

Final 09/29/10

REVISED DECLARATION OF CONDOMINIUM
FLETCHER WOODS NO. 1 CONDOMINIUM
WITH SUBMISSION TO THE MAINE CONDOMINIUM ACT

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Comment: This draft of a new declaration for Fletcher Woods is designed to be user friendly, starting with a table of contents. The goal of condominium documents drafted by developers is to comply with the condominium act, to help the developer sell his units, and to protect the interests of the developer. I see the role of a redrafted documents for the association as being to give the Board and unit owners a reference that is easy to use (as easy as the complexity of the underlying concepts allow), and which provides a ready answer to questions commonly encountered.

In doing that, I have often included provisions straight from the Maine Condominium Act and the Maine Nonprofit Corporation Act, which are not strictly required to be in the declaration but which help the Board to fulfill its responsibilities. In many cases I have combined information gathered from various parts of the Condominium act and the Maine Nonprofit Corporation act and put them in logical order – for instance, all the powers of the association are listed in section 7.2 of the declaration.

This declaration and the bylaws also emphasize governance questions, often shortchanged in developers documents, providing protections for unit owners against abuses by the Board, and provide for flexibility in operation.

Finally, I have in some instances provided optional language for the committee to look at. Some of the things in the proposed declaration and bylaws you will reject; I see it as my job to bring them to your attention, to consider them, and then to recommend or not recommend them to the full board as you wish.

ARTICLE 1. INTRODUCTORY; DEFINITIONS

Section 1.1. Submission to the Maine Condominium Act.

This Declaration is filed pursuant to the Maine Condominium Act (the "Act"), Title 33, Section 1601-101 et seq., to subject Fletcher Woods No. 1 Condominium to the provisions of the Act and to revise and amend the previous Declaration and to completely replace all provisions of the former Declaration with this document. Fletcher Woods Condominium No. 1 (the "Condominium") was formed under the Maine Unit Ownership Act, Title 33, Section 560 et seq., by a Declaration of Condominium dated December 11, 1970, recorded in the York County Registry of Deeds, Book 1892, page 561. The Declaration has been amended several times by amendments recorded in the York County Registry of Deeds. The Fletcher Woods Association, Inc. (the "Association"), a Maine nonprofit corporation, continues to be the governing body of the Condominium. For purposes of this Declaration,, the Fletcher Woods Association is deemed to be the Declarant.

The Condominium contains 20 existing Units. No additional Units may be added to the Condominium.

The Plats and Plans of the Condominium are recorded at Condominium File ***, pages *** in the York County Registry of Deeds.

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 Rules of the Association, which shall be deemed to be covenants running with the land.

Comment: The paragraph immediately above is a restatement of what the condominium law is, and is included here for clarity. The existing declaration has similar language

Section 1.2. Definitions; General Concepts; Incorporation of Statute into Declaration

Terms contained in the Declaration, Bylaws, Rules and Plats and Plans shall be interpreted according to the definitions found in this section. Other terms not defined in this section shall have the meanings given to them by the Maine Condominium Act. If the terms found in this Declaration are not defined in the Declaration or in the Maine Condominium Act, they shall have their ordinary meanings.

This Declaration has been drafted to give Unit Owners and the Board of Directors practical guidance about the operation of the Condominium. To that end, statutory provisions of the Maine Condominium Act and the Maine Non-profit Corporation Act have been incorporated into the Declaration and Bylaws.

Units, Common Elements and Limited Common Elements. All parts of the Condominium property are either part of a Unit or part of the Common Elements. The Units are the part of the Condominium solely owned by a Unit Owner. The Common Elements are owned "in common" by all Unit owners. A subcategory of the Common Elements are the Limited Common Elements, whose distinguishing feature is that its use is reserved exclusively to one or more, but not all, Unit Owners.

Whether a particular part of the property is a Unit, a Common Element or a Limited Common Element will determine what the rules are for usage, control, responsibility for maintenance, repair and replacement, insurance and other things. Making that determination is always the first step in making decisions about the Property.

Comment. The two paragraphs above are meant to be explanatory only, identifying a

condominium from other forms of ownership. No similar explanatory language in the existing delcaration

Common Charges and Expenses of the Association.

Common Expenses are those expenditures charged against each Unit Owner in accordance with the formula for Common Expense liability set out in Exhibit B of this Declaration. Unless otherwise provided for in the Condominium Documents, all Expenses are Common Expenses. Typical Common Expenses are the cost of insurance policies held by the Association, the costs of maintenance of the Common Areas, management expenses and general administration.

The terms below have a special definition when used in the Declaration, Bylaws, Plans and Rules.

"Eligible Mortgage Holder" is a concept found in the Maine Condominium Act but rarely used in practice. It refers to the holder of a recorded first mortgage on a Unit which has delivered written notice to the Association by prepaid United States mail, return receipt requested, or by delivery in hand securing a receipt therefor, stating the mortgagee's name and address, the unit owner's name and address, and the identifying number of the unit, and stating that the mortgage is a recorded first mortgage. Eligible Mortgage Holders are mentioned in this Declaration only because the Maine Condominium Act authorizes them and creates special rights in those rare mortgage holders that give the proper notices necessary to become Eligible Mortgage Holders.

Comment: The "Eligible Mortgage Holders" provisions are required by the Maine Condominium Act, and cannot be avoided.

"Email Notice" means notice to Unit owners given by means of electronic media, to notify all Unit owners who have provided an email address and consented in writing to its use for such purposes, of meetings, billings and other matters as set forth in Section 10.8 and elsewhere in this Declaration or in the Bylaws. The responsibility for correcting, updating and changing email addresses in the distribution list rests with Unit owners and not the Association. Notice of certain matters not required by law to be given to Unit owners, such as notice of Director's meetings, will be given only to Unit owners by email.

Comment. "Email Notice" is something new and is completely optional. It allows the use of email to provide notices of meetings without the use of the U.S. Mail

and saves postage and printing costs. For those without email notices can be sent by US mail.

"Executive Session" means a meeting of the Board of Directors closed to Unit owners in accordance with the Declaration and Bylaws.

Comment: "Executive Session" is something new and refers to the ability of the Board to meet privately to discuss legal matters and other sensitive subjects. Not in existing declaration nor addressed in the Unit Ownership Act.

"Opportunity to be Heard" means a meeting of the Board of Directors, at which a Unit owner or Unit owners (having been given proper notice) have an opportunity to explain or comment, in person or through a representative, in person or in writing, on proposed actions by the Board, including the imposition of fines or the adoption of Rules, all as set forth in the Declaration.

Comment: "Opportunity to be Heard" is required by the Maine Condominium Act before the Board fines anyone for violation of the rules. Not in existing declaration nor in Unit Ownership Act.

"Periodic Assessment" means the Unit owner's share of the anticipated Common Expenses for each period of the Association's fiscal year as reflected in the budget adopted by the Board of Directors for such year.

Comment: By using the term "periodic" rather than "monthly", the association has the flexibility to allow quarterly payments if it wishes.

"Rule" means any policy, guideline, restriction, procedure, or regulation of an association, however denominated, which is not set forth in the declaration or bylaws and which governs the conduct of persons or the use or appearance of property.

"Unit owner" means a person who is an owner or co-owner of a Unit other than as security for an obligation.

"Vote" or "Voting Rights" is the vote allocated to each Unit, as set out in Exhibit B of the Declaration

Section 1.3 Interpretation

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

Section 1.4. Other Applicable Laws.

Provisions in the Declaration, Bylaws and Rules may be subject to various federal and state laws which may restrict their application, such as the Fair Housing Act, requiring reasonable accommodations for disabilities (Example: access ramps and service animals). The requirements of these laws may have priority over conflicting provisions in this Declaration, the Bylaws or Rules.

Comment: This explanatory language is meant to warn the association that attempts to prohibit seeing eye dogs for disabled persons, for instance, even though the condominium documents prohibit animals, will not prevail over federal law, and may lead to expensive and costly lawsuits. Not addressed in the existing declaration

ARTICLE 2 – THE UNITS.

Section 2.1 Description of Units.

The Units are not changed by this Declaration and the description of the Units from the previous Declaration is incorporated as follows:

“The Units are the twenty (20) separate and numbered dwelling unit which are designated in Exhibit A to this Declaration, excluding, however, all spaces and improvement lying beneath the undecorated and/or unfinished inner surfaces of the perimeter walls and floors, and above the undecorated and/or unfinished inner surfaces of the ceilings of each dwelling unit, and further excluding all spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of all interior bearing walls and/or bearing partitions, and further excluding all pipe, ducts, wires, conduits and other facilities running through any interior wall or partition for the furnishing of utility services to units and common areas and facilities.”

Comment: The boundaries of a unit, as set out in the existing Declaration, Section 5, page 5, cannot be changed, and the language above comes directly from the existing Declaration. What a new declaration can do is to further define what is or is not a unit, and that is what I try to do below. Obviously, the committee may change these things.

By way of further explanation, the Units include the following:

Exterior windows (but not the window frames and sills, which are common elements.

Finish flooring, floor coverings, carpeting and the like

Plumbing, kitchen and bathroom fixtures, kitchen appliances, heating and ventilating equipment, water heaters, bathroom exhaust fans, dryer ducts, electric intercom systems, smoke detectors and components thereof serving only a single Unit, if any, even if located outside of a Unit's boundaries

finish wall and ceiling coverings (including paint, wallpaper, furring, gypsum board, moldings, and any other materials constituting any part of the finished surfaces thereof

Heating elements located in the unit, such as electric or oil heating units.

Electric sockets

Lightbulbs, inside and out

Garage door openers, whether attached to the garage or not.

Chimneys installed for oil heat.

Furnaces, whether installed in the unit or elsewhere

Cable wires for TV inside the unit

Ducts for dryers

Water heaters for unit, wherever installed.

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

Electrical wiring, equipment outlets and lighting devices and fixtures and from the point where the feed wire leaves the Unit's circuit breaker distribution box inwards, and portions of water and sewer utility lines, pipes and equipment serving only that Unit, and located within its general boundary lines as herein described. Other such lines, pipes and equipment are part of the Common Elements.

Storm doors

Any windows attached to the Unit are parts of the Unit and not part of the Limited Common Elements.

A Unit generally does not include: the exterior walls, the 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.

Section 2.2. Unit Boundaries.

The boundaries of each Unit 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:
 - a. Upper Boundary: the planes at the lower surfaces of the ceiling joists, including the lower (inside) 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.
 - b. 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 interior surface of the gypsum-board, sheetrock, or other wall materials forming its exterior or common walls, and the exterior surfaces of windows, extended to the intersections with each other and with the horizontal boundaries.
- c. Interior Finishes. The Unit shall include all wallpaper, paint, carpeting, finished flooring and any other material constituting any part of the finishes 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, except structural components necessary for support of the building.

Comment: Describing Units by unit boundaries is an additional way of describing just what the Unit is, and is required by the Maine Condominium Act. There is no comparable provision in the existing declaration.

Section 2.3. Alteration, Repair, Maintenance and Replacement of Units.

No Unit owner shall change the exterior appearance of a Unit without the prior written approval of the Board of Directors of the Association, including the exterior windows, which shall be "six over six", six panes each for each part of a window, so as to maintain a consistent appearance throughout the condominium provided that nothing shall require those windows not having "six over six" style panes as of the date of this Declaration, to install them upon the adoption of this Declaration or when such windows are replaced.

Unit owners may otherwise alter their Unit as they wish, in accordance with this Declaration, and shall otherwise be responsible for maintenance, repair and replacement of their Units.

Whether by virtue of partial or total destruction by casualty, or otherwise, replacement or reconstruction of Units and/or the structure containing them shall not alter horizontal or vertical Unit boundaries previously existing. Upon replacement or reconstruction, the pre-existing height and exterior dimensions of the building, and its external appearance, shall be preserved, with only such minor changes as the Board of Directors may approve.

Each Unit Owner shall otherwise keep and maintain her or his Unit and its equipment, appliances and appurtenances in good order, condition and repair and in an attractive, clean and sanitary condition, whether such maintenance and repair shall be structural or non-structural. The Unit Owner shall provide ordinary maintenance of the interior and exterior surfaces of windows. Each Unit Owner shall perform his responsibilities 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.

Unit owners shall, in addition, perform routine cleaning of chimneys, notwithstanding that the chimneys are a part of the Common Elements.

Comment: As a letter from attorney Lawrence Clough stated, the existing declaration did not address maintenance responsibilities at all. The language sets out the general rules regarding maintenance, and specifically authorizes the Board to act proactively and preventively to address dangers of water and fire, the two biggest casualty loss items in condominiums. None of this is addressed in the existing declaration.

Section 2.4. Access and Easement Rights to Units.

Each Unit owner has:

a. an unrestricted right of ingress and egress to his or her Unit, which automatically transfers with a transfer of title to the Unit.

b. an easement, in common with all other Unit Owners, to use, maintain, repair and replace pipes, wires, ducts, cables, conduits, public utility lines and other similar items serving his Unit and located in any of the other Units, provided that the interference with the use and enjoyment of the Units in which such items are located shall be minimized. Each Unit shall be subject to a similar easement in favor of all other Unit Owners.

c. an easement for minor intrusions into the Common Elements by exhaust pipes, air conditioners and similar things, subject to approval by the Board or any committee established by the Board for that purpose.

d. an 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.

Comment. This language tracks language in the Unit Ownership Act and the existing declaration.

Section 2.5. 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 because 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.

Comment. This language repeats, in general, what the existing declaration provides.

Section 2.6. Other Provisions Concerning Units.

a. Inconsistency with survey. If the Survey is inconsistent with the definition of Unit as contained in this Declaration, then the definition contained in this Declaration will control.

b. Identifying Number. Each Unit's identifying number is shown on the Plats and Plans.

c. Subdivision. No Unit owner shall have the right to physically subdivide Units into two or more Units .

Comment. I didn't immediately see where the existing declaration prohibits subdivision.

ARTICLE 3 – THE COMMON ELEMENTS AND LIMITED COMMON UNITS.

Section 3.1. The Common Elements and Maintenance Thereof.

The Common Elements include all portions of the Property other than the Units. The Common Elements are maintained at the expense of the Association unless otherwise provided in this Declaration. The Association has broad powers to maintain, alter, improve, remove and replace Common Elements. No vested right exists for the continued existence of any particular Common Element. No Unit Owner shall alter any of the Common Elements or paint or otherwise change the appearance of the Common Elements or paint or otherwise change the exterior appearance of a building, 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 without the prior written approval of the Board of Directors of the Association or any committee established by the Board for that purpose.

Specifically, the Common Elements include the following:

- Land, lawns, trees, and exterior improvements such as drains
- Chimneys, other than chimneys constructed for oil burners.
- Building foundations.
- Exterior parts of the structure, such as roofs, gutter and down spouts, clapboards, exterior trim and bulkheads
- Building beams and rafters providing structural support
- Exterior driveways and walkways
- Exterior doors, including garage doors
- Sewer and water lines located outside the boundaries of the unit
- Electric, telephone, cable wires and lines located outside the boundaries of the unit.
- Circuit breaker boxes
- Outside drainage systems
- Heating and utility lines running through the Unit which serve more than one Unit or the Common Elements.

Section 3.2. The Limited Common Elements.

Limited Common Elements are designated portions of the Common Elements which are reserved for the exclusive use of a particular Unit or Units, to the exclusion of other Units. The following portions of the Condominium are designated as Limited Common

Elements, and the responsibility for each is set forth below:

Area or item	Maintenance responsibility
Attic space above each Unit	Association
Crawl space beneath each unit	Association*
Garage	Association
Florida Rooms	Unit Owner
Patios	Association
Enclosures for patios	Unit owner
Screened in porches	Unit owner
Enclosed decks	Unit owner
Exterior doorsteps and stoops	Association
Exterior shutters	Association
Sump pumps	Unit owner
Circuit breaker boxes	Association
Garage Doors	Association
Lamp posts outside Units	Association
Exterior Window Sills	Association
Dehumidifiers	Unit owner*

*Association is not responsible for checking crawl spaces or dehumidifiers in the winter when owners are away for the season.

If a Unit Owner fails to so maintain, replace and repair the Limited Common Elements that the Unit owner is responsible for maintaining, then the Association may do so and assess the expenses applicable to such unit to that Unit owner.

Section 3.3. Use of Areas Surrounding the Unit; Privacy Zone.

Subject to Rules enacted by the Board, Unit owners may plant and maintain flowers and other plants, and otherwise decorate and maintain the area within 12 feet from the boundary of their Unit or half the distance to another Unit, whichever is less. Unit owners shall maintain this space in a well kept manner. Such area shall also constitute a "privacy zone."

Unit owners may continue use and maintenance of any flower bed extending beyond the privacy zone existing at the time this Declaration is adopted, provided that the right to use and maintain such bed shall be permanently discontinued if not so used and maintained for one calendar year.

ARTICLE 4 – LIABILITY FOR COMMON EXPENSES AND OTHER EXPENSE; VOTING RIGHTS; ASSESSMENTS

Section 4.1. Common Element Interest and Common Expense Liability.

Each Unit's Common Element Interest and Common Expense Liability is 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 B** shall prevail in any event.

Comment. The Common Element Interest is the percentage of the common elements that each unit actually owns. It is actually not that important except in unusual situations. The percentage liability for common expenses determines what part of the common expense liability each unit must pay and is expressed as a percentage. Under the Unit Ownership Act, this percentage is based on the developers estimate of the fair market value of the units when the condominium was created forty years ago, and may result in unfair allocations of payments by unit owners. That percentage cannot be changed without unanimous consent of unit owners and must be the same if the association adopts the Maine Condominium Act.

Section 4.2. Voting Rights.

Each Unit shall have one vote.

Section 4.3 Utilities.

All Unit owners shall pay their own utilities.

Section 4.4. Working Capital Assessments.

Upon the conveyance for value of a unit or any interest in a unit, the grantee (buyer) of such interest shall be responsible for paying to the Association, at the time of the closing, an amount equal to two (2) times the then current monthly assessment on such unit as a membership fee. Such payment shall be available to the Association for all purposes, without restriction. Such a working capital assessment shall not be assessed, collected or be considered payable when a unit or an interest in a unit is transferred: (1) pursuant to a voluntary or involuntary lien or encumbrance; (2) pursuant to a foreclosure or deed in lieu of foreclosure; (3) by death of any owner of a unit or by deed of distribution from an estate (although a transfer from an estate or trust to a bona fide purchaser for value shall be subject to this working capital assessment; (4) as part of a transfer between family members, trustees of a trust for the benefit of family members, or to an entity wholly owned by family members for no or nominal consideration.

Comment: This is substantially the same provision as found in amendment to existing Bylaws recorded at Book 14174, page 373.

Section 4.5. Liability of Unit Owner for Damage to Units and Common Elements.

Each Unit Owner shall be liable, and the Association shall have a lien against his Unit for, all uninsured 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 guest, 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, misuses, 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.

If the Board of Directors believes that a Unit owner is responsible under this section, the Board shall first give the Unit owner and Opportunity to be Heard to determine whether, in its sole reasonable discretion, whether to hold a Unit Owner responsible under this Section, and to determine the reasonable cost of repair or remediation to be assessed against the Unit Owner.

Comment. The existing declaration is similar, except for the requirement that there be an Opportunity to be Heard prior to assessing a unit owner.

ARTICLE 5 - USE AND OCCUPANCY OF UNITS AND COMMON ELEMENTS.

Section 5.1. Generally; Units and Common Elements;

All Unit Owners, their tenants, families, visitors, guests and invitees shall comply with and conform to all applicable laws and regulations of the State of Maine and all ordinances and Rules of the Town of Kennebunk. 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.

The Association, acting through its Board of Directors, shall have exclusive control over the use and occupancy of the Common Elements, except as restricted in this Declaration.

Comment. The sections below are a laundry list of restrictions on use and occupancy of the units. The Unit Ownership Act is vague on the power of the Association to regulate usage within units, but the Maine Condominium Act provides that no amendment to the declaration may affect the use within units except with unanimous consent of all unit owners. That is why restrictions within the unit are set out in some detail here. The committee may want to modify or delete some of these. There is always an option to say that the provisions in the sections

that follow may be enforced or modified by rules. Restrictions on use within Units is found in the existing bylaws, Article V, Section 11.

Section 5.2. Use and Occupancy Restrictions within Units.

Each Unit shall be occupied and used subject to the following restrictions:

- a. 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 strip or waste may be committed on or to the Common Elements.
- b. 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.
- c. Quiet Enjoyment. 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. Fire Safety and Noise Control. No person shall impair or remove 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.
- e. 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 from time to time in accordance with rules established by the Board of Directors. Each Unit shall deposit only ordinary household type waste in the sewerage system. The Association may seek to arrange a common provider for all Units in order to obtain economies of scale.
- f. Electrical, heating, plumbing. No member shall overload the electrical, water, sewage and storm water disposal system servicing the Property. No person shall operate any machinery, appliances, accessories or equipment in such a manner as to cause, in the judgment of the Board of Directors, any unreasonable disturbance or make any alterations to or connections with the heating, plumbing, or sewage disposal systems without the prior written consent of the Board of Directors.
- g. Music; Noise. No Unit owner shall play or permit to be played any musical instrument or operate or permit to be operated any stereo system, phonograph, radio, television set, or other electronic device in or outside his Unit between the hours of 10:00 p.m. and 8:00 a.m., if such playing or operation shall disturb or annoy the occupants of any other Unit.
- h. Antennas. No Unit owner shall attach to the outside of his or her building, erect or maintain an outside television or radio antenna or satellite dish in the Common Elements except with the approval of the Board of Directors.

i. Signs. Except as allowed by this Declaration, no owner of any may erect any sign on or in his Unit or any Limited Common Element which is visible from outside his Unit or from the Common Elements, except a standard sized sign advertising a Unit for sale, without in each instance having obtained the prior written permission of the Board of Directors.

j. Additional Restrictions. Use and behavior within Units are subject to the Rules of the Association as established under the Bylaws, which such authority is adopted by reference herein. Specifically, the powers to effect use of behavior within Units found in Article 6-A (d)(2) of the Bylaws are incorporated herein by reference.

k. 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 sign are displayed, the Unit is not used for meeting with customers or third parties, and there is no noticeable increase in deliveries. The foregoing occupancy restrictions shall not be construed to prevent the occupants of any of the units from entertaining guests of any age in their units, including temporary residency not to exceed six (6) months.

Comment: Subsection k. addresses the existence of home based businesses and allows them, with restrictions. The last sentence of this subsection simply repeats a paragraph found in Section 8, page 7 of the existing declaration.

l. Limitation on Occupancy. There shall be no long term occupancy of any unit exceeding two persons for each bedroom, as originally designed.

Section 5.3. Use and Occupancy Restrictions in the Common Elements

a. Obstruction of Common Elements. 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 the Limited Common Elements and areas designated for parking by the Condominium Documents or the Board of Directors) without the approval of the Board of Directors.

b. Exterior Alterations. Except as set forth in the following subparagraph, and 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 wires, lines, cables, fences, decks, steps, signs, canopies, antennas, clotheslines or other structures, nor (ii) plant, , cut. or remove , 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.

c. Use of Common Areas Immediately Surrounding the Units. Unit owners may plant flowers and shrubs in the privacy zone adjacent to their units, 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. The Board may by rule adopt policies concerning the placement of chairs, grills and other items common placed outdoors in the area immediately surrounding Units, and enact rules to protect Unit owners in the privacy area. No Unit owner shall maintain any fence in the front lawn.

d. Enclosure of outside patios and decks; Florida Rooms. Notwithstanding any provision contained in this Declaration, as amended, or in the Maine Condominium Act which includes a prohibition against making alterations to the exterior of any unit and notwithstanding provisions restricting the ability of unit owners to alter Common Elements of the Condominium, unit owners may enclose their outside patios or decks with screen rooms, "Florida Room" or other seasonal or year-round rooms. In conjunction with constructing any such enclosures on the patio or deck outside a unit, the unit owner may install such reasonable reinforcements as may be necessary to re-enforce the support structures under the newly constructed enclosure. Any such structure and related improvements shall be considered Limited Common Elements associated with the unit affiliated with that particular deck or patio. Any proposed enclosure of a deck or patio, as permitted hereunder, must only be constructed after the following has occurred:

1. Written plans and specification for the enclosure are submitted to the Condominium Association Board of Directors and the Board has reasonably reviewed and approved the proposed enclosure to ensure that the appearance and quality of the proposed enclosure is consistent with the overall quality and appearance of the Common Elements;
2. The Unit owner has received a building permit from the Kennebunk Code Enforcement Officer;
3. The Unit owner has submitted to the Board of Directors written documentation evidencing that the enclosure will comply with all applicable building codes.

Nothing contained in this provision shall permit any such structures to be added to the exterior of the front of any unit.

This provision permitted the construction of certain enclosures on decks and patios outside of condominium units is intended to be retroactive in that it will approve all existing structures constructed prior to July 30, 2004, the effective date of the amendment to the Declaration of Condominium recorded in the York County Registry of Deeds at Book 14174,

page 376, and to all structures erected with approval of the Board constructed after that date, as well as permitting any such structures to be constructed in the future, subject to the provisions set forth above.

Florida Rooms and decks shall be maintained at the expense of the individual unit owner and not by the Association.

Comment: Subparagraph p. incorporates the amendment to Article V, section 13 of the declaration recorded at Book 14174, page 376. That amendment does not address who is responsible for maintaining the structures added under this subparagraph, and the committee may want to discuss that issue.

e. Regulation of Parking. The Board of Directors may regulate parking in driveways and elsewhere on the Common Areas by Rule.

Section 5.4. Pets and Animals

- a. Dogs listed as “aggressive” by the Association’s insurance carrier are prohibited from entering the Property. Unit owners wishing to bring their dogs onto the Property must register their dogs with the Association each year, and must provide proof of current rabies shots as part of that registration.
- b. Persons other than owners shall be prohibited from bringing their pets onto the property, except that family members of unit owners and visitors of unit owners may bring their pets onto the property for a period no longer than 14 days, provided that they are on a leash when in the Common Areas. Specifically, transient and rental occupants are prohibited from bringing their pets onto the Condominium property.
- c. The Board of Directors, acting through the manager, may summarily remove pets which cause unnecessary noise or present danger to other persons.
- d. Except for household pets permitted below, the maintenance, keeping, boarding and/or raising of animal, including without limitation laboratory animals, livestock, poultry or reptiles of any kind, regardless of number, is prohibited with any Unit or upon the Common Elements. A Unit Owner may keep within such Unit one (1) dog, two cats, and up to two other ordinary household pets (but no reptiles) in a Unit, subject to such additional Rules as established from time to time by the Board of Directors.

- e. 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. Pets must be on a leash when outside the unit and they cannot be tied up on a stationary leash or left unattended at any time. No dogs, cats or other pets shall be permitted outside of a Unit except on a leash attended by a responsible person, or otherwise under the control of a responsible person. Pet owners shall promptly clean up the droppings left by their pets.
- f. The Association shall have the power to further regulate the keeping of pets and animals under the Bylaws or Rules 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.
- g. Neither the provisions in this section nor any Rules enacted pursuant to this section shall be construed to limit service dogs or other animals assisting disabled persons as covered by state and federal law.

Section 5.5. Vehicles and Parking

(a) Boats, Trailers, Recreational Vehicles, Large Vehicles, scooters, skateboards. Only passenger vehicles and trucks with a gross vehicle weight of less than 8,000 (7,000) pounds may be kept (Placed) 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.

No inoperable vehicles, or any boats, recreational vehicles, snowmobiles, motorized or nonmotorized scooters or skateboards, all-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 Unit or Limited Common Element 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 garage or driveway adjacent to each Unit designated as a Limited Common Element, in the common parking areas as shown on the Plats and Plans and in those portions of the Common Elements designated from time to time by the Board of Directors for parking. No parking is permitted in the turnaround. 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.

Section 5.6. Leasing, Tenants.

Minimum lease period. The minimum lease period shall be twelve (12) months. A Unit owner may lease her Unit no more than two (2) times per year.

Maximum number of non-owner occupied Units. No more than 20% of the Units may be occupied by non-owners, unless a hardship exemption is granted by the Board of Directors.

Entire Unit Leased. No portion of any Unit (other than the entire Unit) shall be leased for any period.

Written lease required. The Board of Directors may require that all rentals must be made by virtue of a written lease in a form approved by the Board of Directors, a copy of which must be signed by a representative of the Board before the lease becomes effective. The Board of Directors may also, by Rule, establish a standard lease template, required for all unit owners who wish to lease their unit. The lease shall contain the provisions which follow, but these provisions are deemed to be incorporated into the lease by this declaration, whether or not expressly contained in the lease:

- a. The tenant and all other occupants must comply with the Declaration, these Bylaws, and the Rules.
- b. The tenant's failure to comply is a default under the lease.
- c. The Board of Directors has the power to terminate the lease or to bring summary proceedings to evict the tenant in the name of the Unit owner after thirty (30) days' prior written notice to the Unit owner, in the event of a default by the lessee in the performance of the lease, and
- d. In the event that the payment of Common Charges and/or other amounts due to the Association becomes more than 30 days past due, the Association may require the tenant to pay directly to the Association the association fees in an amount of up to the balance of current and delinquent Common Charges and other unpaid amounts outstanding, subject to the rights of any recorded first mortgage or Eligible Mortgage Holder which has exercised an assignment of rents. The Association's notice to the tenant shall be conclusive and binding on the tenant as to the tenant's obligation to pay the rent directly to the Association and as to the amount of Common Charges and other fees due. The Unit owner shall have ten days after such notice is sent to file any objection with the Board of Directors, which objection must be in writing and signed under oath under the pains and penalties of perjury, must contain a short and plain statement of any alleged errors by the Association, and shall include copies of cancelled checks or other written evidence of objection or miscalculation of the amounts due. The Unit owner must state what amounts, if any, which the owner admits is owed to the Association.

e. The foregoing provisions of this paragraph shall not apply to an institutional lender in possession of a Unit as a result of foreclosure, judicial sale or a proceeding in lieu of foreclosure.

f. In the event a guest or tenant of a Unit fails to comply with the provisions of this Declaration, the Bylaws, Rules or the lease, then, in addition to all other remedies which it may have, the Association may notify the Owner of such violations and demand that the same be remedied through the Owner's efforts within a time certain after such notice in the judgment of the Directors.

If such violations are not remedied within said period, then the Owner shall thereafter, at his own cost and expense, immediately institute and diligently evict his tenant or guest on account of such violations. In the event the Owner fails to act promptly, then the Board shall have the right, but not the duty, to institute and prosecute such election as attorney-in-fact for the Owners and at the Owner's sole cost and expense, including all legal fees incurred. Said costs and expenses shall be due and payable upon demand by the Association and shall be deemed to constitute a lien on the particular Unit involved, and the collection thereof may be enforced by the Board of Directors in the same manner as the Board is entitled to enforce collection of Common Expense assessments.

Section 5.7. Miscellaneous

Upon request of the Association, each Unit owner shall provide the Association and/or any managers with a copy of each key to the Unit.

ARTICLE 6 – INSURANCE

Comment: For this article, see separate handout highlighting what the Maine Condominium Act requires. Insurance is extremely important for condominium associations, and in general, associations should deal only with insurance agents with experience in condominium insurance. The insurance requirements of the Condominium Act are minimal requirements; other coverages are usually a good idea, and they are included in this article.

Insurance is covered in Article V, Section 2 of the existing bylaws. That section contains some obsolete provisions, including the minimum amount of insurance, the minimum notice for cancellation.

Section 6.1. 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(e) 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

Section 6.2. Property and Casualty Insurance for Units and Common Elements.

a. Type of Insurance: Coverages. The Association shall obtain and maintain in effect and maintain in effect "special causes of loss form" insurance policy covering direct physical loss to 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 the Common Elements, the Limited Common Elements, Units, and 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.

b. Amount of Coverage. 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.

c. Deductible. Such insurance policy may, at the option of the Board of Directors, contain such deductible as the Board of Directors shall reasonably deem appropriate.

d. Endorsements. Such casualty insurance policy shall also include the following provisions:

1. 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.

(i) 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;

2. 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 6.3 below; and

3. 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.

Section 6.3. Casualty Losses, Adjustment and Payment; Insurance Trustee.

a. Board of Directors adjusts the losses. Any loss covered by the insurance policy described in Section 9.2 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.

b. Insurance proceeds held in trust. 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.

c. Surety Bond. 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.

d. Distribution of insurance 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.

Section 6.4. Liability Insurance.

a. Liability Coverage Required for Common Elements. 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.

b. Comprehensive liability basis; endorsements. 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.

c. Coverage amounts. 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. When reasonably available, the Association shall obtain and carry such coverage in the amount of at least two million (\$2,000,000.00) dollars.

Section 6.5. 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 required by the Maine Condominium Act:

- a. 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;
- b. The Declarant, so long as the Declarant shall own any Unit, shall be protected by all such policies as a Unit Owner.
- c. 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;

- d. The insurer waives its right to subrogation under the policy against any Unit Owner or members of his household;
- e. 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
- f. 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.

Section 6.5-A. Fidelity Insurance.

The Association shall carry fidelity bond coverage in an amount equal to the maximum financial exposure existing at any one time. This coverage shall include the designated agent endorsement if a management company is handling Association funds.

Comment. Similar to Article II, Section 10 of the existing Bylaws. It is amazing how often funds are embezzled. I have encountered several instances of association clients who have had funds stolen; there are common newspaper accounts of such embezzlement (the latest being a bookkeeper who embezzled funds from two condominium associations in Portsmouth), but the reported instances are only the tip of the iceberg; most victims are embarrassed enough not to want their story told.

Section 6.6. Other Insurance.

The Board of Directors shall obtain and maintain as a Common Expense:

- a. Directors and Officers Liability. To the extent reasonably available, Director's and Officers' liability insurance, to satisfy the indemnification obligations of the Association;
- b. Workers' Compensation. Workers' compensation insurance, if and to the extent necessary to meet the requirements of law;
- c. Flood. Flood insurance to the extent that a Unit is located in a special flood hazard area equal to the greater of 100% of the insurable value of the Unit so located or the maximum coverage available under the appropriate national Flood Insurance Administration program. A blanket or master policy shall be obtained, if flood insurance is required, which includes a maximum deductible of the lesser of \$5,000 or one percent (1.00%) of the policy face amount;
- d. Other. 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.

Section 6.7. Memoranda and Cancellation.

- a. Unit owners and Association entitled to certificates of insurance. 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.

b. Notice of cancellation. All such insurers issuing the policy may not cancel, substantially modify, or refuse to renew such policy or policies until thirty (30) 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.

Section 6.8. Payment of Deductibles on the Association's Property and Casualty Policy.

The insurance deductible on the Association's property and casualty policy shall be paid as follows:

a. By the Association, as a Common Expense, where the cause of any damage or destruction of any portion of the Condominium originated in or through the Common Elements or an apparatus located within the Common Elements.

Comment: An example is damage to a Unit caused by a leak in a roof, where the roof is a part of the common elements and the association is responsible for maintaining the roof. It would be unfair to charge the unit owner a part of the deductible when the damage arose out of failure of the association to maintain the roof.

b. By a Unit owner, where the cause of any damage or destruction to any portion of the Condominium originated in or through that Unit or any component thereof. In such case, the Unit owner shall be liable without regard to whether the Unit owner or any occupant was negligent. If the Association pays to repair the damage or destruction, the Association shall have a lien against the Unit for reimbursement in the same manner as a lien for common assessments.

Comment. Where damage originates because of an overflowing toilet, a leaky washer hose or frozen pipes in the unit, the owner of that unit would be responsible for payment of the association's deductible. If water from that unit flows into another Unit and causes damage there, the second unit owner would not be responsible for payment of any part of the deductible because the damage did not "originate in or through" that unit.

- a. By a Unit owner, for any damage or destruction to the Common Elements or other Units, caused by either the intentional act or omission, negligence, abuse, misuse or neglect of a Unit Owner, or his or her family, guest, tenant or the family or guest of said tenant. If the Association pays to repair the damage or destruction, the expense thereof shall be charged to the Unit owner.
- b. Notwithstanding the above, a Unit owner in all instances shall pay the expense of repair of damage to his Unit in the initial deductible amount of \$500 (or such greater amount as may be established by the Rules adopted by the Board of Directors from

time to time) not covered by the insurance.

Section 6.9. Unit Owner's Property and Casualty Insurance.

Each Unit owner is required to purchase their own property and casualty policy covering their Unit, currently known as an HO-6 or a policy providing equivalent commercial coverage. The coverage required by this section shall be sufficient to pay, at a minimum, an amount equivalent to the deductible under the Association's property and casualty master policy, but in any event no less than twenty (20%) per cent of the replacement value of the Unit.

Because of administrative cost, the Association is under no continuing duty to ensure that a Unit owner complies with the requirements of this section. However, Unit owners shall provide proof of such coverage to the Association upon 10 days written request by the Association.

Comment. Section 6.9 encourages or requires unit owners to carry their own insurance on their unit. Such policies provide several benefits for the unit owner and for the association. First, the deductible on such policies is usually much less than on the associations policy (\$250-500), so the unit owner has less exposure to payment of a large deductible. Secondly, a unit owners policy provides liability coverage to the unit owner (for instance, in case of a slip and fall inside the unit). Thirdly, such policies carry loss assessment coverage, with provides some protection against special assessments by the association to pay for uninsured casualty losses.

Section 6.10. Repair.

Any portion of the Property damaged or destroyed shall be repaired or replaced promptly by the Association (using the proceeds of insurance to the extent available), unless:

- a. The Condominium is terminated;
- b. Repair or replacement would be illegal under any state or local health or safety statute or ordinance; or
- c. Eighty percent (80%) in interest of the Unit Owners vote not to rebuild, including every owner of a Unit or Limited Common Element that would not be rebuilt, and including the consent of the Eligible Mortgage Holders as required herein.

Comment. The provisions above are required by the Maine Condominium Act.

ARTICLE 7 – CONDOMINIUM ASSOCIATION, MEMBERSHIP; POWERS

Section 7.1. The Association; Membership.

The Fletcher Woods Association, Inc. shall be the governing body of the

Condominium.

Section 7.2. Powers Granted to the Association and exercised by the Board of Directors.

The Association has the powers listed below. Except as limited by Section 7.3 of this Declaration, and other provision of the Declaration and bylaws, these powers shall be exercised by the Board of Directors and not the Unit Owners:

- a. Rules. Adopt, amend and enforce Rules, as set out in various Sections of this Declaration, subject to procedural requirements of this Declaration and Article 6-A of the Bylaws. Other use of the Common Elements shall be subject to initial Rules adopted by the Board of Directors and further Rules as adopted by the Association from time to time under Section 6-A of the Bylaws. Generally, the Association has broad power to enact rules governing the Common Elements, but the authority to enact rules governing conduct within the Unit is more limited.
- b. Budgets. Adopt and amend budgets for revenues, expenditures and reserves, and to collect assessments for Common Expenses and special charges from Unit owners, subject to ratification of the budget by Unit Owners.
- c. Managers, employees, contractors. Hire and terminate managers and other employees, agents, and independent contractors;
- d. Litigation; hearings. Institute, defend, or intervene in litigation, arbitration, or administrative proceedings in its own name on behalf of itself or two (2) or more Unit owners on matters affecting the Condominium, and the Association shall be deemed to be the attorney-in-fact of each Unit owner for such purposes, subject to specific limitations, as to the Declarant, found in Section 10.5 of the Declaration;
- e. Contracts; Liabilities. Make contracts and incur liabilities;
- f. Regulate, improve, and rent the Common Elements. Regulate the use, maintenance, repair, replacement and modification of Common Elements, provided, however, that the use and allocation of the Limited Common Elements may not be changed without the consent of those Unit owners affected; Cause additional improvements to be made as a part of the Common Elements, subject to the restrictions set forth herein;
- g. Grant easements and licenses. Grant easements, rights of way, leases, permits, concessions, and licenses for sewer lines and sewage disposal facilities, water lines, electrical cables, telephone cables, television cables and antennas, Internet cables, gas lines, storm drains, underground conduits, fire escapes and alarms and such other purposes related to the provision of public services and utilities to the Condominium as may be considered desirable, necessary or appropriate by the Board of Directors for the orderly maintenance, improvement and preservation and enjoyment of the Common Elements or for the preservation of the health,

safety, convenience and welfare of the owners of individual Units. No such rights may be created through any Unit without the written consent of the owners thereof and no such easement shall materially impair the use and enjoyment of the Condominium or any Unit therein;

h. Own property. Acquire, hold, encumber and convey in its own name any right, title, or interest to real or personal property;

j. Access and Emergency Access to Units. Have a right of access to Units, 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 Unit, the Common Elements or the Limited Common Elements; or to abate any violation of law, orders, rules of the Association or of any governmental authorities having jurisdiction thereof. In case of emergency, such right of entry shall be immediate whether or not the Unit Owner is present at the time. Upon such prior notice as is possible under the circumstances, the manager and any person authorized by the Board of Directors shall have the right to enter any Unit in case of any emergency originating in or threatening such Unit or adjoining Common Elements whether or not the owner or occupant is present at the time, and upon prior notice to enter any Unit at reasonable times for the purpose of performing authorized installations, alterations, or repairs to the Common Elements thereon or accessible therefrom.

m. Penalties for late payment; fines and penalties. Impose charges and interest for late payment of assessments and other charges allowed under this Declaration and, after notice and an Opportunity to be Heard, impose reasonable penalties for violations of the Declaration, Bylaws, and Rules of the Association;

n. Charge for certain amendments and resale certificates. Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Common Charges and assessments or resale certificates furnished in accordance with the Maine Condominium Act;

Comment: See amendment to the existing Bylaws at Book 14174, page 373, which authorizes the Association to charge for resale certificates.

o. Indemnification of officers and directors. Provide for the indemnification of its officers and directors and maintain directors and officers (D and O) liability insurance;

p. Borrow money; Assign income as security for loans. Borrow money to finance operations, repairs, renovations, capital improvements or other expenditures, in such amounts and upon such terms as it deems advisable, subject to any limitations or

approval set out in the Bylaws; The Board is specifically given the authority to pledge, assign and grant its right to future income to secure payment of such loans. If it does so, Unit owners may not exercise any right to dissolve the Condominium and the Board of Directors may not discontinue any then existing program of special assessments necessary to pay the loan. This authorization is meant to satisfy the proviso found in Section 1603-102 (14) of the Maine Condominium Act, which allows such assignment only "to the extent the Declaration so provides."

Comment: The subparagraph above replaces similar language found an amendment to the Declaration recorded on December 3, 2004, at Book 14307, page 676, and provides detail that a bank would typically want in granting loans to condominium associations.

r. Other. Exercise any other powers conferred by Declaration or Bylaws, or by the Maine Nonprofit Corporation Act;

Comment. The section above provides a convenient list of powers given to condominium associations. Subsection p., the power to borrow money and assign association income as security for borrowing by the association, does not exist without specific language in the Declaration.

See Article II, Section 2 of the existing Bylaws for a similar list of powers

Section 7.3. Limitations on Powers of the Board.

The Board of Directors may not act contrary to the provisions of the Maine Condominium Act, the Maine Non Profit Corporation Act, the Declaration or the Bylaws. In particular, the Board of Directors may not act on behalf of the Association in the following matters, approval for which is reserved to Unit owners:

- a. To amend the Declaration, the Articles of Incorporation or the Bylaws.
- b. To terminate the Condominium
- c. To elect members of the Board or determine the qualifications, powers and duties, or terms of office of Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term.
- d. The Board's authority over budgets is subject to ratification vote by Unit owners in accordance with the Maine Condominium Act.
- e. To remove a Director. Such power is reserved to Unit owners under the Bylaws, as authorized by the Articles of Incorporation of the Association.

f. Any other limitations of the power of the Board found in the Declaration or Bylaws, including provisions which require Unit owner approval to borrow money or to assign income as security for payment of a loan.

In addition, other state and federal laws, such as the Fair Housing Act, which provides protection for people with disabilities, may limit what the Board can do.

Comment. Just as important as the powers that the Board possesses, the powers that cannot be exercised by the Board are listed in this separate section for convenience. These limitations on the powers of the Board are found at various places in the Maine Condominium Act.

Section 7.4. Reserved.

Section 7.5. Bylaws

The initial Bylaws of the Association are attached hereto as Exhibit __

Section 7.6. Rules

The Board of Directors shall have the power from time to time to adopt, amend and enforce Rules, as set out in the Bylaws.

Comment: the authority to enact rules is set out on page 7 of the existing declaration.

ARTICLE 8. Reserved.

Comment. In the interest of a consistent scheme of numbering, this section (which addresses the powers of a developer in a new condominium), has been reserved.

ARTICLE 9. AMENDMENTS.

Section 9.1. In General

Certain amendments may be unilaterally executed and recorded by the Association as described in Condominium Act, Section 1601-107, Eminent Domain, 1602-108 (a), 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 Units 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), Termination of the Condominium.

Certain provisions in this Declaration and the Bylaws simply repeat mandatory provisions of the Maine Condominium Act or the Maine Nonprofit Corporation Act and cannot be amended. When in doubt, the Association should in all cases seek advice of counsel before amending the Declaration or Bylaws.

Except for the above provisions, the Declaration and the Plats and Plans may be amended as follows:

- (a) The following procedures shall apply to an amendment of this Declaration:
 - a. An amendment to the Declaration may be proposed by either the Board of Directors or by Unit Owners holding at least forty (40) per cent 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, if any.
 - b. 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, the consent required of Eligible Mortgage Holders as may be required, and the Declarant so long as it holds any Special Declarant or Development Rights. Unit owners may express their approval in writing or by proxy. Except as specifically provide to the contrary in this Declaration or the Condominium Act, no amendment may alter the boundaries of a Unit or the Allocated Interest allocated to a Unit without the unanimous consent of all affected owners.

Comment. This section sets out, for the most part, the requirements and limitations on amendments imposed by the Maine Condominium Act (except for the 20% threshold in subsection (a) a., which is arbitrary).

Section 9.2. Percentage Approval Required for Amendments.

Except as set out in Section 9.1, amendments require approval by Unit owners, as follows:

a. Amendments to the Declaration. 75% of the total votes of the Association (not just the percentage of votes actually cast) to amend the Declaration, plus approval by 51% of Eligible Mortgage Holders, if any, to the extent required by the Maine Condominium Act.

b. Amendments to the Bylaws. 67% of the total votes of the Association (not just the percentage of votes actually cast) to amend the Bylaws.

c. Adoption and amendments to the Rules. Rules are adopted and amended by the Board of Directors in accordance with the Bylaws, subject to repeal as set out in the Bylaws.

Comment: Subsection (a) repeats the requirements of the Maine Condominium Act. Under the Unit Ownership Act, there is no set requirement, but most condominium declarations under the Unit Ownership Act specify 75% approval.

Subsection (b), regarding the vote required to amend the bylaws is arbitrary and can be changed. Note, however, that the rule requires 50% of all unit owners, not just those who attend a meeting. Under the Unit Ownership Act the Bylaws must have 75% approval to be amended. It should be pointed out that under the Unit Ownership Act, the most important document is the Bylaws, with the Declaration providing less substance. Exactly the reverse is true under the Maine Condominium Act.

Subsection (c), concerning the adoption of rules, allows the Board to enact them, but there is a provision in the proposed bylaws that allow unit owners to repeal rules that do not meet with the approval of unit owners.

Section 9.3. Recording required to be Effective; Association Officer to Certify and Record Amendments.

Every amendment to the Declaration and to the Bylaws must be recorded in the York County Registry of Deeds and is effective only when so recorded. [Email] Notice of the amendment shall be sent to all Unit owners and Eligible Mortgage Holders, and to all mortgagees known to the Board of Directors, but failure to send such notices shall not affect the validity of the amendment. Amendments shall be prepared, executed, Recorded and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the President of the Association.

Comment. The requirement of recording in the Registry of Deeds for the Declaration (and Bylaws, if the original bylaws are recorded) has frequently not been followed, so it seemed

best to put this requirement (of both the Unit Ownership Act and the Maine Condominium Act) in the declaration.

Section 9.4. Reserved.

Section 9.5. Challenge to Amendment

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.

Comment. This simply repeats the requirements of the Maine Condominium Act.

Fletcher Woods. No comparable provision.

Unit Ownership Act. No comparable provision

ARTICLE 10 GENERAL; NOTICE

Section 10.1. Termination; Eminent Domain; Failure to Repair or Replace after Destruction.

Failure to Repair or Replace after Destruction. Any portion of the Property damaged or destroyed shall be repaired or replaced promptly by the Association unless the Condominium is terminated, repair or replacement would be illegal under any state or local health or safety statute or ordinance, or there is unanimous agreement of unit owners and the required number of Eligible Mortgage Holders.

Comment. Repeats the requirement of the Maine Condominium Act. Article V, Section 3 of the existing bylaws addresses the issue. Section 1603-113 (h) of the Maine Condominium Act applies to failure to restore after casualty loss

Termination. Termination of the condominium requires agreement of 80% of the votes in the Condominium and is governed by Section 1602-118 of the Maine Condominium Act.

Comment. Repeats the requirements of the Maine Condominium Act.

Fletcher Woods Document. Requires 90%, pursuant to Unit Ownership Act.

Unit Ownership Act. 80%

Eminent Domain. The taking of all or a portion of Units or Common Elements by eminent domain is governed by Section 1601-107 of the Maine Condominium Act.

The Association shall consult legal counsel when facing any of the circumstances addressed in this Section.

Comment. Consulting legal counsel is the best advice to give when facing any of the three circumstances listed in this section. Legal requirements for these circumstances are mandatory and complex.

Section 10.2. Severability.

The various provisions of the Declaration, and of the Bylaws, are independent and severable. The invalidity, partial invalidity or unenforceability of any provision or portion shall not affect the validity or enforceability of any other provision or portion thereof unless the deletion of such invalid or unenforceable provision destroys the uniform plan for development and operation of the project which the Declaration (including the Plats and Plans) and Bylaws are intended to create.

Section 10.3 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.

Section 10.4. Captions.

The table of contents, section headings and underlined subheadings in the Declaration and Bylaws are intended solely for the convenience of the reader and in no way define, limit or describe the scope, meaning or intent of those documents.

Section 10.5. Gender, Number, Etc.

The use of the singular number in the Declaration and Bylaws 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.

Section 10.6. Reserved.

Section 10.6-A. Disputes Between the Board and Unit Owners or Between Unit Owners.

The Association may require, on a case by case basis, that disputes between the Board of Directors and one or more Unit Owners regarding the Condominium shall be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding.

Section 10.7. Right to Mortgage; Mortgagee's Rights; Eligible Mortgage Holders.

Each Unit Owner shall have the right to mortgage or encumber his own

respective Unit.

A first mortgage holder of a Unit which takes title by foreclosure or a deed in lieu of foreclosure shall do so free of any claims for unpaid assessments for Common Expenses, late fees, interest and costs levied against such Unit which accrued prior to the acquisition of title to such Unit by the Mortgagee

No adoption by the Association of any right of first refusal or purchase option shall impair the right of an institutional mortgage lender to foreclose its mortgage, to accept a deed in lieu of foreclosure or to dispose or lease a Unit so acquired.

As of the date of this Declaration, holders of mortgages on units very rarely choose to become Eligible Mortgage Holders. If the Association does receive notice from a mortgage holder which enables the mortgage holder to become an Eligible Mortgage Holder as defined in Article 1 of this Declaration, the Association shall comply with Section 1602-119 of the Maine Condominium Act, which requires notices to be sent to Eligible Mortgage Holders of certain proposed acts and gives the Eligible Mortgage Holders voting rights in certain cases.

Approval by an Eligible mortgage holder will 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.

Comment. Most condominium documents, whether formed under the Unit Ownership Act or the Maine Condominium Act, contain lengthy sections on notification to "eligible mortgage holders". Eligible mortgage holders is a concept that formerly existed in secondary mortgage market requirements of Fannie Mae and ended up in the Maine Condominium Act. The length of treatment given to eligible mortgage holders does not reflect their importance; eligible mortgage holders are rare, and your secretary will know when you have one. Therefore, the concept is mentioned only in passing in this document.

Section 10.8. Notice.

Notices sent by the Association have differing requirements, depending on the subject of the notice and to whom it is given.

a. Annual and special meetings; budget ratification-Email Notice or U.S. Mail. Notice of annual or special meetings of unit owners, or of meetings to ratify the Association's budget may be given by Email Notice to those unit owners who have previously agreed in writing that such notice may be given by Email notice. For those Unit owners who have not so agreed in writing, the notice may be given in hand, by prepaid United States' mail to the mailing address of each unit or to any other mailing address designated in writing by the Unit owner or, if none of the above, to the address of the Unit owner on file with the local tax assessor internet database.

The Secretary of the Association shall cause notices of Annual and Special meetings of Unit owners to be sent by U.S. mail or Email notice, as the case may be, not less than 10 nor more than 60 days in advance of any meeting, and notices of budget ratification meeting as required in Section 5.2 of the Bylaws.

Comment: Article III, Section 4 of the existing bylaws calls for notice of annual meetings of at least 10 days but not more than 20 days. Most associations give longer notices of the date of the annual meeting and the Maine Condominium Act allows a minimum of 10 days and a maximum of 60, which seems to allow more flexibility

The Association may provide discounts or incentives to those Unit owners who agree in writing that such notices be given by Email notice, and/or may charge Unit owners who have not agreed to Email Notice or have not provided a valid and up to date Email address, for the extra expense incurred by the Association as a result thereof.

b. Eligible Mortgage Holders, unavailability of insurance-U.S. Mail. Notice of the following matters must be made by U.S. mail, postage prepaid, as required by the Maine Condominium Act:

1. Notices to Eligible Mortgage Holders under Section 1602-119 of the Maine Condominium Act.

2. Notice of unavailability of insurance, Section 1603-113 of the Maine Condominium Act.

c. Legal Matters-Certified Mail. Notice of the following matters by or to the Association must be made by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the Unit Owner at the mailing address on file with the Association or the address the Unit owner shall otherwise designate in writing or, if none of the above, to the address of the Unit owner on file with the Kennebec tax assessor internet database, and to the Association at its designated address on file with the Secretary of the Association

i. Notice of Opportunity to be Heard to individual Unit Owners for alleged violations of the Condominium Documents and other matters that may result in a fine or penalty

ii. Notice of default or lien

iii. Notices involving legal matters.

d. Other-Email Notice. All other communications to and from the Association, including notices of meetings of the Board of Directors, shall be deemed sufficient if given only by Email Notice.

e. Calculation of Time. Notice sent by mail shall be deemed to have been delivered on the earlier of the second day after the date of mailing, or the date of deposit in the Unit

owner's or Eligible Mortgage Holder's mailbox. Email notice shall be deemed delivered when sent.

f. Failure to receive notice of a meeting. If notice of a meeting is given pursuant to the provisions of this Section, failure of any member to receive actual notice of the meeting shall not invalidate the meeting.

g. Emergencies. The minimum time to give notice and the method of notice may be reduced, changed or waived for a meeting called to deal with an emergency, if not prohibited by applicable law.

h. Notices 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 delivered personally, securing a written receipt therefore, or sent by United States mail, postage prepaid, to the Association, at its designated address on file with the Secretary of the Association:

Comment. This section allows email notice where a unit owner desires it and signs a written authorization. Under most email systems, a "distribution list" allows notice to be sent to a large number of people as easily as sending the notice to one person. Email notice is easier and very much less expensive than U.S. mail. Of course, where an owner does not have email or does not consent to its use, U.S. mail will still be available.

Email also allows the association to distribute other materials which are not required by the Condominium Act. In the Bylaws, for example, I provide that unit owners who allow email notices, can receive notices of board of directors meetings, along with agendas. This is impractical if US mail is required.

Some matters are required by the Condominium Act to be given by U.S. mail, and those are listed in the section above.

Other matters are deemed to be so important that they should not be given by email or regular mail, and those matters are also set out in the section above.