



REPORT ON THE CONVERSION OF THE LIGHTHOUSE MOTEL TO CONDOMINIUM OWNERSHIP

Prepared by the Town Manager

March 14, 2008

The Pine Point Resident's Group has asked a series of questions concerning the conversion of the Lighthouse Inn to condominium ownership and how this affects the status of the Inn as a non-conforming use. The Council Chair has also requested a report on the matter that provides a more comprehensive explanation than would be presented through responses to specific questions. This document includes a response from the Town Attorney giving a complete overview of the issues involved, the legal framework in which to discuss and evaluate the questions being asked, and the advice and guidance given to the Code Office. The specific questions are either answered directly or referenced to one of the attached documents.

SUMMARY RESPONSE

The Lighthouse Inn's owners' decision to change its form of ownership to a condominium form does not necessarily change its non-conforming motel status or represent a change in use. The determination of whether there is a change in use is a Code Officer decision based on a review of the condominium declarations, a legal review by the Town Attorney and a review of any physical or structural changes proposed by the owners. The term condominium represents a form of ownership governed by state law and municipal government cannot control form of ownership. When ownership changes in a non-conforming structure, whether it involves one party or multiple parties, code enforcement must assess whether there is a proposed change in how the structure is used. In the case of the Lighthouse Motel, Code Enforcement initially determined that there was a potential change in use because the original proposed condominium declaration was not sufficiently restrictive and did not prevent the conversion of the hotel rooms to dwelling units. Subsequent changes to the declaration recommended by the Town Attorney clarified that the motel would continue to operate as seasonal motel which led the Code Officer to determine there was no change in use resulting from the change in form of ownership. As long as the motel continues to operate in accordance with its revised condominium declaration, there is not a change of use.

SPECIFIC RESPONSES TO QUESTIONS:

[The Town Attorney, Code Officials and Fire Inspector have assisted in providing answers to the questions. The Town Attorney's response concerning the legal issues and guidance provided the code office, the town council and town manager is attached and the response to several of the questions is referenced to the letter.]

1. QUESTION: Has the Town Attorney's position changed? If so, please explain and cite specific language in their amended documents which apparently has satisfied the Town attorney.

Refer to the Town Attorney's Response.

2. QUESTION: How was the decision made and who made it which reversed the Town's formerly strong position that selling motel rooms as condo is a Change of Use requiring Town approval?

Refer to the Town Attorney's Response.

3. QUESTION: Was it the language in this amendment which caused the Town to no longer consider the sale of units as a "Change of Use?"

Refer to the Town Attorney's Response.

4. QUESTION: Why was this one sentence the only language deleted from the original Declarations when the Amendment replaced this entire section of the original?

In the Town Attorney's view, that sentence was not essential to the declaration, because the Town has no authority to enforce the provisions of condominium declarations and the amended declaration remains on record in the registry of deeds, putting buyers on notice of the Town's position concerning change of use, even if the declaration is further amended in the future.

5. QUESTION: How does the Town intend to monitor future amendments to these Declarations to insure that the future owners do not modify them by removing language the Town required?

The use of the Light House Inn has is as a hotel /motel, as defined in the Scarborough Zoning Ordinance sec. VI. Any noticeable change in the operation or change discovered in the annual inspection would be investigated. Town does not enforce condominium declarations but a violation of the Town's ordinances could occur if the building's use is changed. The ownership of the property is not an issue.

6. QUESTION: Why is this 1994 definition referenced in the amendment, and has the Town accepted it as part of what it required to reverse its "Change of Use" position?

The reference to the Town's definition was inserted by the original drafter of the condominium declaration. Because the language is already in the Town's ordinance, the Town Attorney did not consider it an important component of the change of use question.

7. QUESTION: Was there a previous definition for a motel or hotel when the Lighthouse Motel became non-conforming and if so why wouldn't that definition apply when determining whether their condo plan is a Change of Use?

Definitions contained in existing ordinances are only applicable. It is the actual use, not previous definitions, which must be examined in determining whether there has been a change in use.

8. QUESTION: Why are two competing definitional phrases used in the Declaration Amendment? Section 3a states "six months" while 2a refers to the current language in the Zoning Ordinance.

The two definitional phrases govern two different subjects. The Town's ordinance ("186 days in any 365-day period") does not prevent a hotel from being open year-round; it only limits the amount of time any one person can occupy a hotel room. The six months in Section 3a of the Declaration means that the building must be unoccupied for at least six months.

9. QUESTION: Would you agree with Mr. Grysk that the definition above does not apply to the Lighthouse Motel, and the owners would have been unable to install kitchens in the past since doing so would have been a change of use from the original operation when it became nonconforming?

The installation of kitchens as defined are not permitted now or in the future.

10. QUESTION: Does the town support the "kitchen" definition found in the Lighthouse Condominiums January 2008 Amendment? Please explain.

The language is a way to clarify what is meant by kitchen as used by code enforcement. Also refer to the Town Attorney's response.

11. QUESTION: Would the "kitchen" definition in this Amendment permit a unit owner to install all of these; 1) Refrigerator, 2) Freezer, 3) Microwave Oven, 4) Dishwasher, 5) Garbage Disposal, 6) Assorted Kitchen appliances such as toasters, blenders, table top grills and coffee makers, and 7) either a cook top OR oven (but not both)?

Key to the question of kitchen is the infrastructure to support all of the equipment including the wiring and piping. Modifications to support all of the equipment would require a building permit and kitchens are prohibited. Refer to the Town Attorney's response.

12. QUESTION: If such items were installed, wouldn't that really be a Kitchen for all intents and purposes, and would it be allowed by the Town under this definition? Does it pass the straight face test? And would it be safe?

Refer to the answer in question 11.

13. QUESTION: Is that true? Please explain.

The seasonal operation and the inability to use the structure for a substantial part of the year are essential to satisfy code enforcement that there is not a change of use.

14. QUESTION: Since this language does not require owners to rent their "motel" rooms (just those "wishing to") for any portion of the six month period (as the New Ordinance Draft did -see top of next page), is it possible that owners could legally occupy the units for all six months if they chose; or occupy the units for a portion of that time and leave them vacant for the remainder? If that is possible, how can the enterprise continue as a motel?

Yes, the individual owner could occupy his or her unit for the season. A change in use, unless it was to become compliant, would need to be approved by Codes and the Zoning Board of Appeals.

15. QUESTION: If the answer to the previous question is "yes," would it be legal under these Declarations, as amended, for unit owners to permit relatives or friends or friends of friends to occupy their units?

Yes, the individual owner can make the unit available to friends and family.

16 QUESTION: Given these scenarios, is it possible that the 22 units could, in fact, not be available as motel rooms at all? If so, doesn't that become a de facto CHANGE in the use of the nonconforming motel?

The units can be available for rent when not occupied by the owners and this property will likely change over time and be subject to regulations in effect at that time.

17. QUESTION: Would you agree the language in this paragraph - the only substantive change from the original Declarations - is poorly constructed and extremely weak from a Town enforcement point of view?

The language is adequate and clear.

18. QUESTION: Where in the documents should there be explanations for such practical details as who owns and cleans the linen and rooms when they are privately owned? Who owns the furniture? Who removes trash, and maintains an environment appealing to the public. How

will an owner be held accountable for leaving his or her property uninhabitable for transient guests?

The Owner's Association required in the Condo Declaration will need to address those issues.

19. QUESTION: Was that establishment no longer considered a hotel/motel as of that date by the Town up until now?

The notice only advises new owners that they are required to get a Certificate of Occupancy. Refer to the Town Attorney's response.

20. QUESTION: Does this language apply since "motel rooms" are not included in the exceptions?

New owners are required to get a Certificate of Occupancy.

21. QUESTION: Assuming it does apply, and based on Mr. Grysk's inspection of all units at the Lighthouse Motel last month, please itemize what a new owner must do to bring rooms "into compliance with the requirements of this ordinance and any other applicable law, ordinance, rule or regulation for the use proposed by the prospective new owner or tenant" prior to being issued an occupancy permit?

A certificate of occupancy is required, an inspection is made and if no changes are evident a CO is issued.

22. QUESTION: Will owners of rooms or their "tenants" realistically apply for a new Certificate of Occupancy for every changing tenancy as required by the language above?

Change of ownership requires a Certificate of Occupancy.

23. QUESTION: Will the entire facility be required to bring the "common elements" and "limited common elements" into compliance upon the first unit sale? (These common areas are outlined in the original declarations).

The Owners Association or the Owner, if the Association is not yet formed, is required to comply with the declarations.

24. QUESTION: Since Fire & Life Safety codes are not grandfathered, will the following be accomplished upon sale of the first unit/room prior to the issuance of an occupancy permit?

First the above statement is not all true. NFPA fire codes are in fact not grandfathered in the true sense of the word. The NFPA handles those situations by establishing codes that

either effect “New Construction” or “Existing Construction” so there is some minimum kind of grandfathering.

To address the change of use question under the fire codes, if the building stays as a motel / hotel / condominium / garden apartment and or apartment house and any other similar use under any other name, it is still classified under the residential occupancy in the NFPA standards.

a. Will a sprinkler system be required?

The sprinkler ordinance requirement will not kick in unless the building is renovated and or expanded. If the building stays in its present form the installation of a sprinkler would not be required.

b. Will fire alarm pull stations be required?

Not under the present use and or future proposed use at this time. If the building goes through some major renovations, and or expansion than pull stations may be required at that time.

c. Will a hard-wired, interconnected smoke detection system be installed?

The requirement for the building at its present use and proposed use is hard wired single station smoke detectors. The building presently has single station hard wired smoke detectors and heat detectors in each unit which meets code.

d. Will fire escapes be installed?

Not required at this time, the present egress requirements meet code.

e. Will egress windows be installed as required by current code?

At this time they are not required by code, if you have a single occupancy that has an exit direct to the outside the egress windows are not required.

25. QUESTION: Will these other basic upgrades be done to the “common elements?”

a. Will the exposed asbestos shingles be removed?

b. Will the asbestos shingles beneath the vinyl siding be removed?

c. Will ADA requirements be met?

The use has not changed only the ownership. 22 individuals will each own a unit and enjoy collective ownership of the common elements. Only sections that are renovated need to comply with current regulations. Asbestos is not illegal to have on a building only

how it is handled and disposed of is regulated. The ADA is a federal law, the owners will determine compliance.

26. QUESTION: Did the owners apply for and receive an Innkeepers license subsequent to 3-19-07? If so, was it obtained prior to the annual filing deadline?

The Lighthouse Inn was issued license 07-10 in March 2007, the licensing period in 2007 was April 1 through March 31 which has subsequently been changed to coincide with annual inspections.

27. QUESTION: Was this facility subjected to the Town's Innkeeper inspection and licensing procedures subsequent to 3-19-07? If so, please provide reports of the inspections.

The Inn Keeper's license was enacted in June 2006 effective April 1, 2007.

28. QUESTION: Will the facility continue to be subject to licensing requirements such as those outlined in the new Ordinance draft? (See top of next page for an excerpt).

It will be subject to the licensing requirements of a motel.

29. QUESTION: If so, what will be licensed: the individually-owned units, the entity, the management firm; and where is this specified?

The entity will be licensed as motel.

30. QUESTION: Will the Town have the authority to inspect individually owned units under the Innkeeper Licensing rules without violating private owners' constitutional rights? Please explain.

Yes the property will still be run as a hotel- motel-Inn subject to the rules and regulations governing hotels-inns as outlined in the Scarborough Zoning Ordinance, and licensed by the State Of Maine. Only ownership is proposed to change not operation as a hotel -inn.

31. QUESTION: What were the requirements set out by the Town Attorney?

Refer to the Town Attorney's Response.

32. QUESTION: It was acknowledged in the Council's public session that the "New Ordinance" draft came about because the Lighthouse Motel was the first nonconforming motel which sought to convert to condos by bypassing the Zoning Board, and other owners had expressed interest in converting (indeed, two other lodging places in Pine Point followed the existing ordinance and received approval from the ZBA last summer). Mr. Grysk stated that he

had never approved such a plan in his tenure here prior to those two conversions. Why, if the New Ordinance was drafted by the Town attorney did he not require the Lighthouse Motel to abide by those proposed rules even though they had not been yet enacted by the Town Council?

Condominium is a form of ownership and does not represent a land use.

33. QUESTION: Can adjacent rooms be combined?

A building permit is required for any structural modifications to the building and may require a variance by the Zoning Board.

34. QUESTION: Has the Fire Department given its blessing on this change of ownership given that it is possible for all units to be occupied for all six months by the same residents and its current condition with regards to life safety systems?

A "condominium" is a description of ownership not occupancy. Regardless of the type of ownership the property falls under the residential occupancy section of the present life safety codes.

35. QUESTION: The Declarations are silent on the issue of multiple ownership of one unit? Will that be allowed and what are the implications?

Ownership is not regulated by the Town.

36. QUESTIONS: Regarding the process

37. Q: The Residents Group has been very involved for three years in matters concerning the Lighthouse conversion plans, Depot St., the barricade issue, and the Beachwalk subdivision. Its representative participated in the Town Council Study for eight months. Please explain why we were not given the courtesy of being told of the latest development, particularly after 10 members of the group testified at the Council's public hearing on the New Ordinance?

The matter is a code enforcement issue and the code enforcing office has to deal with the applicant property owner and the officer's actions must comply with applicable law.

38. Q: Many articles about this issue appeared in four local newspapers. Has the local press been informed of the resolution allowing the sales of individual units?

The Code Enforcement Officer does not contact the press when he makes a decision on a zoning question. All written communications to and from the Code Enforcement Officer are public record available to the press.

39. Q: Did the Town Council deliberate as a body on this decision in public or take any action? If not, please explain why, given the pending Ordinance on the table and the Council's previous involvement.

The Council was informed by the Town Attorney in executive session about the legal issues and potential litigation. Refer to the Town Attorney's response.

40. Q: Did the Ordinance Committee continue its work from last fall on the New Ordinance to regulate change of ownership of guest rooms in nonconforming hotels and motels?

Draft ordinance did not regulate change of ownership but included language to assess whether there was a potential change in use of a motel by change in form of ownership. The draft ordinance is currently tabled.

41. Q: Hypothetically, if the Council had enacted the last draft of that ordinance, would the Town permit sales of rooms at the Lighthouse motel as it is now or would it withhold occupancy permits when a change of ownership occurred?

Town cannot prohibit the sales of individual units but does require a certificate of occupancy with the sale of the units.

42. Q: Has there been any official written communication to the motel owners or their attorneys confirming that the Town of Scarborough no longer considers their plan a "Change of Use." If so, please include a copy with your response.

The Attorneys representing the Town and property owners have discussed the language that would be acceptable to the town. Refer to the Town Attorney's response.

43. Q: What are the implications should the Town Council rescind that decision and require the motel to abide by existing ordinance?

This is a code enforcement issue and not a Town Council issue.

44. Q: Is there any plan to remove the New Ordinance consideration from the table and dispense with it?

The proposed ordinance remains on the table indefinitely.

45. Q: If so, please confirm that the section of that ordinance which would prevent the Lighthouse motel from being exempt from it (because they filed their Declarations 11 days before the first reading of the ordinance) would still apply if the Council took it off the table?

The proposed ordinance is not applicable to the existing situation.

46. Q: Have the new members of the Town Council been fully briefed on the 3 year history of this issue?

The Council has been briefed.

47. Q: Was there any discussion about a land exchange during this latest round of negotiations?

The discussions involved only legal issues requiring a decision by the Code Office.

48. Q: If not, do you anticipate that the parking lot across the public road will forever remain where it is despite the ongoing and long-standing safety issues there?

Parking situation is not anticipated to change.

49. Q: If there is no land exchange then what will the Town be able to do with the 3200 SF parcel donated by the Beachwalk developer to the Town which abuts the parking strip and is surrounded by a private road?

The land will be open space within the Beachwalk subdivision.

50. Q: Was there any discussion during the latest round of negotiations about the fence installed by the Lighthouse Motel which obliterated public views of the ocean?

The fence was discussed when the manager and council chair met with the property owners on a visit to the property.

51. Q: Did the Town attempt to use its leverage to have the fence removed for the benefit of the public? (examples of leverage include ordering the Motel's substantial stone wall structure removed from its location several feet inside the public right-of-way (on a dangerous curve), enforcement of the "living quarters restriction" imposed by the 1989 Planning Board for the office building, which has been occupied as living quarters every year since, a plan to erect a Town fence in front of the motel, and others).

The attractiveness of the fence is very subjective and the property owners are within their legal rights.

52. Q: Would it be legal for the Town to erect a fence, of similar design, in front of the Motel, on Town property, to protect guests from walking into the public street and to end the long-standing private use of the street for loading and unloading cars, playground-like activities, motel maintenance vehicle parking, etc.?

Any fence in the street right of way would need to be justified as being required for public safety.

53. Q: Is the Town attorney and Town Council aware that this may eliminate forever the possibility of a proportional exchange of land, leaving the only option that of a 1:1 ratio (in other words, simply moving the parking area to front of the motel)?

We are aware that the situation is not likely to change anytime in the near future.

54. Q: Is the Town attorney and Town Council aware that there are only 26 parking spaces for 22 units plus management and staff, and that the Zoning Ordinance requires two spaces? (Note: the Zoning Board required 1.5 spaces for the other conversions they approved last summer)

The use as a motel has not changed while the other properties in the area are being converted into apartment buildings for year round occupancy.

Scenarios

55. Q: If Owner A installs a full kitchen without a permit how will Code Enforcement know and what action would they take if they learned of it from another unit owner, for example?

Owner A will be treated the same way as any other zoning or building violation, as we have time and knowledge of such violations.

56. Q: What procedures are in place, or will be in place, by the Town to monitor this “unique operation” after one or more units are sold?

There are no special procedures, monitoring is the same for all structures throughout the community.

57. Q: Who on the town payroll will be auditing the guest register and monitoring compliance with the restrictions in the Declarations to insure that it is operating as a motel? Who will the Town assign to examine Motel receipts, occupancy schedules, reservations, and other compliance issues?

The Town does not audit motel operations and does not have authority to do so.

58. Q: If there are violations who will be assessed fines or other penalties – the owner (or multiple owners in the “Timeshare” scenario), the Association, the management firm?

Depends on the nature of the violation, all parties are subject to enforcement.

59. Q: With respect to the restrictions on these units being used as primary residences, explain how the Town Clerk will know that a unit owner is not eligible to vote here, or the Excise Department will know that a unit owner cannot register a car here, or the School Department will know that a child may not enroll in school here?

The same requirements and proof of residency required of all transactions is the same, there are no unusual or specific criteria for a seasonal motel. The motel cannot be used as legal residency.

60. Q: How will a central management entity be able to monitor how owners are using their units? For example, if an owner chooses to rent her unit herself, or make a deal with a relative or friend, how can the management possibly monitor that?

These are issues for the association and the motel managers to address.

61. Q: Has the Town set a precedent for other non-conforming motels to use the same loopholes, if you will, to create this unusual hybrid operation?

There are no precedents, this is not a change of use and any motel/hotel could change its form of ownership.

62. Q: Have we contacted the State to examine whether any statutes exist which supersede our ordinances, particularly those relating to life safety in condominiums?

Code Enforcement and Fire Inspectors work collaboratively with state counterparts and inspections are performed according to state and local regulations.

63. Q: If an owner "leases" his or her room, as allowed in Article XI of the original declarations, and the tenant refuses to "quit" the premises prior to the date of building closure, what legal entanglements do you perceive given that tenants rights to due process in eviction are guaranteed and the process timely? And who evicts? The owner or the management? Who has the legal right to evict?

Enforcement of the declaration is the responsibility of the owners' association or their delegated representative and the association can be the subject of fine or legal action.

64. Q: If a unit owner enters into a short-term lease with a family with children during the fall season, for example (landlords may not discriminate in housing with respect to children), those children are obviously required to attend school yet cannot enroll based on the restrictions in the Declarations. How will that be handled?

The building is required to be closed and shuttered during the off season and cannot be used a legal residence.

65. Q: How will property taxes be assessed and apportioned since there is no precedent for this sort of operation?

The Assessor will assess this property just as any other condominium is assessed, and the Scarborough Assessor is well experienced in assessing condominiums.

66. Q: Given the possibility that all of these units can be occupied by the owners, by multiple owners, by the owner's family and friends, and friends of friends, or left vacant at the discretion of the owner, then the requirement that this enterprise must "remain" a motel really does not mean anything? Do you agree? Please tell us why you do or do not.

At the present time the motel will continue to operate as a motel as stated in its declaration. Individuals may buy the units for owner occupancy or for investment as rental property and the mix of units is unknown or how it will affect management of the motel.

67. Q: If it turned out that none, or very few true motel guests rented rooms in the future, would you then consider the operation a Change of Use?

As long as it continues to operate on a seasonal basis and rooms are available that can be rented it is classified as a motel.

68. Finally, what will the Town Manager be recommending to the Town Council regarding its role in this at this point?

The Manager is not recommending any action to the Town Council since this is a decision that must be made by code enforcement with advice from the Town Attorney. The Council has been briefed on the legal issues surrounding the code officer's decision.

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March 26, 2008

Ronald W. Owens, Town Manager
Town of Scarborough
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P.O. Box 360
Scarborough, Maine 04070-0360

Re: Lighthouse Inn Condominium

Dear Ron:

I am writing in response to your request that I provide a narrative summarizing my participation in the Town's review of the Lighthouse Inn Condominium conversion.

When the Trumans proposed converting the Lighthouse Inn to the condominium form of ownership in the summer of 2006, they provided the Town with draft condominium documents – a condominium declaration and a set of rules and restrictions (Attachment 1). Dave Grysk asked me to review those draft documents. I advised Dave that I did not think those draft documents contained sufficient safeguards to prevent a change in the way the property was used from transient seasonal occupancy to a more permanent form of occupancy and that nothing in the documents prevented the guest rooms from being converted to dwelling units, creating a change of use in the nonconforming hotel/motel. I expressed those views in my letters to Dave dated August 3, 2006 (Attachment 2) and November 8, 2006 (Attachment 3). On November 14, 2006, Dave Grysk wrote to the Trumans and advised them of the Town's position (Attachment 4).

It must be kept in mind that the creation of a condominium does not, in and of itself, constitute a change of use. A condominium is not a land use, it is a form of ownership of real estate. The Town of Scarborough does not have any ordinances regulating condominium conversions and, under state law, a municipality may not prohibit the condominium form of ownership. 33 M.R.S.A. § 1601-106 (Attachment 5). The Town had no legal authority to prevent the Trumans from recording the condominium declaration in the Registry of Deeds, and the Trumans did so in March 2007 (Attachment 6).

Still concerned that, as condominium units were sold, the property might no longer be operated as a hotel, Dave Grysk wrote to the Trumans on March 30, 2007 and advised them

that a new certificate of occupancy would need to be obtained before the sale of any unit (Attachment 7). In addition, in order to put prospective purchasers on notice of that requirement, the Town recorded a notice in the Cumberland County Registry of Deeds on April 3, 2007, also advising of the need for a new certificate of occupancy (Attachment 8).

In ensuing months, the Trumans obtained new legal counsel and, after discussions with the Town's Staff and Council leadership, proposed amendments to the condominium declaration which they suggested would meet the concerns about potential change of use (Attachment 9). I reviewed those proposed amendments, and felt they remained inadequate to keep the hotel running as a hotel. I drafted additional language, discussed it with Dave Grysk, and confirmed with Dave that the language I proposed would address adequately the change of use question, provided the hotel was operated in accordance with the restrictions in that language. The draft language I suggested was as follows:

The Town of Scarborough considers the Property to be a "grandfathered" nonconforming hotel/motel, and the allowed use of the units is hotel rooms, not dwelling units. However, unit owners are not prohibited from occupying the rooms for their own use when they are not being rented as hotel rooms.

The Association shall appoint a hotel manager, who may be a unit owner, a person employed by the Association, or a person employed by a management company engaged by the Association, to manage the Property. Any unit owner wishing to rent out his or her unit as a transient lodging on a nightly or weekly basis must do so through the hotel manager. The Association shall maintain the existing hotel office to be available as an office for the hotel manager.

No kitchens shall be installed in any of the units. A unit is considered to have a kitchen if the unit has cooking facilities which include both a cook-top with gas burners or electric heating elements and a gas or electric oven, together with the necessary piping and/or wiring to operate both.

The question of whether the Trumans' proposed condominium conversion would create a change of use was, and remains, a Code Enforcement matter. However, because Code Enforcement was facing several similar situations during the same period of time, Staff had offered the Town Council some possibilities for ordinance amendments which could help the Code Enforcement Officer in dealing with future hotel condominium conversions. Those possible amendments have not been adopted.

Because the Council was aware, by virtue of the proposed ordinance amendments, of the hotel condominium conversions, I felt it was appropriate to brief the Council on the status of the situation with the Lighthouse prior to communicating to the Trumans' counsel about the language I had drafted for insertion into the condominium declaration. I met with the Council on December 5, 2007. Concerned about the possibility of litigation, I made my report to the Council in executive session. No action was required of the Council, and the Council took no vote.

Ronald W. Owens, Town Manager
March 26, 2008
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After meeting with the Council, I informed the Trumans' attorney that if they would add the language I had drafted to the amended condominium declaration, that would satisfy the Code Enforcement Officer that the condominium conversion by itself did not constitute a change of use. I also advised the attorney that, before he recorded an amended condominium declaration, Code Enforcement wanted to conduct an inspection of the property, in order to confirm the number of existing units and their condition. The results of that inspection are recorded in a January 30, 2008 memorandum from Assistant Code Enforcement Officer Tom Reinsborough (Attachment 10). The Trumans recorded the revised declaration on January 24, 2008 (Attachment 11), and on January 31, 2008 I wrote to Dave Grysk confirming my view that, if the property is operated in accordance with the revised condominium declaration, there would not be a change of use (Attachment 12).

In order to complete the record in the Cumberland County Registry of Deeds, I propose to follow up with a slightly revised letter to Dave Grysk (Attachment 13), suitable for recording, and then record a copy of that letter in the Registry. That will advise potential buyers that in order not to be considered a change in use, the property must continue to be operated as a hotel/motel and that a new certificate of occupancy is required for each unit sold.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Vaniotis", written over a large, circular scribble.

Christopher L. Vaniotis

CLV/lc

cc: David Grysk, Code Enforcement Officer
Daniel B. Bacon, Town Planner

**DECLARATION
OF
THE LIGHTHOUSE INN CONDOMINIUM**

ARTICLE I

SUBMISSION

Section 1.1 Submission of Real Estate. Peter J. Truman and Nicholas C. Truman of Scarborough, Cumberland County, Maine (collectively, the "Declarant"), hereby submits the land, rights, appurtenances and easements together with a certain two-family residential building (the "Building") and other improvements situated thereon, located within the Town of Scarborough, Cumberland County, Maine, and more particularly described in **Exhibit A** attached hereto (the "Property") to the Maine Condominium Act, Chapter 31 of Title 33 of the Maine Revised Statutes Annotated, as amended (the "Act"), and hereby creates "The Lighthouse Inn Condominium" (the "Condominium"). The Property is shown on the condominium plat identified as "Condominium Plat, The Lighthouse Inn Condominium, Pine Point, Scarborough, Maine, Made for Record Owners Peter J. Truman and Nicholas C. Truman" (the "Plat") and the condominium floor plans and elevations identified as "Horizontal & Vertical Boundaries, The Lighthouse Inn Condominium, Pine Point, Scarborough, Maine, made for Record Owners Peter J. Truman and Nicholas C. Truman" (the "Plan"), said Plat and Plan being numbered 1 through 2, prepared by _____ to be recorded herewith in the Cumberland County Registry of Deeds and attached hereto as **Exhibit B**.

The Property is conveyed and declared subject to:

- (i) (insert any encumbrances from Cumberland County Registry of Deeds here)
- (iii) Easements, Conditions, Covenants and Restrictions as shown on the Plat and the Plan.
- (iv) The easements, covenants, restrictions and reservations contained in and created by this Declaration, said Plat and the Plan and the Bylaws of the Association.

Section 1.2 Defined Terms. The terms used in this Declaration, the Bylaws of the Association and the Plat and Plans generally shall have the meanings specified in the Act, except as otherwise defined herein.

ARTICLE II

ASSOCIATION

The business affairs of the Condominium shall be managed by a non-profit and non-stock corporation to be organized under the laws of the State of Maine and to be known as the "The Lighthouse Inn Condominium Association" (the "Association"). Each condominium unit owner shall be a member of the Association. Membership shall be appurtenant to each unit, and the transfer of title to a unit shall automatically transfer the membership appurtenant to that unit to the transferee(s). The owner or owners of each unit shall be entitled to the voting rights in the Association as described in Section 4.2 below. The granting of a mortgage by a unit owner, however, shall not transfer membership in the Association unless and until foreclosure or transfer in lieu of foreclosure. The Association shall have all the powers set forth in section 1603-102 of the Act and as set forth in the Bylaws of the Association, attached hereto as **Exhibit C**.

ARTICLE III

UNITS; UNIT BOUNDARIES; ALLOCATED INTERESTS

Section 3.1 Number of Units. The Declarant hereby creates a total of **twenty two (22)** units in the Condominium.

Section 3.2 Location, Identification and Dimension of Units. The location, dimensions, identification number and approximate area of each unit is shown on the Plat and the Plan.

Section 3.3 Unit Boundaries. The boundaries of each unit are as shown on the Plat and the Plan and are described as follows:

(a) Upper (horizontal) Boundaries. The upper boundary of each unit is the horizontal plane at the lower surface of the joist line of the ceiling of the top floor of the unit, including attic space, which includes the upper side of the gypsum board, if any, of the ceiling and any other materials constituting any part of the finished surfaces thereof.

(b) Lower (horizontal) Boundaries. The lower boundary of each unit is the physical surface of the earth extending to an intersection with the vertical (perimeter) boundaries described below.

(c) Vertical (perimeter) Boundaries. The vertical boundaries of each unit are the vertical planes at the interior edge of the stud line and exposed chimneys not covered by studding, which includes the exterior surfaces of the gypsum board of all walls bounding the unit. The vertical boundary lines also specifically include the exterior surface of doors, windows, storm windows, and glass walls, but excluding their frames, sills, and thresholds.

(d) Miscellaneous. All structures, fixtures and improvements at any time located within a unit's boundaries, whenever constructed, are a part of that unit, except as expressly provided in this Article III and elsewhere in this Declaration. A unit does not include the exterior walls, roof, foundation walls, studs, beams and rafters of the Building, nor the land nor any pipes, ducts, cables, electrical and transmission wires and conduits, distribution pipes and water and sewer pipes, and all other utility lines which serve more than one unit or the common elements up to the valve, switch or shutoff between common and exclusively used portions thereof, with the valve, shut off or switch being a part of the unit.

Section 3.4 Party Walls. Each unit is owned subject to, and together with the mutual easements of support and shelter over and to the party walls provided for party walls by law. In the event, by virtue of reconstruction, repair or removal of structures, affecting elements supported or sheltered by the party wall, the removing unit owner shall shore, reconstruct and weather proof such party wall so it can perform its function of support and shelter, and if such reconstruction, repair or removal is to be permanent, finish all surfaces exposed to weather in an architecturally finished manner consistent with the rest of the building.

Section 3.5 Relocation of Unit Boundaries and Subdivision of Units. Relocation of boundaries of units is permitted by amendment to the Declaration in compliance with the provisions of the Act and upon receipt of all necessary governmental approvals, permits and licenses including the zoning ordinance of the Town of Scarborough then in effect. The subdivision of units is not permitted.

Section 3.6 Allocated Interests. The undivided ownership of common elements and liability for common expenses and votes in the Association shall be allocated equally between each of the twenty-two (22) units.

ARTICLE IV

COMMON ELEMENTS

Section 4.1 Common Elements. Common elements consist of the entire Property, except the individual units as described in Article III above, and generally include:

- (a) The land, with the benefit of and subject to all easements, covenants, agreements, and restrictions of record as of the date hereof;
- (b) The exterior walls, roof, foundation walls, studs, beams and rafters of the Building;
- (c) All pipes, ducts, cables, electrical and transmission wires and conduits, distribution pipes, water and sewer pipes, and all other utility lines which serve more than one unit or the common areas (excepting equipment owned by public and municipal utilities);
- (d) All other parts of the Property necessary or convenient to its existence, maintenance and safety or normally in common use, except as otherwise expressly provided in this Declaration.

Section 4.2 Percentage interests. Attached hereto as **Exhibit D** is a list of all Units and identifying numbers (all as shown more fully on the Plat and the Plan) allocating a percentage of undivided interests in the common elements and in the common expenses of the Association, and the votes appurtenant to each Unit. Each Unit shall be allocated a percentage of undivided interests in the common elements and in the common expenses of the Association and each Unit shall be allocated a percentage of the total votes.

Section 4.3 Limited Common Elements. Limited common elements, the exclusive use of which is reserved to the use of a particular unit, to the exclusion of the other unit, consist of the following, in addition to those features described in Section 1602-102(2) and (4) of the Act:

- (a) The land underlying and surrounding each unit (and all structures and improvements located thereon) as shown on the Plat as a limited common element;
 - (b) Walks, drives, retaining walls, landscaping, public utility, electrical, drainage and mechanical pipes, ducts, chases, lines, conduits, ducts and accessory fixtures serving one of the units;
 - (c) Street and garden lights powered from an appurtenant unit;
 - (d) Fences, gates, mailboxes, hedges, enclosures, and other structures and fixtures enclosing a unit;
 - (e) Balconies, decks, porches, stairs and landings accessible from a single unit;
 - (f) Doors leading from units to balconies, and their related frames, sills and hardware;
 - (g) Doors leading from units to interior corridors which are Common Elements (if any);
- and
- (h) Parking spaces numbered to correspond with a particular unit.

Section 4.4 Special Maintenance and Special Expense Assessment. The owners of any unit to which a fixture or other item of property is allocated to that unit as a limited Common Element under Section 4.3 above and the owners of any unit or units with a fireplace chimney or chimney flue which serves only that unit shall be responsible for the good upkeep, maintenance and repair of such fixture, item of property, fireplace chimney or chimney flue, and if the owner fails to meet such responsibility the Association may arrange for the

same and shall assess the expense to such unit owners. The expense of maintenance and repair of Common Elements necessitated by the negligence, misuse, or neglect of a unit owner shall be charged by the Association to such unit owner. Notwithstanding the foregoing, all support posts for the decks and porches of the building located on the Property and all parking aisles and other paved areas, other than the individually numbered parking spaces shall be Common Elements.

ARTICLE V

DEVELOPMENT RIGHTS, SPECIAL DECLARANT RIGHTS AND DECLARANT CONTROL PERIOD

Section 5.1 Development Rights/Special Declarant Rights.

(a) The Units and Common Elements shall be, and are hereby, made subject to easements in favor of the Declarant, Unit Owners, and appropriate easements for service companies. The easements created in this Article V shall include, without limitation, rights to: provide easements to utility or service companies, or governmental agencies or authorities; install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, elevators, telephone wires and equipment, television equipment, air conditioning, heating systems, electric wires, conduits and equipment and ducts and vents over, under, through, along and on the Units and Common Elements.

(b) Declarant shall have the continuing right to enter upon and conduct work in all portions of the building, including all Condominium Units, Common Elements, and Limited Common Elements, in order to effect such improvements, renovations, modifications, replacements, construction, repair and alterations.

(c) Declarant does not reserve the right to create additional units.

Section 5.2 Declarant Control Period.

(a) During the period of Declarant Control as hereinafter described the Declarant shall have the right to appoint or remove any officer of the Association or any Executive Board member or to approve any of the acts of the Association, or of the Executive Board. The period of Declarant Control extends from the date of the first conveyance of a Unit to a person other than the Declarant for a period of three (3) years from the date of said first conveyance or until all units are conveyed to a person or persons other than Declarant, whichever shall occur first.

(b) During the Declarant Control period the Declarant may use any unit which it owns as a rental or model unit or office and such parking space allocated to it and all common elements and roadways of the Condominium and install and maintain signs for any purpose including the sales and marketing of said units and to lease and rent such units for such time and in such manner as the Declarant sees fit.

ARTICLE VI

AMENDMENT

Section 6.1 Amendment of Declaration. This Declaration, including the Plat and the Plan, may be amended or modified in accordance with the following procedure, except as otherwise provided in this Declaration or in the Condominium Act:

(a) The notice of any regular or special meeting of the Association at which a proposed amendment to this Declaration is to be considered shall contain the text of the proposed amendment. Notice shall also be sent to Eligible Mortgage Holders if required pursuant to ARTICLE XII.

(b) At the meeting, the resolution shall be adopted if it receives the affirmative vote or

written consent of unit owners holding more than fifty percent (50%) of the votes in the Association in all cases and such Eligible Mortgage Holders as required pursuant to ARTICLE XII. Unit owners and Eligible Mortgage Holders, if required by ARTICLE XII, may express their approval in writing or by proxy.

(c) An amendment shall be effective when recorded. The Association shall endeavor to forward a copy of the amendment to each unit owner and Eligible Mortgage Holders in the manner elsewhere provided for the giving of notices, but receipt of such notices shall not constitute a condition precedent to the effectiveness of such amendment.

Section 6.2 Amendment to Comply with Secondary Market Mortgage Requirements. It is Declarant's intent that this Declaration comply with the underwriting requirements of Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie Mae), the Veterans' Administration, the Federal Housing Administration or other recognized institutional mortgage programs. In the event that this Declaration does not comply with such underwriting requirements, Declarant or the Association shall have the right to amend this Declaration to make this Declaration conform to such underwriting requirements.

ARTICLE VII

INSURANCE; DAMAGE OR DESTRUCTION

Section 7.1 General. To the extent reasonably available, the Condominium Association shall obtain and maintain insurance coverage as set forth herein. All insurance affecting the Condominium shall be governed by and in accordance with the provisions of this Article and Section 1603-113 of the Act. In any event, the Association shall maintain insurance which meets the then current Condominium Master Insurance Policy requirements of the Federal National Mortgage Association "FNMA". All insurance policies shall have, as the named insured, "The Lighthouse Inn Condominium Association", for the use and benefit of the unit owners of "The Lighthouse Inn Condominium", shall provide that it shall be primary insurance even if other insurance is available to cover any insured loss, shall contain a waiver of subrogation endorsement or clause prohibiting subrogation against individual unit owners, and shall contain an endorsement providing that the coverage is not avoided, nullified or in any other way prejudiced by acts or omissions of unit owners which acts or omissions are not controlled by the Association. All policies of insurance shall provide that the insurer shall notify the Association, any insurance trustee other than the Association, and each first mortgage holder in writing at least thirty (30) days before it cancels or substantially changes any insurance policy or coverage.

Section 7.2 Casualty Insurance. The Association shall maintain casualty insurance in an amount of not less than one hundred (100%) percent of the current replacement cost of the Building, common elements, limited common elements and units, including agreed amount, inflation guard and special condominium endorsements covering the Building and all improvements on the Property including the units and all fixtures, equipment, improvements, betterments, whether or not part of a unit or a common element or a limited common element and such personal property of unit owners as is normally insured under building coverage and all personal property owned by the Association, but excluding land, excavations, portions of foundations below the undersurfaces or lowest basement or its underground pilings, piers, pipes, flues and drains and other items normally excluded from property casualty insurance policies. The policy must also contain the standard mortgage clause and must name as mortgagee either FNMA or the servicers for the mortgages on units in the project. When a servicer is named as mortgagee, its name should be followed by the phrase "its successors and assigns, as their interest may appear."

Section 7.3 Repair. Any portion of the Property damaged or destroyed shall be repaired or replaced promptly by the Association unless: (a) the Condominium is terminated under ARTICLE VIII hereof; or (b) such repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) unit owners holding one-hundred percent (100%) of the votes in the Association vote not to rebuild. Insurance deductibles and the cost of repair or replacement in excess of insurance proceeds and reserves or not covered by any insurance shall be a common expense.

Section 7.4 Application of Insurance Proceeds. Subject to the rights of any Eligible Mortgage Holders, if the entire Condominium is not completely repaired or replaced: (a) the insurance proceeds attributable to the damaged units and common elements shall be used to restore the damaged areas to a condition compatible with the remainder of the Condominium; (b) the insurance proceeds actually received by the Association and attributable to units that are not rebuilt, including without limitation the interest in the common elements and in limited common elements, shall be distributed to such unit owners and their mortgagees; and (c) the remainder of the proceeds shall be held in trust to be distributed to the unit owners and their mortgagees in accordance with the Act.

Section 7.5 General Liability Insurance. The Association shall also maintain comprehensive commercial general liability insurance, including medical payments insurance insuring the unit owners, in their capacity as unit owners and Association members and any managing agent retained by the Association, relating in any way to the ownership and/or use of the common elements, public ways and any other areas under the supervision of the Association and any part thereof. Such insurance policy shall contain a "severability of interest endorsement" or equivalent coverage which precludes the insurer from denying the claim of a unit owner because of the negligent acts of the Association or another unit owner. Such insurance shall include coverage for bodily injury and property damage that results from the operation, maintenance or use of the common elements, any liability resulting from law suits related to employment contracts in which the Association is a party, other than standard workers compensation and employment practices exclusions, and such other risks as the Association determines are appropriate. The amount of coverage of such liability insurance, and the deductibles therefor, shall be as determined by the Association. The scope and amount of coverage of all liability insurance policies shall be reviewed at least once each year by the Association and may be changed in the Association's discretion.

ARTICLE VIII

REMOVAL FROM THE CONDOMINIUM ACT

Section 8.1 The submission of the Property to the Act herein shall not be terminated unless (i) unit owners holding one-hundred percent (100%) of the votes in the Association and (ii) the percentage of the Eligible Mortgage Holders required by ARTICLE XII hereof shall agree to such revocation or removal of the Property from the provisions of the Act, their agreement to be established by written instrument duly recorded.

Section 8.2 Upon removal of the Property from the Act, the unit owners shall hold the Property and any proceeds thereof as tenants in common in accordance with the Act, with any mortgages or liens affecting a unit to attach in order of priority against the resulting common ownership interest. Removal shall not bar the subsequent re-submission of the Property to the Act.

ARTICLE IX

EMINENT DOMAIN

Section 9.1 If a unit is acquired by eminent domain, to the extent the award is paid to the Association or is controlled by this Declaration or the Association, the award shall be applied to compensate the unit owner and his/her/their mortgagee(s), if any, for the unit and the unit's percentage interest in the common elements, whether or not any common elements are acquired. Upon acquisition of the unit, the unit's allocated interests shall be automatically reallocated to the remaining unit and the Association shall promptly prepare, execute, and record an instrument reflecting the reallocation.

Section 9.2 If part of a unit is acquired by eminent domain, to the extent the award is paid to the Association or is controlled by this Declaration or the Association, the award shall be applied to compensate the unit owner and his/her/their mortgagee(s), if any, for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired.

Section 9.3 If part of the common elements are acquired by eminent domain, the Association shall be entitled to payment of the award, subject to the Act; generally the portion of the award attributable to the common elements taken shall be distributed to the unit owners and their mortgagee(s) in accordance with the Act, unless the Association rebuilds or acquires comparable common elements. Any portion of an award attributable to the acquisition of all or a portion of a limited common element must be distributed to the owner of the unit to which that limited common element is allocated at the time of acquisition.

Section 9.4 In the event of a proposed acquisition by eminent domain, the Association shall have the right but not the obligation to act and to intervene on behalf of the unit owners. As such, each unit owner hereby irrevocably constitutes and appoints the Association its true and lawful attorney, with full power of substitution, to represent such unit owner in any proceedings, negotiations, settlements, or agreements in connection with a proposed acquisition by eminent domain. The foregoing power of attorney conferred upon the Association by this Declaration, being coupled with an interest, shall be irrevocable so long as any such person owns a unit. This power of attorney shall not be affected by the disability or incompetence of such a unit owner. Nothing contained in this Section or this Declaration, however, shall entitle any unit owner or other person to priority over a first mortgagee of a unit pursuant to its mortgage instrument in the right to receive eminent domain awards for the taking of units and/or common elements.

ARTICLE X

EASEMENTS

Section 10.1 Access. Appurtenant to each Unit is a perpetual right, subject to the rules and regulations established by the Association, of ingress and egress from such unit through the common elements to the public streets adjoining the Property.

Section 10.2 Association. The Association and/or any other person authorized by the Association shall have a right of access to any unit and any limited common elements to the full extent as provided in the Act and the Bylaws. In case of emergency, such entry may be gained immediately whether or not the unit owner is present at the time or notified in advance of such entry.

Section 10.3 Utilities. Each unit shall have an easement in common with all other units to use all pipes, wires, ducts, cables, conduits, meters, utility and/or gas lines and other common elements serving such unit and located in any of the other units or on the common elements.

Section 10.4 Party Wall. Each unit sharing a party wall with the adjacent unit shall have an easement for support from such other unit, and an easement for driving and removing nails, screws, bolts and other attachment devices into the unit side surface of the party wall, whether concrete or framing which supports the dry wall, to the extent such nails, screws, bolts and other attachment devices may encroach into the adjoining unit or common areas; provided, however, that any such action shall not adversely affect either the structural, thermal or acoustical character of the party wall.

Section 10.5 Support. Each unit shall have an appurtenant easement to the extent necessary for structural and lateral support over the other unit and over the common elements and limited common elements; each unit, the common elements and limited common elements shall be subject to an easement for structural and lateral support in favor of the other unit. If any portion of the common elements or limited common elements hereafter encroaches 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 or other than as a result of the purposeful 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, a valid easement appurtenant to the encroaching units, common elements or limited common elements for said encroachment and for the maintenance of the same shall exist for so long as the encroachment shall exist. In the event that any Building shall be partially destroyed as a result of fire or other casualty or as a result of a taking in the nature of eminent domain or by an action or deed in lieu of condemnation, and then is

rebuilt, encroachments of a portion or portions of the common elements or limited common elements upon any unit or of any unit upon any other unit or upon any portion of the common elements or limited common elements due to such rebuilding, shall be permitted, and valid easements appurtenant to the encroaching units, common elements or limited common elements for such encroachments and the maintenance thereof shall exist so long as that Building as so rebuilt shall stand.

ARTICLE XI

A. LEASING

All leases of units must be in writing. The written lease of any unit must: (a) require the lessee to comply with this Declaration, the Bylaws and any rules and regulations of the Association; (b) provide that failure to comply therewith constitutes a default under the lease; (c) provide that the Association has the power to terminate the lease and to bring summary proceedings to evict the tenant in the name of the lessor thereunder 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 (d) shall be for a period at least seven (7) consecutive days unless leased or rented by the Declarant and (e) shall comply with the provisions of subsection B below. Each unit owner, promptly following the execution of any lease of a unit, shall forward a conformed copy thereof to the Association and the Management Company, if any.

B. RESTRICTIONS ON USE AND OCCUPANCY

The use and occupancy restrictions of the Town of Scarborough, Maine require that the individual resort units be restricted to year round residential motel and transient purpose only, with no person occupying any unit in excess of One Hundred Eighty-Six (186) days in any Three Hundred Sixty Five Days (365) day period, all as defined under the Scarborough Zoning Ordinance. No unit may be used as a primary residence. Neither unit owners nor tenants may register a vehicle, register to vote, nor register children for school, using his or her unit as a primary residential address. The restrictions imposed by this section of the Declaration shall not be removed or modified without the prior written approval of the Town of Scarborough.

C. CLOSURE OF BUILDING

All unit owners agree and understand that the Property shall be available to them on a seasonal basis and that the Property will be closed for a period of approximately four (4) months in the winter of each year. Initially, the Declarant and the Management Company shall decide which dates the Property will be closed and unavailable for occupancy. Thereafter, the Management Company shall determine the appropriate dates for closure of the Property with the consent of at least seventy-five percent (75%) of the unit owners.

ARTICLE XII

RIGHTS OF MORTGAGEES

Section 12.1 Eligible Mortgage Holder. Any first mortgagee of a unit may file with the Association a request identifying itself as a first mortgage holder and the number of the unit encumbered by its mortgage with the Association by certified or registered first-class mail, return receipt requested or by delivery in hand securing receipt therefore and thereby shall become an "Eligible Mortgage Holder"; the Secretary of the Association shall maintain such information. After the filing of a request by the Eligible Mortgage Holder, the Association shall cause notice to be sent to the Eligible Mortgage Holders of any one or more of the following events affecting the mortgaged unit(s), if so requested.

(a) Default by the owner of a mortgaged unit in the payment of quarterly common charges, assessments, service charges, or other amounts due the Association that continues for sixty (60) days or as required by the Act;

(b) The lapse, cancellation, expiration or material modification of insurance required to be maintained under this Declaration or the Bylaws of the Association;

(c) A material amendment to the Declaration requiring the consent of Eligible Mortgage Holders as provided in Section 12.2 below;

(d) Any condemnation proceeding against any portion of the Property;

(e) Material destruction of any portion of the common elements or limited common elements or any improvements thereon; or

(f) Such other events specified in the Act.

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

Section 12.2 Material Amendments. For a material amendment to the Declaration but subject in any event to the provisions of the Act, approval must be obtained from Eligible Mortgage Holders representing in the aggregate at least fifty-one percent (51%) of the votes of units subject to mortgages held by Eligible Mortgage Holders. An amendment affecting any of the following shall be deemed material:

(a) Voting rights in the Association;

(b) Change in percentage liability for common expenses, assessment liens for common expenses, or the subordination of assessment liens;

(c) Reallocation of pro rata interests in the common elements or limited common elements or rights to their use;

(d) Boundaries of any unit;

(e) Convertibility of units into common elements or vice versa;

(f) Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;

(g) Insurance or fidelity bonds;

(h) The rights to lease units;

(i) Imposition of any restrictions on a unit owner's right to sell or transfer his or her unit;

(j) Restoration or repair of the Property (after damage or destruction, partial taking by eminent domain or condemnation) in a manner other than that specified in this Declaration;

(k) Any action to terminate the Condominium;

(l) Any provisions of this Article or any other provision of this Declaration that expressly benefits mortgage holders, insurers or guarantors;

(m) The merger or consolidation of the Condominium with another condominium or the

subjection of the Condominium to a master association; and

(n) Any change in the Association's right to lien a unit for unpaid common expense assessments or a change in the priority of such liens.

The approval of any Eligible Mortgage Holder to such a material amendment to the Declaration shall be presumed when an Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the proposal is made.

Section 12.3 Records. An Eligible Mortgage Holder may, at its sole expense, examine the books, records and accounts of the Association at reasonable times with reasonable advance notice to the Treasurer of the Association.

Section 12.4 Dispositions by Mortgagees. In the event the Association adopts any right of first refusal or purchase option arising in the event of the sale or transfer of a unit, it shall not impair the right of an institutional mortgage lender to foreclose its mortgage, to accept a deed in lieu of foreclosure after written notice of default to Mortgagee, which deed identifies the circumstances classifying it as such a deed, or to dispose of, advertise, sell or lease a unit acquired under the procedures set forth above, and any such foreclosure or deed shall convey title free and clear of any such right of first refusal or purchase option with respect to such conveyance, but only with respect to such conveyance.

ARTICLE XIII

ASSESSMENT FOR COMMON EXPENSES AND SERVICE CHARGES.

Section 13.1 Common Expense Assessments. The total amount of common expenses incurred by the Association shall be assessed equally against all units, subject to the following:

- (a) A limited common expense shall be assessed solely against the unit benefited.
- (b) Assessments to pay a judgment against the Association shall be made as a common expense against all units.
- (c) Costs of electricity, gas, water and sewer shall be assessed equally against all units, unless such services are separately metered, in which case each unit owner shall be required to pay the bills for such services consumed or used in his/her/their unit.

Section 13.2 Common Expenses. "Common expenses" shall be any and all expenses incurred by the Association to pay for insurance premiums, taxes, and to operate, maintain, repair, and replace portions of the units that are the Association's responsibility pursuant to this Declaration (if any), the common elements and limited common elements as necessary to keep the same a first-class condition with respect to appearance, operation and function and utilities used in connection with the operation and maintenance of the common elements and limited common elements. Notwithstanding the foregoing, each unit owner shall be responsible for the repair, maintenance and upkeep of his/her/their respective limited common elements including the removal of ice, snow, leaves and debris therefrom (as applicable). In the event a particular unit owner fails to repair, maintain or upkeep his/her/their limited common elements in a first class condition, the Association shall have the right to do so and shall assess the unit owner for all costs and expenses incurred in connection therewith pursuant to Section 13.5 below.

Section 13.3 Lien Rights. Each unit is subject to a lien in favor of the Association for the unpaid common expense assessments, interest and costs of collection as provided in the Act, which lien may be foreclosed in like manner as a mortgage on real estate. No foreclosure of the Association's lien shall release the unit owner from any personal liability for any unpaid portion of the lien. The recordation of this Declaration constitutes record notice of the lien. Such lien for common expense assessments shall not have priority over a

first mortgage securing a loan to purchase a unit, and upon the closing of a foreclosure sale of such first mortgage, any liens for then-existing common expense assessments automatically shall be released but without releasing the responsible unit owner from any personal liability for the liability secured by the released lien.

Section 13.4 Working Capital Fund. Contemporaneous with the conveyance of each unit by Declarant, the unit purchaser shall pay to the Association an amount equal to the estimated common expense charges for two months' operation of the Condominium for each such unit for funding a working capital fund. Within sixty (60) days after the closing of the sale of the first unit, Declarant shall pay to the Association his pro rata share of the working capital fund for any unsold Units of the Condominium. Such working capital fund shall be established by the Association at the time of the conveyance of the first unit, as a segregated account, owned by and in the name of the Association, established at a Maine financial institution insured by the Federal Deposit Insurance Corporation or other equivalent federally-sponsored insurance (the "Working Capital Account"). The Working Capital Account shall contain a dual signature provision requiring the signature of at least 2 officers or Executive Board Members (or their respective duly designated representatives) on any checks, withdrawal slips or automatic withdrawal requests, and shall not allow for ATM withdrawals.

Section 13.5 Service Charges and Fines. The Association shall have the power to separately charge a unit and the owner thereof for services rendered to that unit, and interest and costs of collection in connection with service charges, and for fines assessed against a unit owner for violation of this Declaration, the Bylaws and the rules and regulations of the Association (if any). Such charges and fines shall be a lien on the unit with the same status as a lien for common expense assessments under the Act, this Declaration and the Bylaws of the Association, which lien for service charges may be foreclosed in like manner as a mortgage on real estate. The recordation of this Declaration constitutes record notice of the lien.

Service charges shall include without limitation:

(a) If a unit owner requests the Association to perform repair or maintenance work on the unit other than as required by this Declaration, or if a unit owner or a member of a unit owner's household, or a unit owner's guests or tenants, damage the common elements or if a unit owner fails to perform maintenance or repair work required by this Declaration, and the Association performs such work pursuant to ARTICLE XIV below, the expense thereof as determined by the Association may be assessed against such unit owner as a service charge.

(b) Fees, if any, which may be established by the Association for the use and maintenance of water, sewer/septic and/or other utility services and equipment. The expense of charges for water and sewer/septic services and of equipment maintenance and repair and reasonable reserve allowances may also be calculated by the Association in their discretion and assessed quarterly as a service charge to each unit. At the election of the Association, the expense of capital improvements, major repairs or renovations to the water and sewers/septic systems may be assessed either as a common expense or as a service charge.

(c) Insurance premiums on permanent improvements to units installed by unit owners and insured by the request of the unit owner with the Association's hazard insurance carrier.

Section 13.6 Liability; Re-Sale Certificate. Multiple owners of a unit shall each be jointly and severally liable with one another for all unpaid common expense assessments, service charges, interest, penalties and costs of collection during their period of unit ownership up to the time of the grant or conveyance. A grantee shall not be prevented from exercising any right to recover from the grantor such amounts paid for those common expenses assessments, service charges, etc. arising prior to the conveyance. A grantee or proposed purchaser under a purchase and sale contract for a unit may obtain, upon request and the payment of such fee as may be established from time to time by the Association, a statement from the Association setting forth the amount of unpaid common expense assessments and service charges, interest, penalties and costs of collection against the unit as of the date of grant or conveyance and such other information required by the Act. The grantee shall not be liable for, and the unit conveyed shall not be subject to a lien for any unpaid amounts due from the grantor before the statement date in excess of the amount set forth in the statement except interest and

costs of collection accruing thereafter.

Section 13.7 Budget. The proposed budget approved by the Association shall be adopted unless rejected by the vote of unit owners holding more than fifty-one percent (51%) of the votes in the Association. After the first conveyance of an individual unit, the budget must contain funding for an adequate reserve for replacements of improvements to the common elements and to those limited common elements that the Association is obligated to maintain.

Section 13.8 Violations. Any unit owner in default in the payment of any amount due the Association or in violation of any provision of the Act, this Declaration, the Bylaws, or the rules and regulations of the Association, which violation continues after reasonable notice to cure by the Association to the unit owner, may be prohibited by the Association from the use and enjoyment of any and all of the common elements that are not essential to access to the unit or for the provision of necessary utilities, in addition to all other remedies available to the Association.

ARTICLE XIV

USE; MAINTENANCE AND REPAIR; IMPROVEMENTS

Section 14.1 Use.

(a) Use. Each unit may be used and occupied subject to all restrictions contained in this Declaration, the Bylaws, and the Rules and Regulations of the Association, as promulgated and amended from time to time. The units are restricted to Resort-style vacation use. The Units may not be used for professional, business, commercial, industrial or manufacturing purposes, or primarily for storage, except for a home occupation conducted entirely by phone or internet and not involving client visits or other disruptive activity. The use and occupancy restrictions of the Town of Scarborough, Maine require that the individual condominium units be restricted to year round residential motel and transient purpose only, with no personal occupancy in excess of One Hundred Eighty-Six (186) days in any Three Hundred Sixty Five (365) day period, as defined under the Scarborough Zoning Ordinance. No unit may be used as a primary residence. Neither unit owners nor tenants may register a vehicle, register to vote, nor register children for school, using his or her unit as a primary residential address. The restrictions imposed by this section shall not be removed or modified without the prior written approval of the Town of Scarborough. No unit owner shall be allowed to install a sign visible from the common elements or limited common elements indicating or advertising a commercial use or home office use in any unit. Each unit shall be used by the owner or other occupant(s) thereof in compliance with all applicable laws, ordinances and regulations, and each unit owner agrees to indemnify, defend and hold the Association and other unit owner and occupants harmless from all fines, penalties, costs and prosecutions for any violation thereof.

(b) Offensive Activities. Nothing shall be done in any unit which will increase the rate of insurance of the Building beyond the rates applicable for motels/hotels without consent of the other unit owners. Notwithstanding anything in this ARTICLE XIV to the contrary, nothing shall be done or kept in any unit or in the limited common elements that will increase the rate of insurance for the Property or any part thereof without the prior written consent of the Association. No unit owner shall permit anything to be done or kept in this unit or in the limited common elements that will result in the cancellation of insurance on the common elements or limited common elements or any part thereof or that would be in violation of any law, regulation, ordinance or administrative ruling.

(c) Pets. The keeping, boarding and/or raising of farm animals, laboratory animals, livestock, poultry or reptiles of any kind, regardless of number, shall be and is prohibited within any unit or upon the common elements or limited common elements, except that the keeping of domestic pets such as dogs, cats or caged birds and reptiles, aquarium fish or other domesticated species of animals is permitted subject to the Rules and Regulations and other regulations established by the Association. Each unit owner is responsible for the clean up of his/her/their pet's excrement. The Association shall have the power to further regulate pets

and animals under the Bylaws or rules and regulations of the Association as promulgated or amended from time to time, including without limitation the power to regulate the number, size and species of pets allowed, to establish behavior requirements and to expel any offending pets and animals from the Property.

(d) Rubbish. No unit owner shall rake, sweep or throw, or permit to be raked, swept or thrown, from his unit or limited common elements onto the other unit owners unit or limited common elements, any leaves, dirt, debris, trash or other substance, all of which shall be placed or left in receptacles designated for such purposes.

(e) Nuisance. No unit owner shall use his unit in such a manner as to create a nuisance or disturbance of other unit owners. No unit owner shall play or operate any electronic or mechanical, sound-producing machinery, appliance or device outside his unit between the hours of 11:00 p.m. and 8:00 a.m., whether inside or outside, if such playing or operation shall unreasonably disturb or annoy the occupants of any other unit. No unit owner shall erect or maintain an outside television or radio antenna, except for small satellite dishes not in excess of 18 inches in diameter which may be installed with the prior written consent of, and pursuant to any conditions imposed by, the Association, and which nevertheless must be installed (i) such that they are not visible from the parking areas and driveways of the Condominium and (ii) otherwise in the most visually discrete manner possible.

(f) Access. Common elements and limited common elements providing access to the units shall be used only for access to and from units by vehicles and pedestrians and shall not be blocked by any personal property of unit owners, their tenants, families and guests.

Section 14.2 Maintenance and Repair of Units. Except as expressly provided in this Declaration, the maintenance of the units and limited common elements shall be allocated between the unit owners and the Association in accordance with the Section 1603-107(a) of the Act. Each unit owner shall keep his or her unit and all systems therein in good order, condition and repair and in a clean and sanitary condition, all at the unit owner's sole cost and expense, whether such maintenance and repair shall be ordinary or extraordinary, which shall include without limitation all interior portions of the unit, the windows and doors of the unit, the interior floors and ceilings of the unit, and all fixtures and appliances within the unit; provided, however, that maintenance and repair of the exterior, and exterior features and fixtures, supporting structure, foundation, roof, and decks of the Building (not designated as limited common elements), and the exterior paint, shall be the responsibility of the Association and the costs and expenses of such maintenance and repair shall be assessed against both of the unit owners as a common expense as though such maintenance and repair were being made to common elements. If any owner fails to maintain his/her/their unit or limited common elements as provided above within ninety (90) days of written notice from the Association or, immediately and without notice, in the event of emergency, the Association through its officers or managing agent shall have the right, but not the obligation, to enter the unit and perform such maintenance or repair in the name of the owner. The Association shall be entitled to assess the expense thereof as a service charge due in full at the time of the next regular quarterly payment of assessments. Each unit owner shall promptly report to the Association or the managing agent any defect or need for repairs to the unit, common elements and limited common elements for which the Association is responsible pursuant to this Declaration and the Act.

Section 14.3 Maintenance of Common Elements. The Association and its designees shall maintain, repair and replace the portions of the units that are the Association's responsibility under this Declaration, the common elements including the limited common elements (except as otherwise specifically provided herein) and shall establish reasonable reserves for such purposes.

Section 14.4 Liability for Damage. Each unit owner shall be liable for the expense of maintenance, repair or replacement of (i) any damage to his unit and (ii) any damage to the common elements, limited common elements or to another unit caused by such unit owner's act, neglect or carelessness or by that of any member of such unit owner's family, or such unit owner's tenants, guests, invitees, employees, agents, contractors, or their pets. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy, or abandonment of any unit or its appurtenances. Nothing herein contained, however, shall be

construed so as to modify any waiver by insurance companies of rights of subrogation against such unit owner.

Section 14.5 Improvements. Nothing will be done to any unit which will impair the structural integrity of the Building or decrease the support in the party walls. Reasonable structural changes to a unit not affecting the support of the adjoining unit may be undertaken without consent. There may be no change to the exterior siding material or color thereof unless authorized by the Association. Unit owners may make interior or exterior non-structural improvements to the Building or any improvements within a unit, or to any limited common elements associated therewith, including without limitation, adding sunrooms, stairs, painting and staining, adding architectural detailing, changing doors and installing architectural conceits of any nature provided the color, siding and general architectural style remains the same, without consent of the other unit owners or the Association. With respect to any improvements installed, built, or made by a unit owner, the Association shall have no obligation for maintenance, repair or replacement thereof unless expressly and in writing assumed by the Association. In the event such improvements become unsightly, deteriorated, dilapidated, or otherwise in violation of the conditions imposed by the Association, the Association shall have the right to enter the unit or limited common element, remove, repair or restore the deteriorated improvement, and assess the cost thereof to the unit owner.

ARTICLE XV

MISCELLANEOUS

Section 15.1 Interpretation. In the event of any inconsistency between or among the Act, this Declaration, the Bylaws or rules or regulations of the Association, the Act shall control; provided that a provision in this Declaration which is permissible under the Act shall not be considered to be inconsistent with the Act.

Section 15.2 Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provisions hereof.

Section 15.3 Context. The use of the singular number in this Declaration shall be deemed to include the plural, the plural the singular, and the use of any one gender shall be deemed applicable to all genders.

Section 15.4 No 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 that may occur.

Section 15.5 Invalidity. If any term, covenant, provision, phrase or other element of this Declaration, the Bylaws, any deed to a unit, or the rules and regulations of the Association is held to be invalid or unenforceable for any reason whatsoever, such holdings shall not affect, alter, modify, or impair in any manner, any other term, covenant or provision, phrase or other element of such documents.

Section 15.6 Notice. Any notices required or permitted to be given under this Agreement shall be sufficient if in writing and if sent: (i) by first class mail, postage prepaid, registered or certified, return receipt requested; (ii) by hand delivery; or (iii) by FedEx, or similar overnight express mail service, prepaid, each to the unit owner's unit address or if sent to the Association, to the Association president's address. All such communication shall be deemed made upon the earlier of three (3) business days following deposit with the U.S. Mail or the date of receipt as disclosed on the return receipt (if sent by registered or certified mail), or upon delivery (if hand delivered), or upon delivery as indicated on the proof of delivery (if sent via FedEx or similar overnight express mail service). With respect to any of the above-referenced methods of delivery, rejection or other refusal to accept or the inability to deliver because of a change of address of which no notice was given shall be deemed to be receipt of the notice sent. Either party may change its address for purposes of this paragraph by giving the other party notice of the new address or in the manner described herein.

Section 15.7 Dispute Resolution.

(a) Negotiation. The unit owners agree to attempt in good faith to resolve by negotiation any disagreement, language interpretation, legal controversy or claim arising out of or relating to this Declaration (a "dispute"). To invoke this procedure, the disputing unit owner shall give each other relevant party written notice of the dispute, citing this section of the Declaration. Within ten (10) days, each receiving party shall submit to the others a written response. Each notice and response shall include a statement of the party's position and a summary of the evidence and arguments supporting such party's position. The parties to the dispute shall thereafter meet promptly at a mutually acceptable place to attempt to resolve the dispute.

(b) Mediation. In the event the dispute has not be resolved within thirty (30) days of the disputing party's original notice, the unit owners agree to then attempt in good faith to settle the dispute by mediation, through a neutral, mutually acceptable mediator located in Cumberland County, Maine.

(c) Mandatory Arbitration. In the event the dispute has not been resolved within ninety (90) days after the disputing party's original notice, any unit owner may serve on the relevant parties written demand for arbitration of the dispute. Thereafter, the dispute shall be settled by arbitration before a single arbitrator in accordance with the Expedited Procedures under the Commercial Arbitration Rules of the American Arbitration Association, or such other rules and procedures as the parties to the dispute may hereafter consent to in writing. Any such arbitration shall occur in Cumberland County, Maine, or such other location as is mutually acceptable to the parties. Except as the parties may hereafter consent to in writing, the arbitrator (or a majority thereof, if more than one) shall be licensed to practice law in Maine and experienced in real estate and contract law, and the arbitrator(s) shall be required to decide each claim in accordance with applicable law and to set forth in writing the award and a summary of those facts considered by the arbitrator(s) to be material to such decision. This agreement to arbitrate shall be enforceable under the Uniform Arbitration Act. In any judicial action to compel arbitration under this subsection or to enforce an arbitral award, the prevailing party shall be entitled to an award of the reasonable expenses (including attorneys' fees) incurred in bringing such action.

(d) Ancillary Proceedings. A unit owner may seek a preliminary injunction or other preliminary judicial relief if in his or its judgment such action is necessary to avoid irreparable damage. Despite any such action the parties will continue to participate in good faith in the procedures specified in this Section. All applicable statutes of limitation shall be tolled during the pendency of any mediation or arbitration hereunder, and the parties agree to take such action, if any, required to effectuate such tolling.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as of this _____ day of _____, 2006.

Witness

Peter J. Truman, *Declarant*

Witness

Nicholas C. Truman, *Declarant*

STATE OF MAINE
COUNTY OF CUMBERLAND

_____, 2006

Personally appeared before me the above-named Peter J. Truman and Nicholas C. Truman as aforesaid, and acknowledged the foregoing to be her free act and deed.

Attorney-at-Law/Notary Public

Print name: _____

EXHIBIT A
(legal description)

EXHIBIT B

REDUCED SIZE COPIES OF THE PLAT & PLAN

EXHIBIT C

BYLAWS

EXHIBIT D

**PERCENTAGE INTEREST
OF UNITS IN
THE LIGHTHOUSE INN CONDOMINIUM**

<u>UNIT #</u>	<u>PERCENTAGE INTEREST</u>	<u>VOTES</u>
Unit 1	4.54545	1
Unit 2	4.54545	1
Unit 3	4.54545	1
Unit 4	4.54545	1
Unit 5	4.54545	1
Unit 6	4.54545	1
Unit 7	4.54545	1
Unit 8	4.54545	1
Unit 9	4.54545	1
Unit 10	4.54545	1
Unit 11	4.54545	1
Unit 12	4.54545	1
Unit 13	4.54545	1
Unit 14	4.54545	1
Unit 15	4.54545	1
Unit 16	4.54545	1
Unit 17	4.54545	1
Unit 18	4.54545	1
Unit 19	4.54545	1
Unit 20	4.54545	1
Unit 21	4.54545	1
Unit 22	4.54545	1
TOTAL	100%	22

RULES AND REGULATIONS

FOR

THE LIGHTHOUSE INN CONDOMINIUM

1. Each Unit will be used as a resort-style vacation unit only. The Units may not be used for professional, business, commercial, industrial or manufacturing purposes, or primarily for storage, except for a home occupation conducted entirely by phone or internet and not involving client visits or other disruptive activity. The use and occupancy restrictions of the Town of Scarborough, Maine require that the individual condominium units be restricted to year round residential motel and transient purpose only, with no rental in excess of One Hundred Eighty-Six (186) consecutive days. The unit owners may use their unit on a year round basis as a resort or vacation home without restriction, but not as a primary residence. No rental of any unit may be for more than five (5) individuals at any one time. Neither unit owners nor tenants may register a vehicle, register to vote, nor register children for school, using his or her unit as a primary residential address. No unit may be rented for a period of less than seven (7) days and all tenants must check in at the office before occupying any unit. Notwithstanding the foregoing, the Declarant while it still owns any units, shall not be subject to any restrictions on its ability for rent units. The restrictions imposed by this section shall not be removed or modified without the prior written approval of the Town of Scarborough.
2. The walkways and entrances of any building shall not be obstructed or used for any purpose other than ingress to and egress from the Units.
3. Unit Owners may not erect awnings, fences, signs, television antennas, clotheslines or other structures, plant or remove trees or shrubs, store trailers, boats, recreational vehicles or unregistered motor vehicles, or other personal property, junk or debris outdoors, alter the grading or landscaping, place outdoor furniture, potted plants, flags, or decorations, or do any other thing which affects the external appearance of the buildings or grounds including Limited Common Areas except in accordance with policies established by, or specific consent of, a majority of the unit owners. No flammable liquids shall be kept or stored in any units. Provided, however, that flower boxes, of the same type, color and quality of the existing flower boxes, may be hung from the windows.
4. Nothing shall be hung or shaken from the balconies, decks or windows or placed upon the exterior windowsills of the building. No personal property, clothing, debris or other personal articles shall be allowed to stand in the Common Elements or Limited Common Elements other than areas designated for such use. This prohibition shall include "for sale" signs, rental signs, leasing signs and decorations of any type.
5. No bicycles or similar vehicles or toys or other personal articles shall be allowed to stand in the Common Elements or Limited Common Elements other than areas designated for such use.

6. No Unit Owner shall make or permit any odors or noises that will disturb or annoy the occupants of the building or do or permit anything to be done therein which will interfere with the rights, comfort, security or convenience of other Unit Owners. In addition, no Unit Owner or member of the Unit Owner's family, or guest, tenant, or employee of a Unit Owner shall play musical instruments after 11 p.m. in or on the property. Smoking is prohibited upon the Common Elements and Limited Common Elements of the Condominium. Smoking is allowed only in such area designated as such and shown on the Plans.

7. Each Unit Owner shall keep his or her Unit in good state of preservation and cleanliness and shall not sweep or throw or permit to be swept or thrown therefrom, or from the doors, windows, balconies or decks thereof, any dirt or other substance.

8. Household Pets

- a. Unit owners may keep orderly domestic household pets, or aquarium fish, and no more than one (1) dog and one (1) cat. Renters of a unit shall not be allowed to keep any pets in such unit. No other pets or animals shall be permitted to be raised, bred or kept in on the property without the prior unanimous written consent of the Executive Board. Unit Owners are responsible for the behavior of their pets or their guest's pets and are liable for any property damage, personal injury or disturbance that such animals may cause. The Association shall have the right to assess the Unit Owner for reimbursement of related expenses and to lien the owner's property in the event of non-payment.
- b. All pets must be licensed and inoculated as required by law, and owners must comply with Town of Scarborough ordinances regulating pets. The Association reserves the right to notify the Animal Control Officer if a pet owner fails to do so.
- c. No animal or pet is allowed outside of its unit except on a leash and under the control of a responsible person. The tying of animals or pets to trees, bushes, benches or other items outside of a Unit is prohibited. Notwithstanding the foregoing, some animals may need to be on a leash in the backyard for control, others, like a well behaved dog or cat, would not require a leash.
- d. Owners are responsible for the immediate removal of pet wastes from lawn or driveway common areas.
- e. Damage to common area lawns inflicted by excessive animal use or by a concentration of animal urine and other wastes may be repaired by the Association. The Association shall have the right to assess the Unit Owner for reimbursement of repair expense and to lien the Owner's property in the event of non-payment.
- f. No animal shall be permitted to become a nuisance such as constant barking or aggressive behavior as to disturb a neighbor's rest or peaceful enjoyment of their Unit or the common area.

- g. No animal may be tied or leashed outside of the Unit at any time; exterior pet runs of any type are not allowed at the Condominium.
- h. The unit owners, by majority vote, shall have the power, if necessary, to further regulate the keeping of pets and animals including, without limitation, the express power to regulate the size and species, to establish additional behavior requirements, and to expel any offending animals from the Condominium.

9. All garbage and refuse from the Units shall be deposited with care in closed containers intended for such purpose and disposed of only at such times and in such manner as the Executive Board may direct. Such closed containers shall be stored in the existing rubbish area in the rear of the building. Containers should be placed at the foot of the driveway on the day(s) designated for collection. Empty trash containers should be returned to such storage areas as soon as possible. Unit Owners are responsible for insuring that accumulated trash does not create a nuisance in regards to odor, cleanliness, bug infestation, or neatness. Public trash removal services are only for the removal of routine household trash. Larger items are the responsibility of the Unit Owner and should be disposed of in accordance with Town of Scarborough ordinances and practices.

10. No radio or television aerial shall be attached to or hung from the exterior of any building.

11. The agents of the Association and any contractor or workman authorized by the Association may enter any Unit at any reasonable hour of the day for any purpose permitted under the terms of the Declaration and Bylaws or these Rules and Regulations.

12. Trailers, snowmobiles, motor homes, campers, motor bikes, mini bikes, or the like shall be stored in the parking spaces assigned to the Unit Owner to which they belong. No automobile belonging to a Unit Owner or to a member of the Unit Owner's family, or guest, tenant, or employee of a Unit Owner shall be parked in such a manner as to impede or prevent ready access to another Unit Owner's parking space or to impede or prevent ingress and egress from the property to Pine Point Road. On occasion, automobiles belonging to a guest of a Unit Owner may be parked in the extra parking space depicted on the Condominium Plat, provided that such automobile may be parked in such parking space for no more than one (1) day without the prior unanimous consent of the Board. Any damage caused by such motor home or camper shall be paid for by the Unit Owner responsible for the presence of such vehicle. The Unit Owners, their employees, servants, agents, visitors, licensees and the Unit Owner's family shall obey all parking regulations, and any other traffic regulations published in the future for the safety, comfort and convenience of the Unit Owners, and comply with all traffic safety regulations and laws.

13. The Unit Owner shall not cause or permit the blowing of any horn from any vehicle in which she, her guests or family shall be an occupant, approaching or in the parking areas serving the building.

14. All damage to the building or Common Elements or Limited Common Elements caused by the moving or carrying of any article therein shall be paid for by the Unit Owner responsible for the presence of such article.

15. No Unit Owner shall use or permit to be brought into the building any inflammable oils or fluids such as gasoline, kerosene, naphtha, benzene or other explosives or articles deemed extra hazardous to life, limb or property, without in each case obtaining the prior written consent of the Executive Board.
16. Unit Owners shall be held responsible for the actions of their guests, tenants, children and other family members and all rental agreements must include a copy of these rules and regulations.
17. Any consent or approval given under these Rules and Regulations by the Executive Board shall be revocable at any time.
18. Complaints regarding the service of the building and the property or regarding actions of other Unit Owners or the Association shall be made in writing to the Executive Board.
19. No felling of trees or other growth is permitted in the Common Elements or Limited Common Elements except as done by the Association for maintenance purposes.
20. The Unit Owners shall do nothing to harm or disrupt and shall assist, to the extent possible, the Executive Board in the proper maintenance of the drainage system in the property.
21. The Association shall be responsible for snow removal from sidewalks around the building, the front porch, back door entrances and the parking area. Individual Unit Owners shall be responsible for keeping their decks, which are Limited Common Elements, free from snow and ice. In addition, the Association shall be responsible for sanding and salting these areas. The Unit Owners shall meet annually on or about October 1st of each year to discuss snow removal. The Unit Owners, at that time, shall mutually agree on arrangements for the removal of snow for the ensuing winter (for the purposes of this agreement, winter shall be defined as December 1st through March 15th). In the event a third party contractor is hired to remove the snow, one Unit Owner shall be responsible for initiating contact with the contractor and arranging for snow removal after each snowstorm. Every attempt shall be made to utilize the same third party contractor from year to year and to have the snow removed in the early morning after each snowfall of two or more inches.
22. In addition to the annual meeting on or about the 1st Monday of August of each year unless such date shall occur on a holiday, in which event the meeting shall be held on the succeeding day that is not a holiday, the Unit Owners shall meet annually to discuss what annual maintenance, if any, is necessary to maintain the present condition of the parking area and walkways. The parking area and walkways shall be maintained in good and safe condition. In addition, the walkways and parking area shall not be further improved (i.e., repaved, widened or enlarged), without the prior unanimous consent of the Unit Owners. In the event that any Unit Owner or Owners incurs any cost or expense without written consent of all Unit Owners, such Unit Owner or Owners shall not be entitled to reimbursement of such expenses and such Unit Owner or Owners shall be solely liable for them.

23. Winter and Stormy Weather

- a. The Executive Board and the snow removal contractor make every effort to insure that snow is cleared from paved areas and walks as quickly as possible. Despite these efforts, there will be times that these areas may be temporarily impassable. Unit Owners must be available to move their cars to allow for plowing of the lot.
- b. All Owners/tenants should be alert to pending weather conditions and to take all necessary precautions to deal with the possibility of power outages, flooding, extreme cold, icing conditions, and heavy precipitation (rain, snow and/or sleet) which could cause damage to personal and common property.
- c. In the event of high winds, all personal property shall be secured or placed indoors. This is the responsibility of the unit owner/tenant.
- d. Installation of a generator or other auxiliary emergency heating/power devices requires the prior approval of the Executive Board. Installation must be done by a contractor who is licensed under Maine law. The contractor must provide proof of adequate insurance.
- e. During winter months, the Unit Owner is responsible for closing any interior shut-off valves for all outside faucets; clearing snow away from any intake/exhaust fittings; clearing snow away from dryer vents if close to the ground; clearing snow away from any doors; and insuring that sufficient heat is on during winter months to prevent pipe freezing and damage to your unit or others. The Unit Owner is liable for building damages, damage to personal property, and damage to heating equipment caused by the failure to do the above.
- f. Unit Owners who are away for extended periods of time, particularly in winter, either on vacation, work related travel or because of seasonal use of their Unit, are responsible for arranging with a neighbor, friend or contractor to have their unit checked periodically to insure that all systems are operable and no storm or cold weather damage has occurred. It is essential that a member of the Executive Board be notified of who has this responsibility and who has access to the Unit.

The Executive Board of the Condominium promulgated the preceding Rules and Regulations for the safety, well-being and convenience of all unit owners. The Board has the responsibility, under the Declaration, for the efficient administration of Condominium affairs and it is their responsibility to interpret and enforce the Condominium Declaration, By-Laws and Rules and Regulations.

A true copy, ATTEST

Date: _____, 2006

Adopted: _____, 2006

_____, President

Amended: _____, 20__

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COUNSELORS AT LAW

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August 3, 2006

David Grysk
Town of Scarborough
P.O. Box 360
Scarborough, ME 04070-0360

Re: The Lighthouse Inn

Dear Dave:

At your request, I am writing to address the July 25, 2006 letter to you from Robert E. Danielson, Esquire asking you to confirm that no permits or approvals would be required to convert the Lighthouse Inn to a condominium.

It is not clear to me that converting the existing hotel rooms to condominium units would not be a change of use. I am attaching the opinion of the Maine Supreme Judicial Court in Oman v. Town of Lincolnville, 367 A.2d 1347 (Me. 1990). In that case the Law Court perceived rental cabins for a transient population as different from seasonal, single-family residences.

The term "hotel/motel" in the Scarborough Zoning Ordinance refers to a building or buildings containing "guest rooms and offering lodging accommodations ... to transient guests." While the term "transient guest" is broadly defined to include a person who occupies the hotel for up to 186 days in any 365 day period, the basic premise of the definition remains that hotel rooms are "guest rooms" and that a hotel offers lodging accommodations to the general public. It is not clear from attorney Danielson's letter whether the rooms in the Lighthouse Inn, once individually owned, would continue to be offered for rent to the general public on a transient basis.

August 3, 2006
Page 2 of 2

Accordingly, based on the information currently available, I do not think you should provide confirmation that no permits or approvals are required for the proposed change.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christopher L. Vaniotis".

Christopher L. Vaniotis

CLV/lc

Enclosure

cc: Joseph Ziepniewski, Town Planner

the victim. The admission of such testimony cannot be held to comprise obvious error affecting substantial rights. *Whiting*, 538 A.2d at 302; M.R.Crim.P. 52(b).

The entry is:

Judgments affirmed.

All concurring.

II.

[4] Finally, Giovanini contends that the instructions given to the jury on the purposes for which prior conduct could be considered were erroneous.⁴ The trial court gave a limiting instruction following the victim's testimony which was reiterated in the course of instructing the jury at the close of the trial. Those instructions limited the consideration of the testimony concerning the "truth or dare" game to its bearing on the relationship between Giovanini and the victim, and Giovanini's opportunity, motive or intent to commit the crimes with which he was charged. The court specifically prohibited the jury from using that testimony to establish the defendant's propensity to commit those crimes. Giovanini, who failed to object to either instruction at trial, maintains that the jury should not have been instructed that the evidence could be considered on the element of intent since the crime of gross sexual misconduct requires no culpable mental state. *State v. Keaten*, 390 A.2d 1043, 1045 (Me.1978) (construing 17-A M.R.S.A. § 253(1)(B)). While the State was not required to prove Giovanini's intent in order to convict him of gross sexual misconduct, intent is an essential element of unlawful sexual contact,⁵ the other crime with which Giovanini was charged. Viewed under an obvious error standard, the court's limiting instructions were not so inadequate that they "[tainted] the proceeding, ... denying [Giovanini] a fair trial and resulting in manifest injustice." *Whiting*, 538 A.2d at 302.

4. We reject Giovanini's additional contention that the trial court erred in defining the sexual act required to establish gross sexual misconduct as one that contained an element of sexual gratification. The instruction given incorporated the definition in effect at the time of the incident. See 17-A M.R.S.A. § 251(1)(C) (1983), repealed by P.L.1985, ch. 495, § 5 (effective Sept. 19, 1985); *Mailman v. Colonial Acres Nursing Home*, 420 A.2d 217, 221 (Me.1980).

Property owners sought judicial review of decision rendered by town zoning board of appeals declaring that conversion of their rental cabins to condominium form of ownership would violate minimum lot size requirement of zoning ordinance. The Superior Court, Waldo County, Browne, J., affirmed. Landowners appealed. The Supreme Judicial Court, Wathen, J., held that rental cabins serving transient population were not "dwelling units" within meaning of zoning ordinance and, accordingly, conversion to condominiums would involve creation of nine individual dwelling units out of former single use, each of which would be required to comply with minimum lot requirement.

Affirmed.

5. 17-A M.R.S.A. § 255(1)(C) (1983) provided in pertinent part as follows:

(1) A person is guilty of unlawful sexual contact if he *intentionally* subjects another person, not his spouse, to any sexual contact, and

(C) The other person has not in fact attained his 14th birthday and the actor is at least 3 years older. . . .

(Emphasis added).



David OMAN and Jean Oman

v.

TOWN OF LINCOLNVILLE.

Supreme Judicial Court of Maine.

Argued Nov. 3, 1989.

Decided Jan. 3, 1990.

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569

Zoning and Planning 254, 256

Rental cabins serving transient population were not "dwelling units" within meaning of zoning ordinance and, accordingly, conversion to condominiums would involve creation of nine individual dwelling units out of former single use, each of which would be required to comply with minimum lot requirement.

See publication Words and Phrases for other judicial constructions and definitions.

Esther R. Barnhart (orally), Strout, Payson, Pellicani, Hokkanen, Strong & Levine, Rockland, for plaintiffs.

Terry Calderwood (orally), Calderwood, Ingraham & Gibbons, Camden, for defendant.

Before McKUSICK, C.J., and ROBERTS, WATHEN, GLASSMAN, CLIFFORD, HORNBLY and COLLINS, JJ.

WATHEN, Justice.

Plaintiffs David and Jean Oman appeal from a judgment of the Superior Court (Waldo County, *Browne, J.*) affirming a decision rendered by the Zoning Board of Appeals for the Town of Lincolnville. The Board declared that the conversion of plaintiffs' rental cabins to a condominium form of ownership would violate the minimum lot size requirement of the General Zoning Ordinance. Plaintiffs argue on appeal that their condominium proposal is protected from the application of the lot size requirement by the grandfather clause. We affirm the Superior Court.

The facts of the case are undisputed. Plaintiffs own property in Lincolnville consisting of a main house and eight detached cabins located on 3.01 acres. Each cabin has a separate heating and electrical system as well as its own bathroom and kitchen. All of the buildings have been in existence for more than forty years and, with the exception of the main house, have been used continuously as rental cabins. All of the cabins, with the exception of one, have been rented on a seasonal basis, generally from May to October. Approximately 50% of the rentals are for a period of one night.

Plaintiffs proposed to sell the individual cabins and the main house as condominium units for seasonal single family residence. At issue is the interpretation of three articles of the Town's General Zoning Ordinance. Article 7 mandates that "[m]inimum lot area shall be 40,000 square feet per individual dwelling unit or other single use". Article 7A defines a "dwelling unit" as "a room or group of rooms designed and equipped exclusively as living quarters for only one family...." Article 4 governing prior existing uses provides that:

Any lawful use of building, structure, premises, land or parts thereof existing prior to the effective date of this Ordinance and not in conformance with the provisions of this Ordinance may continue and may be maintained, repaired and improved. No such non-conforming use may be expanded or changed to any other non-conforming use in any way which does not conform to this Ordinance.

Plaintiffs contend that the proposed conversion involves no change in use. It is their position that at present each individual rental cabin constitutes a "dwelling unit" on a nonconforming lot. The Town contends, however, that the entire cabin rental operation constitutes a single use and, as such, meets the requirement for minimum lot size.

The Board declined to interpret "dwelling unit" to include the rental cabins. The Board committed no error of law in this regard. A rental cabin serving a transient population is not "designed and equipped exclusively for use as living quarters for only one family." Accordingly, the conversion to condominiums will involve the creation of nine individual "dwelling units" out of the former single use. The Board correctly determined that each newly-created "dwelling unit" must comply with the minimum lot requirement of 40,000 square feet.

The Entry is:

Judgment affirmed.

All concurring.



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COUNSELORS AT LAW

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November 8, 2006

David Grysk
Code Enforcement Officer
Town of Scarborough
259 U.S. Route 1
P.O. Box 360
Scarborough ME 04070-0360

Re: Lighthouse Inn, Proposed Condominium Conversion

Dear Dave:

I have reviewed the proposed "Declaration of the Lighthouse Inn Condominium" and the draft "Rules and Regulations for the Lighthouse Inn Condominium" provided by Robert Danielson, Esquire, counsel for the Lighthouse Inn. Those documents came to me under cover of an e-mail message from Attorney Danielson which indicated "[w]e will be applying for building permits to spruce up the units including adding kitchens to some and combining some guest rooms." Based upon the information I have reviewed, I would conclude that the changes proposed in connection with the condominium conversion would constitute a change in the non-conforming use, allowable only if approved by the Zoning Board of Appeals under Section III(F) of the Scarborough Zoning Ordinance.

As I understand it, the Lighthouse Inn has been operated as a typical hotel, offering temporary, short-term lodging for tourists and travelers. The Lighthouse Inn's current website evidences all the indications of a traditional hotel – daily check-in and check-out times, rooms listed as non-smoking, credit cards accepted, rates listed as daily rates, and daily maid service. The Condominium Declaration, in contrast, describes the units as "resort units," which the unit owners can occupy themselves for up to 186 days in any 365-day period, and the units cannot be rented for a period of less than seven days. The proposed Rules and Regulations state that "[t]he unit owners may use their unit on a year-round basis as a resort or vacation home without restriction."

The Rules and Regulations also contain many provisions which appear to be inconsistent with traditional hotel use and consistent with residential use. For example, unit owners are allowed to keep "domestic household pets." Unit owners are required to provide for their own disposal of "routine household trash." There are prohibitions against storage of trailers, snowmobiles and motorhomes, campers, motorbikes, minibikes, etc. And there is a


David Grysk, Code Enforcement Officer
November 8, 2006
Page 2 of 2

provision that "Unit Owners who are away for extended periods of time, particularly in winter, either on vacation, work-related travel or because of seasonal use of their Unit, are responsible for arranging with a neighbor, friend or contractor to have their Unit checked periodically to ensure that all systems are operable and no storm or cold weather damage has occurred."

The test under Maine law for whether there has been a change in a non-conforming use is (1) whether the use reflects the "nature and purpose" of the use existing when the zoning took effect, (2) whether the use is "different in quality or character" from the original use and (3) whether the use is different in kind in its effect on the neighborhood. Total Quality, Inc. v. Town of Scarborough, 588 A.2d 283 (Me.1991). See also, Oman vs. Town of Lincolnville, 367 A.2d 1347 (Me. 1990).

In my view, the materials presented describe a use which is different both in nature and purpose and in quality or character from the "grandfathered" use of the Lighthouse Inn. Accordingly, the changes proposed in connection with the condominium conversion would constitute a change in use, and would not be permissible unless reviewed and approved by the Board of Appeals under Section III(F).

Feel free to contact me if you have additional questions.

Sincerely,

Christopher L. Vaniotis

CLV/clh

cc: Ronald W. Owens, Town Manager
Joseph Ziepniewski, Town Planner
Robert Danielson, Esquire

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Town of Scarborough, Maine

P.O. BOX 360 - SCARBOROUGH, MAINE 04070-0360

Peter & Nicholas Truman
366 Pinepoint Road
Scarborough, Maine 04074

November 14, 2006

Dear Peter & Nicholas:

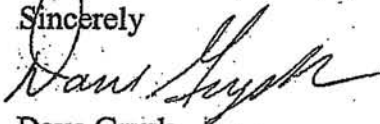
This letter is to let you know the interpretation of the Scarborough Code Enforcement Office regarding a new proposed use of the Light House Inn.

You have been in contact with the Code Office in the past regarding the change of use of the Lighthouse Inn. At one time you were proposing to change from one nonconforming use, the Lighthouse Inn, to another nonconforming use, five residential condo units. It has come to my attention that you are now proposing to spruce up the rooms, combine some rooms and add kitchens to some units. They then would be offered for sale as condo units. As noted in a letter from Town Attorney Christopher Vantotis of Bernstein Shur Counselors at Law, dated November 8, 2006, the proposed use would be inconsistent with the traditional way that the Inn has been operated but would be consistent with a residential use.

If you were to proceed with the present proposal you would have to apply for and receive miscellaneous appeal approval to change from one non-conforming use, the inn, to another nonconforming use, residential units.

If you have any questions regarding this letter and the interpretation of the Scarborough Code Enforcement Office, please contact me at 730-4050. I will be glad to meet with you and your representatives. You may request an Administrative Appeal under Section VB1. of the Scarborough Zoning Ordinance.

Sincerely



Dave Grysk
Chief Code Enforcement Officer

33 §1601-106. Applicability of local laws and regulations

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33 §1601-106. Applicability of local laws and regulations

A zoning, subdivision, building code or other real estate use law, ordinance or regulation may not prohibit the condominium form of ownership. Otherwise, no provision of this Act invalidates or modifies any provision of any zoning, subdivision, building code or other real estate use law, ordinance or regulation. No county, municipality, village corporation or other political subdivision, whether or not acting under the municipal home rule powers provided for under the Constitution of Maine, Article VIII, Part Second or Title 30-A, chapter 111, and section 3001, or any other authority from time to time, may adopt or enforce any law, ordinance, rule, regulation or policy which conflicts with the provisions of this Act. [1987, c. 737, Pt. C, §§76, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

SECTION HISTORY

1981, c. 699, (NEW). 1987, c. 322, (AMD). 1987, c. 737, §§C76,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD).

Doc#: 16655 Bk:24934 Pg: 47

**DECLARATION
OF
THE LIGHTHOUSE INN CONDOMINIUM**

ARTICLE I

SUBMISSION

Section 1.1 Submission of Real Estate. Peter J. Truman and Nicholas C. Truman of Scarborough, Cumberland County, Maine (collectively, the "Declarant"), hereby submits the land, rights, appurtenances and easements together with a certain 22 unit motel/hotel building (the "Building") and other improvements situated thereon, located within the Town of Scarborough, Cumberland County, Maine, and more particularly described in Exhibit A attached hereto (the "Property") to the Maine Condominium Act, Chapter 31 of Title 33 of the Maine Revised Statutes Annotated, as amended (the "Act"), and hereby creates "The Lighthouse Inn Condominium" (the "Condominium"). The Property is shown on the condominium plat and plan identified as "Survey and Floor Plan Lighthouse Inn Condominium, King Street & Pine Point Road, Scarborough, Maine, Made for Peter Truman" (the "Plat") prepared by Cullenberg Land Surveying dated March 14, 2007 to be recorded herewith in the Cumberland County Registry of Deeds and attached hereto as Exhibit B.

The Property is conveyed and declared subject to:

- (i) Terms, covenants, conditions, restrictions, rights and easements set forth in instruments duly recorded in the Cumberland County Registry of Deeds.
- (iii) Easements, Conditions, Covenants and Restrictions as shown on the Plat and the Plan.
- (iv) The easements, covenants, restrictions and reservations contained in and created by this Declaration, said Plat and the Plan and the Bylaws of the Association.

Section 1.2 Defined Terms. The terms used in this Declaration, the Bylaws of the Association and the Plat and Plans generally shall have the meanings specified in the Act, except as otherwise defined herein.

ARTICLE II

ASSOCIATION

The business affairs of the Condominium shall be managed by a non-profit and non-stock corporation to be organized under the laws of the State of Maine and to be known as the "The Lighthouse Inn Condominium Association" (the "Association"). Each condominium unit owner shall be a member of the Association. Membership shall be appurtenant to each unit, and the transfer of title to a unit shall automatically transfer the membership appurtenant to that unit to the transferee(s). The owner or owners of each unit shall be entitled to the voting rights in the Association as described in Section 4.2 below. The granting of a mortgage by a unit owner, however, shall not transfer membership in the Association unless and until foreclosure or transfer in lieu of foreclosure. The Association shall have all the powers set forth in section 1603-102 of the Act and as set forth in the Bylaws of the Association, attached hereto as Exhibit C.

ARTICLE III

UNITS; UNIT BOUNDARIES; ALLOCATED INTERESTS

Section 3.1 Number of Units. The Declarant hereby creates a total of twenty two (22) units in the Condominium.

Section 3.2 Location, Identification and Dimension of Units. The location, dimensions, identification number and approximate area of each unit is shown on the Plat and the Plan.

Section 3.3 Unit Boundaries. The boundaries of each unit are as shown on the Plat and the Plan and are described as follows:

(a) Upper (horizontal) Boundaries. The upper boundary of each unit is the horizontal plane at the lower surface of the joist line of the ceiling of the top floor of the unit, including attic space, which includes the upper side of the gypsum board, if any, of the ceiling and any other materials constituting any part of the finished surfaces thereof.

(b) Lower (horizontal) Boundaries. The lower boundary of each unit is the physical surface of the earth extending to an intersection with the vertical (perimeter) boundaries described below.

(c) Vertical (perimeter) Boundaries. The vertical boundaries of each unit are the vertical planes at the interior edge of the stud line and exposed chimneys not covered by studding, which includes the exterior surfaces of the gypsum board of all walls bounding the unit. The vertical boundary lines also specifically include the exterior surface of doors, windows, storm windows, and glass walls, but excluding their frames, sills, and thresholds.

(d) Miscellaneous. All structures, fixtures and improvements at any time located within a unit's boundaries, whenever constructed, are a part of that unit, except as expressly provided in this Article III and elsewhere in this Declaration. A unit does not include the exterior walls, roof, foundation walls, studs, beams and rafters of the Building, nor the land nor any pipes, ducts, cables, electrical and transmission wires and conduits, distribution pipes and water and sewer pipes, and all other utility lines which serve more than one unit or the common elements up to the valve, switch or shutoff between common and exclusively used portions thereof, with the valve, shut off or switch being a part of the unit.

Section 3.4 Party Walls. Each unit is owned subject to, and together with the mutual easements of support and shelter over and to the party walls provided for party walls by law. In the event, by virtue of reconstruction, repair or removal of structures, affecting elements supported or sheltered by the party wall, the removing unit owner shall shore, reconstruct and weather proof such party wall so it can perform its function of support and shelter, and if such reconstruction, repair or removal is to be permanent, finish all surfaces exposed to weather in an architecturally finished manner consistent with the rest of the building.

Section 3.5 Relocation of Unit Boundaries and Subdivision of Units. Relocation of boundaries of units is permitted by amendment to the Declaration in compliance with the provisions of the Act and upon receipt of all necessary governmental approvals, permits and licenses including the zoning ordinance of the Town of Scarborough then in effect. The subdivision of units is not permitted.

Section 3.6 Allocated Interests. The undivided ownership of common elements and liability for common expenses and votes in the Association shall be allocated equally between each of the twenty-two (22) units.

ARTICLE IV

COMMON ELEMENTS

Section 4.1 Common Elements. Common elements consist of the entire Property, except the individual units as described in Article III above, and generally include:

- (a) The land, with the benefit of and subject to all easements, covenants, agreements, and restrictions of record as of the date hereof;
- (b) The exterior walls, roof, foundation walls, studs, beams and rafters of the Building;
- (c) All pipes, ducts, cables, electrical and transmission wires and conduits, distribution pipes, water and sewer pipes, and all other utility lines which serve more than one unit or the common areas (excepting equipment owned by public and municipal utilities);
- (d) All other parts of the Property necessary or convenient to its existence, maintenance and safety or normally in common use, except as otherwise expressly provided in this Declaration.

Section 4.2 Percentage interests. Attached hereto as **Exhibit D** is a list of all Units and identifying numbers (all as shown more fully on the Plat and the Plan) allocating a percentage of undivided interests in the common elements and in the common expenses of the Association, and the votes appurtenant to each Unit. Each Unit shall be allocated a percentage of undivided interests in the common elements and in the common expenses of the Association and each Unit shall be allocated a percentage of the total votes.

Section 4.3 Limited Common Elements. Limited common elements, the exclusive use of which is reserved to the use of a particular unit, to the exclusion of the other unit, consist of the following, in addition to those features described in Section 1602-102(2) and (4) of the Act:

- (a) The land underlying and surrounding each unit (and all structures and improvements located thereon) as shown on the Plat as a limited common element;
 - (b) Walks, drives, retaining walls, landscaping, public utility, electrical, drainage and mechanical pipes, ducts, chases, lines, conduits, ducts and accessory fixtures serving one of the units;
 - (c) Street and garden lights powered from an appurtenant unit;
 - (d) Fences, gates, mailboxes, hedges, enclosures, and other structures and fixtures enclosing a unit;
 - (e) Balconies, decks, porches, stairs and landings accessible from a single unit;
 - (f) Doors leading from units to balconies, and their related frames, sills and hardware;
 - (g) Doors leading from units to interior corridors which are Common Elements (if any);
- and
- (h) Parking spaces numbered to correspond with a particular unit.

Section 4.4 Special Maintenance and Special Expense Assessment. The owners of any unit to which a fixture or other item of property is allocated to that unit as a limited Common Element under Section 4.3 above and the owners of any unit or units with a fireplace chimney or chimney flue which serves only that unit shall be responsible for the good upkeep, maintenance and repair of such fixture, item of property, fireplace chimney or chimney flue, and if the owner fails to meet such responsibility the Association may arrange for the

same and shall assess the expense to such unit owners. The expense of maintenance and repair of Common Elements necessitated by the negligence, misuse, or neglect of a unit owner shall be charged by the Association to such unit owner. Notwithstanding the foregoing, all support posts for the decks and porches of the building located on the Property and all parking aisles and other paved areas, other than the individually numbered parking spaces shall be Common Elements.

ARTICLE V

DEVELOPMENT RIGHTS, SPECIAL DECLARANT RIGHTS AND DECLARANT CONTROL PERIOD

Section 5.1 Development Rights/Special Declarant Rights.

(a) The Units and Common Elements shall be, and are hereby, made subject to easements in favor of the Declarant, Unit Owners, and appropriate easements for service companies. The easements created in this Article V shall include, without limitation, rights to: provide easements to utility or service companies, or governmental agencies or authorities; install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, elevators, telephone wires and equipment, television equipment, air conditioning, heating systems, electric wires, conduits and equipment and ducts and vents over, under, through, along and on the Units and Common Elements.

(b) Declarant shall have the continuing right to enter upon and conduct work in all portions of the building, including all Condominium Units, Common Elements, and Limited Common Elements, in order to effect such improvements, renovations, modifications, replacements, construction, repair and alterations.

(c) Declarant does not reserve the right to create additional units.

Section 5.2 Declarant Control Period.

(a) During the period of Declarant Control as hereinafter described the Declarant shall have the right to appoint or remove any officer of the Association or any Executive Board member or to approve any of the acts of the Association, or of the Executive Board. The period of Declarant Control extends from the date of the first conveyance of a Unit to a person other than the Declarant for a period of three (3) years from the date of said first conveyance or until all units are conveyed to a person or persons other than Declarant, whichever shall occur first.

(b) During the Declarant Control period the Declarant may use any unit which it owns as a rental or model unit or office and such parking space allocated to it and all common elements and roadways of the Condominium and install and maintain signs for any purpose including the sales and marketing of said units and to lease and rent such units for such time and in such manner as the Declarant sees fit.

ARTICLE VI

AMENDMENT

Section 6.1 Amendment of Declaration. This Declaration, including the Plat and the Plan, may be amended or modified in accordance with the following procedure, except as otherwise provided in this Declaration or in the Condominium Act:

(a) The notice of any regular or special meeting of the Association at which a proposed amendment to this Declaration is to be considered shall contain the text of the proposed amendment. Notice shall also be sent to Eligible Mortgage Holders if required pursuant to ARTICLE XII.

(b) At the meeting, the resolution shall be adopted if it receives the affirmative vote or

written consent of unit owners holding more than fifty percent (50%) of the votes in the Association in all cases and such Eligible Mortgage Holders as required pursuant to ARTICLE XII. Unit owners and Eligible Mortgage Holders, if required by ARTICLE XII, may express their approval in writing or by proxy.

(c) An amendment shall be effective when recorded. The Association shall endeavor to forward a copy of the amendment to each unit owner and Eligible Mortgage Holders in the manner elsewhere provided for the giving of notices, but receipt of such notices shall not constitute a condition precedent to the effectiveness of such amendment.

Section 6.2 Amendment to Comply with Secondary Market Mortgagee Requirements. It is Declarant's intent that this Declaration comply with the underwriting requirements of Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie Mae), the Veterans' Administration, the Federal Housing Administration or other recognized institutional mortgage programs. In the event that this Declaration does not comply with such underwriting requirements, Declarant or the Association shall have the right to amend this Declaration to make this Declaration conform to such underwriting requirements.

ARTICLE VII

INSURANCE; DAMAGE OR DESTRUCTION

Section 7.1 General. To the extent reasonably available, the Condominium Association shall obtain and maintain insurance coverage as set forth herein. All insurance affecting the Condominium shall be governed by and in accordance with the provisions of this Article and Section 1603-113 of the Act. In any event, the Association shall maintain insurance which meets the then current Condominium Master Insurance Policy requirements of the Federal National Mortgage Association "FNMA". All insurance policies shall have, as the named insured, "The Lighthouse Inn Condominium Association", for the use and benefit of the unit owners of "The Lighthouse Inn Condominium", shall provide that it shall be primary insurance even if other insurance is available to cover any insured loss, shall contain a waiver of subrogation endorsement or clause prohibiting subrogation against individual unit owners, and shall contain an endorsement providing that the coverage is not avoided, nullified or in any other way prejudiced by acts or omissions of unit owners which acts or omissions are not controlled by the Association. All policies of insurance shall provide that the insurer shall notify the Association, any insurance trustee other than the Association, and each first mortgage holder in writing at least thirty (30) days before it cancels or substantially changes any insurance policy or coverage.

Section 7.2 Casualty Insurance. The Association shall maintain casualty insurance in an amount of not less than one hundred (100%) percent of the current replacement cost of the Building, common elements, limited common elements and units, including agreed amount, inflation guard and special condominium endorsements covering the Building and all improvements on the Property including the units and all fixtures, equipment, improvements, betterments, whether or not part of a unit or a common element or a limited common element and such personal property of unit owners as is normally insured under building coverage and all personal property owned by the Association, but excluding land, excavations, portions of foundations below the undersurfaces or lowest basement or its underground pilings, piers, pipes, flues and drains and other items normally excluded from property casualty insurance policies. The policy must also contain the standard mortgage clause and must name as mortgagee either FNMA or the servicers for the mortgages on units in the project. When a servicer is named as mortgagee, its name should be followed by the phrase "its successors and assigns, as their interests may appear."

Section 7.3 Repair. Any portion of the Property damaged or destroyed shall be repaired or replaced promptly by the Association unless: (a) the Condominium is terminated under ARTICLE VIII hereof; or (b) such repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) unit owners holding one-hundred percent (100%) of the votes in the Association vote not to rebuild. Insurance deductibles and the cost of repair or replacement in excess of insurance proceeds and reserves or not covered by any insurance shall be a common expense.

Section 7.4 Application of Insurance Proceeds. Subject to the rights of any Eligible Mortgage Holders, if the entire Condominium is not completely repaired or replaced: (a) the insurance proceeds attributable to the damaged units and common elements shall be used to restore the damaged areas to a condition compatible with the remainder of the Condominium; (b) the insurance proceeds actually received by the Association and attributable to units that are not rebuilt, including without limitation the interest in the common elements and in limited common elements, shall be distributed to such unit owners and their mortgagees; and (c) the remainder of the proceeds shall be held in trust to be distributed to the unit owners and their mortgagees in accordance with the Act.

Section 7.5 General Liability Insurance. The Association shall also maintain comprehensive commercial general liability insurance, including medical payments insurance insuring the unit owners, in their capacity as unit owners and Association members and any managing agent retained by the Association, relating in any way to the ownership and/or use of the common elements, public ways and any other areas under the supervision of the Association and any part thereof. Such insurance policy shall contain a "severability of interest endorsement" or equivalent coverage which precludes the insurer from denying the claim of a unit owner because of the negligent acts of the Association or another unit owner. Such insurance shall include coverage for bodily injury and property damage that results from the operation, maintenance or use of the common elements, any liability resulting from law suits related to employment contracts in which the Association is a party, other than standard workers compensation and employment practices exclusions, and such other risks as the Association determines are appropriate. The amount of coverage of such liability insurance, and the deductibles therefor, shall be as determined by the Association. The scope and amount of coverage of all liability insurance policies shall be reviewed at least once each year by the Association and may be changed in the Association's discretion.

ARTICLE VIII

REMOVAL FROM THE CONDOMINIUM ACT

Section 8.1 The submission of the Property to the Act herein shall not be terminated unless (i) unit owners holding one-hundred percent (100%) of the votes in the Association and (ii) the percentage of the Eligible Mortgage Holders required by ARTICLE XII hereof shall agree to such revocation or removal of the Property from the provisions of the Act, their agreement to be established by written instrument duly recorded.

Section 8.2 Upon removal of the Property from the Act, the unit owners shall hold the Property and any proceeds thereof as tenants in common in accordance with the Act, with any mortgages or liens affecting a unit to attach in order of priority against the resulting common ownership interest. Removal shall not bar the subsequent re-submission of the Property to the Act.

ARTICLE IX

EMINENT DOMAIN

Section 9.1 If a unit is acquired by eminent domain, to the extent the award is paid to the Association or is controlled by this Declaration or the Association, the award shall be applied to compensate the unit owner and his/her/their mortgagee(s), if any, for the unit and the unit's percentage interest in the common elements, whether or not any common elements are acquired. Upon acquisition of the unit, the unit's allocated interests shall be automatically reallocated to the remaining unit and the Association shall promptly prepare, execute, and record an instrument reflecting the reallocation.

Section 9.2 If part of a unit is acquired by eminent domain, to the extent the award is paid to the Association or is controlled by this Declaration or the Association, the award shall be applied to compensate the unit owner and his/her/their mortgagee(s), if any, for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired.

Section 9.3 If part of the common elements are acquired by eminent domain, the Association shall be entitled to payment of the award, subject to the Act; generally the portion of the award attributable to the common elements taken shall be distributed to the unit owners and their mortgagee(s) in accordance with the Act, unless the Association rebuilds or acquires comparable common elements. Any portion of an award attributable to the acquisition of all or a portion of a limited common element must be distributed to the owner of the unit to which that limited common element is allocated at the time of acquisition.

Section 9.4 In the event of a proposed acquisition by eminent domain, the Association shall have the right but not the obligation to act and to intervene on behalf of the unit owners. As such, each unit owner hereby irrevocably constitutes and appoints the Association its true and lawful attorney, with full power of substitution, to represent such unit owner in any proceedings, negotiations, settlements, or agreements in connection with a proposed acquisition by eminent domain. The foregoing power of attorney conferred upon the Association by this Declaration, being coupled with an interest, shall be irrevocable so long as any such person owns a unit. This power of attorney shall not be affected by the disability or incompetence of such a unit owner. Nothing contained in this Section or this Declaration, however, shall entitle any unit owner or other person to priority over a first mortgagee of a unit pursuant to its mortgage instrument in the right to receive eminent domain awards for the taking of units and/or common elements.

ARTICLE X

EASEMENTS

Section 10.1 Access. Appurtenant to each Unit is a perpetual right, subject to the rules and regulations established by the Association, of ingress and egress from such unit through the common elements to the public streets adjoining the Property.

Section 10.2 Association. The Association and/or any other person authorized by the Association shall have a right of access to any unit and any limited common elements to the full extent as provided in the Act and the Bylaws. In case of emergency, such entry may be gained immediately whether or not the unit owner is present at the time or notified in advance of such entry.

Section 10.3 Utilities. Each unit shall have an easement in common with all other units to use all pipes, wires, ducts, cables, conduits, meters, utility and/or gas lines and other common elements serving such unit and located in any of the other units or on the common elements.

Section 10.4 Party Wall. Each unit sharing a party wall with the adjacent unit shall have an easement for support from such other unit, and an easement for driving and removing nails, screws, bolts and other attachment devices into the unit side surface of the party wall, whether concrete or framing which supports the dry wall, to the extent such nails, screws, bolts and other attachment devices may encroach into the adjoining unit or common areas; provided, however, that any such action shall not adversely affect either the structural, thermal or acoustical character of the party wall.

Section 10.5 Support. Each unit shall have an appurtenant easement to the extent necessary for structural and lateral support over the other unit and over the common elements and limited common elements; each unit, the common elements and limited common elements shall be subject to an easement for structural and lateral support in favor of the other unit. If any portion of the common elements or limited common elements hereafter encroaches 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 or other than as a result of the purposeful 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, a valid easement appurtenant to the encroaching units, common elements or limited common elements for said encroachment and for the maintenance of the same shall exist for so long as the encroachment shall exist. In the event that any Building shall be partially destroyed as a result of fire or other casualty or as a result of a taking in the nature of eminent domain or by an action or deed in lieu of condemnation, and then is

rebuilt, encroachments of a portion or portions of the common elements or limited common elements upon any unit or of any unit upon any other unit or upon any portion of the common elements or limited common elements due to such rebuilding, shall be permitted, and valid easements appurtenant to the encroaching units, common elements or limited common elements for such encroachments and the maintenance thereof shall exist so long as that Building as so rebuilt shall stand.

ARTICLE XI

A. LEASING

All leases of units must be in writing. The written lease of any unit must: (a) require the lessee to comply with this Declaration, the Bylaws and any rules and regulations of the Association; (b) provide that failure to comply therewith constitutes a default under the lease; (c) provide that the Association has the power to terminate the lease and to bring summary proceedings to evict the tenant in the name of the lessor thereunder 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 (d) shall be for a period at least seven (7) consecutive days unless leased or rented by the Declarant and (e) shall comply with the provisions of subsection B below. Each unit owner, promptly following the execution of any lease of a unit, shall forward a conformed copy thereof to the Association and the Management Company, if any.

B. RESTRICTIONS ON USE AND OCCUPANCY

The use and occupancy regulations of the Town of Scarborough, Maine require that the individual units be restricted to residential motel and transient purpose only, with no person occupying any unit in excess of One Hundred Eighty-Six (186) days in any Three Hundred Sixty Five Days (365) day period, all as defined under the Scarborough Zoning Ordinance effective as of the date hereof. No unit may be used as a primary residence. Neither unit owners nor tenants may register a vehicle, register to vote, nor register children for school, using his or her unit as a primary residential address. The restrictions imposed by this section of the Declaration shall not be removed or modified without the prior written approval of the Town of Scarborough.

C. CLOSURE OF BUILDING

All unit owners agree and understand that the Property shall be available to them on a seasonal basis and that the Property will be closed for a period of approximately four (4) months in the winter of each year. Initially, the Declarant shall decide which dates the Property will be closed and unavailable for occupancy. Thereafter, a management company shall determine the appropriate dates for closure of the Property with the consent of at least seventy-five percent (75%) of the unit owners.

ARTICLE XII

RIGHTS OF MORTGAGEES

Section 12.1 Eligible Mortgage Holder. Any first mortgagee of a unit may file with the Association a request identifying itself as a first mortgage holder and the number of the unit encumbered by its mortgage with the Association by certified or registered first-class mail, return receipt requested or by delivery in hand securing receipt therefore and thereby shall become an "Eligible Mortgage Holder"; the Secretary of the Association shall maintain such information. After the filing of a request by the Eligible Mortgage Holder, the Association shall cause notice to be sent to the Eligible Mortgage Holders of any one or more of the following events affecting the mortgaged unit(s), if so requested.

(a) Default by the owner of a mortgaged unit in the payment of quarterly common charges, assessments, service charges, or other amounts due the Association that continues for sixty (60) days or as required by the Act;

- (b) The lapse, cancellation, expiration or material modification of insurance required to be maintained under this Declaration or the Bylaws of the Association;
- (c) A material amendment to the Declaration requiring the consent of Eligible Mortgage Holders as provided in Section 12.2 below;
- (d) Any condemnation proceeding against any portion of the Property;
- (e) Material destruction of any portion of the common elements or limited common elements or any improvements thereon; or
- (f) Such other events specified in the Act.

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

Section 12.2 Material Amendments. For a material amendment to the Declaration but subject in any event to the provisions of the Act, approval must be obtained from Eligible Mortgage Holders representing in the aggregate at least fifty-one percent (51%) of the votes of units subject to mortgages held by Eligible Mortgage Holders. An amendment affecting any of the following shall be deemed material:

- (a) Voting rights in the Association;
- (b) Change in percentage liability for common expenses, assessment liens for common expenses, or the subordination of assessment liens;
- (c) Reallocation of pro rata interests in the common elements or limited common elements or rights to their use;
- (d) Boundaries of any unit;
- (e) Convertibility of units into common elements or vice versa;
- (f) Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- (g) Insurance or fidelity bonds;
- (h) The rights to lease units;
- (i) Imposition of any restrictions on a unit owner's right to sell or transfer his or her unit;
- (j) Restoration or repair of the Property (after damage or destruction, partial taking by eminent domain or condemnation) in a manner other than that specified in this Declaration;
- (k) Any action to terminate the Condominium;
- (l) Any provisions of this Article or any other provision of this Declaration that expressly benefits mortgage holders, insurers or guarantors;
- (m) The merger or consolidation of the Condominium with another condominium or the

subjectation of the Condominium to a master association; and

(n) Any change in the Association's right to lien a unit for unpaid common expense assessments or a change in the priority of such liens.

The approval of any Eligible Mortgage Holder to such a material amendment to the Declaration shall be presumed when an Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the proposal is made.

Section 12.3 Records. An Eligible Mortgage Holder may, at its sole expense, examine the books, records and accounts of the Association at reasonable times with reasonable advance notice to the Treasurer of the Association.

Section 12.4 Dispositions by Mortgagees. In the event the Association adopts any right of first refusal or purchase option arising in the event of the sale or transfer of a unit, it shall not impair the right of an institutional mortgage lender to foreclose its mortgage, to accept a deed in lieu of foreclosure after written notice of default to Mortgagee, which deed identifies the circumstances classifying it as such a deed, or to dispose of, advertise, sell or lease a unit acquired under the procedures set forth above, and any such foreclosure or deed shall convey title free and clear of any such right of first refusal or purchase option with respect to such conveyance, but only with respect to such conveyance.

ARTICLE XIII

ASSESSMENT FOR COMMON EXPENSES AND SERVICE CHARGES.

Section 13.1 Common Expense Assessments. The total amount of common expenses incurred by the Association shall be assessed equally against all units, subject to the following:

- (a) A limited common expense shall be assessed solely against the unit benefited.
- (b) Assessments to pay a judgment against the Association shall be made as a common expense against all units.
- (c) Costs of electricity, gas, water and sewer shall be assessed equally against all units, unless such services are separately metered, in which case each unit owner shall be required to pay the bills for such services consumed or used in his/her/their unit.

Section 13.2 Common Expenses. "Common expenses" shall be any and all expenses incurred by the Association to pay for insurance premiums, taxes, and to operate, maintain, repair, and replace portions of the units that are the Association's responsibility pursuant to this Declaration (if any), the common elements and limited common elements as necessary to keep the same a first-class condition with respect to appearance, operation and function and utilities used in connection with the operation and maintenance of the common elements and limited common elements. Notwithstanding the foregoing, each unit owner shall be responsible for the repair, maintenance and upkeep of his/her/their respective limited common elements including the removal of ice, snow, leaves and debris therefrom (as applicable). In the event a particular unit owner fails to repair, maintain or upkeep his/her/their limited common elements in a first class condition, the Association shall have the right to do so and shall assess the unit owner for all costs and expenses incurred in connection therewith pursuant to Section 13.5 below.

Section 13.3 Lien Rights. Each unit is subject to a lien in favor of the Association for the unpaid common expense assessments, interest and costs of collection as provided in the Act, which lien may be foreclosed in like manner as a mortgage on real estate. No foreclosure of the Association's lien shall release the unit owner from any personal liability for any unpaid portion of the lien. The recordation of this Declaration constitutes record notice of the lien. Such lien for common expense assessments shall not have priority over a

first mortgage securing a loan to purchase a unit, and upon the closing of a foreclosure sale of such first mortgage, any liens for then-existing common expense assessments automatically shall be released but without releasing the responsible unit owner from any personal liability for the liability secured by the released lien.

Section 13.4 Working Capital Fund. Contemporaneous with the conveyance of each unit by Declarant, the unit purchaser shall pay to the Association an amount equal to the estimated common expense charges for two months' operation of the Condominium for each such unit for funding a working capital fund. Within sixty (60) days after the closing of the sale of the first unit, Declarant shall pay to the Association his pro rata share of the working capital fund for any unsold Units of the Condominium. Such working capital fund shall be established by the Association at the time of the conveyance of the first unit, as a segregated account, owned by and in the name of the Association, established at a Maine financial institution insured by the Federal Deposit Insurance Corporation or other equivalent federally-sponsored insurance (the "Working Capital Account"). The Working Capital Account shall contain a dual signature provision requiring the signature of at least 2 officers or Executive Board Members (or their respective duly designated representatives) on any checks, withdrawal slips or automatic withdrawal requests, and shall not allow for ATM withdrawals.

Section 13.5 Service Charges and Fines. The Association shall have the power to separately charge a unit and the owner thereof for services rendered to that unit, and interest and costs of collection in connection with service charges, and for fines assessed against a unit owner for violation of this Declaration, the Bylaws and the rules and regulations of the Association (if any). Such charges and fines shall be a lien on the unit with the same status as a lien for common expense assessments under the Act, this Declaration and the Bylaws of the Association, which lien for service charges may be foreclosed in like manner as a mortgage on real estate. The recordation of this Declaration constitutes record notice of the lien.

Service charges shall include without limitation:

(a) If a unit owner requests the Association to perform repair or maintenance work on the unit other than as required by this Declaration, or if a unit owner or a member of a unit owner's household, or a unit owner's guests or tenants, damage the common elements or if a unit owner fails to perform maintenance or repair work required by this Declaration, and the Association performs such work pursuant to ARTICLE XIV below, the expense thereof as determined by the Association may be assessed against such unit owner as a service charge.

(b) Fees, if any, which may be established by the Association for the use and maintenance of water, sewer/septic and/or other utility services and equipment. The expense of charges for water and sewer/septic services and of equipment maintenance and repair and reasonable reserve allowances may also be calculated by the Association in their discretion and assessed quarterly as a service charge to each unit. At the election of the Association, the expense of capital improvements, major repairs or renovations to the water and sewers/septic systems may be assessed either as a common expense or as a service charge.

(c) Insurance premiums on permanent improvements to units installed by unit owners and insured by the request of the unit owner with the Association's hazard insurance carrier.

Section 13.6 Liability: Re-Sale Certificate. Multiple owners of a unit shall each be jointly and severally liable with one another for all unpaid common expense assessments, service charges, interest, penalties and costs of collection during their period of unit ownership up to the time of the grant or conveyance. A grantee shall not be prevented from exercising any right to recover from the grantor such amounts paid for those common expenses assessments, service charges, etc. arising prior to the conveyance. A grantee or proposed purchaser under a purchase and sale contract for a unit may obtain, upon request and the payment of such fee as may be established from time to time by the Association, a statement from the Association setting forth the amount of unpaid common expense assessments and service charges, interest, penalties and costs of collection against the unit as of the date of grant or conveyance and such other information required by the Act. The grantee shall not be liable for, and the unit conveyed shall not be subject to a lien for any unpaid amounts due from the grantor before the statement date in excess of the amount set forth in the statement except interest and

costs of collection accruing thereafter.

Section 13.7 Budget. The proposed budget approved by the Association shall be adopted unless rejected by the vote of unit owners holding more than fifty-one percent (51%) of the votes in the Association. After the first conveyance of an individual unit, the budget must contain funding for an adequate reserve for replacements of improvements to the common elements and to those limited common elements that the Association is obligated to maintain.

Section 13.8 Violations. Any unit owner in default in the payment of any amount due the Association or in violation of any provision of the Act, this Declaration, the Bylaws, or the rules and regulations of the Association, which violation continues after reasonable notice to cure by the Association to the unit owner, may be prohibited by the Association from the use and enjoyment of any and all of the common elements that are not essential to access to the unit or for the provision of necessary utilities, in addition to all other remedies available to the Association.

ARTICLE XIV

USE: MAINTENANCE AND REPAIR: IMPROVEMENTS

Section 14.1 Use.

(a) Use. Each unit may be used and occupied subject to all restrictions contained in this Declaration, the Bylaws, and the Rules and Regulations of the Association, as promulgated and amended from time to time. The units are restricted to Resort-style vacation use. The Units may not be used for professional, business, commercial, industrial or manufacturing purposes, or primarily for storage, except for a home occupation conducted entirely by phone or internet and not involving client visits or other disruptive activity. The use and occupancy restrictions of the Town of Scarborough, Maine require that the individual condominium units be restricted to residential motel and transient purpose only, with no personal occupancy in excess of One Hundred Eighty-Six (186) days in any Three Hundred Sixty Five (365) day period, as defined under the Scarborough Zoning Ordinance effective as of the date hereof. No unit may be used as a primary residence. Neither unit owners nor tenants may register a vehicle, register to vote, nor register children for school, using his or her unit as a primary residential address. The restrictions imposed by this section shall not be removed or modified without the prior written approval of the Town of Scarborough. No unit owner shall be allowed to install a sign visible from the common elements or limited common elements indicating or advertising a commercial use or home office use in any unit. Each unit shall be used by the owner or other occupant(s) thereof in compliance with all applicable laws, ordinances and regulations, and each unit owner agrees to indemnify, defend and hold the Association and other unit owner and occupants harmless from all fines, penalties, costs and prosecutions for any violation thereof.

(b) Offensive Activities. Nothing shall be done in any unit which will increase the rate of insurance of the Building beyond the rates applicable for motels/hotels without consent of the other unit owners. Notwithstanding anything in this ARTICLE XIV to the contrary, nothing shall be done or kept in any unit or in the limited common elements that will increase the rate of insurance for the Property or any part thereof without the prior written consent of the Association. No unit owner shall permit anything to be done or kept in this unit or in the limited common elements that will result in the cancellation of insurance on the common elements or limited common elements or any part thereof or that would be in violation of any law, regulation, ordinance or administrative ruling.

(c) Pets. The keeping, boarding and/or raising of farm animals, laboratory animals, livestock, poultry or reptiles of any kind, regardless of number, shall be and is prohibited within any unit or upon the common elements or limited common elements, except that the keeping of domestic pets such as dogs, cats or caged birds and reptiles, aquarium fish or other domesticated species of animals is permitted subject to the Rules and Regulations and other regulations established by the Association. Each unit owner is responsible for the clean up of his/her/their pet's excrement. The Association shall have the power to further regulate pets

and animals under the Bylaws or rules and regulations of the Association as promulgated or amended from time to time, including without limitation the power to regulate the number, size and species of pets allowed, to establish behavior requirements and to expel any offending pets and animals from the Property.

(d) Rubbish. No unit owner shall rake, sweep or throw, or permit to be raked, swept or thrown, from his unit or limited common elements onto the other unit owners unit or limited common elements, any leaves, dirt, debris, trash or other substance, all of which shall be placed or left in receptacles designated for such purposes.

(e) Nuisance. No unit owner shall use his unit in such a manner as to create a nuisance or disturbance of other unit owners. No unit owner shall play or operate any electronic or mechanical, sound-producing machinery, appliance or device outside his unit between the hours of 11:00 p.m. and 8:00 a.m., whether inside or outside, if such playing or operation shall unreasonably disturb or annoy the occupants of any other unit. No unit owner shall erect or maintain an outside television or radio antenna, except for small satellite dishes not in excess of 18 inches in diameter which may be installed with the prior written consent of, and pursuant to any conditions imposed by, the Association, and which nevertheless must be installed (i) such that they are not visible from the parking areas and driveways of the Condominium and (ii) otherwise in the most visually discrete manner possible.

(f) Access. Common elements and limited common elements providing access to the units shall be used only for access to and from units by vehicles and pedestrians and shall not be blocked by any personal property of unit owners, their tenants, families and guests.

Section 14.2 Maintenance and Repair of Units. Except as expressly provided in this Declaration, the maintenance of the units and limited common elements shall be allocated between the unit owners and the Association in accordance with the Section 1603-107(a) of the Act. Each unit owner shall keep his or her unit and all systems therein in good order, condition and repair and in a clean and sanitary condition; all at the unit owner's sole cost and expense, whether such maintenance and repair shall be ordinary or extraordinary, which shall include without limitation all interior portions of the unit, the windows and doors of the unit, the interior floors and ceilings of the unit, and all fixtures and appliances within the unit; provided, however, that maintenance and repair of the exterior, and exterior features and fixtures, supporting structure, foundation, roof, and decks of the Building (not designated as limited common elements), and the exterior paint, shall be the responsibility of the Association and the costs and expenses of such maintenance and repair shall be assessed against both of the unit owners as a common expense as though such maintenance and repair were being made to common elements. If any owner fails to maintain his/her/their unit or limited common elements as provided above within ninety (90) days of written notice from the Association or, immediately and without notice, in the event of emergency, the Association through its officers or managing agent shall have the right, but not the obligation, to enter the unit and perform such maintenance or repair in the name of the owner. The Association shall be entitled to assess the expense thereof as a service charge due in full at the time of the next regular quarterly payment of assessments. Each unit owner shall promptly report to the Association or the managing agent any defect or need for repairs to the unit, common elements and limited common elements for which the Association is responsible pursuant to this Declaration and the Act.

Section 14.3 Maintenance of Common Elements. The Association and its designees shall maintain, repair and replace the portions of the units that are the Association's responsibility under this Declaration, the common elements including the limited common elements (except as otherwise specifically provided herein) and shall establish reasonable reserves for such purposes.

Section 14.4 Liability for Damage. Each unit owner shall be liable for the expense of maintenance, repair or replacement of (i) any damage to his unit and (ii) any damage to the common elements, limited common elements or to another unit caused by such unit owner's act, neglect or carelessness or by that of any member of such unit owner's family, or such unit owner's tenants, guests, invitees, employees, agents, contractors, or their pets. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy, or abandonment of any unit or its appurtenances. Nothing herein contained, however, shall be

construed so as to modify any waiver by insurance companies of rights of subrogation against such unit owner.

Section 14.5 Improvements. Nothing will be done to any unit which will impair the structural integrity of the Building or decrease the support in the party walls. Reasonable structural changes to a unit not affecting the support of the adjoining unit may be undertaken without consent. There may be no change to the exterior siding material or color thereof unless authorized by the Association. Unit owners may make interior non-structural improvements within a unit. With respect to any improvements installed, built, or made by a unit owner, the Association shall have no obligation for maintenance, repair or replacement thereof unless expressly and in writing assumed by the Association. In the event such improvements become unsightly, deteriorated, dilapidated, or otherwise in violation of the conditions imposed by the Association, the Association shall have the right to enter the unit or limited common element, remove, repair or restore the deteriorated improvement, and assess the cost thereof to the unit owner.

ARTICLE XV

MISCELLANEOUS

Section 15.1 Interpretation. In the event of any inconsistency between or among the Act, this Declaration, the Bylaws or rules or regulations of the Association, the Act shall control; provided that a provision in this Declaration which is permissible under the Act shall not be considered to be inconsistent with the Act.

Section 15.2 Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provisions hereof.

Section 15.3 Context. The use of the singular number in this Declaration shall be deemed to include the plural, the plural the singular, and the use of any one gender shall be deemed applicable to all genders.

Section 15.4 No 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 that may occur.

Section 15.5 Invalidity. If any term, covenant, provision, phrase or other element of this Declaration, the Bylaws, any deed to a unit, or the rules and regulations of the Association is held to be invalid or unenforceable for any reason whatsoever, such holdings shall not affect, alter, modify, or impair in any manner, any other term, covenant or provision, phrase or other element of such documents.

Section 15.6 Notice. Any notices required or permitted to be given under this Agreement shall be sufficient if in writing and if sent: (i) by first class mail, postage prepaid, registered or certified, return receipt requested; (ii) by hand delivery; or (iii) by FedEx, or similar overnight express mail service, prepaid, each to the unit owner's unit address or if sent to the Association, to the Association president's address. All such communication shall be deemed made upon the earlier of three (3) business days following deposit with the U.S. Mail or the date of receipt as disclosed on the return receipt (if sent by registered or certified mail), or upon delivery (if hand delivered), or upon delivery as indicated on the proof of delivery (if sent via FedEx or similar overnight express mail service). With respect to any of the above-referenced methods of delivery, rejection or other refusal to accept or the inability to deliver because of a change of address of which no notice was given shall be deemed to be receipt of the notice sent. Either party may change its address for purposes of this paragraph by giving the other party notice of the new address or in the manner described herein.

Section 15.7 Dispute Resolution.

(a) Negotiation. The unit owners agree to attempt in good faith to resolve by negotiation any disagreement, language interpretation, legal controversy or claim arising out of or relating to this

Declaration (a "dispute"). To invoke this procedure, the disputing unit owner shall give each other relevant party written notice of the dispute, citing this section of the Declaration. Within ten (10) days, each receiving party shall submit to the others a written response. Each notice and response shall include a statement of the party's position and a summary of the evidence and arguments supporting such party's position. The parties to the dispute shall thereafter meet promptly at a mutually acceptable place to attempt to resolve the dispute.

(b) Mediation. In the event the dispute has not be resolved within thirty (30) days of the disputing party's original notice, the unit owners agree to then attempt in good faith to settle the dispute by mediation, through a neutral, mutually acceptable mediator located in Cumberland County, Maine.

(c) Mandatory Arbitration. In the event the dispute has not been resolved within ninety (90) days after the disputing party's original notice, any unit owner may serve on the relevant parties written demand for arbitration of the dispute. Thereafter, the dispute shall be settled by arbitration before a single arbitrator in accordance with the Expedited Procedures under the Commercial Arbitration Rules of the American Arbitration Association, or such other rules and procedures as the parties to the dispute may hereafter consent to in writing. Any such arbitration shall occur in Cumberland County, Maine, or such other location as is mutually acceptable to the parties. Except as the parties may hereafter consent to in writing, the arbitrator (or a majority thereof, if more than one) shall be licensed to practice law in Maine and experienced in real estate and contract law, and the arbitrator(s) shall be required to decide each claim in accordance with applicable law and to set forth in writing the award and a summary of those facts considered by the arbitrator(s) to be material to such decision. This agreement to arbitrate shall be enforceable under the Uniform Arbitration Act. In any judicial action to compel arbitration under this subsection or to enforce an arbitral award, the prevailing party shall be entitled to an award of the reasonable expenses (including attorneys' fees) incurred in bringing such action.

(d) Ancillary Proceedings. A unit owner may seek a preliminary injunction or other preliminary judicial relief if in his or its judgment such action is necessary to avoid irreparable damage. Despite any such action the parties will continue to participate in good faith in the procedures specified in this Section. All applicable statutes of limitation shall be tolled during the pendency of any mediation or arbitration hereunder, and the parties agree to take such action, if any, required to effectuate such tolling.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as of this 19th day of March, 2008.

[Signature]
Witness to both

[Signature]
Peter J. Truman, Declarant

Witness

Nicholas C. Truman [Signature]
Nicholas C. Truman, Declarant
His attorney in fact

STATE OF MAINE
COUNTY OF CUMBERLAND

March 19, 2008

Personally appeared before me the above-named Peter J. Truman and Nicholas C. Truman as aforesaid, and acknowledged the foregoing to be her free act and deed.

[Signature]
Attorney-at-Law/Notary Public
Print name: Adam N. Gonzalez

by and through
Peter J. Truman,
his attorney
in fact
AGW

EXHIBIT A

A certain lot or parcel of land situated in the Town of Scarborough at Pine Point, so-called, in the County of Cumberland and State of Maine, and bounded and described as follows: Beginning at a hub at or near high water line in the Easterly side of Pine Point Road; thence running by said Road North $35 \frac{1}{4}^{\circ}$ West 7 rods to King Street; thence Easterly by said King Street fifty (50) feet; thence parallel to and Fifty (50) feet from Pine Point Road to the Sea; thence Westerly Fifty (50) feet to the first mentioned bounds.

Excluding from the above described premises the parcel of land and the right of way conveyed by Perley E. Berry to Esther M. Spill and Abraham Spill by deed dated April 14, 1947 and recorded in the Cumberland County Registry of Deeds, Book 1852, Page 459.

Also conveying all of the right, title and interest of the Grantor in and to the premises in said Scarborough conveyed to Perley E. Berry by Abraham Spill and Esther M. Spill by deed dated April 14, 1947 and recorded in the Cumberland County Registry of Deeds, Book 1852, Page 425.

Meaning and intending to convey the same premises conveyed to Plato Truman, James Truman and Theodore Truman, by F. H. Snow Canning Company, Inc., by deed dated November 19, 1958 and recorded in the Cumberland County Registry of Deeds, Book 2447, Page 407.

The Grantors herein do not warrant their title to said premises conveyed to Perley E. Berry by Abraham Spill and Esther M. Spill by said deed recorded in Cumberland Registry of Deeds, Book 1852, Page 425.

Also another certain lot or parcel of land situated at Pine Point, in the Town of Scarborough, in the County of Cumberland and State of Maine, formerly known as the "Camp Fletcher House" bounded and described as follows: Beginning on the Southerly side of King Street at the Northwesterly corner of land that George H. Fletcher conveyed to Christine White by deed dated June 16, 1914 and recorded in the Cumberland County Registry of Deeds in Book 933, Page 187; thence Westerly following the Southerly side line of King Street Seventy-Five (75) feet, more or less, to the land that Jonathan H. Fletcher conveyed to John Remick on October 13, 1887, deed recorded in Cumberland County Registry of Deeds, Book 541, Page 106; thence Southeasterly Thirty-Five and One Fourth degrees ($35 \frac{1}{4}^{\circ}$) following the Easterly sideline of said Remick's lot seven (7) rods, more or less, to the sea wall; thence Easterly by said sea wall to land formerly of said Christine White; thence Northerly following the Westerly side line of said White's land to the point of beginning.

Also all or right, title and interest, in and to the land which lies in that part of the Town of Scarborough, known as Pine Point, in said Cumberland County and State of Maine, and which lies Northeasterly of and adjacent to the following described line: Beginning at a point in the southerly sideline of King Street, so-called, said point being Forty-Four and eighty-five one hundredths (44.85) feet Easterly from the Northeasterly side of the Blue Point Road, measured along the line of said King Street, said point being also Seventy-Eight and $\frac{73}{100}$ (78.73) feet Southerly from the corner board below the sill at the southwest corner of the main house belonging to John Atwood and standing on the Northerly side of King Street and being Eleven and $\frac{20}{100}$ (11.20) feet Westerly from the Northwesterly corner of the metal garage, situated on said premises, and standing next Easterly of the within described line; thence South 32° East One Hundred Fifteen and Five tenths (115.5) feet, said line passes one and $\frac{68}{100}$ (1.68) feet Westerly from the Southwesterly corner of said metal garage, measured along the line

of the Southerly side of said garage produced Westerly and passes Seventeen and 95/100 (17.95) feet Westerly from the Southwesterly corner of the piazza on the house of said Spill, formerly situated thereon, measured along the line of the Southerly side of said piazza produced Westerly.

The above bearing refers to the 1947 Magnetic Meridian.

Also granting herein the right to cross and recross on foot a right of way from the Southerly side of land which lies adjacent to and Northeasterly of the above described line to the sea; said right of way is to be four and 52/100 (4.52) feet wide measured at right angles to the sidelines, to lie Southwesterly of and adjacent to the Northeasterly side line of said Berry's land, wherever that may be.

Being the same premises described in a deed from Esther M. Spill dated May 6, 1964 and recorded in the Cumberland Registry of Deeds in Book 2826, Page 419.

Also conveying a certain lot or parcel of land situated at Pine Point, in the Town of Scarborough, County of Cumberland, and State of Maine, bounded and described as follows: Beginning at an iron rod driven into the ground on the apparent Southwesterly sideline of the Blue Point Road formerly known as the Blue Point Road or Depot Street; said iron rod is located South 35° 20' 00" East 252.26 feet from the point of intersection of the said apparent Southwesterly sideline of the Pine Point Road with the apparent Southerly sideline of east Grand Avenue formerly known as Baker Avenue; thence from said point of beginning South 35° 20' 00" East along the said apparent Southwesterly sideline of the Pine Point Road - 271.05 feet to an iron rod driven into the ground; thence continuing South 35° 20' 00" East to the Atlantic Ocean or to however far the Grantors herein have right or title; thence Southwesterly by said Atlantic Ocean 21.00 feet, more or less, to remaining land of the Grantors herein; thence by said remaining land of the Grantors herein and parallel with the said apparent Southwesterly sideline of the Pine Point Road North 35° 20' 00" West to an iron rod driven into the ground, said iron rod is located South 54° 40' 00" West 21.00 feet from said last mentioned iron rod on the said apparent Southwesterly sideline of Pine Point Road; thence continuing North 25° 20' 00" West by said remaining land of the Grantors 271.05 feet to an iron rod driven into the ground; thence North 54° 40' 00" East still by said remaining land of the Grantors 21.00 feet to the point of beginning.

Being part of the land described as parcel #1 in the deed by Snowberry, Inc. dated December 31, 1949 and recorded in the Cumberland County Registry of Deeds in Book 1986, Page 175.

Being a portion of the premises conveyed to Peter J. Truman and Nicholas C. Truman by warranty deed of Plato Truman, James Truman and Theodore Truman, dated June 17, 1981 and recorded in the Cumberland County Registry of Deeds in Book 4969, Page 313.

EXHIBIT B

REDUCED SIZE COPIES OF THE PLAT & PLAN

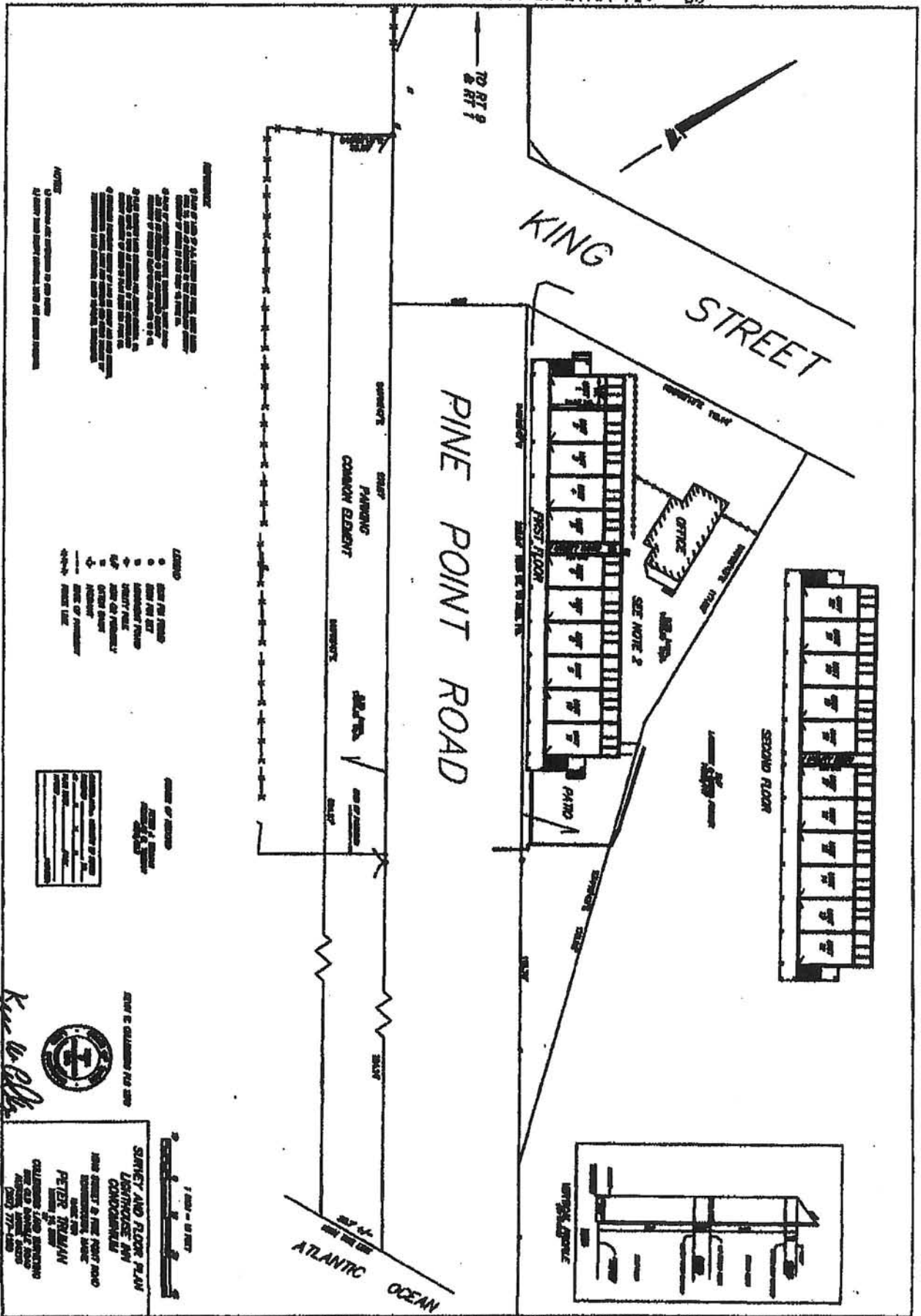


EXHIBIT C

BYLAWS

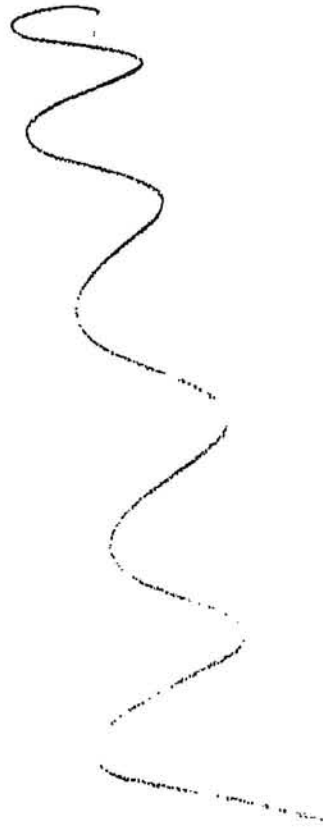


EXHIBIT C
BYLAWS
OF
THE LIGHTHOUSE INN CONDOMINIUM ASSOCIATION

ARTICLE I

GENERAL PROVISIONS

A. **Applicability.** These Bylaws provide for the governance of The Lighthouse Inn Condominium Association pursuant to the requirements of Article 3 of the Maine Condominium Act ("the Act") of Title 33, Chapter 31 of the Maine Revised Statutes Annotated of 1964, as amended, for The Lighthouse Inn Condominium, created under the Declaration of The Lighthouse Inn Condominium dated March 19, 2007, and recorded at the Cumberland County Registry of Deeds. All unit owners, mortgagees, lessees and occupants of the units are subject to these Bylaws.

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

ARTICLE II

THE ASSOCIATION

A. **Membership.** The Association shall consist exclusively of all of the unit owners, or following termination of the Condominium of all former unit owners entitled to distributions of proceeds under Section 1602-118 of the Act, or their heirs, successors or assigns, acting as a group in accordance with the Act, the Declaration and these Bylaws. The owner or owners of each unit shall be entitled to one (1) vote per unit in the Association. Membership is transferable only as provided in the Declaration or these Bylaws. The membership of a unit owner shall terminate upon the conveyance, transfer or other disposition of his/her interest in the unit, whereupon his/her membership and any interest in the assets of the Association shall automatically transfer to and be vested in the successor in ownership. Membership is otherwise non-transferable.

B. **Responsibility.** The Association shall have the responsibility of administering the Condominium, maintaining and repairing the Common Elements and Limited Common Elements of the Condominium, establishing the means and methods of collecting assessments and charges, arranging for the management of the Condominium and performing all of the other acts that may be required or permitted to be performed by the Association pursuant to the Act and the Declaration. The foregoing responsibilities shall be performed by the Executive Board as more particularly set forth in these Bylaws.

C. **Annual Meetings.** The annual meetings of the Association shall be held on the 1st Monday of October of each year unless such date shall occur on a holiday, in which event the meeting shall be held on the succeeding day that is not a holiday. At annual meetings the Executive Board shall be elected by ballot of the unit owners in accordance with the requirements of Article III.C of these Bylaws (subject to the provisions of the Declaration) and such other business as may properly come before the meeting may be transacted.

D. **Place of Meetings.** Meetings of the Association shall be held at the Condominium or at such other suitable place convenient to the unit owners as may be designated by the Executive Board.

E. Special Meetings. The President or Secretary shall call a special meeting of the Association if so directed by resolution of the Executive Board or upon a petition signed and presented to the Secretary by unit owners holding at least fifty-one percent (51%) of the votes in the Association.

F. Notice of Meetings. The Secretary shall give to each unit owner a written notice of each annual, regularly scheduled or special meeting of the Association at least ten (10) but not more than sixty (60) days, prior to such meeting. The notice of any meeting must state the 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, any budget changes and any proposal to remove a member of the Executive Board or officer. The giving of a notice of meeting shall be in the manner provided for in Article IX.A of these Bylaws.

G. Quorum. Except as set forth above, the presence in person, by conference telephone, or by proxy of unit owners holding more than fifty-one percent (51%) of the votes in the Association at the commencement of a meeting shall constitute a quorum at all meetings of the Association. If a meeting is adjourned pursuant to Article II-I below, the quorum at such second meeting shall be deemed present throughout any meeting of the Association if persons holding more than fifty-one percent (51%) of the votes in the Association are present in person or by proxy at the beginning of the meeting.

H. Voting. Voting at all meetings of the Association shall be on the basis of the Percentage Interest in each unit as defined in the Declaration. If the unit owner is a corporation, joint venture, partnership or unincorporated association, the person who shall be entitled to cast the vote for such unit shall be the person named in a certificate executed by such entity pursuant to its governing documents. If the unit owner is a trust, the trustee or trustees shall be deemed to be the owner for voting purposes. Where the ownership of a unit is in more than one person, the person who shall be entitled to cast the vote of such unit shall be the person named in a certificate executed by all of the owners of such unit and filed with the Secretary, or in the absence of such named person from the meeting, 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 agreement of a majority in interest of the owners pursuant to Section 1603-110(a) of the Act. There shall be deemed to be majority agreement if any one of the multiple owners casts the vote 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. Such certificate shall be valid until revoked by a subsequent certificate similarly executed. Subject to the requirements of the Act, wherever the approval or disapproval of a unit owner 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 election of members of the Executive Board and except where a greater number is required by the Act, the Declaration or these Bylaws, the vote of unit owners holding more than fifty-one percent (51%) of the votes present at one time at a duly convened meeting at which a quorum is present is required to adopt decisions at any meeting of the Association. No votes allocated to a unit owned by the Association may be cast. There shall be no cumulative or class voting.

I. Proxies. Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit Owner. A proxy may only be granted to another unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven (11) months after its date, unless it specifies a shorter term.

J. Adjournment of Meetings. If at any meeting of the Association a quorum is not present, the unit owners entitled to cast a majority of the votes represented at such meeting may adjourn the meeting to such time after the time for which the original meeting was called as they shall agree.

K. Conduct of Meetings. The President (or in his absence, the Secretary) 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 a record of all transactions occurring at such meeting.

L. Powers. The Association shall have all powers provided to such associations by law and by the Act, including, without limitation, the power to:

- (1) Adopt and amend these Bylaws and rules and regulations regarding the Condominium (the "Rules and Regulations");
- (2) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for Common Expenses from unit owners;
- (3) Hire and terminate managing agents and other employees, agents and independent contractors;
- (4) Institute, defend or intervene in litigation or administrative proceedings in its own name on matters affecting the Condominium;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement and modification of Common Elements, except as set forth in the Declaration;
- (7) Cause additional improvements to be made as a part of the Common Elements, except as set forth in the Declaration;
- (8) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, provided that Common Elements may be conveyed or subjected to a security interest only pursuant to Section 1603-112 of the Act;
- (9) Grant easements, leases, licenses and concessions through or over the Common Elements;
- (10) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws and Rules and Regulations of the Association;
- (11) Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments;
- (12) Provide for the indemnification of its officers and Executive Board and maintain liability insurance for them;
- (13) Operate, maintain and repair the Common Elements and the Limited Common Elements except as set forth in the Declaration;

- (14) Exercise any other powers conferred by the Declaration;
- (15) Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association; and
- (16) Exercise any other powers necessary and proper for the governance and operation of the Association and the Condominium.

ARTICLE III

EXECUTIVE BOARD

A. Number and Qualification. The affairs of the Association shall be governed by the Association with recommendations by Executive Board. The Executive Board shall be composed of five (5) persons, a majority of whom shall be unit owners as required by Section 1603-103(e) of the Act, or such other number as determined from time to time by a majority of the Members.

B. Powers. Upon the affirmative vote or written consent of unit owners holding more than fifty percent (50%) of the votes in the Association, the Executive Board may act on behalf of the Association and exercise any powers of the Association described in Articles II through V of the Bylaws except as provided for in the Declaration and the Act (including, without limitation, Section 1603-103(b)).

C. Election and Term of Office. The Declarant shall be entitled to initially appoint the members to the Executive Board and, thereafter the Declarant, or after the expiration of the Declarant Control Period, if any, as defined in Article V of the Declaration, the unit owners shall fill any vacancies in the respective positions initially appointed, at the annual meetings of the Association, subject to the provisions of the Declaration. The term of office of any Executive Board member to be elected (except as set forth herein) 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, their death, adjudication of incompetency, removal, or resignation. An Executive Board member may serve an unlimited number of terms and may succeed himself.

D. Removal or Resignation of Members of the Executive Board. At any regular or special meeting of the Association duly called, any one or more of the members of the Executive Board may be removed with or without cause by a majority of votes in the Association and a successor may then and there 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 Board member whose removal has been proposed by a unit owner shall be given at least ten (10) days' 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, if he is a unit owner shall be deemed to have resigned upon transfer of title to his unit.

E. Vacancies. Vacancies in the Executive Board caused by any reason other than the removal of a member by a vote of the unit owners shall be filled by a vote of a majority of the remaining members at a special meeting of the Executive Board held for such purpose promptly after the occurrence of any such vacancy. Each person so elected shall be a member of the Executive Board for the remainder of the term of the member being replaced and until a successor shall be elected at the next annual meeting of the Association at which such seat is to be filled.

F. Regular Meetings. Regular meetings of the Executive Board shall be held on a regular basis at such time and place as shall be determined from time to time by a majority of the Executive Board members. Notice of regular meetings of the Executive Board shall be given to each Executive Board member, by mail or hand delivery, at least seven (7) days prior to the day named for such meeting.

G. Special Meetings. Special meetings of the Executive Board may be called by the President on at least five (5) days' notice to each Board member, given by mail or hand delivery, which notice shall state the time, place and purpose of the meeting. Special meetings of the Executive Board shall be called by the President or Secretary in like manner and on like notice on the written request of at least two (2) members of the Executive Board.

H. Waiver of Notice. Any Executive Board member may at any time, in writing, waive notice of any meeting of the Executive Board, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by an Executive Board member at any meeting of the Executive Board shall constitute a waiver of notice by him of the time, place and purpose of such meeting. If all Executive Board members are present at any meeting of the Executive Board, no notice shall be required and any business may be transacted at such 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 Executive Board members 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.

I. Quorum of the Executive Board. At all meetings of the Executive Board, all Executive Board members shall constitute a quorum for the transaction of business, and the votes of a majority of the Executive Board members present at a meeting at which a quorum is present shall constitute the decision of the Executive Board. If at any meeting of the Executive Board there shall be less than a quorum present, the Executive Board members present must adjourn the meeting to a later time. At any reconvened 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 meeting by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other.

J. Compensation. No member of the Executive Board shall receive any compensation from the Association for acting as such, but may be reimbursed for any expenses incurred in the performance of his duties; provided, however, that all such expenses must be authorized in advance by the Executive Board.

K. 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 all transactions and proceedings occurring at such meetings.

ARTICLE IV

OFFICERS

A. Designation. The principal officers of the Association shall be the President, the Secretary and the Treasurer. The officers shall be elected by the Executive Board. The Executive Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. The President and Secretary shall be unit owners and members of the Executive Board.

Any other officers may, but need not be, unit owners or members of the Executive Board. An officer other than the President may hold more than one office.

B. Election of Officers. The officers of the Association shall be elected annually by a majority of all the Executive Board members at a regular meeting of the Executive Board and shall hold office at the pleasure of the Executive Board.

C. Removal of Officers. Upon the affirmative vote of a majority of all members of the Executive Board, any officer may be removed, either with or without cause, and a successor may be elected at any meeting of the Executive Board called for such purpose.

D. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Executive Board.

E. Secretary. The Secretary shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Secretary is able to act, the Executive Board shall appoint some other member of the Executive Board to act in the place of the President, on an interim basis. The Secretary shall also perform such other duties as shall from time to time be delegated or assigned him/her by the Executive Board or by the President. The Secretary shall keep the minutes of all meetings of the Association and of the Executive Board, and have charge of such books and papers as the Executive Board may direct.

F. Treasurer. The Treasurer shall be responsible for financial and fiscal matters and shall maintain all books, records, ledgers, and checking accounts relative thereto. The Treasurer need not be a unit owner.

ARTICLE V

COMMON EXPENSES AND BUDGETS

A. Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by the Association.

B. Preparation and Approval of Budget. On or before the first day of October of each year (or ninety (90) days before the beginning of the fiscal year if the fiscal year is other than the calendar year), the Executive Board shall recommend 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 those parts of the units as to which it is the responsibility of the Association 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 will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Condominium and the rendering to the unit owners of all related services. Such budget shall also include such reasonable amounts as the Executive Board considers necessary to provide working capital, a general operating reserve and reserves for contingencies and replacements. The budget shall segregate and allocate Limited Common Expenses among applicable unit owners. Within thirty (30) days after recommendation of any proposed budget for the Condominium, the Executive Board shall provide a summary of the budget to all the unit owners, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at the ratification meeting unit owners holding fifty-one percent (51%) of the

votes in the Association reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the Executive Board. The budget shall constitute the basis for determining each unit owners' assessments for Common Expenses and Limited Expenses of the Association and shall automatically take effect at the beginning of the fiscal year for which it is adopted, subject to Article V.C(6) below. 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.

C. Assessment and Payment of Common Expenses.

(1) Common Expenses. The Executive Board shall calculate the monthly assessments for Common Expenses against each unit by multiplying the total amount of the estimated funds required for the operation of the Condominium set forth in the budget adopted by the Association for the fiscal year in question by fifty percent (50%) and dividing the resultant product by the number of calendar months in such fiscal year. Such assessments shall be deemed to have been adopted and assessed on a monthly basis and not on an annual basis payable in monthly installments, shall be due and payable on the first day of each calendar month and shall be a lien against each unit owner's unit as provided in the Act and Declaration. The assessments shall be made no later than thirty (30) days after the budget is adopted, except that the first assessment shall be made no later than sixty (60) days after the first conveyance of a unit to a Purchaser. 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 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 Association may determine, shall be equally assessed promptly against the unit owners and shall be payable in one or more monthly assessments, as the Association may determine.

(2) Limited Common Expenses. Limited Common Expenses are those Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element and shall be assessed against the unit or units to which that Limited Common Element has been assigned, except as otherwise provided in the Declaration.

(3) Reserves. The Association shall build up and maintain reasonable reserves for working capital, operations, contingencies and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year may be charged first against such reserves. 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 recommend and the association may levy further assessments for Common Expenses which shall be assessed equally against the unit owners and shall be payable in one or more monthly assessments as the Association may determine.

(4) Further Assessments. The Executive Board shall serve notice on all unit owners of any further assessments as permitted or required by the Act or approved by seventy-five percent (75%) of the unit owners. The further assessments shall, unless otherwise specified in the notice, become effective with the next monthly assessment which is due more than ten (10) days after the delivery of such notice of further assessments. All unit owners so assessed shall be obligated to pay the amount of such monthly assessments. Such assessments shall be a lien as of the effective date as set forth in the preceding Sections.

(5) Initial Budget. At or prior to the time assessment of Common Expenses commences, the Executive Board shall recommend the budget, as described in this Article, for the period commencing on the date the Executive Board determines that assessments shall begin 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 during such period as is provided in Article V.C above.

(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 a unit owner's obligation to pay his allocated 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.

(7) Accounts and 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.

(8) Limitations on Expenditure and Borrowing. The power of the Executive Board to expend funds, incur expenses or borrow money on behalf of the Association is subject to the requirement that the consent of unit owners holding at least seventy-five percent (75%) of the votes in the Association obtained at a meeting duly called and held for such purpose in accordance with the provisions of these Bylaws, or the unanimous written consent of unit owners holding all of the votes in the Association shall be required to (a) expend funds or incur expenses that it is reasonably anticipated will cause the aggregate amount of actual expenses (including reserves) to exceed the approved budget by more than ten percent (10%) after taking into account any projected increase in income, and (b) to borrow money.

(9) Payment of Common Expenses. Each unit owner shall pay the Common Expenses assessed by the Executive Board pursuant to the provisions of this Article V. No unit owner may exempt himself from liability for his contribution toward Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his unit. No unit owner shall be liable for the payment of any part of the Common Expenses assessed against his unit subsequent to the date of recordation of a conveyance by him in fee of such unit. All assessments against a unit shall be the personal obligation of the Owner of that unit at the time the assessment becomes due, and liability for such assessments shall not pass to the purchaser of the unit unless the purchaser agrees to assume the obligation. Any such purchaser shall be entitled to a statement setting forth the amount of the unpaid assessments against the selling unit owner within five (5) days following a written request therefor to the Executive Board. Such purchaser shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments in excess of the amount set forth in such statements. Subject to the Act, each record holder of a mortgage on a unit who comes into possession of a unit by virtue of foreclosure or any purchaser at a foreclosure sale, shall take the unit free of any claims for unpaid assessments or charges against such unit which accrue prior to the time such holder comes into possession thereof, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all units including the mortgaged unit.

(10) Lien for Assessments. The total monthly assessment levied against each unit for Common Expenses including Limited Common Expenses, revised Common Expenses including Limited Common Expenses, or any special assessment, and any other sums duly levied against the unit pursuant to the Declaration, these Bylaws or the Act, all interest thereon and charges for late payment thereof and legal fees and other costs of collection thereof and fines, penalties and fees as provided in the Declaration or these Bylaws shall constitute the personal liability of the Owner of the unit so assessed and also shall, until fully paid, constitute a lien against the unit in favor of the Association from the date upon which such assessment or other such sum becomes due as provided in Section 1603-116 of the Act. Such lien shall, with respect to monthly assessments and revised monthly assessments, be effective on the first day of each month as to the full amount of the monthly assessment or revised monthly assessment, and, as to special assessments and other sums duly levied including Limited Common Expenses assessed against unit owners for maintenance repair or replacement of a Limited Common Element, on the first day of the next month which begins more than ten (10) days after delivery to the unit owner of notice of such special assessment or levy. Such lien is prior to all other liens and encumbrances on a unit except (a) liens and encumbrances recorded before the recordation of this Declaration, (b) a first mortgage recorded before or after the date which the assessments sought to be enforced becomes delinquent, and (c) liens for real estate taxes and other governmental assessments or charges against the units; provided, however, that such lien is not subject to the provisions of 14 M.R.S.A. Section 4561 and 18-A M.R.S.A. Sections 2-201, et. seq., as they or their equivalents may be amended or modified from time to time. Any assessment not paid within five days after its due date shall accrue interest at the rate of 18% per annum.

(11) 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 due from each unit owner as required by the Act, or the resale certificate and documents required by the terms of the Act.

(12) Mortgage Liability. Any first mortgagee who obtains title to a condominium unit pursuant to the remedies in the mortgage or through foreclosure will not be liable for more than six months of the unit's unpaid regularly budgeted dues accrued before the acquisition of the title to the unit by the mortgagee.

ARTICLE VI

COMPLIANCE AND DEFAULT

Each unit owner shall be governed by, and shall comply with all of the terms of the Declaration, these Bylaws, the Rules and Regulations and the Act, as any of the same may be amended from time to time.

A. Actions by Owners. No unit owner shall have the right to object, challenge, commence any suit at law or in equity or take any other action against the Association or other unit owner(s) under any act, power or authority now in force or hereafter to be enacted except after following such procedures as are established in the Declaration and as may be established by the Executive Board and the Association by rule or regulation consistent with the provisions of the Declaration.

B. Actions by Association. Subject to prior compliance with the procedures established in Article VI.A hereof, the failure of a unit owner to comply with the Declaration, these Bylaws and the Rules and Regulations (if any) shall entitle the Association and Executive Board to the remedies

provided herein, in the Declaration and in the Act, none of which shall be exclusive of any other remedies.

C. Suits. Failure to comply with the terms of the Declaration, By-Laws and the Rules and Regulations (if any), as the same may be amended from time to time, shall entitle the Association or any aggrieved unit owner, subject to the dispute resolution provisions of the Declaration, to sue for the recovery of damages or for injunctive relief, or both. Such relief shall not be exclusive of other remedies provided by law.

D. Costs and Attorney's Fees. In any proceeding arising because of an alleged failure of a unit owner to comply with the terms of the Declaration, Bylaws or Rules and Regulations (if any), the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorney's fees.

ARTICLE VII

AMENDMENTS

A. Amendments to Bylaws. These Bylaws may be modified or amended only by vote of unit owners holding at least seventy-five percent (75%) of the votes in the Association, except as otherwise expressly set forth herein or in the Act.

B. Approval of Mortgagees. The Declaration contains provisions concerning various rights and interests of record holders of mortgages on units. Such provisions are to be construed as covenants for the protection of such holders on which they may rely in making loans secured by such mortgages. Accordingly, no amendment or modification of the Declaration or these Bylaws impairing or affecting such rights, priorities, remedies or interests of such a holder shall be adopted without the prior written consent of such holders who have registered an address with the Secretary.

C. Amendments to the Declaration. Any two officers or Executive Board members of the Association may prepare, execute, certify and record amendments to the Declaration on behalf of the Association.

ARTICLE VIII

INSURANCE

A. Policies. The Association shall purchase, for the benefit of itself and the unit owners, those policies of insurance required by the Act and the Declaration and shall cause all such policies of insurance to remain in effect at all times.

ARTICLE IX

MISCELLANEOUS

A. Notices. All notices, demands, bills, statements or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by certified mail, return receipt requested, postage prepaid, (i) if to a unit owner, at the address of the unit owner, or (ii) if to the Association or the Executive Board, at such 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:

B. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws or the intent of any provision thereof. 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.

Date Adopted: March 19, 2007

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EXHIBIT D

PERCENTAGE INTEREST
OF UNITS IN
THE LIGHTHOUSE INN CONDOMINIUM

<u>UNIT #</u>	<u>PERCENTAGE INTEREST</u>	<u>VOTES</u>
Unit 1	4.54545	1
Unit 2	4.54545	1
Unit 3	4.54545	1
Unit 4	4.54545	1
Unit 5	4.54545	1
Unit 6	4.54545	1
Unit 7	4.54545	1
Unit 8	4.54545	1
Unit 9	4.54545	1
Unit 10	4.54545	1
Unit 11	4.54545	1
Unit 12	4.54545	1
Unit 13	4.54545	1
Unit 14	4.54545	1
Unit 15	4.54545	1
Unit 16	4.54545	1
Unit 17	4.54545	1
Unit 18	4.54545	1
Unit 19	4.54545	1
Unit 20	4.54545	1
Unit 21	4.54545	1
Unit 22	4.54545	1
TOTAL	100%	22

Received
Recorded Register of Deeds
Mar 19, 2007 03:37:42P
Cumberland County
Paulea E. Lovley

RECEIVED

APR - 2 2007



Town of Scarborough, Maine

P.O. BOX 360 • SCARBOROUGH, MAINE 04070-0360

March 30, 2007

Peter J. Truman
Nicholas C. Truman
366 Pine Point Road
Scarborough, ME 04074

Subject: Lighthouse Inn, 378 Pine Point Road, Assessor's Map U22 Parcel 108

Dear Sirs:

On March 19, 2007 you recorded a Declaration of the Lighthouse Inn Condominium in the Cumberland County Registry of Deeds.

I call your attention to Section IV(C)(1)(b), of the Scarborough Zoning Ordinance which states:

Prior to any change in the ownership or tenancy of a building or structure other than a single-family, two-family or multi-family dwelling, the owner of the building or structure (or the prospective new owner or tenant with the written authorization of the owner) shall obtain a new certificate of occupancy. The new owner or tenant shall not occupy the building or structure until it is brought into compliance with the requirements of this Ordinance and of any other applicable law, ordinance, rule or regulation for the use proposed by the prospective new owner or tenant.

Please be advised that it would be a violation of the Scarborough Zoning Ordinance for you to convey a unit in the condominium without a new certificate of occupancy or for a new owner to occupy a unit until a certificate of occupancy has been issued. A certificate of occupancy can be issued only upon a determination that the occupancy complies with all the requirements of the Zoning Ordinance and other applicable ordinances and codes. That determination would be made by the Code Enforcement Office after an inspection of the premises and an analysis of the proposed use.

Please make prospective purchasers aware of the requirement for a new certificate of occupancy, and please feel free to contact this office if you have questions.

Sincerely,

David Grysk
Code Enforcement Officer

cc: Robert E. Danielson, Esq.
Christopher L. Vaniotis, Esq.

TOWN OF SCARBOROUGH

NOTICE REGARDING THE LIGHTHOUSE INN CONDOMINIUM

Condominium Declaration: "Declaration of Lighthouse Inn Condominium," dated March 19, 2007

Recording Data: Book 24934, Page 47

Property Owners: Peter J. Truman and Nicholas C. Truman

To prospective purchasers of units in the above-referenced condominium:

You are hereby notified of the requirements of Section IV(G)(1)(b) of the Zoning Ordinance of the Town of Scarborough, Maine, which reads as follows:

Prior to any change in the ownership or tenancy of a building or structure other than a single-family, two-family or multi-family dwelling, the owner of the building or structure (or the prospective new owner or tenant with the written authorization of the owner) shall obtain a new certificate of occupancy. The new owner or tenant shall not occupy the building or structure until it is brought into compliance with the requirements of this Ordinance and of any other applicable law, ordinance, rule or regulation for the use proposed by the prospective new owner or tenant.

TOWN OF SCARBOROUGH

By: David Grysk
David Grysk, Code Enforcement Officer

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

March 30, 2007

PERSONALLY APPEARED, the above-named David Grysk in his capacity as Code Enforcement Officer of the Town of Scarborough, Maine and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Town.

TEBNT2 EUCOM
MO100 SWAN CYAL

Carole M. Logan
1 Notary Public/ Attorney at Law

Received
Recorded Register of Deeds
Apr 03 2007 11:09:02A
Cumberland County
Pamela E. Loyley

CAROLE M. LOGAN
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES DECEMBER 15, 2008

SEAL

LIGHTHOUSE INN CONDOMINIUM
1ST AMENDMENT TO
DECLARATION OF CONDOMONIUM

This First Amendment to Declaration of Condominium is dated as of the 1st day of October, 2007, by **Peter J. Truman** and **Nicholas C. Truman**, (collectively, the "Declarant")

RECITALS:

A. Declarant executed and recorded a Declaration of The Lighthouse Inn Condominium, which Declaration is dated March 19, 2007, and recorded in the Cumberland County Registry of Deeds, in Book 24934, Page 47. (the "Condominium Declaration").

B. The Condominium consists of Twenty-Two (22) units and the Declarant still owns all units and are therefore the sole members of the unit owners Association. There are no Eligible Mortgage Holders as that term is defined in the Declaration.

C. At a special meeting of the Association, in accordance with Article VI of the Declaration, at which all members were present and voting, the Association voted to amend the Declaration as set forth below;

NOW, **THEREFORE**, in accordance with Section 1602-110 and 1602-117 of the Maine Condominium Act, Chapter 31 of Title 33 of the Maine Revised Statutes Annotated (the "Act") and in accordance with the Declaration, the undersigned being all members of the Association hereby makes this First Amendment to the Declaration:

1. **Definition.** Capitalized terms not defined herein shall have the same meaning ascribed to them in the Declaration.

2. Article XI, Sections B & C of the Declaration are deleted in their entirety and replaced with:

B. Restrictions on Use and Occupancy. No unit may be occupied for more than six (6) months in any one calendar year. No unit may be used as a primary residence. Neither unit owners nor tenants may register a vehicle, register to vote, nor register children for school, using his or her unit as a primary residential address.

B. Closure of Building. All unit owners agree and understand that the Property shall be available to them during the summer months and that the Property will be closed for a period of six (6) months each year. Initially, the Declarant shall decide which dates the Property will be closed and unavailable for occupancy. Thereafter, a management company shall determine the appropriate dates for closure of the Property with the consent of at least seventy-five percent (75%) of the unit owners but in no event will the units be available to unit owners for more than six (6) months in any calendar year.

3. Article XIV, Section 14.1(a) of the Declaration is deleted in its entirety and replaced with:

a. **Use.** Each unit may be used and occupied subject to all restrictions contained in this Declaration, the Bylaws, and the Rules and Regulations of the Association, as promulgated and amended from time to time. The units are restricted to Resort-style vacation use. The units may not be used for professional business, commercial, industrial or manufacturing purposes, or primarily for storage, except for a home occupation conducted entirely by phone or internet and not involving client visits or other disruptive activity. No unit may be occupied for more than six (6) months in any calendar year. No unit may be used as a primary residence. Neither unit owners nor tenants may register a vehicle, register to vote, nor register children for school, using his or her unit as a primary residential address. No unit owner shall be allowed to install a sign visible from the common elements or limited common elements indicating or advertising a commercial use or home office use in any unit. Each unit shall be used by the owner or other occupant(s) thereof in compliance with all applicable laws, ordinances and regulations, and each unit owner agrees to indemnify, defend and hold the Association and other unit owner and occupants harmless from all fines, penalties, costs and prosecutions for any violation thereof.

4. **Ratification.** The Declaration, as amended hereby, is hereby ratified, confirmed, adopted and approved and shall remain in full force and effect.

5. **Governing Law.** This Amendment shall be governed by and interpreted in accordance with the laws of the State of Maine and shall be binding on the undersigned and its respective successors and assigns.

IN WITNESS WHEREOF, the Association, has caused this First Amendment to be executed as of the date first set forth above.

WITNESS:

Peter J. Truman

Nicholas C. Truman

STATE OF MAINE
COUNTY OF CUMBERLAND, ss

On this ___ day of _____, 2007, personally appeared before me the above named Peter J. Truman and Nicholas C. Truman and acknowledged the foregoing instrument to be their free act and deed.

Before me,

Notary Public/Attorney at Law
Printed Name: _____

RULES AND REGULATIONS

FOR

THE LIGHTHOUSE INN CONDOMINIUM

(Revised 10-01-07)

1. Each unit may be used and occupied subject to all restrictions contained in this Declaration, the Bylaws, and the Rules and Regulations of the Association, as promulgated and amended from time to time. The units are restricted to Resort-style vacation use. The Units may not be used for professional, business, commercial, industrial or manufacturing purposes, or primarily for storage, except for a home occupation conducted entirely by phone or internet and not involving client visits or other disruptive activity. No unit may be occupied for more than six (6) months in any calendar year. No unit owner shall be allowed to install a sign visible from the common elements or limited common elements indicating or advertising a commercial use or home office use in any unit. Each unit shall be used by the owner or other occupant(s) thereof in compliance with all applicable laws, ordinances and regulations, and each unit owner agrees to indemnify, defend and hold the Association and other unit owner and occupants harmless from all fines, penalties, costs and prosecutions for any violation thereof. No rental of any unit may be for more than five (5) individuals at any one time. Neither unit owners nor tenants may register a vehicle, register to vote, nor register children for school, using his or her unit as a primary residential address. All tenants must check in at the office before occupying any unit. Notwithstanding the foregoing, the Declarant while it still owns any units, shall not be subject to any restrictions on its ability to rent units.

2. The walkways and entrances of any building shall not be obstructed or used for any purpose other than ingress to and egress from the Units.

3. Unit Owners may not erect awnings, fences, signs, television antennas, clotheslines or other structures, plant or remove trees or shrubs, store trailers, boats, recreational vehicles or unregistered motor vehicles, or other personal property, junk or debris outdoors, alter the grading or landscaping, place outdoor furniture, potted plants, flags, or decorations, or do any other thing which affects the external appearance of the buildings or grounds including Limited Common Areas except in accordance with policies established by, or specific consent of, a majority of the unit owners. No flammable liquids shall be kept or stored in any units. Provided, however, that flower boxes, of the same type, color and quality of the existing flower boxes, may be hung from the windows.

4. Nothing shall be hung or shaken from the balconies, decks or windows or placed upon the exterior windowsills of the building. No personal property, clothing, debris or other personal articles shall be allowed to stand in the Common Elements or Limited Common Elements other than areas designated for such use. This prohibition shall include "for sale" signs, rental signs, leasing signs and decorations of any type.

5. No bicycles or similar vehicles or toys or other personal articles shall be allowed to stand in the Common Elements or Limited Common Elements other than areas designated for such use.

6. No Unit Owner shall make or permit any odors or noises that will disturb or annoy the occupants of the building or do or permit anything to be done therein which will interfere with the rights, comfort, security or convenience of other Unit Owners. In addition, no Unit Owner or member of the Unit Owner's family, or guest, tenant, or employee of a Unit Owner shall play musical instruments after 11 p.m. in or on the property. Smoking is prohibited upon the Common Elements and Limited Common Elements of the Condominium. Smoking is allowed only in such area designated as such and shown on the Plans.

7. Each Unit Owner shall keep his or her Unit in good state of preservation and cleanliness and shall not sweep or throw or permit to be swept or thrown therefrom, or from the doors, windows, balconies or decks thereof, any dirt or other substance.

8. Household Pets

- a. Unit owners may keep orderly domestic household pets, or aquarium fish, and no more than one (1) dog and one (1) cat. Renters of a unit shall not be allowed to keep any pets in such unit. No other pets or animals shall be permitted to be raised, bred or kept in on the property without the prior unanimous written consent of the Executive Board. Unit Owners are responsible for the behavior of their pets or their guest's pets and are liable for any property damage, personal injury or disturbance that such animals may cause. The Association shall have the right to assess the Unit Owner for reimbursement of related expenses and to lien the owner's property in the event of non-payment.
- b. All pets must be licensed and inoculated as required by law, and owners must comply with Town of Scarborough ordinances regulating pets. The Association reserves the right to notify the Animal Control Officer if a pet owner fails to do so.
- c. No animal or pet is allowed outside of its unit except on a leash and under the control of a responsible person. The tying of animals or pets to trees, bushes, benches or other items outside of a Unit is prohibited. Notwithstanding the foregoing, some animals may need to be on a leash in the backyard for control, others, like a well behaved dog or cat, would not require a leash.
- d. Owners are responsible for the immediate removal of pet wastes from lawn or driveway common areas.
- e. Damage to common area lawns inflicted by excessive animal use or by a concentration of animal urine and other wastes may be repaired by the Association. The Association shall have the right to assess the Unit Owner for reimbursement of repair expense and to lien the Owner's property in the event of non-payment.
- f. No animal shall be permitted to become a nuisance such as constant barking or aggressive behavior as to disturb a neighbor's rest or peaceful enjoyment of their Unit or the common area.

- g. No animal may be tied or leashed outside of the Unit at any time; exterior pet runs of any type are not allowed at the Condominium.
- h. The unit owners, by majority vote, shall have the power, if necessary, to further regulate the keeping of pets and animals including, without limitation, the express power to regulate the size and species, to establish additional behavior requirements, and to expel any offending animals from the Condominium.

9. All garbage and refuse from the Units shall be deposited with care in closed containers intended for such purpose and disposed of only at such times and in such manner as the Executive Board may direct. Such closed containers shall be stored in the existing rubbish area in the rear of the building. Containers should be placed at the foot of the driveway on the day(s) designated for collection. Empty trash containers should be returned to such storage areas as soon as possible. Unit Owners are responsible for insuring that accumulated trash does not create a nuisance in regards to odor, cleanliness, bug infestation, or neatness. Public trash removal services are only for the removal of routine household trash. Larger items are the responsibility of the Unit Owner and should be disposed of in accordance with Town of Scarborough ordinances and practices.

10. Except as permitted by the Declaration, no radio or television aerial shall be attached to or hung from the exterior of any building.

11. The agents of the Association and any contractor or workman authorized by the Association may enter any Unit at any reasonable hour of the day for any purpose permitted under the terms of the Declaration and Bylaws or these Rules and Regulations.

12. Trailers, snowmobiles, motor homes, campers, motor bikes, mini bikes, or the like shall be stored in the parking spaces assigned to the Unit Owner to which they belong. No automobile belonging to a Unit Owner or to a member of the Unit Owner's family, or guest, tenant, or employee of a Unit Owner shall be parked in such a manner as to impede or prevent ready access to another Unit Owner's parking space or to impede or prevent ingress and egress from the property to Pine Point Road. Any damage caused by such motor home or camper shall be paid for by the Unit Owner responsible for the presence of such vehicle. The Unit Owners, their employees, servants, agents, visitors, licensees and the Unit Owner's family shall obey all parking regulations, and any other traffic regulations published in the future for the safety, comfort and convenience of the Unit Owners, and comply with all traffic safety regulations and laws.

13. The Unit Owner shall not cause or permit the blowing of any horn from any vehicle in which she, her guests or family shall be an occupant, approaching or in the parking areas serving the building.

14. All damage to the building or Common Elements or Limited Common Elements caused by the moving or carrying of any article therein shall be paid for by the Unit Owner responsible for the presence of such article.

15. No Unit Owner shall use or permit to be brought into the building any inflammable oils or fluids such as gasoline, kerosene, naphtha, benzene or other explosives or articles deemed extra hazardous to life, limb or property, without in each case obtaining the prior written consent of the Executive Board.

16. Unit Owners shall be held responsible for the actions of their guests, tenants, children and other family members and all rental agreements must include a copy of these rules and regulations.

17. Any consent or approval given under these Rules and Regulations by the Executive Board shall be revocable at any time.

18. Complaints regarding the service of the building and the property or regarding actions of other Unit Owners or the Association shall be made in writing to the Executive Board.

19. No felling of trees or other growth is permitted in the Common Elements or Limited Common Elements except as done by the Association for maintenance purposes.

20. The Unit Owners shall do nothing to harm or disrupt and shall assist, to the extent possible, the Executive Board in the proper maintenance of the drainage system in the property.

21. The Unit Owners shall meet annually to discuss what annual maintenance, if any, is necessary to maintain the present condition of the parking area and walkways. The parking area and walkways shall be maintained in good and safe condition. In addition, the walkways and parking area shall not be further improved (i.e., repaved, widened or enlarged), without the prior unanimous consent of the Unit Owners. In the event that any Unit Owner or Owners incurs any cost or expense without written consent of all Unit Owners, such Unit Owner or Owners shall not be entitled to reimbursement of such expenses and such Unit Owner or Owners shall be solely liable for them.

The Executive Board of the Condominium promulgated the preceding Rules and Regulations for the safety, well-being and convenience of all unit owners. The Board has the responsibility, under the Declaration, for the efficient administration of Condominium affairs and it is their responsibility to interpret and enforce the Condominium Declaration, By-Laws and Rules and Regulations.

A true copy, ATTEST

Date: March 19, 2007

Adopted: March 19, 2007

Amended: October 1, 2007

Peter J. Truman, President



Town of Scarborough, Maine

P.O. BOX 360 • SCARBOROUGH, MAINE 04070-0360

RECEIVED

FEB 01 2008

STATUS OF LOT

Peter J. & Nicholas C. Truman
Lighthouse Inn
372 Pine Point Road
Scarborough, Maine 04074

RE: 372 Pine Point Road
Map U-22, Lot 108
January 30, 2008

TO Peter J. & Nicholas C. Truman

The property known as the Lighthouse Inn, owned by, Peter J. & Nicholas C. Truman, n/f owner of 372 Pine Point Road, Scarborough, Maine. TAX MAP U-22, PARCEL 108, IS CONSIDERED A LEGAL LOT OF RECORD WITH A GRANDFATHER NON CONFORMING COMMERCIAL BUILDING ON IT. The use is a 22 room hotel or inn with a detached office for a clerk. It is located in the (R4A) zoning district the lot is currently on Public water (Saco Water District), and is served by a Public Sewer, (Scarborough Sanitary District). The 22 rooms are all identical 12' W x 25' L, with a 12' x 20' sleeping area and 5' x 12' bath at the end of each Room, there is a small enclosure to hang a few items in, and a small 3 or 4 cubic foot fridge in each room. The entire 2 story building in served by 2-200 amp electrical services. There is a common boiler located in the first floor utility room that supplies all hot water. The building is wood framed with exterior stairs to the second floor, the rooms are very dated with no amenities except for the fridge. The hotel or Inn in not a winterized building and is completely shut down for the winter season.

CODE ENFORCEMENT OFFICER, L.P.I. 591

T. E. Reinsborough
TOM REINSBOROUGH

LIGHTHOUSE INN CONDOMINIUM
1ST AMENDMENT TO
DECLARATION OF CONDOMINIUM

This First Amendment to Declaration of Condominium is dated as of the 10 day of January, 2008, by Peter J. Truman and Nicholas C. Truman, (collectively, the "Declarant") and owners of 100% of the beneficial interest in the Lighthouse Inn Condominium.

RECITALS:

- A. Declarant executed and recorded a Declaration of The Lighthouse Inn Condominium, which Declaration is dated March 19, 2007, and recorded in the Cumberland County Registry of Deeds, in Book 24934, Page 47. (the "Condominium Declaration").
- B. The Condominium consists of Twenty-Two (22) units and the Declarant still owns all units and are therefore the sole members of the unit owners Association. There are no Eligible Mortgage Holders as that term is defined in the Declaration.
- C. At a special meeting of the Association, in accordance with Article VI of the Declaration, at which all members were present and voting, the Association voted unanimously to amend the Declaration as set forth below;

NOW, THEREFORE, in accordance with Section 1602-110 and 1602-117 of the Maine Condominium Act, Chapter 31 of Title 33 of the Maine Revised Statutes Annotated (the "Act") and in accordance with the Declaration, the undersigned being all members of the Association hereby makes this First Amendment to the Declaration:

1. **Definition.** Capitalized terms not defined herein shall have the same meaning ascribed to them in the Declaration.
2. **Restrictions on Use.** Article XI, Sections B & C of the Declaration are deleted in their entirety and replaced with:
 - a. **Restrictions on Use and Occupancy.** The use and occupancy regulations of the Town of Scarborough, Maine require that the individual units be restricted to residential motel and transient purpose only, with no person occupying any unit in excess of One Hundred Eighty-Six (186) days in a Three Hundred Sixty Five Days (365) period, all as defined under the Scarborough Zoning Ordinance effective as of the date hereof. Not unit may be used as primary residence. Neither unit owner nor tenants may register a vehicle, register to vote, nor register children for school, using his or her unit as a primary residential address.

The Town of Scarborough considers the Property to be a "grandfathered" nonconforming hotel/motel, and the allowed use of the units is hotel rooms, not dwelling units. However, unit owners are not prohibited from occupying the rooms for their own use when they are not being rented as hotel rooms. The Association shall appoint a hotel manager, who may be a unit owner, a person employed by the Association, or a person employed by a management company engaged by the Association, to manage the Property. Any unit owner wishing to rent out his or her unit as a transient lodging on a nightly or weekly basis must do so through the hotel manager. The Association shall maintain the existing hotel office to be available as an office for the hotel manager. Not kitchens shall be installed in any of the units. A unit is considered to have a kitchen if the unit has cooking facilities which include both a cook-top with gas burners or electric heating elements and a gas or electric oven, together with the necessary piping and/or wiring to operate both.

b. Closure of Building. All unit owners agree and understand that the Property shall be available to them during the summer months and that the Property will be closed for a period of six (6) months each year. Initially, the Declarant shall decide which dates the Property will be closed and unavailable for occupancy. Thereafter, a management company shall determine the appropriate dates for closure of the Property with the consent of at least seventy-five percent (75%) of the unit owners but in no event will the units be available to unit owners for more than six (6) months in any calendar year.

3. Additional Restrictions. Article XIV, Section 14.1(a) of the Declaration is deleted in its entirety and replaced with:

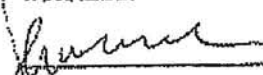
a. Use. Each unit may be used and occupied subject to all restrictions contained in this Declaration, the Bylaws, and the Rules and Regulations of the Association, as promulgated and amended from time to time. The units are restricted to Resort-style vacation use. The units may not be used for professional business, commercial, industrial or manufacturing purposes, or primarily for storage. No unit may be occupied for more than six (6) months in any calendar year. No unit may be used as a primary residence. Neither unit owners nor tenants may register a vehicle, register to vote, nor register children for school, using his or her unit as a primary residential address. No unit owner shall be allowed to install a sign visible from the common elements or limited common elements indicating or advertising a commercial use or home office use in any unit. Each unit shall be used by the owner or other occupant(s) thereof in compliance with all applicable laws, ordinances and regulations, and each unit owner agrees to indemnify, defend and hold the Association and other unit owner and occupants harmless from all fines, penalties, costs and prosecutions for any violation thereof.


4. Ratification. The Declaration, as amended hereby, is hereby ratified, confirmed, adopted and approved and shall remain in full force and effect.


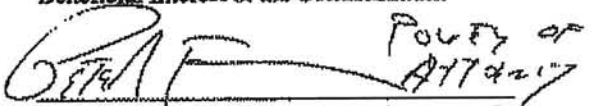
5. ~~Governing Law.~~ This Amendment shall be governed by and interpreted in accordance with the laws of the State of Maine and shall be binding on the undersigned and its respective successors and assigns

IN WITNESS WHEREOF, the Association has caused this First Amendment to be executed as of the date first set forth above.

WITNESS:







Peter J. Truman, Declarant and Owner of 50%
Beneficial Interest in the Condominium
 Power of
Attorney
Nicholas C. Truman, Declarant and Owner of
50% Beneficial Interest in the Condominium

STATE OF MAINE
COUNTY OF CUMBERLAND, ss

On this 10th day of January, 2008, personally appeared before me the above named Peter J. Truman and Nicholas C. Truman and acknowledged the foregoing instrument to be their free act and deed.

Before me,



Notary Public/Attorney at Law
Printed Name: _____

SEAL

O:\LAWOFFICER\REALTY\Truman, Peter\Amendment to Declaration-clean-01-07-08.doc

Jo-Anna Laverriere
Notary Public, State of Maine
My Commission Expires July 22, 2011

Received
Recorded Register of Deeds
Jun 24 2008 10:59:46A
Cumberland County
Pamela E. Lovley

207.774-1127
207.774-1127 facsimile
bernsteinshur.com

100 Middle Street
PO Box 9729
Portland, ME 04104-5029

BERNSTEIN SHUR

COUNSELORS AT LAW

Christopher L. Vaniotis
207 228-7205 direct
cvaniotis@bernsteinshur.com

January 31, 2008

David Grysk, Code Enforcement Officer
Town of Scarborough
259 U.S. Route 1, P.O. Box 360
Scarborough, Maine 04070-0360

Re: Lighthouse Inn, Condominium Conversion

Dear Dave:

On January 9, 2008, Gene Libby, Esquire, counsel for Peter J. Truman and Nicholas C. Truman, sent me a draft document entitled Lighthouse Inn Condominium First Amendment to Declaration of Condominium (dated December 2007). Attorney Libby has since informed me that the amended declaration has been recorded in the Cumberland County Registry of Deeds at Book 25767, Page 193.

That document incorporates revisions to the original Declaration of Condominium, inserted at the Town's request. Those revisions address the concerns I raised in my letters to you of October 3, 2006 and November 8, 2006. I am now comfortable that if the condominium is operated as described in that First Amendment to Declaration of Condominium, the conversion of the hotel to condominium ownership does not create a change of use.


On April 3, 2007, the Town recorded a "Notice Regarding the Lighthouse Inn Condominium" in the Cumberland County Registry of Deeds at Book 24975, Page 268. The Town recorded that notice because, at the time, Code Enforcement was concerned that the condominium conversion constituted a change in use. As a result of the revised condominium documents, that is no longer a concern. However, a new certificate of occupancy will be required upon the sale of each condominium unit.

Feel free to give me a call if you have any questions.

Sincerely,



Christopher L. Vaniotis



David Grysk, Code Enforcement Officer
January 31, 2008
Page 2 of 2

CLV/lc

cc: Gene R. Libby, Esquire
Ronald W. Owens, Town Manager
Dan B. Bacon, Town Planner

Carpenter/CLV/Scarborough/CodeEnf/LighthouseInn/GryskLtr011508 5014.295

207 774-1200 main
207 774-1127 facsimile
bernsteinshur.com

100 Middle Street
PO Box 9729
Portland, ME 04104-5029

BERNSTEIN SHUR

COUNSELORS AT LAW

Christopher L. Vaniotis
207 228-7205 direct
cvaniotis@bernsteinshur.com

DRAFT

_____, 2008

David Grysk, Code Enforcement Officer
Town of Scarborough
259 U.S. Route 1, P.O. Box 360
Scarborough, Maine 04070-0360

Re: Lighthouse Inn, Condominium Conversion

Dear Dave:

On April 3, 2007, the Town recorded a "Notice Regarding the Lighthouse Inn Condominium" in the Cumberland County Registry of Deeds at Book 24975, Page 268. The Town recorded that notice because, at the time, there were questions as to whether the conversion of the existing hotel to a condominium constituted a change in use. See my letters to you dated October 3, 2006 and November 8, 2006.

On January 24, 2008, Peter J. Truman and Nicholas C. Truman recorded the "Lighthouse Inn Condominium First Amendment to Declaration of Condominium" at Book 25767, Page 193. I have reviewed that amended declaration, which incorporates revisions to the original declaration requested by the Town. In my view, if the condominium is operated as described in the First Amendment to Declaration of Condominium, the conversion of the hotel to condominium ownership does not create a change of use.

As indicated in the Town's April 3, 2007 notice, a new certificate of occupancy will be required upon the sale of each condominium unit. So that purchasers of units are aware of that requirement, I recommend that a copy of this letter be recorded in the Registry of Deeds.

Sincerely,

Christopher L. Vaniotis

David Grysk, Code Enforcement Officer

_____, 2008

Page 2 of 2

DRAFT

CLV/lc

cc: Gene R. Libby, Esquire
Ronald W. Owens, Town Manager
Dan B. Bacon, Town Planner

Carpenter/CLV/Scarborough/CodeEnf/LighthouseInn/GryskLtr021208 5014.295



Pine Point Residents Group

To: Council Chairman Messer and Members of the Town Council

From: Representatives of the Residents Group, Pine Point
Harold Hutchinson, Jack Callahan, Judy Shirk, Elaine Richer, John Thurlow

Date: February 25, 2008

Reg: Town approval for the Lighthouse Motel to sell 22 condominium units

Thank you Chairman Messer for your response to our request for a formal investigation into what we perceive as significant irregularities in the approval process regarding the Lighthouse Motel's conversion to 22 condominiums on 1/3 acre of land. We interpret your request to the Town Manager, dated February 16, 2008, as a favorable response to our request which we hope will be followed by further Council attention and action. We urge you to direct the Town Manager to inform the Motel owners that the Council is looking into this matter and suggest that they make no sales until a final Town Council resolution is made.

Mr. Owens requested on February 19th that we provide a "...concise listing of the just the questions contained in [your] email." Those are itemized within along with support information for his convenience.

Chairman Messer's request of the Town Manager stated, "I'm formally requesting (via this email) that the Town Manager provide a report on the questions raised within your email and a summary of events concerning this issue." (emphasis added). While we will be grateful for answers to our questions, we also strongly agree with Chairman Messer's approach regarding the summary of events. This issue became a controversial public matter over three years ago when the Council at that time entertained a proposal to exchange public land with the Lighthouse Motel to facilitate its conversion to **six** condominiums. The events which have occurred since should be summarized in sufficient detail so the new Town Council, which now has the burden of addressing it, will be fully informed. As a group of over 80 residents we have been closely involved throughout this long process. After you receive your report, we would appreciate participating in your examination since we can also provide information and perhaps alternative perspectives which you deserve to hear from constituents. We strongly believe that this is not an administrative matter but one of important public policy deserving of your time and wisdom.

Thank you.

Disclaimer: The "Residents Group" is an informal group of citizens who gather to deliberate local issues and present Position Statements to government officials. We only represent our members' collective positions. The Pine Point Ladies Auxiliary, Friends of Pine Point (formerly the Pine Point Association), Pillsbury Shores Association, and the various local established homeowners associations are different organizations. The Group also maintains an e-mail list to share information with members and non-members. We do not release the addresses of members on the list unless requested or authorized to do so by our members.

To Ron Owens, Town Manager
February 25, 2008
Regarding Your Request for Questions

As promised we have summarized our group's questions concerning the Lighthouse Inn/Condominium matter. You will recall that we asked 19 specific questions in the body of our February 11th email. Those are included here along with others from the text of the email. We've also included, where appropriate, relevant excerpts from documents which we hope you will find helpful. Please address your responses to the five representatives of the Pine Point Residents Group.

1. The attorneys for the Lighthouse Inn wrote to the Town on July 25, 2006 asking the Code Enforcement Officer to confirm that "no permits or approvals are required" for their plan to sell 22 motel rooms as condo units. The Town attorney responded on August 3, 2006 advising that he did not "think the town should confirm that no permits or approvals are required for the proposed change."

QUESTION: Has the Town Attorney's position changed? If so, please explain and cite specific language in their amended documents which apparently has satisfied the Town attorney.

QUESTION: How was the decision made and who made it which reversed the Town's formerly strong position that selling motel rooms as condo is a Change of Use requiring Town approval?

2. The Declarations filed by the owners establishing the "Lighthouse Inn Condominiums" was modified by a "First Amendment" by the 2 owners on January 10, 2008.

QUESTION: Was it the language in this amendment which caused the Town to no longer consider the sale of units as a "Change of Use?"

3. In their original Declarations, in Article XI, Section B: Restrictions On Use and Occupancy there was very specific language requiring Town approval which read as follows: (boxed in red lines):

B. RESTRICTIONS ON USE AND OCCUPANCY

The use and occupancy regulations of the Town of Scarborough, Maine require that the individual units be restricted to residential motel and transient purpose only, with no person occupying any unit in excess of One Hundred Eighty-Six (186) days in any Three Hundred Sixty Five Days (365) day period, all as defined under the Scarborough Zoning Ordinance effective as of the date hereof. No unit may be used as a primary residence. Neither unit owners nor tenants may register a vehicle, register to vote, nor register children for school, using his or her unit as a primary residential address. The restrictions imposed by this section of the Declaration shall not be removed or modified without the prior written approval of the Town of Scarborough.

From the Original Declaration of Condominium, Lighthouse Motel

QUESTION: Why was this one sentence the only language deleted from the original Declarations when the Amendment replaced this entire section of the original?

4. The two owners of the Lighthouse Motel are now the only owners of the 22 units and therefore were able to amend their original Declarations in January 2008.

QUESTION: How does the Town intend to monitor future amendments to these Declarations to insure that the future owners do not modify them by removing language the Town required?

5. The so-called "six month rule" definition of a hotel/motel in the Zoning Ordinance has been one of the arguments supporting the view that this facility is not changing its use. The Zoning Ordinance was amended to include this definition in 1994 and, according to Dave Grysk, the ordinance was amended to facilitate the Residence Inn and similar conforming lodging places which wanted to build in Scarborough. It was not intended, he stated, to define existing non-conforming motels. The new Ordinance draft which was tabled by the Council last fall clearly confirms that view (see excerpt below).

QUESTION: Why is this 1994 definition referenced in the amendment, and has the Town accepted it as part of what it required to reverse its "Change of Use" position?

QUESTION: Was there a previous definition for a motel or hotel when the Lighthouse Motel became non-conforming, and if so why wouldn't that definition apply when determining whether their condo plan is a Change of Use?

QUESTION: Why are two competing definitional phrases used in the Declaration Amendment? Section 3a states "six months" while 2a refers to the current language in the Zoning Ordinance.

**G. CHANGE OF OWNERSHIP OF GUEST ROOMS IN
NONCONFORMING HOTELS OR MOTELS**

1. As used in this subsection G, the term "hotel or motel" includes any facility offering lodging accommodations for hire in guest rooms, including hotels, motels, inns, tourist courts, motor courts, motor lodges, guest cabins and any other establishments subject to licensing under the Town of Scarborough Innkeepers License Ordinance. The term "non-conforming hotel or motel" means an existing hotel or motel which is not an allowed use in the zoning district where it is located. A nonconforming hotel or motel shall not be defined by or governed by the definition of "hotel/motel" in section VI, which is intended to apply only to new uses.

From the Town Council Ordinance Draft, Order 07-79-
Tabled and referred to the Ordinance Committee

Hotel/Motel:

A building or group of buildings containing six or more guest rooms and offering lodging accommodations (which may include such accessory services as food and beverages, meeting rooms, entertainment and recreation) to transient guests. A hotel may provide kitchens or kitchenettes in guest rooms and will not, as a result, be considered a dwelling under this ordinance, so long as the hotel is occupied exclusively by transient guests. A transient guest is a person who occupies the hotel for no more than 186 days in any 365-day period. (11/02/94)

Definition of Hotel/Motel From the Scarborough Zoning Ordinance

6. The definition above indicates that kitchens are permitted “so long as the hotel is occupied exclusively (emphasis added) by transient guests.” Once again, Mr. Grysk indicated that he determines “Change of Use” based on the nature of the operation of a business at the time it became non-conforming. The Lighthouse never had kitchens and still does not.

QUESTION: Would you agree with Mr. Grysk that the definition above does not apply to the Lighthouse Motel, and the owners would have been unable to install kitchens in the past since doing so would have been a change of use from the original operation when it became nonconforming?

7. The Lighthouse Motel, as stated above, has never had kitchens (arguably because that would have required Zoning Board approval and significant facility upgrades for life safety). There was no mention of kitchens in their original Condominium Declarations, but they did include language in their First Amendment, filed last January 10, 2008 (see below). This amendment essentially defines “kitchen” where no definition exists in our Zoning Ordinance. Indeed, the only mention of the word “kitchen” in our Zoning Ordinance is in the definition of a hotel (above).

office to be available as an office for the hotel manager. Not kitchens shall be installed in any of the units. A unit is considered to have a kitchen if the unit has cooking facilities which include both a cook-top with gas burners or electric heating elements and a gas or electric oven, together with the necessary piping and/or wiring to operate both.

From the 1st Amendment to the Declaration of Condominium, Lighthouse Motel

QUESTION: Does the town support the “kitchen” definition found in the Lighthouse Condominiums January 2008 Amendment? Please explain.

QUESTION: Would the “kitchen” definition in this Amendment permit a unit owner to install all of these; 1) Refrigerator, 2) Freezer, 3) Microwave Oven, 4) Dishwasher, 5) Garbage Disposal, 6) Assorted Kitchen appliances such as toasters, blenders, table top grills and coffee makers, and 7) either a cooktop OR oven (but not both)?

QUESTION: If such items were installed, wouldn't that really be a Kitchen for all intents and purposes, and would it be allowed by the Town under this definition? Does it pass the straight face test? And would it be safe?

8. When you compare the original language in the Lighthouse Condominium Declarations with the new language in the First Amendment, you discover that the words are virtually the same with few exceptions. The language requiring Town approval was eliminated, as stated earlier, the “Closure” date was modified from 6 to 4 months, and a typo was added. One exception is the new paragraph below found on page two of the Amendment (this includes the excerpt from the previous question). We must assume that it is, in part, this language that “satisfied” the Town attorney since few other changes were made.

QUESTION: Is that true? Please explain.

The Town of Scarborough considers the Property to be a “grandfathered” nonconforming hotel/motel, and the allowed use of the units is hotel rooms, not dwelling units. However, unit owners are not prohibited from occupying the rooms for their own use when they are not being rented as hotel rooms. The Association shall appoint a hotel manager, who may be a unit owner, a person employed by the Association, or a person employed by a management company engaged by the Association, to manage the Property. Any unit owner wishing to rent out his or her unit as a transient lodging on a nightly or weekly basis must do so through the hotel manager. The Association shall maintain the existing hotel office to be available as an office for the hotel manager. Not kitchens shall be installed in any of the units. A unit is considered to have a kitchen if the unit has cooking facilities which include both a cook-top with gas burners or electric heating elements and a gas or electric oven, together with the necessary piping and/or wiring to operate both.

From the 1st Amendment to the Declaration of Condominium. Lighthouse Inn

9. Calling your attention to the same paragraph above, we read that the “allowed use of the units is hotel rooms, not dwelling units. The definition of a Dwelling Unit from the Scarborough Zoning Ordinance is below. The Amendment goes on to read that “unit owners are not prohibited from occupying the rooms for their own use when they are not being rented as hotel rooms.” Skipping the next sentence, we read that “any unit owner wishing (emphasis added) to rent out his or her unit as a transient lodging...”

Dwelling Unit:

A building or portion thereof providing complete housekeeping facilities for one family. Then term shall not be deemed to include trailer.

From the Scarborough Zoning Ordinance

QUESTION: Since this language does not require owners to rent their “motel” rooms (just those “wishing to”) for any portion of the six month period (as the New Ordinance Draft did -see top of next page), is it possible that owners could legally occupy the units for all six months if they chose; or occupy the units for a portion of that time and leave them vacant for the remainder? If that is possible, how can the enterprise continue as a motel?

(a) At least half of the rooms must be offered to and actually be available for occupancy by members of the general public for at least 180 days in any 365-day period.

From the Town Council Ordinance Draft Order 07-79-
Tabled and referred to the Ordinance Committee
Intent was to insure that the motel remained a motel

QUESTION: If the answer to the previous question is “yes,” would it be legal under these Declarations, as amended, for unit owners to permit relatives or friends or friends of friends to occupy their units?

QUESTION: Given these scenarios, is it possible that the 22 units could, in fact, not be available as motel rooms at all? If so, doesn't that become a de facto CHANGE in the use of the nonconforming motel?

QUESTION: Would you agree the language in this paragraph - the only substantive change from the original Declarations - is poorly constructed and extremely weak from a Town enforcement point of view?

QUESTION: Where in the documents should there be explanations for such practical details as who owns and cleans the linen and rooms when they are privately owned? Who owns the furniture? Who removes trash, and maintains an environment appealing to the public. How will an owner be held accountable for leaving his or her property uninhabitable for transient guests?

10. The Lighthouse Motel owners filed Condominium Declarations and Bylaws at the Registry of Deeds on 3-19-07, after they were informed of the Town's decision that they would need to apply for approval. This filing was 11 days before the Town Council was to give the New Ordinance its first reading. The Town almost immediately filed a response at the Registry (3/30/07) which stated:

NOTICE REGARDING THE LIGHTHOUSE INN CONDOMINIUM

“To prospective purchasers of units in the above-referenced condominium: You are hereby notified of the requirements of Section IV(G)(1)(b) of the Zoning Ordinance of the Town of Scarborough, Maine, which reads as follows:

Prior to any change in the ownership or tenancy of a building or structure other than a single-family, two family or multifamily dwelling (emphasis added), the owner of the building or structure (or the prospective new owner or tenant with the written authorization of the owner) shall obtain a new certificate of occupancy. The new owner or tenant shall not occupy the building or structure until it is brought into compliance with the requirements of this ordinance and any other applicable law, ordinance, rule or regulation for the use proposed by the prospective new owner or tenant.

QUESTION: Was that establishment no longer considered a hotel/motel as of that date by the Town up until now?

QUESTION: Does this language apply since "motel rooms" are not included in the exceptions?

QUESTION: Assuming it does apply, and based on Mr. Grysk's inspection of all units at the Lighthouse Motel last month, please itemize what a new owner must do to bring rooms "into compliance with the requirements of this ordinance and any other applicable law, ordinance, rule or regulation for the use proposed by the prospective new owner or tenant" prior to being issued an occupancy permit?

QUESTION: Will owners of rooms or their "tenants" realistically apply for a new Certificate of Occupancy for every changing tenancy as required by the language above?

QUESTION: Will the entire facility be required to bring the "common elements" and "limited common elements" into compliance upon the first unit sale? (these common areas are outlined in the original declarations).

QUESTION: Since Fire & Life Safety codes are not grandfathered, will the following be accomplished upon sale of the first unit/room prior to the issuance of an occupancy permit?

- Will a sprinkler system be required?
- Will fire alarm pull stations be required?
- Will a hard-wired, interconnected smoke detection system be installed?
- Will fire escapes be installed?
- Will egress windows be installed as required by current code?

QUESTION: Will these other basic upgrades be done to the "common elements?"

- Will the exposed asbestos shingles be removed?
- Will the asbestos shingles beneath the vinyl siding be removed?
- Will ADA requirements be met?

QUESTION: Did the owners apply for and receive an Innkeepers license subsequent to 3-19-07? If so, was it obtained prior to the annual filing deadline?

QUESTION: Was this facility subjected to the Town's Innkeeper inspection and licensing procedures subsequent to 3-19-07? If so, please provide reports of the inspections.

QUESTION: Will the facility continue to be subject to licensing requirements such as those outlined in the new Ordinance draft? (see top of next page for an excerpt).

The *hotel or motel must maintain a license under 30-A M.R.S.A. § 3811 and the Town of Scarborough Innkeepers License Ordinance.*

From the Town Council Ordinance Draft Order 07-79-
Tabled and referred to the Ordinance Committee
Intent was to insure that the motel remained a motel

QUESTION: If so, what will be licensed: the individually-owned units, the entity, the management firm; and where is this specified?

QUESTION: Will the Town have the authority to inspect individually owned units under the Innkeeper Licensing rules without violating private owners' constitutional rights? Please explain.

11. In your response to our inquiries, dated, 2.7.2008, you wrote, "... the Trumans revised their documents to satisfy all of the requirements that the Town Attorney had set out at the beginning of this process to avoid being considered a change of use." (see below)

No action was required of the Council since the Trumans revised their documents to satisfy all of the requirements that the Town Attorney had set out at the beginning of this process to avoid being considered a change of use. Documents are in the process of being filed by the

From Town Manager's E-mail of February 7, 2008

QUESTION: What were the requirements set out by the Town Attorney?

QUESTION: It was acknowledged in the Council's public session that the "New Ordinance" draft came about because the Lighthouse Motel was the first nonconforming motel which sought to convert to condos by bypassing the Zoning Board, and other owners had expressed interest in converting (indeed, two other lodging places in Pine Point followed the existing ordinance and received approval from the ZBA last summer). Mr. Grysk stated that he had never approved such a plan in his tenure here prior to those two conversions. Why, if the New Ordinance was drafted by the Town attorney did he not require the Lighthouse Motel to abide by those proposed rules even though they had not been yet enacted by the Town Council?

QUESTION: Can adjacent rooms be combined?

QUESTION: Has the Fire Department given its blessing on this change of ownership given that it is possible for all units to be occupied for all six months by the same residents and its current condition with regards to life safety systems?

QUESTION: The Declarations are silent on the issue of multiple ownership of one unit? Will that be allowed and what are the implications?

QUESTIONS: Regarding the process

Q: The Residents Group has been very involved for three years in matters concerning the Lighthouse conversion plans, Depot St., the barricade issue, and the Beachwalk subdivision. Its representative participated in the Town Council Study for eight months. Please explain why we were not given the courtesy of being told of the latest development, particularly after 10 members of the group testified at the Council's public hearing on the New Ordinance?

Q: Many articles about this issue appeared in four local newspapers. Has the local press been informed of the resolution allowing the sales of individual units?

Q: Did the Town Council deliberate as a body on this decision in public or take any action? If not, please explain why, given the pending Ordinance on the table and the Council's previous involvement.

Q: Did the Ordinance Committee continue its work from last fall on the New Ordinance to regulate change of ownership of guest rooms in nonconforming hotels and motels?

Q: Hypothetically, if the Council had enacted the last draft of that ordinance, would the Town permit sales of rooms at the Lighthouse motel as it is now or would it withhold occupancy permits when a change of ownership occurred?

Q: Has there been any official written communication to the motel owners or their attorneys confirming that the Town of Scarborough no longer considers their plan a "Change of Use." If so, please include a copy with your response.

Q: What are the implications should the Town Council rescind that decision and require the motel to abide by existing ordinance?

Q: Is there any plan to remove the New Ordinance consideration from the table and dispense with it?

Q: If so, please confirm that the section of that ordinance which would prevent the Lighthouse motel from being exempt from it (because they filed their Declarations 11 days before the first reading of the ordinance) would still apply if the Council took it off the table?

5. Notwithstanding anything to the contrary in 1 M.R.S.A. § 302, this section III.G shall apply to proceedings pending at the time of its passage.

From the Town Council Ordinance Draft Order 07-79-
Tabled and referred to the Ordinance Committee
Intent was to insure that the motel remained a motel

Q: Have the new members of the Town Council been fully briefed on the 3 year history of this issue?

Q: Was there any discussion about a land exchange during this latest round of negotiations?

Q: If not, do you anticipate that the parking lot across the public road will forever remain where it is despite the ongoing and long-standing safety issues there?

Q: If there is no land exchange then what will the Town be able to do with the 3200 SF parcel donated by the Beachwalk developer to the Town which abuts the parking strip and is surrounded by a private road?

Q: Was there any discussion during the latest round of negotiations about the fence installed by the Lighthouse Motel which obliterated public views of the ocean?



Q: Did the Town attempt to use its leverage to have the fence removed for the benefit of the public? (examples of leverage include ordering the Motel's substantial stone wall structure removed from its location several feet inside the public right-of-way (on a dangerous curve), enforcement of the "living quarters restriction" imposed by the 1989 Planning Board for the office building, which has been occupied as living quarters every year since, a plan to erect a Town fence in front of the motel, and others).

Q: Would it be legal for the Town to erect a fence, of similar design, in front of the Motel, on Town property, to protect guests from walking into the public street and to end the long-standing private use of the street for loading and unloading cars, playground-like activities, motel maintenance vehicle parking, etc.?

Q: Is the Town attorney and Town Council aware that this may eliminate forever the possibility of a proportional exchange of land, leaving the only option that of a 1:1 ratio (in other words, simply moving the parking area to front of the motel)?

Q: Is the Town attorney and Town Council aware that there are only 26 parking spaces for 22 units plus management and staff, and that the Zoning Ordinance requires two spaces? (Note: the Zoning Board required 1.5 spaces for the other conversions they approved last summer)

Scenarios

Q: If Owner A installs a full kitchen without a permit how will Code Enforcement know and what action would they take if they learned of it from another unit owner, for example?

Q: What procedures are in place, or will be in place, by the Town to monitor this “unique operation” after one or more units are sold?

Q: Who on the town payroll will be auditing the guest register and monitoring compliance with the restrictions in the Declarations to insure that it is operating as a motel? Who will the Town assign to examine Motel receipts, occupancy schedules, reservations, and other compliance issues?

Q: If there are violations who will be assessed fines or other penalties – the owner (or multiple owners in the “Timeshare” scenario), the Association, the management firm?

Q: With respect to the restrictions on these units being used as primary residences, explain how the Town Clerk will know that a unit owner is not eligible to vote here, or the Excise Department will know that a unit owner cannot register a car here, or the School Department will know that a child may not enroll in school here?

Q: How will a central management entity be able to monitor how owners are using their units? For example, if an owner chooses to rent her unit herself, or make a deal with a relative or friend, how can the management possibly monitor that?

Q: Has the Town set a precedent for other non-conforming motels to use the same loopholes, if you will, to create this unusual hybrid operation?

Q: Have we contacted the State to examine whether any statutes exist which supersede our ordinances, particularly those relating to life safety in condominiums?

Q: If an owner “leases” his or her room, as allowed in Article XI of the original declarations, and the tenant refuses to “quit” the premises prior to the date of building closure, what legal entanglements do you perceive given that tenants rights to due process in eviction are guaranteed and the process timely? And who evicts? The owner or the management? Who has the legal right to evict?

Q: If a unit owner enters into a short-term lease with a family with children during the fall season, for example (landlords may not discriminate in housing with respect to children), those children are obviously required to attend school yet cannot enroll based on the restrictions in the Declarations. How will that be handled?

Q: How will property taxes be assessed and apportioned since there is no precedent for this sort of operation?

Q: Given the possibility that all of these units can be occupied by the owners, by multiple owners, by the owner's family and friends, and friends of friends, or left vacant at the discretion of the owner, then the requirement that this enterprise must "remain" a motel really does not mean anything? Do you agree? Please tell us why you do or do not.

Q: If it turned out that none, or very few true motel guests rented rooms in the future, would you then consider the operation a Change of Use?

Finally, what will the Town Manager be recommending to the Town Council regarding its role in this at this point?

Thank you very much.

NOTE: the numbering system of these questions was simply to make referring to them simpler.