

# **RESTATED DECLARATION OF CONDOMINIUM FOR WATER'S EDGE MOTEL AND COTTAGES, A CONDOMINIUM**

Water's Edge Joint Ventures, LLC, hereinafter called the *Declarant*, a Maine limited liability company which is the successor declarant and owner of all of the units in the condominium in Boothbay, Maine, formerly known as "Water's Edge, A Condominium," the declaration of which is dated August 3, 2007, and recorded in the Lincoln County Registry of Deeds in Book 3888, Page 314, hereby amends and restates said declaration in full as follows.

## **ARTICLE 1 CREATION OF THE CONDOMINIUM**

**Section 1.1. Submission of the Property.** The Declarant is the owner of the property described in Exhibit A attached hereto, located at 545 Ocean Point Road in Boothbay, Lincoln County, Maine, and hereby declares said property, together with all improvements thereon and all interests appurtenant thereto, to be a condominium and submits the same to the provisions of the Maine Condominium Act, ME. REV. STAT. ANN. tit. 33, §§ 1601-101 to 1604-118, as it may from time to time be amended.

**Section 1.2. Name.** The name of the condominium is *Water's Edge Motel and Cottages, A Condominium*. The name of the unit owners' association is *Water's Edge Motel and Cottages Condominium Association*.

**Section 1.3. Plans.** A plat depicting the condominium property and floor plans of the condominium buildings have been recorded in the Lincoln County Registry of Deeds and are labeled *Water's Edge Motel and Cottages, A Condominium*.

## **ARTICLE 2 UNITS**

**Section 2.1. Number of Units.** The Declarant is hereby declaring twenty-one units in the condominium, as depicted on the plat and plans. The Declarant reserves no right to create any additional units in the condominium, so the maximum number of units is twenty-one.

**Section 2.2. Unit Boundaries.** Each unit is bounded below by the unit's floors or portions of floors which, as shown on the condominium floor plans, lie directly and immediately above another unit, a common element, or the foundation of the building. Each unit is bounded above by the unit's ceilings which, as shown by the floor plans, lie directly and immediately below another unit, a common element, or the roof of the building. Each unit is bounded on its sides by the unit's walls or portions of walls which, as shown by the condominium floor plans, adjoin directly and immediately

to another unit, a common element, or the exterior or foundation of the building. Each unit's side boundaries extend to the exterior surfaces of any doors or windows in the walls or portion of walls which constitute the unit's side boundaries.

Of the floors, ceilings, and walls which constitute a unit's boundaries, all lath, furring, wall-board, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials forming any part of the finished surfaces thereof are part of the unit, and all other portions of such floors, ceilings and walls are part of the common elements of the condominium. Except for the limited common elements described in Article 3 below, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are part of the unit. Any exterior doors, windows, or other fixtures designed to serve a single unit, but located outside of the unit's boundaries, are limited common elements allocated exclusively to that unit, as described in Article 3 below.

**Section 2.3. Allocated Interests.** Each unit is allocated a percentage of undivided interest in the common elements, a percentage of the common expenses, and a number of votes in the unit owners' association. The two allocated percentages are equal for each unit and are obtained by dividing one hundred by the total number of units and rounding the result to the nearest hundredth of one percent (.01%). Amounts of five thousandths of one percent (.005%) or greater are rounded to the next higher hundredth of one percent (.01%); lesser amounts are rounded to the next lower hundredth of one percent (.01%). By way of example, the percentage 10.275000% would be rounded to 10.28% and the percentage 10.274999% would be rounded to 10.27%.

One vote in the unit owners' association is allocated to each unit.

In the event additional units are added to the condominium or units are withdrawn from the condominium, the formulas described above shall be used to reapportion the allocated interests among all the units in the condominium. Such reapportionment shall be made by the executive board.

Attached hereto as Exhibit B is a list of the identifying numbers of the units which sets forth the allocated interests appurtenant to each unit.

**Section 2.4. Alterations of Units.** A unit owner, after having given written notice to the executive board at least thirty days in advance, may make any improvements or alterations to the unit owner's unit which do not impair the structural integrity of the building or the mechanical systems and which do not lessen the support of any portion of the condominium. No unit owner may change the exterior appearance of the unit owner's unit nor change the appearance of any other portion of the condominium, unless the unit owner has first obtained permission from the unit owners' association. (See also section 10.4 below.)

If a unit owner acquires an adjoining unit or an adjoining portion of an adjoining unit, the unit owner may, after having given written notice to the executive board at least thirty days in advance, remove or alter any intervening partition or create apertures in any such partition, even if the partition is partially or wholly a common element, if, and only if, those acts do not impair the structural integrity of the building or the mechanical systems and do not lessen the support of any portion of the condominium.

**Section 2.5. Relocation of Unit Boundaries.** A unit owner may acquire an adjoining portion of an adjoining unit, but only in accordance with the provisions of this section. The owners of the two units affected shall submit a written application to the executive board of the unit owners' association requesting an amendment to this declaration to relocate the unit boundaries so that the adjoining unit portion to be acquired becomes a part of the acquiring owner's unit.

If the executive board approves the requested boundary relocation, then the executive board shall cause an amendment to this declaration to be prepared which identifies the two units, describes the unit portion being acquired, and contains words of conveyance between the owners of the two units. The amendment shall be executed by the owners of the two units and by the executive board on behalf of the unit owners' association. The executive board shall ensure that the amendment is recorded in the registry of deeds and that it is indexed under the name of the condominium and the names of the owners of the two units. The executive board shall also cause plats or plans, as necessary, complying with the Maine Condominium Act, to be prepared which show the relocated unit boundaries, the new dimensions of the two units, and the units' identifying numbers. The executive board shall ensure that the plats or plans are properly recorded in the registry of deeds.

The expense involved in reviewing the boundary relocation proposal and in preparing and recording the amendment and the plats or plans, including but not limited to attorneys', architects', engineers', and recording fees, shall be a common expense assessed exclusively against the two units involved and may be enforced in the same manner as other assessments. This expense shall be assessed against the two units equally or in such other proportion as the owners of the two units may agree.

If the executive board rejects a requested boundary relocation, the owners of the two units may appeal its decision to the unit owners' association in accordance with the provisions of this declaration and the association's bylaws.

For the purposes of this section, a portion to be acquired shall be considered to adjoin a neighboring unit only if their boundaries are sufficiently coextensive that a doorway or stairway may be created for passage between them. In any event, the acquisition of a portion of a unit may be accomplished only by relocating the unit boundaries as described above. (See also section 10.4 below.)

**Section 2.6. Subdivision of Units.** No unit may be subdivided, except to the extent authorized under section 2.5 above.

**Section 2.7. Leases and Rentals of Units.** A unit owner may lease the unit owner's unit by a written instrument which restates the conditions of Article 5 of this declaration, including particularly, but not limited to, the limitation to seasonal vacation use set forth in section 5.1. Every such lease shall provide that the lessee must comply in full with the provisions of the Maine Condominium Act, the ordinances of the Town of Boothbay, this declaration, the bylaws of the unit owners' association, and the rules and regulations of the condominium. No such lease shall relieve the unit owner from nor reduce the unit owner's obligations and liability under said provisions. Each unit owner shall inform the executive board of the names and addresses of any tenants of the unit

owner's unit and shall provide the executive board with a copy of the lease, which shall be kept with the register of guests, as provided in section 5.2 below. Rentals of a unit may be made without a written lease if made by or through the Rental Office or the rental agent, as provided in section 5.2 below. All persons renting a unit must sign the register of guests, as provided in section 5.2 below. Every unit which is leased or rented must have posted, in a conspicuous place within the unit, a schedule of the maximum daily rates which may be charged for occupancy of the unit by one or more persons and the minimum number of days for which the unit must be rented (if any such minimum is imposed).

**Section 2.8. Maintenance.** The division between the unit owners and the unit owners' association of the responsibility for maintenance of the units shall be controlled by the provisions of the bylaws of the unit owners' association.

### **ARTICLE 3 COMMON ELEMENTS**

**Section 3.1. Common Elements.** All portions of the condominium which do not lie within the boundaries of a unit, as described above, are common elements. All unit owners have an undivided ownership interest in all of the common elements. The common elements consist primarily of the rental office, the exteriors of the buildings, the grounds, and the driveways.

**Section 3.2. Limited Common Elements.** Limited common elements are common elements of which the use is granted exclusively to one or more, but fewer than all, of the units. Limited common elements may be allocated to units as designated on the condominium plat. The grounds within a perimeter of twelve feet around each of the cottage units (the units not located in the Lower Building or the Upper Building) are a limited common element allocated to each such unit, provided that (a) all existing pavement, improvements, and utility systems remain common elements, (2) these limited common elements may not be fenced or otherwise enclosed, and (c) in any case where the distance between two cottage units is less than twenty-four feet, the dividing line of the two limited common elements shall be halfway between the units. Any parking spaces, not allocated to particular units as limited common elements by designation on the condominium plat, may be so allocated to units by the executive board or may remain unallocated for use by any unit owners and visitors. Any exterior doors, windows, or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit. If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partly within and partly outside of the boundaries of a unit, then any portion which serves only that unit is a limited common element, and any portion which serves more than one unit or which serves part of the common elements is a common element. In resolving any doubts as to the designation of any such fixture, preference shall be given to construing it as a common element.

**Section 3.3. Reallocation of Limited Common Elements.** The limited common elements may be reallocated upon the written request of all of the owners of the units affected, with the approval of the executive board.

**Section 3.4. Alteration of Common Elements.** No unit owner shall make any alteration, improvement, or change of any of the common elements, including the limited common elements or any part of them, without having first obtained the permission of the unit owners' association, except as permitted by Article 2 above. This prohibition includes, but is not limited to, antennas (including satellite dishes of all sorts, even the small "dish antenna" style), clothes lines, fences, and air conditioning units.

**Section 3.5. Alienation of Common Elements.** Portions of the common elements may be conveyed or subjected to a security interest by the unit owners' association if agreed to by unit owners entitled to cast eighty percent (80%) or more of the votes in the unit owners' association and if also agreed to by unit owners entitled to cast eighty percent (80%) of the votes allocated to units not owned by the Declarant and, in the case of limited common elements, if agreed to by all of the owners of all of the units to which the element to be conveyed or subjected to a security interest is allocated. This section shall not be construed to require the consent of the unit owners' association for a unit owner to grant a mortgage of the unit owner's unit and its allocated interests and limited common elements.

**Section 3.6. Maintenance.** The provisions of the bylaws of the unit owners' association control the responsibility for maintenance of the common elements.

## ARTICLE 4 DECLARANT'S RIGHTS

**Section 4.1. Declarant's Use of Units.** The Declarant is the owner of any unsold units and has all the rights of a unit owner with respect thereto. As long as any unit remains unsold, the Declarant may use any unsold unit as a model to be displayed to or occupied by prospective purchasers or as a sales office, management office, construction office for business related to the condominium, or for vacation rental or lease. The Declarant may erect and maintain signs on the common elements advertising the condominium.

**Section 4.2 Completion of Improvements.** The Declarant reserves the right to complete all units and other improvements shown on the condominium plat and/or plans, including, but not limited to, the right to construct roads, utility systems, and other infrastructure and to connect the same to existing portions of the condominium, the right to install a pool, and the right to enter over, under, upon, and through the common elements of the condominium in order to effect the foregoing purposes.

**Section 4.3. Declarant Control Period.** There shall be a Declarant Control Period, during which the Declarant shall appoint the officers and members of the executive board of the unit owners' association and may remove members and appoint others. The officers and members appointed by the Declarant need not be unit owners. The Declarant Control Period shall last until sixteen of the units have been sold to persons other than the Declarant or for five years from the date of sale of the first unit to a person other than the Declarant, whichever first occurs, but the Declarant may voluntarily end the Declarant Control Period at an earlier time. Within sixty days after the Declarant

Control Period has ended, the executive board members shall be elected by the association in accordance with its bylaws.

## **ARTICLE 5**

### **RESTRICTIONS ON USE, OCCUPANCY, AND ALIENATION**

**Section 5.1. Use.** All of the units not owned by the Declarant shall be used only for purposes of seasonal occupancy; no unit may be used as a permanent or “year round” dwelling. No livestock or animals of any kind shall be kept in or about any unit for purposes of breeding or sale. Any pets must, at all times, be kept within the unit or otherwise restrained from running loose. No horses, pigs, or ferrets may be kept as pets. Other pets may be excluded or regulated by the executive board as set forth in section 5.3 below. Owners shall be responsible for cleaning up and disposing of their pets’ wastes and shall be liable for all damages caused by their pets.

**Section 5.2. Seasonal Occupancy; Rental Office.** Each unit may be owned by any person or entity, but no unit may be occupied between the date in the fall when the Town of Boothbay turns off the water supply to the units and the date in the spring when the Town turns on the water supply. The Rental Office, as shown on the condominium plans, shall be maintained as a common element by the association and may be used by unit owners to coordinate the rentals of their units. The association may also or alternatively engage the services of a rental agent to facilitate the rental of units. The names of all persons renting a unit must be written in the register of guests kept in the Rental Office, and the register shall be signed by the person renting the unit or by someone under that person’s direction. The register shall also indicate which unit was rented to each such person, the date each rental commenced, and the date each rental ended. The register and all of its records shall be kept for not less than two years, for inspection by officials of the Town of Boothbay and others so authorized by Maine law. If required by the Town of Boothbay, the unit owners’ association shall post conspicuously in the Rental Office, near the register of guests, a notice provided by the Town of Boothbay setting forth the laws concerning the register of guests. The use and preservation of the register of guests shall at all times comply with Maine law, as it may be amended from time to time.

**Section 5.3. Rules and Regulations.** The executive board shall adopt rules and regulations that shall further regulate the management of the condominium and the conduct of the unit owners and their employees, invitees, and lessees, which rules and regulations may include limiting the use of and access to the roads or common areas at particular times or during certain weather conditions or other circumstances. In particular, but without limiting the generality of the foregoing, the executive board may regulate parking at the condominium, including the type and number of vehicles which may be parked and the locations where parking is allowed. Also without limiting the generality of the foregoing, the executive board may regulate the use of lawn furniture, recreational and cooking equipment, ornaments, and other items upon the grounds surrounding the units.

**Section 5.4. Violations by Unit Owners.** The violation of any rules or regulations, the breach of any of the bylaws, or the breach of any provision of this declaration shall give the executive board the right to take whatever action is reasonably necessary to terminate the particular viola-

tion or breach, to remedy any damage occasioned by such violation or breach, and to prevent further violation or breach. Such action on the part of the executive board may include entry into any unit where such violation or breach exists without giving rise to any manner of trespass and may include the bringing of any appropriate legal action. The costs of any such termination, reparation, or prevention, including reasonable attorneys' fees, shall be assessed against the unit of the unit owner in violation or breach. The executive board shall impose reasonable fines for such violations or breaches.

## **ARTICLE 6**

### **UNIT OWNERS' ASSOCIATION**

**Section 6.1. Membership.** Water's Edge *Motel and Cottages* Condominium Association shall be organized to govern and operate the condominium. All unit owners shall be members of the unit owners' association, and no one other than a unit owner shall be a member.

**Section 6.2. Powers.** The unit owners' association shall have all of the powers allowed by the Maine Condominium Act, but it shall not exercise its powers to acquire real property or to cause additional improvements to be made as a part of the common elements or to alter the outward appearance of the condominium buildings, unless unit owners entitled to cast eighty percent (80%) or more of the votes in the unit owners' association agree to such action, nor shall it make or authorize a non-budgeted expenditure of funds unless unit owners entitled to cast sixty percent (60%) or more of the votes in the unit owners' association agree to such action.

**Section 6.3. Meetings.** The unit owners' association shall meet at least once in each calendar year. A quorum shall be present if unit owners entitled to cast more than fifty percent (50%) of the votes in the association are present in person or by proxy. The vote allocated to a unit must be cast as one vote; no vote may be divided.

**Section 6.4. Executive Board.** The executive board shall consist of three members, who shall be elected by the unit owners' association in accordance with its bylaws (except as provided in section 4.3 above). The executive board may act on behalf of the unit owners' association in all instances, subject to the provisions of the Maine Condominium Act and this declaration. The executive board shall not make nor authorize non-budgeted expenditures of funds unless required in cases of emergency.

**Section 6.5. Notice.** The executive board shall cause notice of matters affecting the condominium to be given to all unit owners by sending a written statement thereof by the United States Postal Service, postage prepaid, return receipt requested, to each unit owner at the address last given in writing to the executive board by the unit owner or by delivering a written statement thereof in hand to each unit owner and obtaining a receipt therefor from the unit owner. If a unit is owned by more than one person, then notice given to one of the unit owners shall be sufficient to serve as notice to all of the owners of that unit. If the notice is of a meeting at which a unit owner has the right to vote or of an action to be taken to which a unit owner has the right to consent or refuse consent,

then the notice shall be given to such unit owner at least fifteen days prior to such meeting or the taking of such action.

**Section 6.6. Bylaws.** The bylaws of the unit owners' association shall contain provisions for its operation and governance. No provision of the bylaws shall be inconsistent with this declaration.

## **ARTICLE 7 ASSESSMENTS**

**Section 7.1. Common Expenses.** Except as set forth in this Article, the common expenses shall be assessed against all of the units in the condominium in accordance with the percentages of liability for the common expenses listed in Exhibit B.

**Section 7.2. Limited Common Elements.** Any common expense arising from the maintenance, repair, or replacement of a limited common element and any common expense which benefits fewer than all of the units, even though not arising from a limited common element, shall be assessed exclusively against those units which it benefits, in the same proportion as their allocated percentages of common expense liability bear to each other.

**Section 7.3. Misconduct.** Any common expense caused by the misconduct of a unit owner or owners shall be assessed by the unit owners' association against the unit owner's unit or the unit owners' units.

## **ARTICLE 8 AMENDMENT**

This declaration may be amended only by complying with the procedures specified by the Maine Condominium Act. Any amendment which requires a vote of the unit owners, but does not require unanimous consent, shall fail of passage unless agreed to by the unit owners of units to which eighty percent (80%) or more of the votes in the unit owners' association have been allocated. Any amendment of the use and occupancy restrictions affecting the units must also be approved by the Town of Boothbay, which approval may be evidenced by the signature of the Code Enforcement Officer.

## **ARTICLE 9 EASEMENTS**

The condominium is subject to the easements depicted, noted, or referenced on the condominium plat, and also the easement granted to Gordon A. Frizzell, Trustee, by the deed dated August 3, 2007, and recorded in the Lincoln County Registry of Deeds in Book 3888, Page 312 and all units are conveyed subject thereto.

**ARTICLE 10**  
**GENERAL PROVISIONS**

**Section 10.1. Definitions.** Terms not defined in this declaration shall have the meanings defined in the Maine Condominium Act. The use herein of the term *Declarant* includes any successor declarants or assignees of the Declarant. The term *unit owner* refers equally to all of the owners of a unit, of whatever number and gender.

**Section 10.2. Construction and Severability.** The provisions of this declaration shall be construed, if possible, so as to be valid and enforceable under the laws of the State of Maine. If any provision cannot be so construed and is held to be unenforceable, then it shall be considered severable, and the remaining provisions shall continue to be valid and enforceable.

**Section 10.3. Precedence.** No provision of the bylaws or rules and regulations of the unit owners' association shall conflict or be inconsistent with this declaration. Any such conflicting or inconsistent provision shall be void and of no effect.

**Section 10.4. Compliance with Law.** The provisions and requirements of this declaration are in addition to all applicable federal, state, and municipal laws, ordinances, and regulations. Notwithstanding any authority or permission for any action provided or obtained pursuant to this declaration, all required permits, licenses, and approvals for such action must be obtained from the Town of Boothbay, the State of Maine, and all other applicable reviewing authorities. In particular, but without limiting the generality of the foregoing, the unit owners' association shall annually obtain or renew its innkeeper's license from the Town of Boothbay.

In witness whereof Water's Edge Joint Ventures, LLC, has caused this instrument to be signed and sealed in its company name by its undersigned member, hereunto duly authorized, this \_\_\_\_\_ day of October, 2007.

Witness:

**Water's Edge Joint Ventures, LLC**

\_\_\_\_\_

By \_\_\_\_\_  
James P. Shannon, Member

**STATE OF MAINE**

Cumberland County

October \_\_\_\_\_, 2007

Personally appeared the above named James P. Shannon, Member of Water's Edge Joint Ventures, LLC, and acknowledged before me the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said company.

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Notary Public/Attorney at law

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Print or type name as signed

**WATER'S EDGE MOTEL AND COTTAGES,  
A CONDOMINIUM**

**EXHIBIT A**

The land, together with the buildings and improvements thereon, in Boothbay, Lincoln County, Maine, bounded and described as follows:

Beginning at an iron pipe in the westerly sideline of Route 96 at the southeasterly corner of land now or formerly of Margaret S. Dewhurst; thence S 22° 51' 48" W by and along the westerly sideline of Route 96 a distance of 74.00 feet to the northeasterly corner of land now or formerly of Gordon A. Frizzell, Trustee of the Linekin Realty Trust, thence N 61° 57' 13" W by and along said Frizzell land 93.00 feet to the northwesterly corner thereof; thence S 27° 44' 01" W by and along said Frizzell land 101.01 feet to the northerly sideline of land now or formerly of Gertrude A. Karger; thence N 58° 28' 27" W by and along said Karger land 115 feet, more or less, to an angle point; thence N 59° 36' 30" W by and along said Karger land 96.95 feet to an angle point; thence N 56° 53' 07" W by and along said Karger land 54.60 feet to an angle point; thence N 59° 07' 04" W by and along said Karger land 114.21 feet to an angle point; thence N 62° 13' 08" W by and along said Karger land 66.46 feet to an iron rod; thence continuing on the same course by and along said Karger land 46 feet, more or less, to the waters of Linekin Bay; thence northerly by the waters of Linekin Bay 167 feet, more or less, to the southerly line of said Dewhurst land; thence S 62° 56' 02" E by and along said Dewhurst land 15 feet, more or less, to an iron rod; thence continuing on the same course by and along said Dewhurst land 544.30 feet to the point of beginning. Bearings used herein are based on magnetic north in 1993.

# WATER'S EDGE MOTEL AND COTTAGES, A CONDOMINIUM

## EXHIBIT B

<u>Unit</u>	<u>Undivided Interest in Common Elements</u>	<u>Common Expense Liability</u>	<u>Votes in the Association</u>
1	4.76%	4.76%	1
2	4.76%	4.76%	1
3	4.76%	4.76%	1
4	4.76%	4.76%	1
5	4.76%	4.76%	1
101	4.76%	4.76%	1
102	4.76%	4.76%	1
103	4.76%	4.76%	1
104	4.76%	4.76%	1
201	4.76%	4.76%	1
202	4.76%	4.76%	1
203	4.76%	4.76%	1
204	4.76%	4.76%	1
Admiral's Quarters	4.76%	4.76%	1
Captain's Galley	4.76%	4.76%	1
First Mate	4.76%	4.76%	1
Port	4.76%	4.76%	1
Rear Admiral's Quarters	4.76%	4.76%	1
Second Mate	4.76%	4.76%	1
Starboard	4.76%	4.76%	1
Steerage	4.76%	4.76%	1
<b>Total</b>	<b>99.96%</b>	<b>99.96%</b>	<b>21</b>