BYLAWS

OF

WEST END COMMONS HOMEOWNERS' ASSOCIATION, INC.

These Bylaws have been adopted this 25th day of August, 2003 by the persons constituting all of the members of the first Executive Board of West End Commons Homeowners' Association, Inc. (the "Association").

ARTICLE I

INTRODUCTION

Section 1.1. Applicability. These Bylaws shall relate solely to the property called West End Commons, A Condominium (the "Condominium"), located at Portland, Maine (the "Property") more fully described in the Declaration of Condominium of the Condominium dated January 16, 2004, and the Plats and Plans prepared with reference thereto (collectively, the "Declaration"), recorded or to be recorded in the Cumberland County Registry of Deeds in Portland, Maine, as the same may be amended from time to time.

Section 1.2. Definitions. The capitalized terms used herein without definition shall have the same definitions as such terms have in the Declaration and the Maine Condominium Act, Title 33, Maine Revised Statutes, Section 1601-101 *et seq.* (the "Act"). Unless otherwise provided in the Act, in the event of inconsistencies in definitions between the Act and the Declaration, the Declaration shall control. The "Executive Board" or the "Board" means the Board of Directors as provided in the Maine Nonprofit Corporation Act, Title 13-B, Maine Revised Statutes Annotated, Section 101 *et seq.*

Section 1.3 Compliance. Pursuant to the provisions of the Act, every Unit Owner and all persons entitled to occupy a Unit shall comply with these Bylaws.

Section 1.4 Office. The office of the Condominium, the Association, and the Executive Board shall be located at the Property or at such other place as may be designated from time to time by the Executive Board.

Section 1.5 Incorporation of Statutory Law. Except as expressly provided herein, in the Declaration, or in the Act, the Association shall be governed by the provisions of any applicable statute of the State of Maine.

ARTICLE 2

THE ASSOCIATION

Section 2.1 Membership The Association is a Maine corporation, all the members of which are the Unit Owners of the Property. The Declarant, being the initial owner of all Units, initially shall constitute all of the members of the Association. A person shall automatically become a member of the Association at the time he acquires legal title to his Unit, and he shall continue to be a member so long as he continues to hold title such Unit. A Unit Owner shall not be permitted to resign from membership in the Association prior to the time when he transfers title to his Unit to another. No membership may be transferred in any way except as appurtenant to the transfer of title to the Unit to which that membership pertains. Transfer of membership shall be automatic upon transfer of title, but the Association may treat the prior Unit Owner as the member for all purposes until satisfactory evidence of the recording of the instrument of conveyance in the Cumberland County Registry of Deeds is presented and this shall be determintative of all disputes concerning the date of transfer of title to any Unit or Units. A mortgage conveyance of any Unit, however, shall not operate to transfer membership until the mortgage is foreclosed or the Unit is conveyed in lieu of foreclosure.

Section 2.2. Meetings. Meetings of the Association shall be conducted in accordance with the following:

(a) **Annual Meetings.**

(1) Unit Owners shall hold Annual Meetings for the purposes stated in Section 2.2(a)(2) hereof (the "Annual Meeting"). The Annual Meeting of Unit Owners shall be held in the first Monday of December of each year at a time to be designated by the Executive Board.

(2) The purposes of the Annual Meeting of the Association shall be to elect the members of the Executive Board unless such action is being taken pursuant to the provisions of Section 2.2(b) hereof or Section 3.5 hereof, and to conduct such other business as may be required or permitted by law, the Declaration, or these Bylaws to be done by a vote of Unit Owners. The Treasurer of the Executive Board shall present at each Annual Meeting a financial report (which, at the discretion of the Executive Board may be prepared and reviewed by an independent certified public accountant) of the receipts and Common Expenses for the Association's immediately preceding fiscal year, itemized receipts and expenditures, the allocation thereof to each Unit Owner, and any changes expected for the present fiscal year. A copy of such financial report shall be sent to each Unit Owner not less than five (5) days prior to the Annual Meeting.

(b) **Special Meetings.** The President shall call a special meeting of the Association,

if so directed by resolution of the Executive Board or upon petition signed and presented to the Secretary by Unit Owners entitled to cast at least forty-five percent (45%) of the votes in the Association. The notice of any special meeting shall state the time, the place and purpose thereof. Such meetings shall be held within forty-five (45) days after receipt by the President of said resolution or petition; provided, however, if the purpose includes the consideration of the rejection of a capital expenditure pursuant to Section 5.8 hereof, such meeting shall be held within fifteen (15) days after receipt by the President of said resolution or petition. No business shall be transacted at a special meeting except as stated in the notice.

(c) **Notice**. Notices to Unit Owners of meetings of the Association, or meetings of the Executive Board which Unit Owners who are not Executive Board members are entitled or invited to attend pursuant to Section 3.3(e) hereof, shall be delivered either by hand or by prepaid mail to the mailing address of each Unit or to the mailing address designated in writing by the Unit Owner to the Executive Board. If a notice sent to Unit Owners pursuant to the foregoing sentence includes an item on the proposed agenda which would require the approval of eligible mortgage holders pursuant to the Declaration, the Bylaws, or the Act, a copy of such notice will also be sent to the eligible mortgage holders. All such notices shall be delivered to all Unit Owners (and eligible mortgage holders, if applicable) not less than ten (10) nor more than sixty (60) days in advance of the date of the meeting to which the notice relates and shall state the date, time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws. The Secretary of the Executive Board shall cause all such notices to be delivered as aforesaid. Notice sent by mail shall be deemed to have been delivered on the second day after the date of mailing, in the case of a mailed notice or the date of deposit in the Unit Owner's (or if applicable, in the eligible mortgage holder's) mailbox in the case of hand delivery. No subject may be dealt with at any Annual Meeting or special meeting of the Association, unless the notice of such meeting stated that that subject would be discussed at such meeting.

(d) **Quorum**. Except as set forth below, the presence in person or by proxy of at least twenty percent (20%) of the Unit Owners at the commencement of a meeting shall constitute a quorum at that meeting of the Association. If a quorum is not present, Unit Owners entitled to cast a majority of the votes represented at such meeting may adjourn the meeting to a time not less than forty-eight hours after the time for which the original meeting was called. If a meeting is adjourned, the quorum at such second meeting shall be deemed present throughout any meeting of the Association if at least twenty percent (20%) of the Unit Owners are present in person or by proxy at the beginning of the meeting. No meeting may be adjourned to a date which is more than twenty-nine (29) days after the adjourned meeting.

(d) **Voting**. Each Unit Owner shall be entitled to one vote for each Unit owned by him. When the ownership of Unit is in more than one person, the person who shall be entitled to cast the vote of such Unit shall be the person owning such Unit who is present. If more than one person owning such Unit is present, then such vote shall be cast only in accordance with the majority in interest of the owners pursuant to Section 1603-110 of the Act. There shall be

deemed to be majority agreement if any one of the multiple owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit. Subject to the requirements of the Act, wherever the approval or disapproval is required by the Act, the Declaration or these Bylaws, such approval or disapproval shall be made only by the person who would be entitled to cast the vote of such Unit at any meeting of the Association. Except with respect to the election of members of the Executive Board, and except where a greater number is required by the Act, the Declaration or these Bylaws, the approval of the owners of Units of more than fifty percent (50%) of the aggregate votes present at a meeting duly convened voting in person or by proxy is required to adopt decisions at any meeting of the Association. In all elections for Executive Board members, each Unit Owner shall be entitled to cast one vote for each vacancy to be filled at such election. Those candidates for election receiving the greatest number of votes cast in such elections shall be elected and, if the Executive Board members are being elected to unequal terms, the candidates receiving the highest number of votes shall be elected to the longest terms. Except as set forth in Section 2.2(b) above, if the Declarant owns or holds title to one or more Units, the Declarant shall have the right at any meeting of the Association to cast the votes to which such Unit or Units are entitled. No votes allocated to a Unit owned by the Association may be cast. There shall be no cumulative or class voting or splitting of votes.

(f) **Proxies.** A vote may be cast in person or by proxy. If a Unit is owned by more than one person, each Owner of the Unit may vote through a duly elected proxy. Such proxy may be granted by any Unit Owner only in favor of another Unit Owner, the holder of a mortgage on a Unit, or the Declarant. Proxies shall be duly executed in writing, shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting. Such proxy shall be deemed revoked only by actual receipt by the person presiding over the meeting of written notice of revocation from the grantor of the proxy. No proxy shall be valid for a period in excess of eleven (11) months after the execution thereof. A proxy is void if it is not dated or purports to be revocable without notice.

(g) **Actions of Association Without a Meeting.** Any action required or permitted to be taken by a vote of the Association may be taken without a meeting if all Unit Owners shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the proceedings of the Association.

(h) **Conduct of Meetings.** The President, or anyone else delegated by the President and approved by a majority of members voting, shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a Minute book all resolutions adopted at the meeting as well as keep a record of all transactions occurring at the meeting.

Section 2.3 Copies of Condominium Documents. The Association shall have current copies of the Declaration, these Bylaws, the Rules and Regulations, if any, and any other rules concerning the Property as well as its own books, records, and financial statements

available for inspection by Unit Owners or by holders, insurers and guarantors of first Mortgages secured by Units. These documents shall be available during normal business hours.

ARTICLE 3

EXECUTIVE BOARD

Section 3.1 Composition. The affairs of the Association shall be governed by the Executive Board. The Executive Board shall consist of from three (3) to nine (9) natural individuals, all of whom shall be Unit Owners, or during the Declarant Control Period, designees of the Declarant. The initial Executive Board shall consist of three (3) members. The terms of the initial Board of Directors shall expire upon the expiration of the Declarant Control Period, as defined below. In the event of any vacancy on the initial Board, the Declarant shall fill such vacancy. The members of the initial Executive Board shall be appointed, removed, and replaced from time to time by the Declarant without the necessity of obtaining formal or informal resignations. During the Declarant Control Period, the Declarant shall have the right to allow or disallow any acts of the Association or the Executive Board including, but not limited to, any proposed amendment to the Declaration, the Bylaws, or the Rules and Regulations, if any, adopted by the Association.

For purposes of these Bylaws the "Declarant Control Period" shall mean the entire time period which extends from the date of recording of the Declaration for the Association until, unless previously terminated by the Declarant, the earlier of (i) sixty (60) days after the date of conveyance of seventy-five percent (75%) of the Units of the Association to an owner(s) other than the Declarant or (ii) five (5) years following the conveyance of the first Unit to an owner(s) other than the Declarant.

Upon termination of the Declarant Control Period, the Unit Owners shall elect an Executive Board of no fewer than three (3) members and no more than nine (9) members. The Members of the Executive Board shall serve until the first regular election of the Executive Board held at the first Annual Meeting of the Association following the expiration of the Declarant Control Period and held in accordance with these Bylaws. At that time, the respective terms of the Directors who shall be chosen to serve on the Executive Board shall be staggered terms (no more than two (2) Members' terms expiring in any given year). Thereafter, the term of the members shall be for three (3) years.

Section 3.2. Election and Term of Office.

(a) Except as otherwise provided, at the Annual Meeting of the Association, subject to the Declaration, the number of members of the Executive Board (from three (3) to nine (9)) shall be set, and the election of members of the Executive Board shall be held. The term of office of any Executive Board member to be elected (except as set forth above or in Section 3.5 below) shall be fixed at three (3) years. The members of the Executive Board shall hold office

until the earlier to occur of the election of their respective successors or their death, adjudication of incompetency, removal or resignation. Any Executive Board member may serve an unlimited number of terms and may succeed himself.

(b) Persons qualified to be members of the Executive Board may be nominated for election as follows:

(1) Any Unit Owner may submit to the Secretary at least thirty (30) days before the meeting at which the election is to be held a nominating petition signed by Unit Owners owning at least twenty percent (20%) of the Units in the aggregate, together with a statement that the person nominated is willing to serve on the Executive Board and a biographical sketch of the nominee. The Secretary shall mail or hand deliver copies of the submitted items to every Unit Owner together with the notice of such meeting; and

(2) Nominations may be submitted from the floor at a meeting at which the election is held for each vacancy on the Executive Board for which no more than one person has been nominated by petition.

Section 3.3. Meetings. Meetings of the Executive Board shall be conducted in accordance with the following:

(a) **Time and Location**. The Executive Board shall hold an Annual Meeting within ten (10) days following the Annual Meeting of the Association for the purpose of electing officers, as more fully set in Article 4 thereof, and for any other purposes which may be required or permitted by law, the Declaration or these Bylaws to be done by a vote of the Executive Board. The Executive Board shall hold meetings at the call of the President or upon request to the President by at least a majority of the members of the Executive Board; provided, however, that:

(1) In any event, the Executive Board shall meet at least three (3) times each fiscal year (in addition to the Annual Meeting of the Executive Board), unless all members of the Executive Board shall waive such requirements as to a particular meeting or meetings;

(2) There shall be a meeting of the Executive Board on or before the first day of the eleventh month of each fiscal year for the purpose of adopting the budget of the Association for the next following fiscal year of the Association; and

(3) The President shall call an Executive Board meeting if requested by a majority of the members of the Executive Board for a date occurring not less than five (5) nor more than twenty (20) days after receipt of such request.

The President shall designate the time and location of Executive Board meetings. No business shall be transacted at Executive Board meetings other than as specified in the notice thereof.

(b) **Notice**. Not less than forty-eight (48) hours prior to the time of any Executive Board meeting, a written notice stating the date, time and place of such meeting shall be delivered, either by hand or by mail or telegram, to each Executive Board member at the address given to the Executive Board by such Executive Board member for such purpose. Any Executive Board member may waive notice of a meeting or consent to any action of the Executive Board without a meeting. An Executive Board member's attendance at a meeting shall constitute his waiver of such notice of such meeting.

(c) **Quorum of the Executive Board**. At all meetings of the Executive Board, a majority of the members shall constitute a quorum for the transaction of business, and the votes of a majority of the members present at a meeting at which a quorum is present shall constitute a decision of the Executive Board. If at any meeting of the Executive Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice. One or more members of the Executive Board may participate in and be counted for quorum purposes at any meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.

(d) **Voting**. Each Executive Board member shall be entitled to cast one vote. A vote of the majority of the members of the Executive Board present at any meeting at which a quorum is present shall bind the Executive Board for all purposes unless otherwise provided in the Declaration or these Bylaws.

(e) **Organization.** Executive Board meetings may be held under such reasonable rules consistent with these Bylaws as the Executive Board may determine. Unit Owners who are not Executive Board members shall have no right to attend a particular meeting or meetings of the Executive Board. If the Executive Board does elect to allow Unit Owners who are not Executive Board members to attend a particular meeting or meetings, the Secretary shall give prior notice in the manner provided in Section 2.2(c) hereof, to all Unit Owners at each meeting at which Unit Owners are entitled or invited to be present; provided, however, that the failure to give such notice shall neither invalidate any actions taken by the Executive Board at such meeting nor impose any liability on the Executive Board or its officers and/or members for the failure to give such notice. All Unit Owners shall have the right to attend and be heard, but not the right to vote, at the Executive Board meeting at which the fiscal year budget of the Association shall be presented to the Executive Board for adoption. The Secretary of the Executive Board shall give Unit Owners notice of such meeting, accompanied by a copy of the proposed budget, in the manner provided in Section 2.2(c) hereof.

(f) **Conduct of Meetings.** The President shall preside over all meetings of the Executive Board, and the Secretary shall keep a Minute Book of the Executive Board meetings, recording therein all resolutions adopted by the Executive Board and a record of all transactions and proceedings occurring at such meetings.

(g) **Action Without a Meeting.** Any action by the Executive Board required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Executive Board shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Executive Board.

Section 3.4. Resignation and Removal. Except with respect to members of the Executive Board designated by the Declarant, at any regular or special meeting duly called, any one or more of the members of the Executive Board may be removed with or without case by Unit Owners entitled to cast a majority of all votes in the Association and a successor may then be elected to fill the vacancy thus created. Any Unit Owner proposing removal of a Board member shall give notice thereof to the Secretary. Any member whose removal has been proposed by a Unit Owner shall be given notice by the Secretary of the time, place and purpose of the meeting and shall be given an opportunity to be heard at the meeting. A member of the Executive Board may resign at any time and shall be deemed to have resigned upon transfer of title to his Unit. The Declarant shall have the right to remove and replace any and all members of the Executive Board appointed by the Declarant at any time from time to time until the expiration of the Declarant Control Period.

Section 3.5. Vacancies. Any vacancy or vacancies on the Executive Board, whether caused by resignation, removal, death, adjudication of incompetency, or an increase in size of the Executive Board, shall be filled by the Executive Board with an interim appointee who shall serve until the next Annual Meeting of the Association at which time such vacancy may be filled by majority vote of the owners of Units present in person or by proxy, provided, however, that the Declarant shall have the right, during the Declarant Control Period, to fill any vacancy created by resignation, death, or adjudication of incompetency of a member who had been appointed by the Declarant and had not been elected by the Unit Owners. If the vacancy results from removal by the Association, the election of a new member or members may be held at the same meeting where such removal takes place and notice of a petition for removal shall be considered notice of any election to fill each vacancy so caused.

Section 3.6. Compensation. No member of the Executive Board shall receive compensation for performing his duties as a member of the Executive Board unless such compensation is expressly authorized or approved by vote of the members.

Section 3.7. Validity of Contracts with Interested Executive Board Members. No contract or other transaction between the Association and one or more of its Executive Board members or between the Association and any corporation, firm, or association in which one or more of the Executive Board members are directors or officers, or are financially interested, shall

be void or voidable because such Executive Board member or members are present at any meeting of the Executive Board which authorized or approved the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

(a) The fact that an Executive Board member is also such a director or officer or has such financial interest is disclosed or known to the Executive Board and is noted in the minutes thereof, and the Executive Board authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such Executive Board Member or members; or

(b) The contract or transaction is made in good faith and is not unconscionable to the Association at the time it is authorized, approved or ratified.

Section 3.8. Inclusion of Interested Executive Board Members in a Quorum. Any Executive Board member holding such director or officer position or having such financial interest in another corporation, firm or association may be counted in determining the presence of a quorum at a meeting of the Executive Board or a committee thereof which authorizes, approves, or ratifies a contract or transaction of the type described in Section 3.7 hereof.

Section 3.9. Powers of the Executive Board.

(a) **Enumeration.** The Executive Board shall have all of the powers and duties granted by the Act and the laws governing nonnprofit corporations or both.

(b) **Limitation.** Nothing in this Section or elsewhere in these Bylaws shall be considered to grant to the Executive Board or to the officers of the Association any powers or duties which, by law, are possessed by Unit Owners.

(c) **Delegation of Powers; Managing Agent.** The Executive Board may employ for the Condominium a managing agent at a compensation established by the Executive Board. The managing agent shall perform such duties and services as the Executive Board shall authorize, including, but not limited to, all of the duties listed in the Declaration and these Bylaws; **Provided, However**, where a managing agent does not have the power to act under the Declaration or these Bylaws, the Managing Agent may act as an advisor or in an advisory capacity to the Executive Board. The Executive Board may delegate to the managing agent all of the powers granted to the Executive Board by the Act, the Declaration and these Bylaws other than the following powers: (i) to adopt an annual budget and any amendment thereto or to assess Common Expenses; (ii) to adopt, repeal or amend rules and regulations; (iii) to designate signatories on Association bank accounts; (iv) to borrow money on behalf of the Association; (v) to acquire mortgages on Units; and (vi) to assign Common Elements as Limited Common Elements. Any contract with the managing agent must provide that it shall be cancelable to either party without cause and without a termination fee upon not less than sixty (60) days nor

more than ninety (90) days written notice and shall be cancelable by the Executive Board with cause upon not less than thirty (30) days written notice. Any such contract negotiated by the Declarant shall meet all requirements of this Section 3.9(c) for contracts negotiated by the Association but shall not exceed one (1) year but may be renewed upon consent of the Association.

ARTICLE 4

OFFICERS

Section 4.1. Election. At the first meeting of the Executive Board, and at every Annual Meeting of the Executive Board thereafter, the Executive Board members, if a quorum is present, shall elect Executive Board officers of the Association for the following year, such officers to serve a one year term or until their respective successors are elected. The officers to be elected are: President, Secretary, Treasurer, and such other officers as the Executive Board shall determine. Each officer may serve an unlimited number of terms so long as such member or officer continues to be reelected to the Executive Board. Any member may hold two offices simultaneously. Each officer shall be a Unit Owner or the agent of a Unit Owner which is an entity.

The Corporation shall have and continuously maintain in the State of Maine a registered office which may be, but need not be, the same as its principal office, and a registered agent who may either be an individual resident in the State of Maine whose business office or residential address is identical with the Corporation's registered office or a domestic or foreign corporation authorized to do business or carry on activities in the State of Maine whose registered office also serves as the registered office of the Corporation. The Registered Agent may resign by filing a written notice with the Secretary of State of the State of Maine and by mailing a copy thereof to the Corporation in care of an officer who is not the resigning registered agent, at the address of such officer as shown by the most recent Annual Report of the Corporation. The appointment of the agent terminates on the date of the filing of the notice by the Secretary of State.

Section 4.2. Duties. The duties of the officers shall be as follows:

(a) **President.** The President shall be the chief executive officer of the Association and the chairperson of the Executive Board. The President shall be responsible for implementing the decisions of the Executive Board and ,in that capacity, shall direct, supervise, coordinate and have general control over the affairs of the Association and the Executive Board, subject to the limitations of the laws of the State of Maine, the Condominium Documents, and the actions of the Executive Board. The President shall have the power to sign checks and other documents on behalf of the Association and the Executive Board, or both, with or without the signatures of any other officers as may be determined by the Executive Board. The President shall preside, or shall designate to someone the responsibility to preside, at all meetings of the Association. He shall preside at all meetings of the Executive Board at which he is in attendance, and he shall be a

member of all committees. If the President is absent from such meeting, the body holding the meeting shall elect a person to preside. If the Executive Board so provides, the President also shall have any and all of the powers and duties ordinarily attributable to the chief executive officer of a corporation domiciled in Maine.

(b) **Secretary**. Unless otherwise determined by the Executive Board, the Secretary shall keep or cause to be kept all records (or copies thereof if the original documents are not available to the Association) of the Association and the Executive Board and shall have the authority to affix the seal of the Association to any documents requiring such seal. The Secretary shall have, or cause to be given, all notices as required by law, the Declaration or these Bylaws, shall take and keep or cause to be taken and kept minutes of all meetings of the Association, the Executive Board and all committees, and shall take and keep or cause to be taken and kept at the Association's office a record of all names and addresses of all Unit Owners as well as copies of the Declaration, The Plats and Plans, these Bylaws and the Rules and Regulations, all of which shall be available at the office of the Association for inspection by Unit Owners or prospective Unit Owners during normal business hours and for distribution to them at such reasonable charges (if any) as may be set from time to time by the Executive Board. The Secretary shall keep or cause to be kept the register of eligible mortgage holders. The Secretary shall also perform all duties and have such other powers as are ordinarily attributable to the Secretary of a corporation domiciled in Maine.

(c) **Treasurer**. Unless otherwise determined by the Executive Board, the Treasurer shall have the charge and custody of, and be responsible for, all funds and securities of the Association, shall deposit or cause to be deposited all such funds in such depositories as the Executive Board may direct, shall keep or cause to be kept correct and complete accounts and records of all financial transactions of the Association and the Executive Board and shall submit or cause to be submitted to the Executive Board and the Association such reports thereof as the Act, the Declaration, the Executive Board, or these Bylaws may from time to time require. Such records shall include, without limitation, chronological listings of all receipts and expenditures on account of the Common Elements, Limited Common Elements, and each Unit, the amount of each assessment for Common Expenses and expenses assessable to individual Units, if any, and the amount paid and the amounts due on such assessments. Such records shall specify and itemize the maintenance, repair, and replacement expenses relating to the Common Elements and the Limited Common Elements and any other expense incurred by the Association. The foregoing financial records shall be kept at the Association's office and shall be available there for inspection by Unit Owners or prospective Unit Owners during normal business hours. The Treasurer shall, upon request, provide any person who shall have entered into a written agreement to purchase a Unit with a written statement of the information required to be provided by the Association pursuant to Sections 1613-116(h) and 1604-108(b) of the Act. The Treasurer shall also perform such duties and have such powers as are ordinarily attributable to the Treasurer of a corporation domiciled in Maine.

Section 4.3. Compensation. The officers of the Executive Board shall serve without

compensation for their services in such capacity unless such compensation is expressly authorized or approved by a majority vote of owners of Units present in person or by proxy at any Annual or special meeting of the Association duly called and held.

Section 4.4. Resignation and Removal. Any officer may resign at any time by written notice to the Executive Board, such resignation to become effective at the next Executive Board meeting. Any officer who ceases to be a member of the Executive Board for any reason also shall be deemed to have resigned or been removed, *ipso facto*, from any Executive Board office he may have held. Any officer may be removed from his office at any time by a majority vote of the Executive Board whenever in the judgment of the Executive Board members the interests of the Association will be best served thereby, or by the vote of the Association with or without cause, in the same manner as set forth for the removal of the Executive Board members in Section 3.4 hereof.

Section 4.5. Vacancies. Vacancies caused by resignation or removal of officers or the creation of new offices may be filled by a majority vote of the Executive Board, if the vacancy resulted from action of the Executive Board. If, however, the vacancy resulted from action by the Association, such vacancy shall be filled in the same manner as set forth in Section 3.5 hereof for filling Executive Board vacancies.

ARTICLE 5

COMMON EXPENSES, BUDGETS

Section 5.1. Fiscal Year. The fiscal year of the association shall be the calendar year unless otherwise determined by the Executive Board; **Provided, However**, that the first fiscal year shall begin upon the recordation of the Declaration and end on December 31 of the same year.

Section 5.2. Preparation and Approval of Budget.

(a) **Adoption.** On or before the first day of November of each year (or sixty days before the beginning of the fiscal year if the fiscal year is other than the calendar year), the Executive Board shall adopt an annual budget for the Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair, and replacement of the Common Elements and the Limited Common Elements, in accordance with the Declaration, and those parts of the Units as to which it is the responsibility of the Executive Board to maintain, repair and replace; and the cost of wages, materials, insurance premiums, services, supplies, and other expenses that may be declared to be Common Expenses by the Act, the Declaration, these Bylaws or a resolution of the Association and which shall be required during the ensuing fiscal year for management and administration expenses; the cost of such insurance and utilities as may be furnished by the Association; the amount of such reserves as shall be reasonably established by the Executive Board including operation

contingency reserves for expenses both unanticipated and extraordinary and reserves for periodic maintenance, repair and replacement of the Common Elements and Limited Common Elements; and such other expenses of the Association as may be approved by the Executive Board including operation deficiencies, if any, for prior periods.

(b) **Available for Inspection.** On or before the next succeeding fifth day of November (or fifty-five days before the beginning of the fiscal year if the fiscal year is other than the calendar year), the Executive Board shall make the budget available for inspection at the Association office and shall mail to each Unit Owner a summary of the budget in a reasonably itemized form that sets forth the amount of the Common Expenses. Such budget shall constitute the basis for determining each Unit Owner's assessments for Common Expenses of the Association.

(c) **Ratification of Budget.** The Executive Board shall set a date for a meeting of the Unit Owners to consider ratification of such budget not less than fourteen (14) days or more than thirty (30) days after mailing of such summary. Unless at that meeting a majority of all the Unit Owners reject such budget, such budget is ratified, whether or not a quorum is present. In the event such proposed budget is rejected, the prior year's budget shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board.

(d) **Reasonable Efforts.** The Executive Board shall make reasonable efforts to meet the deadlines set forth above, but compliance with such deadlines shall not be a condition precedent to the effectiveness of any budget.

Section 5.3. Assessment and Payment of Common Expenses.

(a) **Common Expenses.** The Executive Board shall calculate the Monthly Assessment for Common Expenses against each Unit by multiplying (i) the total amount of the estimated funds required for the operation of the Property set forth in the budget adopted by the Executive Board for the fiscal year in question by (ii) the percentage of Common Expense liability of each Unit in the Condominium and dividing (iii) the result by the number of calendar months in such fiscal year. The Declarant may, but is under no obligation to, pay a monthly assessment determined as provided herein. Such assessments, payable in monthly installments, shall be due and payable on the first day of each calendar month and shall be a lien against such Unit Owner's Unit as provided in the Act and in the Declaration. Within ninety (90) days after the end of each fiscal year, the Executive Board shall prepare and deliver to each Unit Owner and to each record holder of a first mortgage on a Unit (who has registered an address with the Secretary) an itemized accounting of the Common Expenses and funds received during such fiscal year less expenditures actually incurred and sums paid into reserves. Any net shortage with regard to Common Expenses, after application of such reserves as the Executive Board may determine, shall be assessed promptly against the Unit Owners in equal shares and shall be payable as a Special Assessment, in such manner as the Executive Board may determine.

(b) **Working Capital Fund.** A working capital fund shall be established equal to at least two (2) months estimated Common Expense Assessments for each Unit. The share for each Unit shall be collected and transferred to the Association at the time of the initial sale of each Unit and shall be maintained in a segregated account for the use and benefit of the Association. The Declarant, as owner of the Units, shall not be required to make any contribution to the working capital fund as a result of its ownership of a Unit(s) during the Declarant Control Period. Such amounts shall not be considered as advance payments of regular assessments.

(c) **Reserves.** Extraordinary expenditures not originally included in the annual budget which may become necessary during the year may be charged first against reserves for working capital, operations, contingencies, and replacements. If the reserves are deemed to be inadequate for any reason, including non-payment of any Unit Owner's assessments, the Executive Board may at any time levy further assessments for Common Expenses which shall be assessed against the Unit Owners in accordance with their Percentage Interests and shall be payable as a Special Assessment, in such manner as the Executive Board may determine.

Section 5.4. Further Assessments. The Executive Board shall serve notice on all Unit Owners of any further assessments pursuant to Sections 5.3(a) and 5.3(c) or otherwise as permitted or required by the Act, the Declaration, and these Bylaws by a statement in writing giving the amount and reasons therefor, and such further assessments, unless otherwise specified in the notice, shall become effective with the next Monthly Assessment which is due more than ten days after the delivery of such notice of further assessments. All Unit Owners so assessed shall be obligated to pay the amount of such Assessments. Such assessments shall be a lien as of the effective date as set forth in the Act and these Bylaws.

Section 5.5. Initial Budget. At or prior to the time assessment of the Common Expenses commences, the Executive Board shall adopt the budget as described in this Article 5, for the period commencing on the date of the recording of the Declaration in the Cumberland County Registry of Deeds and ending on the last day of the fiscal year during which such commencement date occurs. Assessments shall be levied and become a lien against the Unit Owners during such period as is provided in Section 5.3 above.

Section 5.6. Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Executive Board to prepare a budget for any fiscal year shall not constitute a waiver or release in any manner of Unit Owner's obligation to pay his allocable share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Unit Owner shall continue to pay each Monthly Assessment at the rate established for the previous fiscal year until the new annual or adjusted budget shall have been adopted.

Section 5.7. Accounts; Audits. All sums collected by the Executive Board with respect to assessments against the Unit Owners or from any other source may be commingled into a single fund. All books and records of the Association shall be kept in accordance with

good and accepted accounting practices and the same shall be audited at least once each year by an independent accountant retained by the Executive Board. The Association shall prepare and furnish within a reasonable time a statement for the preceding fiscal year to any holder, insurer or guarantor of a first Mortgage secured by a Unit who submits a written request thereof to the Association.

Section 5.8. Limitations on Expenditures and Borrowing. Anything herein to the contrary notwithstanding, the Association by a vote of more than fifty percent (50%) of all votes in the Association present, may reject any capital expenditure or borrowing approved by the Executive Board, within fifteen (15) days after approval by the Executive Board; provided, however, that this Section shall not apply to the Executive Board so long as a majority of its members are appointed by the Declarant.

Section 5.9. Statement of Common Expenses. The Executive Board shall promptly provide any Unit Owner, contract purchaser or proposed Mortgagee so requesting the same in writing with a written statement of all unpaid assessments for Common Expenses and Limited Common Expenses, if any, due from any such Unit Owner. The Executive Board may impose a reasonable charge for the preparation of such statement to cover the cost of its preparation, to the extent permitted by the Act.

ARTICLE 6

REPAIR OR RECONSTRUCTION

Section 6.1. Restoration of Property Out of Common Expense Fund. Damage to or destruction of the Buildings shall be promptly repaired and restored by the Association in accordance with the provisions of Section 1603-113(e) and (h) of the Act. The Executive Board shall be responsible for accomplishing the full repair or reconstruction which shall be paid out of the Common Expense fund. The disbursement of funds for such repair or reconstruction shall, at the option of the Executive Board, be made only as the work progresses upon approval of a qualified architect who shall have furnished a description satisfactory to the Executive Board of the costs involved and the services and materials to be furnished by the contractors, subcontractors, and materialmen. Unit Owners may apply the proceeds from their individual property insurance policies, if any, to the share of such Common Expense as may be assessed to them. The Executive Board shall be responsible for restoring the Property only to substantially the same condition as it was immediately prior to the damage and each Unit Owner shall personally assume the additional expenses of any improvements to his Unit which he restores, to restore it beyond such condition. If any physical changes are made to the restored Unit or the Common Elements, or any combination of them, which renders inaccurate the Plats and Plans which are then of record, the Executive Board shall record amended Plats and Plans showing such changes.

ARTICLE 7

SEPARATE REAL ESTATE TAXES

Section 7.1 Assessments Against Individual Units. In the event that, commencing with the taxable period during which occurs the first conveyance of a Unit to a person other than the Declarant, real estate taxes are not separately assessed against each Unit Owner (including the Declarant, as to the Units then owned by it) each Unit Owners shall pay his proportionate share thereof in accordance with his respective Percentage Interest in the Common Elements.

ARTICLE 8

AMENDMENTS

Section 8.1. General Requirements; Consent of Declarant or Holders of Mortgages; Curative Amendment to Bylaws. Except as otherwise provided in any one or more of these Bylaws, the Declaration or the Act, these Bylaws may be amended by vote of the Unit Owners entitled to cast a majority of the votes in the Association, cast in person or by proxy at a meeting duly held in accordance with the provisions of these Bylaws; provided, however, that if such amendment shall make any change which would have a material effect upon any rights, privileges, powers, and options of the Declarant, such amendment shall require the joinder of the Declarant; and further provided that no amendment seeking (i) to abandon, partition, subdivide, encumber, sell or transfer any portion of the Common Elements, or (ii) to abandon or terminate the condominium form of ownership of the Property except as otherwise provided in the Declaration, shall be effective without the prior written approval of all Mortgagees holding mortgages encumbering the Units. Notwithstanding the foregoing, amendments of a material nature must be approved by the Unit Owners entitled to cast at least seventy-five percent (75%) of the total allocated votes in the Association and by eligible mortgage holders representing at least fifty-one percent (51%) of the votes of Units subject to mortgages held by eligible mortgage holders. A change to any of the following, except where such change may be effected by the Declarant, the Association or certain Unit Owners under the Declaration or the Act, would be considered material:

(a) voting rights;

(b) assessments, assessment liens, or subordination of assessment liens;

(c) reserves for maintenance, repair and replacement of Common Elements;

(d) responsibility for maintenance and repairs;

(e) reallocation of interests in the Common or Limited Common Elements, or right to their use;

(f) boundaries of any Unit;

(g) convertibility of Units into Common Elements or Common Elements into Units;

(h) expansion or contraction of the Condominium; or the addition, annexation or withdrawal of property to or from the Condominium;

(i) insurance or fidelity bonds;

(j) leasing of Units;

(k) imposition of any restrictions on a Unit owner's right to sell or transfer his or her Unit;

(l) restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;

(m) any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs;

(n) any provisions that expressly benefit holders, insurers or guarantors of mortgagees on the Units.

If the amendment is not of such a material nature, such as the correction of a technical error or the clarification of a statement, the approval of an eligible mortgage holder may be assumed when the eligible mortgage holder has failed to submit a response to any written proposal for an amendment within thirty (30) days after the proposal is made.

Section 8.2. Amendments to the Declaration. The Declaration may be amended pursuant to the provisions of the Act and of the Declaration. The President is empowered to prepare and execute any amendments to the Declaration on behalf of the Association and the Secretary is empowered to attest, seal with the Association's corporate seal, if any, or as a sealed instrument if no seal, and record any such amendments on behalf of the Association.

ARTICLE 9

GENERAL PROVISIONS

Section 9.1. Severability. The provisions of these Bylaws shall be deemed independent and severable and the invalidity, and partial invalidity or unenforceability of any provision or portion hereof shall not affect the validity or enforceability of any other provision or portion thereof unless the deletion of such invalid or unenforceable provision shall destroy the uniform plan for development and operation of the Property which the Declaration and these

Bylaws are intended to create.

Section 9.2. Conflicts. The Act and the Declaration shall control in the event of any conflict between the provisions thereof and the provisions of these Bylaws. The Act, the Declaration, and these Bylaws shall control in the case of any conflict between the provisions thereof and the provisions of the Rules and Regulations.

Section 9.3. Notices. All notices or other communications required or permitted under these Bylaws shall be in writing and shall be deemed to have been given when personally delivered or on the second business day after the day on which mailed by certified mail, return receipt requested, postage prepaid (or otherwise as the Act may permit), (a) if to a Unit Owner at the single address which the Unit Owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the Unit of such Unit Owner, or (b) if to the Association, the Executive Board, or to the managing agent, at the principal office of the Association and to the managing agent or at such other address as shall be designated by notice in writing to the Unit Owners pursuant to this Section. If a Unit is owned by more than one person, each such person who so designates a single address in writing to the Secretary shall be entitled to receive all notices hereunder.

Section 9.4. Headings. The headings preceding the various Sections of these Bylaws and the Table of Consents are intended solely for the convenience of readers of the Bylaws and in no way define, limit or describe the scope of these Bylaws or the intent of any provisions thereof.

Section 9.5. Gender. The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders, and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

ARTICLE 10

CORPORATE SEAL

Section 10.1 Seal. At the determination of the Executive Board, the Association may have a corporate seal. The form of the seal of the Association shall contain the name of the Association and the State of Maine.

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