Owners, their families, guests and invitees shall comply with and conform to all applicable laws and regulations of the State of Maine, and all ordinances, rules and regulations of the Town of Scarborough. The violating Unit Owner shall hold the Association and other Unit Owners harmless from all fines, penalties, costs and prosecutions for the violation thereof or noncompliance therewith.

**§8.7 Use of Common Elements.** Subject to this Declaration, the Bylaws or by the Rules and Regulations adopted from time to time by the Board of Directors pursuant to its powers, each Unit Owner, occupant, tenant, guest, visitor and invitee may use the Common Elements in common with all other Unit Owners and their occupants, tenants, guests, visitors and invitees, in accordance with the single family residential purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other Unit Owners, upon the following terms:

(a) *Motor Vehicles and Parking.* Only passenger vehicles and trucks with a gross vehicle weight of less than 8,000 pounds may be kept or stored on the Property, and such vehicles must be in operable condition and fully licensed for operation on public highways. No motorized vehicles shall be used on the Property, except within the parking areas and on the streets as shown on the Condominium Plat. The Rules and Regulations may further restrict the vehicles permitted on the property, including the number of vehicles per Unit.

No inoperable vehicles, nor any boats, recreational vehicles, snowmobiles, terrain vehicles or other vehicles or recreational equipment, trailers, or similar items may be kept or parked on the Property except within a fully enclosed garage forming a part of the Limited Common

Elements appurtenant to a Unit. No snowmobiles, all terrain vehicles or similar items may be operated on the Property.

Motor vehicles may be parked only in the parking and garage area designated as a Limited Common Elements and in those portions of the Common Elements designated from time to time by the Board of Directors for parking. No parking shall be permitted in areas posted against parking by the Board of Directors, and no overnight parking shall be permitted in Clearview Drive. No parking is permitted in the turn around areas. Other than the Limited Common Element garage and parking space appurtenant to each Unit or as the Board of Directors may permit from time to time, any Common Elements designated as spaces for general parking shall be used by the Unit Owners on "first come, first served" basis. No unattended vehicle shall be left in such a manner as to impede the passage of traffic or to impair access to driveway or parking areas.

The Board of Directors may adopt such Rules and Regulations as it deems necessary or appropriate to further regulate parking.

(b) *Exterior Alterations.* Except with the written consent of the Board of Directors or as otherwise expressly provided in this Declaration, no person shall (i) construct or maintain any antennas, dishes, wires, cables, fences, steps, signs, canopies, clotheslines or other structures, nor (ii) plant, trim, cut or remove vegetation, trees or shrubs, nor (iii) materially alter the grading or landscaping, nor (iv) do any other thing which affects the appearance from the exterior of the Common Elements or Limited Common Elements.

The Board of Directors may in its discretion designate areas in which Unit Owners may plant flowers and annuals based on plans specifically approved by the Board and subject to the obligation of the Unit Owner to maintain such items in good condition and repair, failing which they may be removed by the Association at the Unit Owner's expense.

(c) *Signs.* No signs of any character shall be erected, posted or displayed from any Unit, Common Element or Limited Common Element without the prior written approval of the Board of Directors, except for such signs as may be posted by the Declarant for the promotional or marketing purposes as permitted herein or as permitted by the Condominium Documents. The Board of Directors shall have sole authority to erect signs authorized by the Town of Scarborough. The Board of Directors may also erect or authorize directional and identifying sign(s) listing the name and location of each occupant of the Units.

(d) *Obstruction/Storage.* No Unit Owner shall obstruct any of the Common Elements nor shall any Unit Owner place or store anything on any of the Common Elements except those areas designated for parking by the Condominium Documents or as permitted by the Board of Directors.

(e) *Responsibility.* Neither the Board of Directors, the Association, any Unit Owner, nor the Declarant shall be considered a bailee of any personal property stored on the Common Elements (including vehicles parked on the Common Elements), whether or not exclusive possession of the particular area is given to a Unit Owner for storage or parking purposes. None of them shall be responsible for the security of such personal property or for any loss or damage

thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

**§8.8 Leasing.** The Bylaws may restrict and regulate leasing of Units.

The Declarant shall have the right to operate any Units (even if not then created as Units) owned by the Declarant as a rental property, and may establish and maintain offices, signs and other accouterments normally used in the operation of rental properties in the Declarant's discretion. Such rental operations shall be for the benefit of the Declarant; neither the Association nor any Unit Owner shall have any interest or right in the profits and losses from such operations.

## **ARTICLE 9 EASEMENTS**

**§9.1 Utilities, Pipes and Conduits.** Each Owner shall have an easement, in common with all other Unit Owners, to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Easements serving his Unit and located in any of the other Units. Each Unit shall be subject to an easement in favor of other Unit Owners to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit. The Association shall have the right to grant to third parties additional permits, licenses and easements over and through the Common Elements for utilities, ways, and other purposes reasonably necessary or useful for the proper maintenance and operation of the Condominium.

**§9.2 Access.** Subject to the terms of this Declaration, the Bylaws and the Rules and Regulations, each Unit Owner shall have an easement in common with all other Unit Owners to use the Common Elements as a means of access to and from his Unit.

**§9.3 Association and Board of Directors Access.** The Association and its officers and directors and such persons as may be authorized by the Board of Directors shall have the right of access to each Unit, as provided in Section 1603-107(a) of the Condominium Act for the inspection, maintenance, repair or replacement of the Common Elements and Limited Common Elements located in the Unit or accessible from the Unit or for making any addition or improvements thereto; or to make repairs to any Unit, the Common Elements or the Limited Common Elements if such repairs are reasonably necessary for public safety or to prevent damage to any other Unit, the Common Elements or the Limited Common Elements; or to abate any violation of law, orders, rules or regulations of the Association or of any governmental authorities having jurisdiction thereof. In case of an emergency, such right of entry shall be immediate whether or not the Unit Owner is present at the time. Upon request of the Association, each Unit Owner shall provide the Association with a copy of each key to the Unit.

**§9.4 Encroachments.** Each Unit and the Common Elements are subject to an easement for structural and lateral support in favor of every other Unit. If any portion of the Common Elements or Limited Common Elements hereafter encroach upon any Unit, or if any Unit hereafter encroaches upon any other Unit or upon any portion of the Common Elements or Limited Common Elements, as a result of settling or shifting of any building in which they are

located, other than as a result of the willful or negligent act or omission of the owner of the encroaching Unit or of the Association in the case of encroachments by the Common Elements or Limited Common Elements, then a valid easement for the encroachment and for the maintenance of the same shall exist. In the event that a building is partially destroyed as a result of fire or other casualty or as a result of a taking by eminent domain or by deed in lieu of condemnation and is subsequently rebuilt, encroachments due to such rebuilding shall be permitted, and valid easements appurtenant thereto shall exist.

**§9.5 Ancillary Easements through Common Elements.** The Common Elements (including, but not limited to, the Limited Common Elements) adjacent to a Unit are subject to the following easements in favor of the adjacent Unit:

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

(ii) For the installation, repair, maintenance, use, removal and/or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Elements adjacent to such Unit; provided that the installation, repair maintenance, use, removal or replacement of any part of the Common Elements, adversely affect either the thermal, fire safety or acoustical character of the building or impair or structurally weaken the building.

(iii) For driving and removing nails, screws, bolts and other attachment devices into the Unit side surface of the studs which support the sheet rock or plaster perimeter walls bounding the Unit, the bottom surface of joists above the Unit and the top surface of the floor joists below the floor of a Unit to the extent such nails, screws, bolts and other attachment devices may encroach into a part of a Common Element adjacent to such Unit; provided that any such action will not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal, safety, or acoustical character of the buildings or impair or structurally weaken the buildings.

## **ARTICLE 10 RIGHTS OF MORTGAGE LENDERS ON UNITS**

**§10.1 Right to Mortgage.** Each Unit Owner shall have the right to mortgage or encumber his own respective Unit together with its appurtenant Allocated Interests. Except as provided by Section 1603-112 of the Condominium Act, a Unit Owner may not mortgage or encumber the Common Elements in any manner except as a component of the Allocated Interests appurtenant to his Unit.

**§10.2 Identification of Mortgagee.** A Unit Owner who mortgages his Unit shall notify the Board of Directors in writing of the name and address of his Mortgagee(s).

**§10.3 Mortgage Foreclosure and Dispositions.** Any holder of a first mortgage covering a Unit which obtains title to the Unit pursuant to a foreclosure or other exercise of the remedies provided in the Mortgage or through deed in lieu of foreclosure after written notice of default which deed identifies the circumstances classifying it as such a deed shall take title to the Unit with its appurtenant Allocated Interests, free of any claims for unpaid assessments for Common Expenses, Service Charges, late fees, interest and costs levied against such Unit which accrued prior to the acquisition of title to such Unit by the Mortgagee, other than the proportionate share of the Common Expenses which become due and payable from and after the date on which the Mortgagee shall acquire title to the Unit through a completed foreclosure or deed in lieu of foreclosure.

In the event the Association adopts any right of first refusal or purchase option arising in the event of the sale or transfer of a Unit, it shall not impair the right of an institutional mortgage lender to foreclose its mortgage, to accept a deed in lieu of foreclosure after written notice of default which deed identifies the circumstances classifying it as such a deed, or to dispose or lease a Unit so acquired.

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

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

- i. Default in the payment of Common Charges, Assessments, Service Charges, or other amounts due the Association which continues for Sixty (60) days or as required by the Condominium Act;
- ii. Default or violation of the Condominium Documents, or any proceedings by the Association relating thereto;
- iii. The expiration, cancellation or material modification of insurance required to be maintained under the Declaration or Bylaws of the Association;
- iv. A material amendment to the Declaration requiring the consent of Eligible Mortgage Holders;
- v. Termination of the Condominium pursuant to Section 1602-118 of the Condominium Act;

- vi. Change in the Allocated Interests of a Unit, voting rights, a change in Unit boundaries or the subdivision of a Unit;
- vii. The merger or consolidation of the Condominium with another condominium;
- viii. The conveyance or subjection to a security interest of any portion of the Common Elements; and
- ix. The lapse, cancellation or material modification of any insurance policy maintained by the Association or any use of any hazard insurance proceeds other than for repair or restoration of the Property.
- x. Such other events specified in the Condominium Act.

If in said request to the Association forwarded by an Eligible Mortgage Holder the mortgage is identified as being subject to the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans' Administration, the Federal Housing Administration or other recognized institutional mortgage programs, then the Association shall maintain such hazard and other insurance policies and coverage required under said mortgage programs and identified in said notice from the institutional mortgage holder, to the extent such insurance is available to the Association.

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

- i. Voting rights in the Association;
- ii. Change in percentage liability for common expenses, assessment liens for common expenses, priority of assessment liens, or the subordination of assessment liens, or increases in the assessments of more than 25% over the prior year;
- iii. Reduction in reserves for maintenance, repair and replacement of Common Elements;
- iv. Responsibility for maintenance and repairs;
- v. Reallocation of pro rata interests in the Common Elements, the Limited Common Element or rights to their use;
- vi. Alteration of the definitions of the boundaries of any Unit, including the partition or subdivision of a Unit;
- vii. Convertibility of Units into Common Elements or vice versa;

- viii. Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- ix. Hazard insurance or fidelity bond requirements;
- x. Imposition of any restrictions on the leasing of Units;
- xi. Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- xii. A decision by the Association to establish self-management after more than 50 Units have been created when professional management had been required previously by an Eligible Mortgage Holder or by the Condominium Declaration or the Bylaws;
- xiii. Restoration or repair of the Property (after damage or destruction, or partial taking by eminent domain or condemnation) in a manner other than that specified in the Declaration;
- xiv. Any action to terminate the Condominium after substantial damage destruction or condemnation occurs;
- xv. Any provisions of this Article and any other provision of this Declaration expressly benefits mortgage holders, insurers or guarantors; or
- xvi. Any provisions of this Article.

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

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

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

**§10.7 Records.** An Eligible Mortgage Holder may examine the books, records and accounts of the Association at reasonable times. The Association shall maintain current copies of this Declaration, the Association's articles of incorporation, Bylaws, and other Rules and Regulations concerning the Condominium as well as its own books, records, and financial statements available for inspection by Unit Owners or by any Eligible Mortgage Holder, insurers, and guarantors of first mortgages that are secured by Units available during normal business hours. Upon written request, any Eligible Mortgage Holder may obtain an audited statement of the Association's fiscal affairs prepared by an independent certified public

accountant once the Condominium has been established for a full fiscal year, which preparation shall be prepared at the Eligible Mortgage Holder's expense.

## **ARTICLE 11 INSURANCE**

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

**§11.2 Property and Casualty Insurance for Units and Common Elements.** The Association shall obtain and maintain in effect an "all-risk" fire and casualty insurance policy covering the Property with extended coverage, vandalism, malicious mischief, windstorm, debris removal, cost of demolition and water damage endorsements, issued by an insurance company authorized to do business in the State of Maine (which company shall also meet the ratings requirements of the Federal National Mortgage Association), insuring as a single entity the entire Property including (i) the Common Elements, (ii) the Limited Common Elements, (iii) Units, and (iv) the fixtures, supplies and common personal property belonging to the Association, *excepting* the land, foundations, excavations, and other similar items customarily excluded from property insurance policies and also *excepting* furniture, furnishings or other personal property supplied or installed by Unit Owners. The policy shall cover the interests of and name as insureds the Association, the Board of Directors, and all Unit Owners and their Mortgagees as their insurable interests may appear.

Such blanket or master insurance policy shall be in an amount equal to one hundred percent (100%) of the then current full replacement cost of the insured Property (exclusive of the land, excavations, foundations and other similar items customarily excluded from such coverage), without deduction for depreciation, together with coverage for the payment of common expenses with respect to damaged Units during the period of reconstruction. Such insurance policy may, at the option of the Board of Directors, contain such deductible as the Board of Directors shall reasonably deem appropriate but not to exceed the lesser of \$10,000 or one (1) percent of the policy's face amount. Unless otherwise established by the Board of Directors from time to time, a Unit Owner shall pay the expense of repair of damage to his Unit in the initial deductible amount of \$250 (as such greater amount as may be revised by the Rules and Regulations adopted by the Board of Directors from time to time) not covered by the insurance; the Association shall not be responsible for the costs of repair of damage to the Unit in the

amount of such insurance deductible for which the Owner is responsible. Such casualty insurance policy shall also include the following provisions:

(i) The following endorsements or their equivalent: (a) "no control," meaning that coverage shall not be prejudiced by any act or neglect of any occupant or Unit Owner or their agents, when such act or neglect is not within the control of the insured, or the Unit Owners collectively, nor by any failure of the insured, or the Unit Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or the Unit Owners collectively, have no control; (b) "Construction Code Endorsement" or "increased cost of construction," (c) "agreed amount" or elimination of co-insurance clause; and (d) "inflation guard," when it can be obtained.

(ii) That any "no other insurance" clause shall expressly exclude individual Unit Owners' policies from its operation, so that the physical damage policy purchased by the Board of Directors shall be deemed primary coverage and any individual Unit Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees;

(iii) The recognition of any Insurance Trust Agreement whereby the Board of Directors may designate in writing an Insurance Trustee to hold any insurance proceeds in trust for disbursement, as provided in Section 11.3 below; and

(iv) A standard "mortgagee clause" which shall: (a) provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any Unit, in their respective order and preference, whether or not named therein; (b) provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Association or owners or any persons under any of them; and (c) waive any provision invalidating such mortgagee clauses by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, and requirement that the mortgagee pay any premium thereon, and any contribution clause.

**§11.3 Casualty Losses, Adjustment and Payment; Insurance Trustee.** Any loss covered by the insurance policy described in Section 11.2 above shall be adjusted with the Association acting through its Board of Directors, but the insurance proceeds shall be payable to the Insurance Trustee designated for that purpose, if any, as provided in the Condominium Act and otherwise to the Association, and not to any Mortgagee.

The Insurance Trustee or the Association as applicable shall hold any insurance proceeds in trust for Unit Owners, Mortgagees and other lien holders as their interests may appear. The Board of Directors shall cause the Insurance Trustee or the Association to obtain a surety bond in 100% of the amount of the insurance proceeds for the faithful performance of the duties as insurance trustee before it shall be entitled to receive such proceeds. Subject to the provisions of this Article, the Bylaws and Section 1603-113(e) of the Condominium Act, the proceeds shall be disbursed first for the repair or restoration of the damage to the Property. Unit Owners, Mortgagees and other lien holders are not entitled to receive payment of any portion of the proceeds, unless either (i) there is a surplus of proceeds after the damaged Common Elements

and Units have been repaired or restored, or (ii) the decision has been made not to repair or restore the damage as provided in Section 1603-113(h) of the Condominium Act, or (iii) the Condominium is terminated in whole or part.

**§11.4 Liability Insurance.** The Board of Directors shall obtain and maintain, as a Common Expense, comprehensive general public liability insurance (including medical payments insurance) and property damage insurance in such limits as the Board may from time to time determine, insuring each Board of Directors member, the managing agent, each Unit Owner and the Declarant against any liability to the public or to the Unit Owners (and their invitees, agents and employees) covering all occurrences commonly insured against for death, bodily injury or property damage, arising out of the maintenance, ownership or use of the Common Elements, and for any legal liability resulting from suits or actions related to employment contracts to which the Association is a party. Such insurance shall be issued on a comprehensive liability basis and shall contain: (a) a cross liability endorsement, under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured; (b) hired and non-owned vehicle coverage; (c) a "severability of interest" endorsement, which shall preclude the insurer from denying liability to a Unit Owner because of negligent acts of the Association or of another Unit Owner; and (d) a broad form liability extension endorsement including "personal injury," contractual liability, and other coverage commonly included in such broad form endorsement. The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than one million dollars (\$1,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence.

**§11.5 Additional Required Provisions.** All insurance policies required to be carried by the Association under this Article shall in addition contain the following provisions or features:

- i. The insurer waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the managing agent or the Unit Owners, and their respective agents, employees, guests and, in the case of the Unit Owners, the members of their households;
- ii. The Declarant, so long as the Declarant shall own any Unit, shall be protected by all such policies as a Unit Owner.
- iii. Each Unit Owner is an insured person under the policy with respect to liability arising out of the ownership of an undivided interest in the Common Elements or membership in the Association;
- iv. The insurer waives its right to subrogation under the policy against any Unit Owner or members of his household;
- v. No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and
- vi. If at the time of a loss under the Association's policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

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

- (i) To the extent reasonably available, "directors and officers" liability insurance, to satisfy the indemnification obligations of the Association;
- (ii) Workers' compensation insurance, if and to the extent necessary to meet the requirements of law;
- (iii) Flood insurance if any or all of the Property is located in a special flood hazard area equal to the greater of 100% of the insurable value of the Property or the maximum coverage available under the appropriate national Flood Insurance Administration program. A blanket or master policy shall be obtained which includes a maximum deductible of the lesser of \$5,000 or one percent (1.00%) of the policy face amount; and
- (iv) Such other insurance as the Board of Directors may determine, as may be requested by a majority of the Unit Owners, or as may be required by Federal National Mortgage Association Guidelines (including, without limitation, fidelity bond coverage).

**§11.7 Memoranda and Cancellation.** All insurers that shall issue an insurance policy or policies under this Article shall issue certificates or memoranda of insurance to the Association, and, upon request, to any Unit Owner or Mortgagee.

All such insurers issuing the policy may not cancel (including cancellation for non-payment of premium), substantially modify, or refuse to renew such policy or policies until twenty (20) days after notice of the proposed cancellation of non-renewal has been mailed to the Association, the managing agent, each Unit Owner and each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

**§11.8 Separate Insurance.** Each Unit Owner shall have the right, at his own expense, to obtain insurance for his Unit and for his own benefit and to obtain insurance coverage upon his personal property and for his personal liability as well as upon any improvements made by him to his Unit under coverage normally called "improvements and betterments coverage;" provided, however, that no Unit Owner shall be entitled to exercise his right to acquire or maintain such insurance coverage which would decrease the amount which the Association on behalf of all Unit Owners may realize under any insurance policy maintained by the Association, or to cause any insurance coverage maintained by the Association to be brought into contribution with insurance coverage obtained by a Unit Owner. All such Unit Owner's policies shall contain waivers of subrogation.

At the request of the Association, any Unit Owner who obtains an individual insurance policy covering any portion of the Condominium, other than improvements and betterments made by such Owner at his expense and personal property belonging to such Owner, shall file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after the purchase of such insurance. Such Unit Owner shall also promptly notify the Board of Directors in writing in the event such policy is canceled. Each Unit Owner shall notify the Board of Directors in writing of all structural improvements made by the Unit Owner to his Unit; provided, however, that this sentence shall not be construed as an authorization to Unit Owners to make structural improvements to Units otherwise than in accordance with this Declaration,

the Bylaws and Rules and Regulations promulgated by the Board of Directors. Any premium increase caused by such improvements may be assessed to the Owner of the improved Unit. No Unit Owner shall be entitled to receive insurance proceeds for the repair, restoration or rebuilding of any such improvements not so reported to the Board of Directors, unless otherwise consented to by vote of the Board of Directors.

## **ARTICLE 12 DAMAGE OR DESTRUCTION.**

**§12.1 Repair.** Any portion of the Property damaged or destroyed shall be repaired or replaced promptly by the Association unless:

- i. The Condominium is terminated;
- ii. Repair or replacement would be illegal under any state or local health or safety statute or ordinance; or
- iii. One Hundred percent (100%) in interest of the Unit Owners vote not to rebuild, including every owner of a Unit or limited common area which would not be rebuilt, and including the consent of the Eligible Mortgage Holders as required herein.

The cost of repair or replacement in excess of insurance proceeds and reserves or not covered by any deductible shall be a common expense, provided that Unit Owners shall be responsible for \$250 of the insurance deductible for damage to their Units or such greater portion of the deductible established by the Rules and Regulations adopted from time to time by the Board of Directors.

**§12.2 Application of Insurance Proceeds.** If the entire Property is not completely repaired or replaced:

- i. the insurance proceeds attributable to the damaged Units and Common Elements shall be used to restore the damaged areas to a condition compatible with the remainder of the Condominium;
- ii. the insurance proceeds attributable to Units which are not rebuilt, including without limitation the interest in the Common Elements and in Limited Common Element, shall be distributed to such Unit Owners and their mortgagees; and
- iii. the remainder of the proceeds shall be held in trust to be distributed to the Unit Owners and their mortgagees in accordance with the Condominium Act.

Any loss covered by such insurance shall be adjusted with the Association, which shall exclusively represent all Unit Owners in any proceedings, negotiations, settlements or agreements. The insurance proceeds shall be paid to the Association as trustee for the Unit Owners and lien holders as their interests may appear. Mortgagees' liens shall transfer in order of priority to the insurance proceeds. Notwithstanding the provisions of this Section, Article 13 of the Declaration governs the distribution of insurance proceeds if the Condominium is terminated. If the members vote not to rebuild any Unit, that Unit's percentage interest in the Common Elements shall be automatically reallocated to the then

remaining Units in proportion to their percentage interests prior to the reallocation, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocation. Unless a Unit Owner has requested and received written confirmation from both the Association and the Association's hazard insurance carrier of optional insurance coverage for the owner's permanent improvements and betterments within the Unit, the Unit Owner shall be responsible for the expense of repair or replacement.

### **ARTICLE 13 TERMINATION OF CONDOMINIUM**

**§13.1 Termination.** In accordance with Condominium Act, the Condominium may be terminated in whole or part with the agreement of the Owners of Units to which at least eighty (80) percent of the Votes in the Association are allocated, and that percentage of Eligible Mortgage Holders required herein and the Condominium Act. Termination shall not bar the subsequent resubmission of the Property to the Condominium Act.

**§13.2 Effect of Termination.** Upon removal of the Property from the Condominium Act, the Unit Owners shall hold the Property and any proceeds thereof as tenants in common in accordance with the Condominium Act and subject to the Condominium Act with any mortgages or liens affecting a Unit to attach in order of priority against the resulting interest.

### **ARTICLE 14. EMINENT DOMAIN.**

**§14.1 Acquisition of Unit(s).** If a Unit is acquired by eminent domain, to the extent the award is paid to the Association or is controlled by this Declaration or the Association, the award shall be applied to compensate the Unit Owner and his mortgagee(s), if any, for the Unit and its percentage interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition of the Unit, its Allocated Interests shall be automatically reallocated to the remaining Units in proportion to their respective Allocated Interests before the taking, and the Association shall promptly prepare, execute, and record an instrument reflecting the reallocations.

If part of a Unit is acquired by eminent domain, to the extent the award is paid to the Association or is controlled by this Declaration or the Association, the award shall be applied to compensate the Unit Owner and his mortgagee(s), if any, for the reduction in value of the Unit and its interest in the Common Elements, whether or not any Common Elements are acquired. Upon such acquisition, (i) that Unit's Allocated Interests shall be reduced in proportion to the reduction in the size of the Unit, and (ii) the portion of the allocated interest divested from the partially acquired Unit shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests provided however, that each Unit shall continue to have one vote to permit equality among Units.

**§14.2 Acquisition of Common Elements.** If part of the Common Elements are acquired by eminent domain, the Association shall be entitled to payment of the award, subject, however, to the Condominium Act; generally the portion of the award attributable to

the Common Elements taken shall be distributed to the Unit Owners and their mortgagee(s) in accordance with the Condominium Act, unless the Association rebuilds or acquires comparable elements. Any portion of an award attributable to the acquisition of a Limited Common Elements or as may otherwise benefit the Condominium as determined by a Court of competent jurisdiction must be equally divided among the owners of the Units to which that Limited Common Element was allocated at the time of acquisition in proportion to their interests in the Common Elements.

**§14.3 Rights of the Association and Mortgage Holders.** In the event of a proposed acquisition by eminent domain, the Association shall have the right but not the obligation to act and to intervene on behalf of Unit Owners. Nothing contained in this Declaration, the Bylaws or any rule or regulation adopted by the Association, however, shall entitle any Unit Owner or other person to priority over a first mortgagee of a Unit pursuant to its mortgage instrument in the right to receive eminent domain awards for the taking of Units and/or Common Elements.

## **ARTICLE 15 AMENDMENTS**

**§15.1 General.** Certain amendments to this Declaration may be made unilaterally by the Declarant in accordance with this Declaration and the Condominium Act. In addition, certain amendments may be unilaterally executed and recorded by the Association as described in Condominium Act Sections 1601-107, Eminent Domain, 1602-108(c), Allocation of Limited Common Elements, 1602-112(a), Relocation of Boundaries Between Adjoining Units, 1602-113, Subdivision of Units and 1602-117(a), Amendment of Declaration, and certain amendments to this Declaration may be made by certain U in Sections 1602-108(b), Reallocation of Limited Common Elements, 1602-112(a), Relocation of Boundaries Between Adjoining Units, 1602-113(b), Subdivision of Units, or 1602-118(b) of the Condominium Act.

Otherwise subject to the other provisions of this Declaration and of the Condominium Act, the Declaration and the accompanying Plats and the Plans may be amended as follows:

- (a) *Before Any Conveyance.* Prior to the conveyance of any Unit by the Declarant to a third party purchaser (other than as security for an obligation), the Declarant shall have the right to unilaterally amend and re-amend this Declaration in any manner that the Declarant may deem appropriate.
- (b) *After First Conveyance.* After the first conveyance of Unit by a Declarant to a third party purchaser, the terms of the following procedures shall apply to an amendment of this Declaration:
  - (i) *Development and Special Declarant Rights.* Notwithstanding any other provision of this Declaration, the Declarant acting unilaterally may record amendments to this Declaration which result from the exercise of Development and Special Declarant Rights pursuant to this Declaration and/or the Act.

- (ii) *Proposal and Notice.* An amendment to the Declaration may be proposed by either the Board of Directors or by Unit Owners holding at least twenty (20) percent of the votes in the Association. Notice of the subject matter of a proposed amendment, including the proposed text thereof, shall be included in the notice of any meeting in which a proposed amendment is to be considered, and such notice shall be given to all Unit Owners and all eligible Mortgage Holders.
- (ii) *Approval.* The amendment shall be adopted if it receives the affirmative vote or written consent of Sixty-Seven percent (67%) or more of the total percentage in interest of all votes in the Association in all cases and such Eligible Mortgage Holders as may be required herein. Unit Owners and mortgagees may express their approval in writing or by proxy. Provided however that no amendment may change the uses to which a Unit may be put and no amendment may alter the boundaries of a Unit or the Allocated Interests allocated to a Unit without the unanimous consent of all affected owners.
- (iii) *By Written Agreement.* In the alternative, an amendment may be made by an agreement signed by the record Owners of Units to which are allocated one hundred percent (100%) of the Units in the manner required for the execution of a deed and acknowledged by at least one of them, together with any required approval by Eligible Mortgage Holders, and such amendment shall be effective when certified and recorded as provided below.

**§15.2 Proviso; Consent of Declarant.** No amendment of this Declaration shall make any change which would in any way affect any of the rights, privileges, powers and options of the Declarant, its successors or assigns, unless the Declarant shall approve such amendment.

**§15.3 Notice, Execution and Recording.** After each amendment to this Declaration adopted by the Association pursuant to this Article has been recorded, notice thereof shall be sent to all Unit Owners and to all Eligible Mortgage Holders, but failure to send such notices shall not affect the validity of such amendment. A certificate of each such amendment shall be executed and acknowledged by such officer(s) or director(s) of the Association designated for that purpose by the Bylaws. The amendment shall be effective when such certificate and copy of the Amendment are recorded.

**§15.4 Notice and Challenge.** No action to challenge the validity of an amendment to this Declaration adopted by the Association may be brought more than one (1) year after such amendment is recorded.

## **ARTICLE 16 GENERAL PROVISIONS**

**§16.1 Enforcement.** The failure to comply with the terms of this Declaration, the Bylaws and the Rules and Regulations adopted pursuant thereto shall entitle the Association to (a) take court action, including without limitation suit for injunctive relief, and/or (b) take such further action as permitted under the Bylaws, and/or (c) enter the Unit or Common Elements in which such violation or breach exists and summarily to abate and cure the violation at the

expense of the defaulting Unit Owner, and the Board of Directors shall not be deemed guilty in any manner of trespass when enforcing these terms. The exercise of any one remedy shall not preclude the exercise of other remedies provided by law, the Condominium Act, this Declaration or in the Bylaws. In any such enforcement action or proceeding the Association shall be entitled to recover the costs of the proceeding, including reasonable attorney's fees and costs, with interest.

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

**§16.2 Units Not Yet Separately Assessed.** In the event that for any year real estate taxes are not separately taxed and assessed to each separate Unit Owner but are taxed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective Common Expense Liabilities.

**§16.3 Conflict.** If any provision of this Declaration, the Bylaws or the Rules and Regulations conflicts with any applicable laws, including, but not limited to, the Condominium Act, then the laws shall be deemed controlling; but the validity of the remainder of this Declaration, the Bylaws and Rules and Regulations, and the application of any such provision, section, clause, phrase, or word in other circumstances shall not be affected thereby.

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

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

**§16.6 Captions.** The headings in this Declaration are for purposes of reference only, and shall not limit or otherwise affect the meaning hereof. The table of contents is attached to this Declaration for purposes of reference and convenience only, and shall neither limit nor otherwise affect the meaning of this Declaration. References in this Declaration to Articles, and Schedules without references to the document in which they are contained are references to this Declaration. Schedules are attached to and incorporated by reference into this Declaration.

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

**§16.8 Power to Interpret.** Any dispute or disagreement with any person other than the Declarant with respect to interpretation or application of this Declaration or the Bylaws or the Rules and Regulations shall be determined by the Board of Directors, which determination shall be final and binding on all parties.

**§16.9 Disputes with Declarant and Arbitration.** In any dispute between one or more Unit Owners and the Declarant regarding the Common Elements, the Board of Directors shall act for the Unit Owners, and any agreement with respect thereto by the Board of Directors shall be conclusive and binding upon the Unit Owners.

All claims, disputes and other matters in question between the Declarant, on the one hand, and the Association or any Unit Owner(s), on the other hand, arising out of or relating to a Unit, the Common Elements, the Limited Common Elements, this Declaration, the Bylaws, the Rules and Regulations, or the deed to any Unit or the breach thereof, or the course of dealing between any Unit Owner, the Association and the Declarant, except for claims which have been waived by the acceptance of a deed, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise in writing. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance applicable law in any court having jurisdiction thereof.

## **ARTICLE 17 NOTICES**

### **§17.1 Notices.**

(a) *To Unit Owners.* All notices, demands, bills and statements or other communications affecting the Condominium shall be given to Unit Owners by the Association in writing and shall be delivered in hand, delivered to the Unit, or sent by United States mail, postage prepaid. If such notification is of a default or lien, then it shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the Unit Owner at the address which the Unit Owner shall designate in writing and file with the Secretary of the Association, or if no such address is so designated, the address of the Unit of such Unit Owner who is the record owner thereof.

(b) *Notice to the Association.* All notices, demands, statements or other communications affecting the condominium given by the Unit Owners to the Association shall be in writing, and shall be deemed to be delivered personally, securing a written receipt therefore, or sent by United States mail, postage prepaid, return receipt requested, addressed to the Association at the principal office of the managing agent, if any, and to the secretary of the Association at the Secretary's address.

(c) *Notice to Eligible Mortgage Holder.* All notices, demands, statements or other communications affecting the Condominium given by the Association to any Eligible Mortgage Holder shall be in writing and shall be delivered personally, securing a written receipt, or sent by United States mail, postage prepaid, addressed to the Eligible Mortgage Holder at the address identified pursuant to the notice given to the Association when it became an Eligible Mortgage Holder.

WITNESS its hand and seal as of April 24, 2006.

**RISBARA CLEARVIEW DEVELOPMENT,  
LLC**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
\_\_\_\_\_, its Manager

STATE OF MAINE  
Scarborough, ss

April \_\_\_\_, 2006

Personally appeared the above-named \_\_\_\_\_ in his said capacity and acknowledged the foregoing Declaration to be his free act and deed, and the free act and deed of said limited liability company, before me,

\_\_\_\_\_  
Name: \_\_\_\_\_  
Attorney at Law/Notary Public

- Exhibit A      Legal Description of Land
- Exhibit B      Condominium Plat
- Exhibit C      Condominium Floor Plans
- Exhibit D      Allocated Interests
- Exhibit E      Condominium Association Bylaws

## EXHIBIT A

A certain lot or parcel of land on the Northwesterly side of the Eastern Road in the Town of Scarborough, County of Cumberland, State of Maine, bounded and described as follows:

Beginning at a point on the Northwesterly side of the Eastern Road, said point being the Southerly corner of land now or formerly of Stuart L. Cayer, being the same premises conveyed to Marcia A. and Rocco C. Risbara Jr. by deed of Keith B. Farnsworth recorded in the Cumberland County Registry of Deeds in Book 4729, Page 71, and being the Southeasterly corner of "Highland Oaks," as shown on a "Subdivision Plan of Highland Oaks (First Section)" by Hardy Stewart and Co. dated 1932 and recorded in said Registry, Plan Book 21 Pages 25 and 26; thence by the following courses and distances:

South 48° 10' 01" West along the Northwesterly sideline of the Eastern Road a distance of Eight Hundred Forty-Nine and 10/100 (849.10) Feet to an iron pin found and land now or formerly of ERP Operating Limited Partnership, formerly of Marcia A. and Rocco C. Risbara Jr. as described in said Registry, Book 4342 Page 317;

Thence North 41° 49' 59" West by said ERP Operating Limited Partnership land, a distance of One Hundred Eighty-Five (185.00) Feet to a point and land of the original Clearview Condominium Phase I;

Thence North 48° 10' 01" East by said Clearview Condominium Phase I land, a distance of One Hundred Sixty—Six and 86/100 (166.86) Feet to a point;

Thence North 46° 49' 59" West by said Clearview Condominium Phase I land a distance of One Hundred Ten and 54/100 (110.54) Feet to a point;

Thence North 23° 27' 49" East by said Clearview Condominium Phase I land a distance of Three Hundred Three and 89/100 (303.89) Feet to a point;

Thence On a curve concave to the East with a radius of Two Hundred Twenty-Five (225.00) Feet by said Clearview Condominium Phase I land an arc distance of One Hundred Forty-Three and 56/100 (143.56) Feet to a point;

Thence North 01° 41' 16" West by said Clearview Condominium Phase I land a distance of Fifty (50) Feet to a point;

Thence on a curve concave to the West with a radius of Thirty (30) Feet by said Clearview Condominium Phase I land an arc distance of Three and 21/100 (3.21) Feet to a point;

Thence North 81° 02' 16" West by said Clearview Condominium Phase I land a distance of One Hundred Eighteen and 36/100 (118.36) Feet to a point;

Thence South 79° 39' 01" West by said Clearview Condominium Phase I land a distance of Two Hundred Sixty One and 49/100 (261.49) Feet to a point;

Thence North 10° 20' 59" West by land formerly of Marcia A. & Rocco C. Risbara Jr. as described in said Registry of Deeds in Book 4342 Page 317, a distance of Forty and 00/100 (40.00) Feet to an iron pin found;

Thence North 79° 39' 01" East by land now or formerly of Marcia A. & Rocco C. Risbara Jr. as described in said Registry of Deeds in Book 7676 Page 107, a distance of Two Hundred Two and 92/100 (202.92) Feet to a point;

Thence North 25° 18' 56" West by land formerly of Marcia A. and Rocco C. Risbara Jr. as described in said Registry of Deeds in Book 7676 Page 107, a distance of Zero and 57/100 (0.57) Feet to a point;

Thence North 64° 41' 04" W by the end of Portland Farms Road as accepted by the Town of Scarborough on December 3, 1927, a distance of Forty and 00/100 (40.00) Feet to a point;

Thence North 25° 18' 56" West by the Easterly sideline of Portland Farms Road as accepted by the Town of Scarborough on December 3, 1927, a distance of Twenty-Two and 54/100 (22.54) Feet to a point;

Thence South 81° 02' 16" East by land formerly of Marcia A. and Rocco C. Risbara Jr. as described in said Registry of Deeds in Book 8150 Page 68, a distance of One Hundred Eighty-Three and 05/100 (183.05) Feet to a point;

Thence South 71° 05' 30" East by land formerly of Marcia A. and Rocco C. Risbara Jr. as Trustees of the Risbara Family Trust as described in said Registry of Deeds in Book 8181 Page 232, a distance of One Hundred Seventy-Two and 69/100 (172.69) Feet to a point;

Thence Southeasterly along a curve to the right having a radius of Three Hundred Sixty and 00/100 (360.00) Feet by land formerly of Marcia A. and Rocco C. Risbara Jr. as Trustees of the Risbara Family Trust as described in said Registry of Deeds in Book 8181 Page 232, an arc length of One Hundred Five and 28/100 (105.28) Feet to an iron pin;

Thence North 48° 10' 01" East by land now or formerly of Marcia A. and Rocco C. Risbara Jr. as Trustees of the Risbara Family Trust as described in said Registry, Book 8181 Page 232, a distance of Two Hundred Forty-Two and 11/100 (242.11) Feet to a point and said land now of Cayer and formerly of Marcia A. and Rocco C. Risbara Jr. as described in said Registry, Book 4729 Page 71;

Thence South 27° 56' 56" East by said Cayer land a distance of Three Hundred Eighty-One and 71/100 (381.71) Feet to the point of beginning.

The above described parcel contains approximately 8.32 acres of land and is depicted on a "Standard Boundary Survey made for Risbara Construction Co." by R.P. Titcomb Associates, Inc. dated May 31, 1988. Bearings are referenced to True North, as determined by astronomic observation.

Together with the benefit of:

Easement and rights granted by Clearview Condominium Association to Clearview Limited Partnership, the Portland Water District and the Scarborough Sanitary District dated October 8, 1992 and recorded in said Registry of Deeds in Book 10331, Page 259.

Rights and easements granted by Rocco C. Risbara, Jr. and Marcia A. Risbara to the Trustees of the Risbara Family Trust, dated May 15, 1990 and recorded in said Registry of Deeds in Book 9177, Page 163;

Subject to the following:

1. Notes, easements and other matters set forth or shown on the plan of "Clear View Condominium, Portland Farms Road, Scarborough, Maine" dated April, 1988 prepared by Richard A. Manthorne P.E. as approved by the Town of Scarborough Planning Board on June 27, 1988 recorded in said Registry of Deeds in Plan Book, 171, Page 69.
2. Rights and easements benefiting Land Phase I of Clear View Condominium as set forth or referred to in the Declaration of Clear View Condominium dated June 27, 1988 and recorded in said Registry of Deeds in Book 8361, Page 228;
3. Rights and easements granted to Central Maine Power Company and New England Telephone and Telegraph Company by deed of Joseph W. Cohen dated June 28, 1951 and recorded in said Registry of Deeds in Book 2048, Page 203;
4. Rights and easements granted to Central Maine Power Company and New England Telephone and Telegraph Company by deed of Harry A. Hall dated February 2, 1926 and recorded in said Registry of Deeds in Book 1228, Page 162;
5. Rights and easements granted to Central Maine Power Company and New England Telephone and Telegraph Company by deed of the Trustees of the Risbara Family Trust, dated May 31, 1988 and recorded in said Registry of Deeds in Book 8444, Page 203;
6. Rights and easements granted to the Trustees of the Risbara Family Trust to the Trustees of the Portland Farms Trust, Rocco C. Risbara, Jr. and Marcia A. Risbara individually, and John C. Harmon by deeds of the Trustees of the Risbara Family Trust dated May 15, 1990 and recorded in said Registry of Deeds in Book 9174, Page 316 and in Book 9177, Page 180;
7. Rights and easements granted the Scarborough Sanitary District by deed of the Trustees of the Risbara Family Trust, dated May 15, 1990 and recorded in said Registry of Deeds in Book 9177, Page 163;
8. Rights and easement granted by Joseph W. Cohen to the Inhabitants of the Town of Scarborough by deed dated September --, 1968 and recorded in said Registry of Deeds in Book 3056 Page 319

9. Rights and easements granted the Town of Scarborough by deed of the Trustees of the Risbara Family Trust, dated January 5, 1990 and recorded in said Registry of Deeds in Book 9177, Page 191, as modified by deed recorded in said Registry of Deeds in Book 9376, Page 89;
10. Rights and easements granted the Town of Scarborough by deed of the Trustees of the Risbara Family Trust dated January 5, 1990 and recorded in said Registry of Deeds in Book 9177, Page 196, as modified by deed dated October 16, 1990 and recorded in said Registry of Deeds in Book 9376, Page 83;
11. Those matters set forth or referred to in a deed from the Trustees of the Risbara Family Trust, to Key Bank of Maine dated October 21, 1991 and recorded in said Registry of Deeds in Book 9758, Page 109;
12. Terms, conditions and restrictions set forth in an Agreement by and among the Town of Scarborough Planning Board, William Weeks in his capacity as Building Inspector for the Town of Scarborough and Key Bank of Maine dated August 10, 1992 and 62395 Book 10331 P3 25-S recorded in said Registry of Deeds in Book 10249, Page 37 including, but not limited to, the restriction that in the event the above-described premises are not submitted to the condominium form of ownership by addition to Clear View Condominium, no further residential units will be permitted within said premises beyond the existing twenty-four (24) thereon; and
13. Rights and easements granted by Key Bank of Maine to Clear View Condominium Association by deed dated September 11, 1992 and recorded in said Registry of Deeds in Book 10313, Page 345.

DECLAR RISBARA CLEARVIEWWL.DOC  
2/19/2008

**Exhibit B     Condominium Plat**

[see separate Public Offering Statement tab]

**Exhibit C     Condominium Floor Plans**

[see separate Public Offering Statement tab]

**Exhibit D Allocated Interests**

| <u>#</u> | <u>Unit</u> | <u># Votes</u> | <u>% Interest in Common Elements</u> | <u>% Common Expense Liability</u> |
|----------|-------------|----------------|--------------------------------------|-----------------------------------|
| 17       |             | 1              | 4.1667%                              | 4.1667%                           |
| 18       |             | 1              | 4.1667%                              | 4.1667%                           |
| 19       |             | 1              | 4.1667%                              | 4.1667%                           |
| 20       |             | 1              | 4.1667%                              | 4.1667%                           |
| 21       |             | 1              | 4.1667%                              | 4.1667%                           |
| 22       |             | 1              | 4.1667%                              | 4.1667%                           |
| 23       |             | 1              | 4.1667%                              | 4.1667%                           |
| 24       |             | 1              | 4.1667%                              | 4.1667%                           |
| 25       |             | 1              | 4.1667%                              | 4.1667%                           |
| 26       |             | 1              | 4.1667%                              | 4.1667%                           |
| 27       |             | 1              | 4.1667%                              | 4.1667%                           |
| 28       |             | 1              | 4.1667%                              | 4.1667%                           |
| 29       |             | 1              | 4.1667%                              | 4.1667%                           |
| 30       |             | 1              | 4.1667%                              | 4.1667%                           |
| 31       |             | 1              | 4.1667%                              | 4.1667%                           |
| 32       |             | 1              | 4.1667%                              | 4.1667%                           |
| 33       |             | 1              | 4.1667%                              | 4.1667%                           |
| 34       |             | 1              | 4.1667%                              | 4.1667%                           |
| 35       |             | 1              | 4.1667%                              | 4.1667%                           |
| 36       |             | 1              | 4.1667%                              | 4.1667%                           |
| 37       |             | 1              | 4.1667%                              | 4.1667%                           |
| 38       |             | 1              | 4.1667%                              | 4.1667%                           |
| 39       |             | 1              | 4.1667%                              | 4.1667%                           |
| 40       |             | 1              | 4.1667%                              | 4.1667%                           |
|          |             | <b>24</b>      | <b>100.0000%</b>                     | <b>100.0000%</b>                  |

DECLAR RISBARA CLEARVIEWL.DOC  
2/19/2008

Exhibit E Condominium Association Bylaws

[see separate Public Offering Statement tab]

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