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First Amendment to Declaration for North Shippen Place, A Condominium

THIS FIRST AMENDMENT TO DECLARATION is executed this 17th
day of September, 2014, by North Shippen Condominium Association, a non-
profit corporation organized and existing under the law of the Commonwealth of Pennsylvania
with its principal place of business located in Lancaster City, Lancaster, Pennsylvania amending
the Original Declaration filed by North Shippen Associates, ("Declarant"), creating North
Shippen Place, a condominium.

WHEREAS, the Original Declaration was filed in Land Record Book 5102, Page 0308
with the Office of Recorder Deeds in and for Lancaster County.

WHEREAS, the Original Declaration provides for corrective amendments to be made to
the Original Declaration which are defective, missing, or inconsistent with any other provisions
hereof or thereof or with the Act.

WHEREAS, the Association wishes to amend the Original Declaration to conform to the
changes made to the Uniform Condominium Act, Act of July 2, 1980, P.L. 286, No. 82, as
amended (the "Act").

WHEREAS, this Amendment has been prepared and agreed upon by the requisite vote to modify the Original Declaration in accordance with Section 3219 of the Act.

NOW THEREFORE, the Association hereby declares that the Declaration shall be restated in its entirety and shall now read as attached as Exhibit A and now known as the Declaration for North Shippen Place, a Condominium.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Association has caused this First Amendment of the Original Declaration to be executed on the day and year first above written.

Witness

Kevin Gardner
Kevin Gardner

North Shippen Place Condominium Association

Russell Russell
President

Commonwealth of Pennsylvania : SS
County of Lancaster :

On this the 17th day of September, 2014, before me, the undersigned officer, a Notary Public, personally appeared Russell Russell, and that he as a board member of the North Shippen Place Condominium Association, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

In Witness Whereof, I have hereunto set my hand and official seal.

Arthur C. Ward
Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Arthur C. Ward, Notary Public
Lancaster Twp., Lancaster County
My Commission Expires April 15, 2018
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

**Declaration Creating and Establishing
North Shippen Place, A Condominium**

**Declarant: North Shippen Place Associates
P.O. Box 658
Delta, Pennsylvania 17314**

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**Declaration Creating and Establishing
North Shippen Place, A Condominium**

Article 1: Definitions

- 1.01 Terms Defined or Used in the Act. Terms used herein and in the Plats and Plans shall have the meanings specified or used for such terms in Section 3103 or elsewhere in the Act, unless otherwise defined herein.
- 1.02 Non-Statutory Terms Defined. The following terms when used herein or in the Plats and Plans shall have the meanings set forth below.
- i. *Act.* The Uniform Condominium Act, Act of July 2, 1980, P.L. 286, No. 82, as amended.
 - ii. *Approved.* Approved at a meeting of the Association. An action is approved upon the affirmative vote of a majority of the Votes of the Unit Owners present in person or by proxy at the meeting of the Association unless a different number of Votes is required by the Act or the Condominium Documents.
 - iii. *Assessment.* The sums assessed against a Unit by the Association for the share of Common Expenses chargeable to it or for any other expense which may be chargeable to a Unit under the Condominium Documents.
 - iv. *Association.* The Association is North Shippen Place Condominium Association, a Pennsylvania nonprofit corporation.
 - v. *Building.* Any building which comprises part of the Condominium at the time of reference. The Buildings comprising part of the Condominium are sometimes hereinafter referred to as the R.H. Brubaker Building, the Franklin Bare Building, and the A.B. Hess Building, which references correspond to the Buildings as shown on the Declaration Plan.
 - vi. *Bylaws.* The Bylaws are Bylaws of the Association at the time of reference. The initial Bylaws bear even date herewith and are entitled "Bylaws of North Shippen Place Condominium Association."
 - vii. *Common Expense Liability.* The portion of the Common Expenses allocated to each Unit in accordance with the formula set forth in Exhibit B attached hereto and made a part hereof.
 - viii. *Common Interest.* Common Interest is the proportionate undivided interest in the Common Elements allocated to each Unit as expressed in Article 6 hereof and set forth in Exhibit B hereof.

- ix. **Condominium Documents.** The Condominium Documents include this Declaration, the Bylaws, and any rules and regulations governing the use and operation of the Condominium adopted by the Association at the time of reference.
- x. **Date of Termination of Declarant Control.** The Date of Termination of Declarant Control shall be the date which is the earlier to occur (i) 180 days after the date in which title to 75% of the Units has been conveyed by Declarant to persons other than Declarant; (ii) five years after the date of the first conveyance of a Unit to a Unit Owner other than Declarant; or (iii) the date on which Declarant elects to relinquish control of the Executive Board.
- xi. **Declarant.** The Declarant is North Shippen Place Associates or any successor to its Special Declarant Rights.
- xii. **Declaration.** The Declaration is this instrument, all amendments, and restatements to it made at the time of reference.
- xiii. **Declaration Plan.** The Declaration Plan is the plat and plans of the Condominium which are comprised of (i) a drawing prepared by JC Engineering/Surveying, Inc., dated March 15, 1996, Drawing DP-1, and (ii) drawings prepared by Bradley, Chambers & Frey, Inc., dated March 15, 1996, Drawings FP-1 through FP - 6, inclusive and intended for Recording concurrently with this Declaration, together with all amendments and supplements at the time of reference. The Declaration Plan is an integral part of the Declaration.
- xiv. **Eligible Insurer.** An eligible insurer is an insurer or guarantor of a first mortgage on a Unit which has notified the Association in writing of its name and address and that it has insured or guaranteed a first mortgage on a Unit.
- xv. **Eligible Mortgagee or Permitted Mortgagee.** The holder of the first mortgage on a Unit which has notified the Association in writing of its name and address and that it holds a first mortgage on the unit.
- xvi. **Executive Board.** The Executive Board is the Board of Directors of the Association.
- xvii. **Finished Surface.** The full thickness of all wallboard, ceiling board, plaster, finished flooring and the full thickness to the structural elements of the building. This definition excludes any common bearing wall which may or may not be included in your Unit. All common bearing walls are Common Elements and not included in the finished surface of your unit. If a common bearing wall is located within your unit, your boundary is the inside of the wall.

- xviii. **Land.** The Land is the tract of land described in Exhibit A hereof together with and subject to all easements, licenses, rights, liberties, privileges, hereditaments and appurtenances set forth in Exhibit A or otherwise belonging thereto.
- xix. **Limited Common Elements.** The Limited Common Elements defined in the Act and those marked as Limited Common Elements on the Plats and Plans.
- xx. **Mortgagee.** A Mortgagee is the holder of any mortgage on a Unit and shall be construed to include eligible mortgagees and permitted mortgagees.
- xxi. **Owner.** An Owner is a Unit Owner.
- xxii. **Percentage Interest.** Each Unit Owner's undivided ownership interest in the Common Elements, appurtenant to each Unit as set forth in Exhibit B attached hereto, as the same may be amended from time to time.
- xxiii. **Permitted Mortgage.** A first mortgage to (i) the Declarant; (ii) the seller of a Unit; (iii) a bank, trust company, savings bank, savings and loan association, mortgage service company, insurance company, credit union, pension fund, or like institutional investor or lender; and (iv) any other mortgagee approved by the Executive Board.
- xxiv. **Recorded.** Recorded means duly entered of record in the Office of the Recorder of Deeds of Lancaster County, Pennsylvania.
- xxv. **Votes.** The Votes in the Association which the Unit Owners are entitled to cast as members of the Association. The Votes are allocated to the Units as set forth in Article 6 hereof.

Article 2: Submission of Condominium to Act

This Declaration is filed pursuant to the Act and Declarant submits the Condominium to the provisions of the Act. Declarant, owner in fee simple of the land described in Exhibit A attached hereto and made a part hereof (the "Land") located in the County of Lancaster and Commonwealth of Pennsylvania, together with the building (the "Building") and improvements thereon erected or to be erected (the "Property"), and the easements, rights and appurtenances thereunto belonging, hereby submits the Property to the provisions of the Pennsylvania Uniform Condominium Act, 68 Pa.C.S. §§3101 et seq. (the "Act"), and hereby creates a condominium to be known as North Shippen Place, a Condominium.

Article 3: Name

The Condominium shall hereafter be identified and known as "North Shippen Place, a Condominium."

Article 4: Description of Units

4.01 Plats and Plans; Units/Common Elements. The location and dimensions of the Building and the other structures and improvements comprising the Property and the location of Units, Common Elements and Limited Common Elements of the Condominium are shown on the Declaration Plan.

4.02 Subdivision into Units.

- i. The Condominium is to consist of the 49 Units and the Common Elements as shown on the Declaration Plan. Declarant hereby subdivides the Condominium into 49 separate parcels of real estate, each parcel being one Unit shown and identified on the Declaration Plan, together with the Common Interest appurtenant to such Unit.
- ii. Each Unit, together with its undivided Common Interest shall for all purposes constitute a separate parcel of real estate, subject only to the Act and the provisions of the Condominium Documents.
- iii. Each Unit together with its undivided Common Interest may be held, owned, purchased, sold, conveyed, mortgaged, leased, encumbered, and otherwise dealt with in the same manner as permitted by the laws of the Commonwealth of Pennsylvania for any other real property.
- iv. The identifying number of each Unit is set forth on the Declaration Plan and in Exhibit B.

4.03 Unit Boundaries.

- i. Each unit shall consist of the volume of space contained within the structural supporting walls of the building. (Reference Article I – xvi Finished Surface)
- ii. Each Unit consists of:
 1. The entire thickness of all doors, door frames and sills, door glass, windows, window frames, sills and assemblies, window glass, skylights and skylight frames and assemblies;
 2. Except as otherwise provided by the Act or this Declaration, all interior partitions; wall, floor and ceiling coverings; mantels, moldings and baseboards; appliances, and other fixtures, improvements and equipment located within the boundaries of the Unit which serve exclusively such Unit and all floors, subfloors, trusses, and supports of the building floors located within the lines; and

3. Whether or not within the boundaries of the Unit, all chimneys, ducts, and flues serving the Unit exclusively and all electrical, plumbing, heating, ventilating, and air conditioning machinery, equipment, fixtures, systems, appliances and installations serving the Unit exclusively.
- iii. Whether or not located within the boundaries of the Unit, no Unit includes:
1. Any structural element of a Building, including, without limitation, foundations; floor systems not within Unit title lines; exterior walls; party walls; columns; beams and girders; the roof and roof trusses; concrete slabs; or other joists or trusses not within Unit title lines; or
 2. Any pipe, chimney, chute, flue, duct, pipe chase, conduit, wire, cable, line, meter or any other element of any utility machinery, equipment, system or facility which serves or is intended to serve or necessary to deliver an utility service to two or more Units or any portion of the Common Elements.

Article 5: Common Elements

- 5.01 No Partition. The Common Elements shall remain undivided and no action for partition or division of any part thereof shall be permitted, except in the event of termination of the Condominium. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of an interest in the Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.
- 5.02 Use. Except as their use may otherwise be limited by the Condominium Documents, each Unit Owner, tenant and occupant of a Unit, and the respective family members, guests, agents, customers, and employees of such Unit Owners, tenants and occupants, may use the Common Elements in common with all other Unit Owners and tenants or occupants of other Units, and their respective family members, guests, agents, customers and employees, for the purposes of the other Unit Owners. The Executive Board may adopt and enforce reasonable rules, regulations and restrictions concerning the use of Common Elements, and may establish reasonable uniform fees and charges for use of Common Elements.
- 5.03 No waiver of Liability. No Unit Owner may exempt himself from liability for Assessments by waiver of the enjoyment of the right to use any of the Common Elements or by abandonment of his Unit or otherwise.

Article 6: Common Interests; Common Expense Liability; Voting

- 6.01 Common Interests. Each Unit has allocated to it the Common Interest. The Common Interest of a Unit shall be inseparable from the Unit. The Common Interest of a Unit and the fee title to such Unit shall not be separately conveyed, transferred, leased, devised, or encumbered and the Common Interest allocated to a Unit shall be deemed to be conveyed, transferred, leased, devised, or encumbered with the Unit whether or not expressly referred to in the instrument effecting the same.
- 6.02 Allocation of Common Elements Interest, Votes, and Common Expense Liability.
- i. Allocation of Common Elements Interest. Attached as Exhibit B hereto is a list of all Units and Percentage Interest votes and Common Expense Liabilities appurtenant to each Unit. Each Unit shall include an undivided interest in the Common Elements equal to the Percentage Interest shown in Exhibit B as allocated in accordance to Exhibit C.
 - ii. Allocation Formula. The formulas used to establish the Common Interest, Common Expense Liability and Votes allocated to each Unit are as follows:
 1. The Common Interest and Common Expense Liability allocated to each Unit have been determined by dividing the number of square feet of floor area of the Unit by the aggregate floor area of all Units. In making this determination, the floor area of any mezzanine area of a Unit has not been considered. Barring manifest error, each Unit shall be deemed to contain the floor area specified in Exhibit B hereof.
 2. The percentages assigned as a result of the foregoing formula shall be calculated to the nearest one one-hundredth of one percent.
 3. The Votes allocated to each Unit have been allocated in direct proportion to the Unit's Common Expense Liability.
 - iii. Votes. Each Unit Owner shall be entitled to cast one Vote in the Association for each 0.01% of the Common Expense Liability allocated to the Unit owned by such Unit Owner. The number of Votes allocated to each Unit is set forth on Exhibit B. The right of any person to cast the Votes allocated to a Unit shall be established by the record title of such Unit.
 - iv. Common Expense Liability. Each Unit has been allocated to it the Common Expense Liability which is set forth on Exhibit B. The Common Expense Liability allocated to a Unit shall be inseparable from the Unit and shall be deemed to be conveyed, transferred, leased, devised, or encumbered with the Unit whether or not expressly referred to in the instrument effecting the same.

Article 7: Expenses

- 7.01 Each Unit Owner shall pay all gas, electrical energy, telephone, cable television, sewer and other utility charges of any type attributable to its Unit and shall be billed through sub-meters.
- 7.02 Common Expenses.
- i. Water service, trash service, sewer service, snow removal, landscaping, and exterior maintenance shall be a common expense unless separately charged by the service provider to the Unit.
 - ii. Electrical energy and other utility charges of any type attributable to the Common Elements and approved by the Executive Board shall be Common Expenses payable by all Unit Owners as such.
 - iii. Maintenance of any and all Common Elements (i.e deck, elevator, roof, etc.) shall be a common expense approved by the Executive Board and shall be payable by all Unit Owners as such.
- 7.03 Limited Expenses. Any other expense benefitting fewer than all of the Units shall be assessed exclusively against the Units benefitted. The Management Company shall determine what expenses benefit fewer than all Units, the identity of all Units benefitted, and the shares in which the Units benefitted shall be assessed for such expenses, which determination shall be conclusive. (Example: If there is a water leak in one unit which would effect the unit below – the Unit that had the water leak would be responsible for the costs associated with the leak)

Article 8: Assessments and Enforcement

- 8.01 Monthly Payments. All Common Expense annual assessments shall be due and payable in equal monthly installments, in advance, on the first day of each month. Special assessments shall be due and payable in equal monthly installments, in advance, on the first day of each month, during such period of time as established by the Executive Board.
- 8.02 Allocation of Limited Common Expenses. Limited Common Expenses shall be assessed against the Units in the manner and proportions provided for in Article 7 hereof. All other Common Expenses shall be assessed against all the Units in accordance with the Common Expense Liability allocated to each Unit.
- 8.03 Subordination of Certain Charges. Any fees, charges, late charges, fines and interest which may be levied by the Executive Board pursuant to Sections 3302(a)(10), (11) and (12) of the Act, shall be subordinate to the lien of a Permitted Mortgage on a Unit.
- 8.04 Reserve. Each annual budget for Common Expenses will include a reasonable amount determined by the Executive Board to be sufficient as a reserve for replacement, contingencies, capital expenditure and deferred maintenance. The Extraordinary expenditures not originally included in the annual budget which may become necessary during the year may be charged against any of the reserve by the discretion of the Executive Board. In addition, the Executive Board shall have the right to segregate all or

any portion of the reserve for any specific replacement or contingency upon such conditions as the Executive Board deems appropriate. When a unit is sold, the new unit owner(s) shall pay an initial payment of three months' condominium fees into the reserve account in addition to the current monthly condominium fees.

- 8.05 Working Capital Fund. A working capital fund is to be established by the Association in the amount of twice the estimated monthly Assessment allocated to each Unit for the fiscal year in which the payment to such fund is due. All amounts paid into such fund shall be non-refundable and shall not be considered as advance payment of Assessments. Each Unit's share of the working capital fund shall be paid to the Association upon the transfer of title of each Unit from Declarant to any purchaser or at the Date of Termination of Declarant Control, whichever is earlier. Following the Date of Termination of Declarant Control, the Declarant may collect funds at closing to reimburse itself for funds it paid the Association for each unsold Unit's share of the working capital fund. Prior to the Date of Termination of Declarant Control, the Declarant shall not use any of the working capital fund to defray its expenses, reserve contributions or construction costs or to make up any budget deficits. No later than the Date of Termination of Declarant Control, the working capital fund shall be transferred to the Association for deposit into a segregated fund.
- 8.06 Accounting. Within One Hundred Twenty (120) days after the end of the fiscal year of the Unit Owners' Association, the Executive Board shall supply to all Unit Owners an itemized accounting of the Common Expenses for the preceding fiscal year actually incurred and paid together with a tabulation of the amounts collected pursuant to the annual budget or assessments and leases and sales of Units owned or managed by the Executive Board on behalf of the Unit Owners' Association, and showing the net excess or deficit of income over expenditures plus reserves.
- 8.07 Special Assessments. If any annual budget proves inadequate for any reason, including nonpayment of any Unit Owner's assessments, or any non-recurring Common Expense or any Common Expense not set forth in the annual budget as adopted, the Executive Board may at any time levy a further assessment, which shall be assessed to the Unit Owners in accordance with Common Expense Liabilities, provided, that if such further assessment is greater than ten percent of the aggregate amount of the annual budget for the year in question, the same shall first be approved by Unit Owners holding at least two-thirds of the Percentage Interests as set forth in Exhibit "B". Such further assessment shall be payable in monthly installments and subject to late payment charges as the Board may determine. The Executive Board shall serve notice of such further assessment on all Unit Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective and shall be payable at such time or times as determined by the Executive Board.
- 8.08 Acceleration. If a Unit Owner is in default with the monthly payment of the aforesaid charges or assessments for thirty (30) days, the Executive Board may, in addition to all other remedies in the Act or Declaration contained, accelerate all other monthly payments of charges and assessments due for the fiscal year in which such default occurs; provided, however, a foreclosing Permitted Mortgagee shall be entitled to automatic subordination of such sums in excess of the amounts given priority over mortgage liens in the Act.

- 8.09 Interest and Charges. All sums assessed by the Executive Board against any Unit Owner as a regular or special assessment or for water or other utility charges of any type shall be subject to 5% late fee per month after the 10th of the month. All interest charged against a Unit Owner will be compounded until paid in full. Any delinquent Owner shall also be obligated to pay (i) all expenses of the Board, including reasonable attorneys' fees, incurred in the collection of the delinquent assessment or utility charges by legal proceedings or otherwise, and (ii) any amounts paid by the Board for taxes or on account of superior liens or otherwise to protect its lien, which expenses and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessment and shall be collectible as such.
- 8.10 Liability. Assessments shall commence as determined by the Association. The Association may temporarily provide for the allocation of a reduced assessment for unsold Units if such Units are not occupied. In any event, all Units shall be allocated full Assessments no later than 60 days after the first Unit is conveyed by the Declarant. Until the Association makes such Assessment, the Declarant shall pay all the expenses of the Condominium. All Assessment shall constitute the personal liability of the Owner, and shall, until fully paid, constitute a lien against such Unit as provided by the Act. **The lessee of a Unit shall be jointly and severally liable with the Owner to the Association for payment of Assessments during the term of the lease.** Any Assessment which the Association determines to be uncollectible may be reassessed as a Common Expense. The Association may enforce its claim against a Unit Owner and lien against a Unit for Assessments and for any and all fees, charges, late charges, fines, and interest due the Association from the Unit Owner, all of which are enforceable as Assessments under the Act, by any means provided in the Act or otherwise permitted by law.
- 8.11 Confession of Judgment. IN ORDER TO EXPEDITE THE EXECUTIVE BOARD'S COLLECTION OF ANY DELINQUENT ASSESSMENT, ELECTRIC OR UTILITY CHARGE, EACH UNIT OWNER (BY THE ACCEPTANCE OF THE DEED TO ITS UNIT) SHALL BE DEEMED TO HAVE APPOINTED ANY ONE OR MORE EXECUTIVE BOARD MEMBERS THE ATTORNEY-IN-FACT FOR SUCH UNIT OWNER TO CONFESS JUDGMENT AGAINST SUCH UNIT OWNER IN ANY COURT OF COMPETENT JURISDICTION IN PENNSYLVANIA, FOR ANY SUCH UNPAID ASSESSMENT(S) OR ELECTRICITY OR OTHER UTILITY CHARGES OF ANY TYPE AND ALL OTHER AMOUNTS RECOVERABLE UNDER SECTION J, WHICH APPOINTMENT (BEING FOR SECURITY) SHALL BE IRREVOCABLE; AND FOR SO DOING A COPY OF THIS ARTICLE 8, VERIFIED BY AFFIDAVIT, SHALL BE A SUFFICIENT WARRANT. THE AUTHORITY GRANTED HEREIN TO CONFESS JUDGMENT SHALL NOT BE EXHAUSTED BY ANY EXERCISE THEREOF BUT SHALL CONTINUE FROM TIME TO TIME AND AT ALL TIMES UNTIL THE DECLARATION SHALL BE TERMINATED.
- 8.12 Liens. Except as specifically provided herein, the creation, priority, enforcement, divestiture and extinguishment of liens of the Association against Units for unpaid Assessments and for fees, charges, late charges, fines and interest enforceable as Assessments, shall be as provided in the Act. Any lien for delinquent Assessments or

other charges that the Association has on a Unit shall be subordinate to any first mortgage on the Unit, if the mortgage was recorded before the delinquent Assessment was due. All Assessments shall be deemed to be adopted and assessed on a monthly basis (rather than on an annual basis payable in monthly installments) and shall be due and payable in advance on the first day of each month.

- 8.13 Certification by Association. Any Unit Owner or purchaser shall be entitled to obtain from the Association a statement in recordable form setting forth the amount of unpaid Assessments levied against the Unit as of the date of the statement. Any such statement given by the Association shall bind the Association, the Executive Board, and every Unit Owner. Upon sale of a unit the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments disclosed in the certificate or becoming due after the effective date thereof (or for all Assessments regardless of amount that the Association has not been requested to furnish a certificate prior to conveyance) but such joint and several liability shall be without prejudice to the grantee's right to recover from the grantor the amount of any such unpaid Assessments.
- 8.14 Surplus Funds. If the aggregate Assessments for Common Expenses exceeds such expenses in any year the surplus shall be credited to the Units in proportion to their Common Expense Liabilities to reduce future assessments.
- 8.15 Failure to Fix New Assessments. If the Association shall fail to fix new Assessments for the subsequent fiscal year before the expiration of any fiscal year, the Unit Owners shall continue to pay the same sums as were payable during the fiscal year then ended and such sums shall be deemed to be the new Assessments for the succeeding fiscal year.
- 8.16 No Exemption by Waiver. No Unit Owner may be exempted from Common Expense Liability by waiver of the enjoyment of the right to use any of the Common Elements or by the abandonment of his Unit or otherwise.

Article 9: The Association and Executive Board

- 9.01 The Association. Subject to the limitations contained in the Condominium Documents, the Association shall have all powers and authority granted by the Act and the Condominium Documents. Except as otherwise provided in the Act and the Condominium Documents, the Executive Board may act in all instances on behalf of the Association and all acts duly authorized and approved by the Executive Board shall constitute acts of the Association.
- 9.02 Executive Board Powers. In addition to the powers set forth in the Act, the Executive Board shall have the following powers:
- i. To appoint committees of the Board (which need consist of only one Board Member) and to delegate to such committees the Executive Board's authority to carry out certain duties of the Board, subject to the approval and control of the Board.

- ii. To engage the services of a manager or managing agent, who may be any person, firm or corporation, upon such terms and compensation as the Executive Board deems fit.
- iii. To engage the services of any persons (including, but not limited to, accountants and attorneys) deemed necessary by the Executive Board at such compensation as is deemed reasonable by the Executive Board, in the operation, repair, maintenance and management of the Property, or in connection with any duty, responsibility or right of the Executive Board and to remove, at any time, any such personnel.
- iv. To pay any amount necessary to discharge any mechanic's lien or other encumbrance levied against the Property or any part thereof which may in the opinion of the Executive Board constitute a lien against the Property or against the Common Elements, rather than merely against the interest therein of particular Unit Owners. Where one or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Executive Board by reasons of said lien or liens, including without limitation, reasonable attorneys' fees and disbursements, shall be specially assessed to said Unit Owners.
- v. To expend funds for the maintenance and repair of any Unit or any other portion of the Property which a Unit Owner is obligated to maintain or repair under the terms hereof, if such maintenance or repair is necessary, in the discretion of the Executive Board, to protect the Common Elements or any other portion of the Property, and the Owner of said Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Executive Board to said Unit Owner; provided that the Executive Board shall levy a special assessment against such Unit for the cost of said maintenance or repair.
- vi. In the event two or more Units share a common utility meter or if a portion of the Common Elements and one or more Units share a common utility meter, to determine the proper allocation of the cost of the utility service among the recipients of such utility service, will be determined by the Executive Board. Its determination shall be conclusive and binding.
- vii. The Executive Board shall have the power to authorize a Unit Owner or the Declarant to penetrate and have limited use of the roof or of any other part of the Common Elements or Limited Common Elements, whether the same are situate in or run through, over, under or adjacent to a Unit, including without limitation, the "wet columns", for which purpose each Unit Owner hereby grants to the Executive Board and persons or entities acting on its behalf or with its consent a perpetual easement over and right of access to its Unit for purposes of access to the roof and such Common Elements or Limited Common Elements, to be exercised under such terms and subject to such conditions and restrictions as the Executive Board may establish in its sole discretion in each instance from time to

time. The Executive Board shall require that the Unit Owner proposing such use shall (i) bear the expense of any work authorized under this subparagraph, (ii) indemnify the other Unit Owners, the Association and the Executive Board, (iii) provide and pay for any required additional insurance, (iv) not interfere with the peaceful occupancy and use of any other Unit affected, and (v) not encroach upon any Unit.

- 9.03 Disputes. In the event of any dispute or disagreement between or among any Unit Owners relating to the Property, or any questions of interpretation or application of the provisions of this Declaration, the Plats and Plans, the Bylaws or the Rules and Regulations, the determination thereof by the Executive Board acting in accordance with such governing documents, shall be final and binding on each and all such Unit Owners. The Executive Board shall have the authority to seek a declaratory judgment or other appropriate judicial relief or order to assist it in carrying out its responsibilities under this Article 9. All costs of obtaining such a judgment shall be borne by the disputants, or in the absence of disputants, by the Unit Owners' Association as a Common Expense.
- 9.04 Validity of Contracts with Interested Executive Board Members. No contract or other transaction between the Unit Owners' Association and one or more of its Executive Board members, or between the Unit Owners' Association and any corporation, firm, or association in which one or more of the Executive Board members are directors or officers, or are financially interested, shall be void or voidable because such Executive Board Members are present at any meeting of the Executive Board or a committee thereof which authorized or approved the contract or transaction or because its votes are counted, if the circumstances specified in either of the following subparagraphs exists:
- i. The fact that an Executive Board member is also such a director or officer or has such financial interest is disclosed or known to the Executive Board or committee and is noted in the minutes thereof, and the Executive Board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such Executive Board member or members; or
 - ii. The contract or transaction is made in good faith and is not unconscionable to the Unit Owners' Association at the time it is authorized, approved or ratified.
- 9.05 Inclusion of Interested Executive Board Members in the Quorum. Any Executive Board member holding a director or officer position or having a financial interest in another corporation, firm or association may be counted in determining the presence of a quorum at a meeting of the Executive Board or committee thereof which authorizes, approves or ratifies a contract or transaction of the type described in Section 9 hereof.

Article 10: Alterations, Maintenance, and Repair

- 10.01 Alterations. Without prior written approval of the Association, no Unit Owner shall perform any alteration, modification, decoration, removal, addition to, or change in the appearance of, the Common Elements whatsoever, or make any modification, decoration,

alteration or addition to his Unit without complying with the provisions of Section 10(C) hereof. The Association may in its unrestricted discretion grant or withhold approval of any proposed alteration, modification, removal or addition and in granting approval may impose upon the Unit Owner such conditions as it deems appropriate.

10.02 Association Responsibilities. The Association shall maintain, repair and replace all Common Elements and all incidental damages caused by work done in any Unit by direction of the Association and billed as common expenses.

10.03 Unit Owner Responsibilities. Each Unit Owner shall:

- i. Maintain, repair, or replace at his own expense all portions of his Unit. All such work shall be conducted in a manner which will not impair the structural integrity or appearance of the Building or impair any mechanical or electrical system therein. All required permits and inspections must be obtained, including those required by the City of Lancaster and the Historic Preservation Group of Lancaster. The materials and workmanship used in such maintenance, repair or replacement by Unit Owners shall be of the same type and quality as were originally provided in the Unit. Any maintenance, repair or replacement costing in excess of \$10,000.00 shall require written approval of the Association as to labor and materials;
- ii. Repair or replace any portion of such Unit Owner's Unit which, if not repaired or replaced, would adversely affect the exterior appearance of the Property or in any manner adversely affect another Unit. If any Unit Owner fails to comply with the requirements of the preceding sentence, the Association may in its sole discretion make such repair or replacement and assess the expense thereof against such Unit Owner;
- iii. Maintain, repair and replace all doors, door frames and sills, door glass, windows, window frames, sills and assemblies, window glass, skylights and skylight frames and assemblies which are a part of the Unit; provided, however, exterior painting of all door and window frames, sills and assemblies shall be the responsibility of the Association, the cost thereof to be charged as a Common Expense;
- iv. Pay the expenses incurred by the Association in making repairs or replacements of the Common Elements caused by his willful or negligent act or failure to act;
- v. Perform his responsibilities in such a manner and at such reasonable hours so as not to disturb other Unit Owners;
- vi. Notify the Association of the need for any maintenance, repair or replacement to the Unit, the responsibility for performance of which lies with the Association. The failure of the Association to take action on such notice shall not be deemed a waiver by it of its rights nor shall it be deemed to constitute its consent thereto or its agreement to pay for such work. The Unit

Owner shall abide by any terms specified by the Association relating to the conduct of such repair work; and

- vii. Maintain a minimum temperature of 50 degrees in the Unit and repair or replace at his own expense any damage to the water or sewer pipes by failure to maintain the aforesaid minimum temperature.

Article 11: Restrictions and Covenants

11.01 General. By acceptance of a Unit Deed every Unit Owner shall covenant on behalf of himself, his heirs, successors and assigns that he will comply strictly with the terms, covenants and conditions set forth in the Condominium Documents, and in rules and regulations adopted from time to time by the Executive Board or the Association, in relation to the use and operation of the Units, the Common Elements and the Condominium. Failure to comply with the Condominium Documents or rules and regulations shall be grounds for an action for damages and injunctive or other equitable relief. Such action may be maintained by an aggrieved Unit Owner, or the Association on its own behalf or on behalf of the Unit Owners, or by any Eligible Mortgagee who is aggrieved by any such non-compliance. In any case of flagrant or repeated violation by a Unit Owner, the Owner may be required by the Association to give sufficient surety or sureties for his future compliance.

11.02 Specific Restrictions on Use of All Units.

- i. A Unit Owner shall not use or permit the Unit or any part thereof to be used for an offensive or unlawful purpose and he shall not permit any nuisance within the Unit and he shall not use or allow the Unit to be used in a manner which unreasonably interferes with the peaceful possession, enjoyment and proper use of the Condominium by the other Unit Owners or other occupants thereof.
- ii. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the Property, or contents thereof, without prior written consent of the Executive Board, which consent may be conditioned upon the Unit Owner of such Unit required to bear the full amount of such insurance. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will violate any law, statute, ordinance or regulation or any governmental body or which will result in the cancellation of any insurance maintained by the Executive Board. No waste shall be committed in the Common Elements.
- iii. No Unit Owner shall install window air-conditioners, exhaust fans or any other item which protrudes through any window serving a Unit or permit anything to be hung or displayed on the outside of windows or placed on the outside wall of any Building and no awning, shutter, radio, or television antenna may be affixed to or placed upon the exterior walls or roof of any Building without the prior written approval of the Association, which approval may be withheld or conditioned in

the Association's sole discretion, and/or by the Historic Preservation Group of Lancaster.

- iv. No Unit Owner may lease less than the entire Unit. All leases shall be in writing and, whether or not it expressly so states, shall be deemed to provide that the lease shall provide that the terms thereof shall be subject in all respects to the provisions of the Condominium Documents and that the failure by the tenant to comply therewith shall constitute a default under such lease. The minimum term of any such lease shall be six months. A copy of each such lease shall be delivered to the Association within ten days of execution thereof. Any Unit Owner requesting to lease less than the full unit must request written approval by the Executive Board, which approval may be withheld or conditioned in the Association's sole discretion.
 - v. Reasonable rules and regulations not in conflict with the provisions of this Declaration, concerning the use and enjoyment of the Property, may be promulgated from time to time by the Executive Board, subject to the right of the Association to change such rules and regulations. Copies of the then current rules and regulations and any amendments thereto shall be furnished to all Unit Owners promptly after the adoption thereof.
- 11.03 Specific Restrictions on Use of Residential Units. Each Unit designed as a Residential Unit on Exhibit B is intended to be, and shall be, used as a private residence only. Any other use of any Unit incidental to principal use of a Unit as a residence shall be permitted only with the prior written consent of the Association and where permitted by law (including but not limited to City of Lancaster's Ordinances and Commonwealth of Pennsylvania statutes).
- 11.04 Specific Restrictions on Use of Commercial Units.
- i. Each Unit designated as a Residential Unit on Exhibit B is restricted to commercial uses (except in the case of any use by Declarant pursuant to the rights reserved in Article 19 hereof). Any other use of any Commercial Unit shall be incidental to its principal use for commercial uses. As used herein, the term "commercial uses" shall mean and include (i) a bank, savings and loan association or other financial institution; (ii) business and professional offices; (iii) establishments for the retail sale or provision of goods or services of any kind except as provided in subparagraph (b) of this Section; and (iv) uses of a general character consistent with the foregoing and consistent with the general character of the Condominium, when specifically approved by the Association and subject to any and all conditions imposed by the Association in connections with any such approval. All determinations by the Association with respect to any additional uses shall be final.
 - ii. The following uses of any Commercial Unit are expressly prohibited:
 - a. A restaurant, night club, tavern, or other eating establishment;
 - b. A liquor store;

- c. Principal use for any manufacturing or processing activity; or
- d. A health club, massage parlor, adult book store, head shop, or other establishment engaged principally in the display, sale or distribution of sexual aids, devices, or literature or devices or paraphernalia commonly used in connection with the use of marijuana, opium, cocaine or any other similar mind altering drug or substance.

A determination by the Association with respect to prohibited uses shall be final.

- iii. Each commercial unit shall be permitted one business identification sign on the entrance door or on a window of the Unit. Except as expressly otherwise provided herein, the Unit Owner shall not be permitted to place any other sign on the exterior of the Building. The Association may from time to time establish signage design standards regulating the size, location and design of such signs.
- iv. The Owner, tenant or other occupier of a Commercial Unit shall not (i) use any loud speaker, sound amplifier or other music or sound system which is audible outside the Unit, (ii) sell or display merchandise of any kind outside the Unit, or (iii) conduct in any Unit any "fire sale," distress sale," going out of business sale" or any similar sale designed to convey to the public that the business operations conducted within the Unit are to be discontinued.
- v. Any commercial unit owner who wishes Board Approval to convert a commercial unit to a residential unit must submit that request to Executive Board in writing, approval may be withheld or conditioned in the Association's sole discretion.

Article 12: Encroachments, Easements

In addition to and in supplementation of any easements of record and the easements provided for by Sections 3216, 3217 and 3218 and the other provisions of the Act, the following easements are hereby created:

- 12.01 Ingress and Egress. Each Unit Owner has a perpetual unrestricted right of ingress and egress throughout the Condominium for access to his or her Unit.
- 12.02 Encroachment. To the extent that any Unit or Common Element now or hereafter encroaches upon any other Unit or Common Element a valid easement for the encroachment and for the maintenance of the same shall exist for so long as the Units and Common Elements affected thereby shall stand. This easement does not relieve a Unit Owner of liability in case of his willful misconduct nor relieve any person of liability for failure to adhere to the Declaration Plan.
- 12.03 Physical Boundaries. In interpreting any and all provisions of the Condominium Documents, subsequent Unit Deeds to, and mortgages of, the actual location of the Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or

encumbered notwithstanding any minor deviations from the locations indicated on the Declaration Plan.

- 12.04 Utilities. A valid easement does and shall continue to exist throughout the Condominium for the purpose of installation, maintenance, operation, repair and replacement of sewer, water, electric, gas, power, intercom, telephone and television pipes, lines, mains, conduits, wires, poles, transformers and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility system; provided, however, any easements within a Unit for such facilities shall be only at the original location thereof, unless approved in writing by the Unit Owner.
- 12.05 Support. Each Unit shall have an easement over the Common Elements and all other Units for structural support and each Unit is subject to an easement for structural support in favor of every other Unit and the Common Expenses.
- 12.06 Access. The Association, its agents, employees and contractors, shall have an easement for access to each Unit to the extent reasonably necessary for the inspection, maintenance, repair and replacement of Common Elements or for making any addition, alteration or improvement thereto, or to insure compliance with, or abate any violation of the Condominium Documents or of any law or government regulation. Furthermore, each Unit Owner, and his agents, employees and contractors, shall have an easement for access to each other Unit during reasonable hours for maintenance and repair of his Unit and for making alteration, additions and improvements thereto, but only to the extent that the Association has determined after notice to the Owner of the Unit to which access is to be had that such access is necessary for the performance of such work and will not unduly interfere with the use of such Unit by its Owner.

Article 13: Eminent Domain

The respective rights, duties, and obligations of the Unit Owners and the Association in the event of the taking of all or any part of any Unit or Common Elements by eminent domain shall be as provided by the Act. The Association shall represent the Unit Owners in any proceeding, negotiation, settlement or agreement relative to any such eminent domain proceeding. Any proceeds of such eminent domain proceedings shall be payable to the Association for the benefit of the Unit Owners and their Eligible Mortgagees.

Article 14: Insurance

- 14.01 Generally. The Executive Board shall acquire and pay for insurance as required by the Act subject to the following:
- i. Such insurance as the Executive Board deems advisable in the operation, and for the protection, of the Common Elements and the Units.
 - ii. The amount of property insurance obtained pursuant to the Act shall in no event be less than the aggregate principal amount of all Permitted Mortgagees. Such

insurance policy(ies) may, at the option of the Board, contain a "deductible" provision in an amount determined by the Board.

- iii. Each Unit Owner and the Executive Board hereby waives and releases any and all claims which he or it may have against any other Unit Owner, the Unit Owners' Association, the Executive Board and members thereof, the Declarant and their respective officers, employees and agents, for damage to the Common Elements. No improvements and betterments installed in Units in the case of fire and extended coverage perils.
- iv. If the act or omission of a Unit Owner, or of a guest, occupant, invitee, licensee or visitor of such Unit Owner, shall cause damage to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Executive Board, to the extent such payment is not waived or released under the provisions of subparagraph iii, above.
- v. Any release or waiver referred to in subparagraphs iii and iv above shall be valid only if such release or waiver does not affect the right of the insured under the applicable insurance policy to recover thereunder. The Unit Owners and the Executive Board agree that with regard to the insurance carriers, such release or waiver does not affect their rights to recover.
- vi. If the Executive Board fails within sixty days of an insured loss to initiate a claim for damages recoverable under the property insurance policies obtained pursuant to the Act, the holder of any Permitted Mortgage may initiate such a claim on behalf of the Board.
- vii. If an event occurs that triggers the use of the Condominium Association insurance policy, the Unit Owner shall be responsible for the payment of the deductible. If more than one Unit Owner is involved with the event, the deductible shall be shared equally between those Unit Owners. If the triggering event is associated with a Common Element, the deductible will be paid by the Condominium Association.
- viii. No betterments and improvements are to be covered by the Association's insurance. Any betterments and improvements made to the original unit as sold from the Declarant to the first unit owner shall be covered by individual homeowners insurance.
- ix. Comprehensive public liability and property damage insurance as required by the Act shall be in such limits as the Board shall deem desirable, insuring the Unit Owners' Association, the Board members, the managing agents, if any, and their respective officers, agents and employees, and the Unit Owners from any liability to the public or to the Unit Owners, their guests, occupants, invitees, licensees or

visitors relating in any way to the ownership or use of the Property or any part thereof.

- x. The Board may obtain such other forms of insurance as it shall elect, including Board members' and officers' liability insurance and such Worker's Compensation insurance as may be necessary to comply with applicable laws.
- xi. The Board shall obtain a fidelity bond or bonds to protect against dishonest acts on the part of the Board members, officers, agents, employees, volunteers and all others who handle, or are responsible for handling, funds of the Unit Owners' Association. Such bond or bonds shall name the Unit Owners' Association as an obligee and shall be in such amount as the Board deems appropriate. Such bond or bonds shall contain a waiver of defense based upon the exclusion of persons who serve without compensation from the definition of "employee."
- xii. Except as otherwise provided in this Declaration, premiums for all insurance obtained or maintained by the Board, fees and expenses of the insurance trustee, if any, and the cost of any appraisal which the Board deems advisable in connection with any insurance, shall be Common Expenses.
- xiii. The Board shall use its best efforts to secure policies with provisions that they cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Unit Owners or any officer or employee of the Board or managing agent, if any, (without a prior demand in writing that the Board or managing agent) as the case may be, cure the defect and without a reasonable period of time thereafter in which to cure the same.
- xiv. Insurance coverage on the furnishings and other items of personal property belonging to a Unit Owner and insurance for its personal liability, to the extent not covered by insurance maintained by the Board, shall be the responsibility of each such Unit Owner. This subparagraph shall apply to any improvements or fixtures installed by a Unit Owner.
- xv. All physical damage insurance policies purchased by the Executive Board shall be for the benefit of the Unit Owners' Association, the Unit Owners and their Permitted Mortgagees, as their interests may appear, and shall provide that, with respect to any single loss, if the proceeds thereof exceed \$250,000, then all such proceeds shall be paid in trust to a reputable lending institution in the Commonwealth of Pennsylvania with trust powers as may be designated by the Executive Board (which trustee is herein referred to as the "Insurance Trustee"). If such proceeds do not exceed \$250,000, then all such proceeds shall be paid to the Executive Board to be applied pursuant to the Act. If proceeds are payable to the Insurance Trustee, the Executive Board shall enter into an Insurance Trust Agreement with the Insurance Trustee which shall provide that the Insurance Trustee shall not be liable for payment of premiums, the renewal of the policies, the sufficiency of coverage, the form of contents of the policies, the correctness of any amounts received on account of the proceeds of any insurance policies, or for

the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in this Declaration and the Act, for the benefit of the insured parties and their beneficiaries thereunder.

- xvi. Insurance Company Rating. The insurance policy shall be written by a carrier which holds at least (i) a “B” or better general policyholder’s rating or a “6” or better financial performance index rating in Best’s Insurance Reports, (ii) a “A” or better general policyholder’s rating and a financial size category of “VIII” or better in Best’s Insurance Reports – International Edition, (iii) an “A” or better rating in Demotech’s Hazard Insurance Financial Stability Ratings, (iv) a “BBBq” qualified solvency rating or a “BBB” or better claims-paying ability rating in Standard and Poor’s Insurer Solvency Review, or (v) a “BBB” or better claims-paying ability rating in Standard and Poor’s International Confidential Rating Service.

14.02 Repairs and Reconstruction After Fire or Other Casualty

- i. When Repair and Reconstruction are Required. Except as otherwise provided in subparagraph 14.02 (ii), in the event of damage to or destruction of the Building as a result of fire or other casualty, the Executive Board, under the direction of the Insurance Trustee if an Insurance Trustee is required, shall arrange for and supervise the prompt repair and restoration of the Building as required by the Act. Notwithstanding the foregoing, each Unit Owner shall have the right to supervise the redecorating of his own Unit.
- ii. Procedure for Reconstruction and Repair.
- a. Cost Estimates. Immediately after a fire or other casualty causing damage to the Building, the Executive Board, under the direction of the Insurance Trustee, if any, shall obtain reliable and detailed estimates of the cost of repairing and restoring the Building as required by the Act to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Executive Board or Insurance Trustee determines to be necessary.
- b. Assessments. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement funds and/or shall be deemed a Common Expense and a special assessment therefor shall be levied.
- c. Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of the Property.

14.03 Disbursements of Construction Funds.

- i. Construction Fund and Disbursement. The proceeds of insurance collected on account of casualty, and the sums received by the Executive Board or Insurance Trustee from collections of assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:
 - a. If the estimated cost of reconstruction and repair is less than \$250,000, then the construction fund shall be disbursed in payment of such costs upon order of the Executive Board.
 - b. If the estimated cost of reconstruction and repair is \$250,000 or more, then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Pennsylvania and employed by the Insurance Trustee to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other persons who have rendered services or furnished materials in connection with the work and stating that: (a) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; (b) there is no other outstanding indebtedness known to such architect for the services and materials described; and (c) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.
- ii. Surplus. It shall be presumed that the first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds and, if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be divided among all Unit Owners in proportion to their Common Expense Liabilities and shall be credited or distributed in accordance with the priority of interests at law or in equity in each Unit.
- iii. Common Elements. When the damage is to both Common Elements and Units, the insurance proceeds shall be applied first to the cost of repairing those portions of the Common Elements which enclose and service the Units, then to the costs of repairing the Units.
- iv. Certificate. The Insurance Trustee shall be entitled to rely upon a certificate executed by the President or Vice President, and the Secretary, certifying: (i) whether the damaged Property is required to be reconstructed and repaired; (ii) the name of the payee and the amount to be paid with respect to disbursement from any construction fund or whether surplus funds to be distributed are less than the assessments paid by the Unit Owners; and (iii) all other matters

concerning the holding and disbursing of any construction fund. Any such certificate shall be delivered to the Insurance Trustee promptly upon request.

- 14.04 When Reconstruction Is Not Required. In the event of insubstantial damage to the Common Elements, and if the Executive Board shall elect not to repair the same, or in the event there is to be no repair or replacement pursuant to Section 3312(g) of the Act, then in either such event any insurance proceeds received on account of such damage shall be expended and/or distributed in accordance with Section 3312 of the Act. If the Condominium shall be terminated pursuant to Section 3220 of the Act, the provisions of Section 3220 of the Act shall apply.

Article 15: Combination, Subdivision, and Adjustment of Boundaries of Units

- 15.01 Changes Permitted. Upon fulfillment of all applicable conditions and requirements set forth in Section 15.02 below and subject to any applicable rights of disapproval of the Executive Board, the boundaries between two or more Units may be relocated, or two or more Units may be combined into fewer Units, or a Unit may be subdivided into two or more Units by amendment to the Declaration and Declaration Plan.
- 15.02 Requirements. All combinations, subdivisions, or boundary adjustments of Units shall be subject to fulfillment of the following requirements:
- i. Declarant's right to create additional Units by subdivision of a Unit shall be limited to the subdivision of Units 030 and 110.
 - ii. No Residential Unit resulting from any combination, subdivision, conversion or boundary adjustment shall contain less than 800 square feet of floor area and no Commercial Unit resulting from any such action shall contain less than 600 square feet of floor area.
 - iii. The aggregate Common Interest, Votes and Common Expense Liability of all Units participating in the combination, subdivision, or boundary adjustment shall be fully apportioned among all Units resulting from such action in proportion to the gross floor area.
 - iv. Any combination, subdivision or boundary adjustment of Units all of which are owned by the Declarant may be effected by Declarant without the consent or approval of the Executive Board or any other Unit Owner. Any amendment of the Declaration and Declaration Units, and need to be executed only by Declarant.
 - v. The combination, subdivision or boundary adjustment of Units owned by any Owner other than Declarant shall be subject to the prior approval of the Executive Board. Prior to the combination of any Units, such Unit shall be under common ownership. Except in the case of Units all of which are owned by Declarant, plans and specifications for all construction or renovation to the Units and Common Elements required or intended to be performed in connection with such action shall be submitted to the Executive Board concurrently with the request to the Board for approval of the action. The Executive Board may withhold its

approval if it reasonably determines that the proposed action does not meet the requirements set forth herein, will adversely affect any other Unit, or is otherwise unreasonable. The Executive Board may impose additional conditions on its approval (including requirements for security for all proposed construction and renovations) which it determines to be desirable for the protection of the Unit Owners. All determinations by the Executive Board shall be made within ninety days of receipt of a written request for a determination from all Unit Owners participating in the proposed action, unless the date for determination is extended with the consent of all applicants. The failure of the Executive Board to make such determination within the ninety day period shall be deemed an approval of such request.

- vi. Any amendment to the Declaration affecting a combination, subdivision or boundary adjustment shall identify the Units involved in such action and resulting therefrom, shall state the identifying numbers of the Units resulting therefrom and the reallocation of Common Interest, Votes and Common Expense Liability, and shall contain any necessary words of conveyance among the Unit Owners participating in such action. Amendments to the Declaration Plan effecting such action shall show the altered boundaries between Units, their identifying numbers and dimensions, and any Common Elements to be constructed or altered in connection with the action.
- vii. Any amendment affecting a combination, subdivision, or boundary adjustment of Units owned by any Owner other than Declarant shall be approved by the Owners of all Units participating in such action, by the Eligible Mortgages of such Units, and by the Association, and shall be executed by such Unit Owners and the Association. All expenses of preparation of such Amendments shall be borne by the Unit Owners participating in such action.
- viii. Notwithstanding the foregoing, Declarant may amend the Declaration and Declaration Plan without the consent or joinder of any person to adjust the boundaries of any Unit or Common Element (whether or not then owned by Declarant) as depicted on the Declaration Plan to correct any error in the description of such boundaries in the Declaration and Declaration Plan or any amendment adopted by Declaration alone or to correct any variations between actual physical boundaries and depicted boundaries resulting from minor construction changes or variations.

Article 16: Amendment

- 16.01 Amendment Generally. This Declaration may be amended only in accordance with the procedures specified in Section 3219 of the Act, the other Sections of the Act referred to in Section 3219 and the provisions of this Declaration.
- 16.02 Rights of Permitted Mortgages. Subject to the limitations imposed by Section 3221 of the Act, no amendment of this Declaration may be made without the prior written approval of 51% of all Permitted Mortgagees if and to the extent that such amendment is material, or if and to the extent that such amendment would have the effect of terminating or

abandoning the Condominium (except for termination or abandonment as a result of a taking of all the Units by eminent domain or a casualty resulting in termination), or abandoning, encumbering, selling or transferring the Common Elements. Any amendment having the effect of partitioning or subdividing any Unit or the Common Elements or changing the Percentage Interests, votes or Common Expense Liability of the Unit Owners shall require the written approval of 51% of all holders of Permitted Mortgages on the Units affected thereby. The granting of easements for public utilities or for the public purposes consistent with the intended use of the Common Elements shall not be deemed to be a transfer within the meaning of this Section resulting in termination, or abandoning, encumbering, selling or transferring the Common Elements. Any amendment having the effect of partitioning or subdividing any Unit or the Common Elements, or changing the Percentage Interests, votes or Common Expense Liability of the Unit Owners shall require the written approval of all holders of Permitted Mortgages on the Units affected thereby. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed to be a transfer within the meaning of this Section.

- 16.03 Other Amendments. If any amendment is necessary in the judgment of the Executive Board to cure any ambiguity, or to correct or supplement any provision of the Declaration or the Plats and Plans which is defective or inconsistent with any other provision of this Declaration or the Plats and Plans or with the Act, or to change, correct or supplement anything appearing or failing to appear in the Plats and Plans which is incorrect, defective or similarly inconsistent, the Executive Board may, at any time and from time to time effect such amendment without the approval of the Unit Owners or Permitted Mortgagees, upon receipt by the Executive Board of an opinion from legal counsel to the effect that the proposed amendment is permitted by the terms of this sentence, together with a like opinion from a registered architect or licensed professional engineer in the case of any such amendment to the Plats and Plans. Each such amendment shall be effective upon the recording of an appropriate instrument setting forth the amendment and its due adoption, execution and acknowledgment by one or more officers of the Executive Board.

Article 17: Termination of Condominium

The Condominium shall be terminated only by an agreement of the Owners of Units to which at least 80% of the Votes are allocated, with the approval of the Eligible Mortgagees of such Units. An agreement of Owners to terminate the Condominium must be evidenced by their execution of a termination agreement or ratifications thereof, which termination agreement and ratifications must be recorded and which shall be effective only when recorded. The relative rights, duties and obligations of the Association, Unit Owners, and lienholders, and all procedures relating to termination shall be as provided in the Act.

Article 18: Special Declarant Rights

- 18.01 Control of Association. The Declarant may appoint and remove all of the officers and members of the Executive Board for a period of five years from the date of the first conveyance of any Unit to any person other than Declarant, provided, however, that:

- i. Not later than 60 days after conveyance of 25% of the Units to Unit Owners other than Declarant at least 25% of the members of the Executive Board shall be elected by Unit Owners other than Declarant (one member if the Executive Board consists of three members, or two members if the Executive Board consists of five members);
- ii. Not later than 60 days after conveyance of 50% of the Units to Unit Owners other than the Declarant at least one-third of the members of the Executive Board shall be elected by Unit Owners other than Declarant (one member if the Executive Board consists of three members, or two members if the Executive Board consists of five members);
- iii. The period of Declarant control shall terminate in any event 180 days after conveyance of 75% of the Units to Unit Owners other than Declarant; and
- iv. The Declarant may voluntarily surrender its rights to appoint and remove officers and members of the Executive Board at any time, and in such event may require, for the duration of the period of Declarant control set forth above, that specified actions of the Association or Executive Board, as described in an instrument executed by Declarant and Recorded, be approved by Declarant before they become effective.

18.02 Sale Offices, Models, Etc. The Declarant shall have the right to transact on the Condominium any business pertaining to or necessary for the consummation of the management, sale or rental of the Units and to use any Units owned by Declarant or any portion of the Common Elements for any purpose relating thereto, including but not limited to the right to maintain a sales office, management office and models in such Units or Common Elements. Such offices and models may be located in any Units owned or leased by Declarant or in any portion of the Common Elements and may be relocated to any Units so owned or leased or any other portion of the Common Elements, without limitation as to size, location or number. Declarant shall have the right to maintain in his Units and on the Common Elements such advertising signs as Declarant in its sole discretion may deem appropriate, provided such signs comply with applicable governmental regulations. Declarant may from time to time relocate such advertising signs.

18.03 Construction. Declarant shall have the right to complete in all respects all construction of the Buildings and each and every other improvement depicted on the Declaration Plan and to perform all maintenance, repair, replacement and reconstruction thereof as Declarant determines to be necessary or appropriate in connection with the development of the Real Estate. Declarant, for itself and its agents, employees, contractors and suppliers, shall have the right, privilege and easement throughout the Common Elements to perform any and all such purposes of exercising any and all rights reserved to Declarant in this Section or by the Act, and for the purposes of discharging any and all obligations of Declarant however arising.

18.04 No Amendments. Neither the Declaration nor Bylaws may be amended prior to the Date of Termination of Declarant Control without Declarant's express written consent.

18.05 Transfer of Special Declarant Rights to Mortgagees. Unless expressly otherwise stated, the lien of any mortgage given by Declarant shall be deemed to extend to all special rights of Declarant reserved in the Condominium Documents or under the Act, whether the mortgage is given before or after this Declaration is Recorded and whether or not the special rights of Declarant are referred to in said mortgage. In the event of the sale or foreclosure of such mortgage, or in the event of any other judicial sale in proceedings to enforce or collect the indebtedness of Declarant secured by the mortgage, or in the event Declarant delivers to the mortgagee a deed in lieu of foreclosure, or in the event of the sale of Declarant's Units under the Federal Bankruptcy Act or receivership proceedings, the mortgagee or other purchaser acquiring title to all of the Units foreclosed, sold or conveyed in lieu of foreclosure, upon the request of such person, may succeed to such special rights of Declarant as permitted by the Act. Any request to succeed to any special rights of Declarant by the Mortgagee or other purchaser shall be made by delivery of a written request to do so to the officer conducting the sale at any time prior to execution, delivery and Recording of the instrument conveying title to such person and by the Recording of a duplicate original of the request (except in the case of a conveyance by a deed in lieu of foreclosure, in which case the request may be signified by an acceptance of the Special Declarant Rights conveyed, contained in the deed in lieu of foreclosure, and executed by the grantee). The instrument conveying title to the purchaser shall provide for transfer of only the Special Declarant Rights requested. If no request has been made, the mortgagee or other purchaser shall not succeed to any Special Declarant rights.

Article 19: Mortgages

- 19.01 Permitted Mortgages. A Unit Owner other than the Declarant or the Executive Board may not voluntarily encumber or subject its Unit to any lien, other than the lien of a Permitted Mortgage and the rights and obligations of the parties thereof shall be subject to the terms and conditions of the Act, this Declaration and the Bylaws, and shall be deemed to provide specifically, but without limitation, that the Permitted Mortgagee shall have no right:
- i. To participate in the adjustment of losses with insurers or in the decision as to whether or not or how to repair or restore damage to or destruction of the Property,
 - ii. To receive or apply the proceeds of insurance to the reduction of mortgage debt or otherwise, except in the event and to the extent of a distribution thereof to Unit Owners upon the happening of either a termination or of insurance proceeds being received in excess of the cost of repair or restoration, or
 - iii. To accelerate the mortgage debt or to have any other remedies by virtue of waste or alleged waste or other conditions occurring anywhere on the Property other than within the affected Unit, and the obligation secured shall be able to be prepaid, without penalty, upon the happening of any termination as aforesaid.

No Unit Owner shall deliver any mortgage, or any obligation to be secured thereby, unless it has first notified the Executive Board of the name and address of the proposed mortgagee and of the amount of the debt proposed to be so secured. When such a Permitted Mortgage is delivered to the Permitted Mortgagee, the Unit Owner shall simultaneously provide executed or conformed

copies to the Executive Board. Upon receipt of such copy of a Permitted Mortgage, the Secretary of the Executive Board shall instruct the insurer of the Property to add the name of the Permitted Mortgagee to the mortgagee loss payable provision of the hazard insurance policy covering the Property and to provide such Permitted Mortgagee with a Certificate of Insurance showing that the Permitted Mortgagee's name has been so added. The lien of any purported mortgage which does not comply with all the requirements of this Article 14 shall not attach to or affect the Property or any part thereof or interest therein and shall be of no force and effect as to the extent that it purports to relate thereto. The Secretary shall maintain a register of such Permitted Mortgages, showing the names and addresses of the Permitted Mortgagees and the amount stated to be secured thereby.

Article 20: Mortgage Protection

- 20.01 Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers, and guarantors of certain first mortgages on Units. This Article is supplemental to, not a substitution for, any other provisions of the Condominium Documents, but in the case of conflict, this Article shall control.
- 20.02 Percentage of Eligible Mortgagees. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean that the approval or consent of Eligible Mortgagees which in the aggregate have allocated to them that specified percentage of votes as compared to the total votes allocated to all Units in the Association then subject to first mortgages held by all Eligible Mortgagees.
- 20.03 Notice of Actions. Upon the written request of an Eligible Mortgagee or Eligible Insurer (stating both its name and address and the unit number or address of the unit on which it has (or insurers or guarantees) a mortgage), the Association shall give prompt written notice to such Eligible Mortgagee or Eligible Insurer of:
- i. Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit in which there is a first mortgage held, insured or guaranteed by that Eligible Mortgagee or Eligible Insurer, as applicable;
 - ii. Any delinquency in the payment of Common Expense assessments owed by a Unit Owner which remains uncured for a period of 60 days and whose Unit is subject to a first mortgage held, insured or guaranteed by that Eligible Mortgagee or Eligible Insurer, as applicable.
 - iii. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
 - iv. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Article 20 hereof.
- 20.04 Consent and Notice Required.
- i. Document Changes. Notwithstanding any other provisions of the Condominium Documents or Act, no amendment of any material provision of the Condominium

Documents by the Association or Unit Owners described in this Article may be effective without notice to all Eligible Mortgagees and Eligible Insurers, as required by Article 20 (C)(iv) above, without the vote of at least 67% of the Unit Owners (or any great Unit Owner vote required in this Declaration or the Act) and without approval by at least 51% of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration except as specifically provided in this Section. The foregoing approval requirements do not apply to (i) corrective amendments affected by the Declarant; (ii) corrective amendments approved in accordance with the Declaration or similar provisions in the Bylaws; (iii) any combination, subdivision or adjustment of boundaries of Units affected in accordance with Article 15 hereof. A change to any of the following would be considered material:

- a. Voting Rights;
- b. Increases in Assessments that raise the previously assessed amount by more than 25%, Assessment liens, or the priority of Assessment liens;
- c. Reduction in reserves for maintenance, repair, and replacement of Common Elements;
- d. Responsibility for maintenance and repairs;
- e. Reallocation of interests in Common Elements or Limited Common Elements, except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only the Eligible Mortgagees holding Security Interests in those Units need approve the action;
- f. Redefining the boundaries of Units, except when boundaries of only adjoining units are involved, or a Unit is being subdivided, then only those Unit Owners and the Eligible Mortgagees holding first mortgages on the Unit or Units need approve the action;
- g. Convertibility of Units into Common Elements or Common Elements into Units;
- h. Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- i. Hazard or fidelity insurance requirements;
- j. Imposition of any restrictions on the leasing of Units;
- k. Imposition of any restrictions on Unit Owners' right to sell or transfer their Units;
- l. A decision by the Association of a condominium that consists of 50 or more Units to establish self-management when professional management had been

required previously by the Condominium Documents or any Eligible Mortgagee;

- m. Restoration or repair of the project after damage or partial condemnation in a manner other than that specified in the Condominium Documents; and
 - n. Any provision that expressly benefits mortgage holders, insurers, or guarantors.
- ii. The Association may not change the period for collection of regularly budgeted Common Expense Assessments to other than monthly collection without the consent of all Eligible Mortgagees.
 - iii. The failure of an Eligible Mortgagee or Eligible Insurer to respond within 30 days to any written request for approval of an addition or amendment to the Condominium documents wherever Eligible Mortgagee or Eligible Insurer approval is required, when such request is delivered by certified or registered mail, return receipt requested, shall constitute implied approval of the addition or amendment.
- 20.05 Inspection of Books. The Association must maintain current copies of the Declaration, Articles of Incorporation of the Association, Bylaws, Rules and Regulations, books, records, financial statements. The Association shall permit any Unit Owner, Eligible Mortgagee, Eligible Insurer, or other first mortgagee of a Unit, to inspect the books and records of the Association during normal business hours.
- 20.06 Financial Statements. The Association shall provide Eligible Mortgagee or Eligible Insurer who submits a written request with a copy of an annual financial statement. It shall be provided within 120 days following the end of each fiscal year of the Association. The financial statement shall be audited by an independent certified public accountant if:
- i. The Condominium contains 50 or more Units, in which case the cost of the audit shall be a Common Expense; or
 - ii. Any Eligible Mortgagee or Eligible Insurer request that it be audited, in which case the Eligible Mortgagee or Eligible Insurer shall bear the cost of the audit.
- 20.07 Attendance at Meetings. Any representative of an Eligible Mortgagee or Eligible Insurer may attend and address any meeting which a Unit Owner may attend.
- 20.08 Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors and may be enforced by any of them by any available means, at law or in equity.

Article 21: Notice and Hearing

- 21.01 Right to Notice and Comment. Before the Executive Board amends the Bylaws or any rules or regulations, whenever the Condominium Documents required that an action be taken after “Notice and Comment,” and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action either shall be given to each Unit Owner in writing, delivered personally, electronic mail, or by U.S. mail to all Unit Owners at such address as appears in the records of the Association, or it shall be published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than five days before the proposed action is to be taken. It shall invite comment to the Executive Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.
- 21.02 Right to Notice and Hearing. Whenever the Condominium Documents require that an action be taken after “Notice and Hearing,” and at any other time the Executive Board determines, the following procedure shall be observed; The party proposing to take the action (e.g., the Executive Board, a committee, an officer, the Manager, etc.) shall give written notice of the proposed action and the date, time, place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Any evidence shall be duly considered, but is not binding in making the decision. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.
- 21.03 Appeals. Any person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of persons other than the Executive Board by filing a written notice of appeal with the Executive Board within 10 days after being notified of the decision. The Executive Board shall conduct a hearing within 30 days, giving the same notice and observing the same procedures as were required for the original meeting.

Article 22: Declarant Delivery of Items to Association

- 22.01 General Requirements. Not later than 60 days after the Date of Termination of Declarant Control, the Declarant shall deliver to the Association all property of the Unit Owners and of the Association held by or controlled by the Declarant, including, without limitation, all of the following items, if and to the extent applicable:
- i. The original or a certified copy or a photocopy of the recorded Declaration and all amendments thereto. If a photocopy is delivered, such photocopy shall reflect the recording information and shall be accompanied by an affidavit executed by the Declarant certifying such photocopy to be a true, correct and complete copy of the actual recorded Declaration and all amendments thereto.

- ii. The Association articles of incorporation with evidence of filing with the Department of State.
- iii. A copy of the Bylaws.
- iv. A complete set of all Executive Board minutes and resolutions and all other books and records of the Association.
- v. A complete copy of all Rules and Regulations that may have been adopted.
- vi. Copies of all Federal, State, and Local tax returns filed by or on behalf of the Association and copies of any tax-exempt elections made by or on behalf of the Association.
- vii. Copies of all past and current budgets of the Association.
- viii. Resignations of officers and members of the Executive Board who are required to resign because the Declarant is required to relinquish or has relinquished control of the Association.
- ix. All Association funds or control thereof.
- x. All tangible personal property and inventories thereof that may have been represented or should have been represented by the Declarant in any public offering statement, sales materials or other writings, if any, to be part of the Common Elements, or that is otherwise property of the Association.
- xi. A copy of the plans or drawings and specifications, if any, utilized in the construction, rehabilitation, renovation or remodeling of any Buildings and improvements within the Condominium and in the construction and installation of any mechanical components and equipment serving the Buildings and improvements and property, if any, to the extent construction, rehabilitation, renovation, remodeling or installation was performed by or on behalf of the Declarant and substantially completed during the period commencing three years prior to the date of the first public offering statement regarding the Condominium, unless no public offering statement is required for any Unit in the Condominium in which event such period shall commence on the date of the Recording of the Declaration or amendment thereto with respect to such improvements, and ending on the date by which compliance with this Article is required. In the event such construction, rehabilitation, renovation, remodeling or installation was substantially completed within such period but not by or on behalf of the Declarant, the obligation of the Declarant under this Section shall be to provide all such plans, drawings, and specifications in the possession of the Declarant and to use reasonable efforts to obtain and provide any such plans, drawings, or specifications not within the possession of the Declarant. If such construction, rehabilitation, renovation, remodeling, or installation was substantially completed more than three years prior to the commencement of the period described in this Section, the obligations of the Declarant under this Section shall be to provide all

such plans, drawings and specifications in the possession of the Declarant. To the extent previously made available to the Declarant, the Declarant in all cases shall deliver to the Association, operating, care, and maintenance manuals and other information regarding mechanical components and equipment serving any Buildings and improvements in the Condominium. A Declarant's delivery of any plans, drawings or specification pursuant to this Section shall not constitute a representation or warranty of the accuracy or completeness of such plans, drawings or specifications and shall not expand or otherwise affect the Declarant's warranties, if any, created under the Act.

- xii. All insurance policies insuring the Association then in force.
 - xiii. Copies of any certificates or statements of occupancy which may have been issued with respect to the improvements comprising the Condominium, if and to the extent available.
 - xiv. Any other permits issued by governmental bodies applicable to the condominium which are then currently in force, all notices of violations of governmental requirements then outstanding and uncured and all reports of investigations for the presence of hazardous conditions as defined in the Act, if any.
 - xv. Any written warranties then in force and effect from contractors, subcontractors, suppliers or manufacturers who have performed work with respect to the Condominium or have supplied equipment or services to the Condominium.
 - xvi. A roster of Unit Owners and Eligible Mortgagees and their respective addresses and telephone numbers, if known, as shown on the Declarant's records.
 - xvii. Employment contracts in which the Association is or is to be one of the contracting parties.
 - xviii. Service and other contracts and leases in which the Association is or is to be one of the contracting parties and service contracts in which the Association has directly or indirectly an obligation or a responsibility to pay some or all of the fees or charges of the person or persons performing such services.
- 22.02 Audit Requirement. Not later than 90 days after the Date of Termination of Declarant Control, a complete audit of the finances of the Association for the time period between the last audit of the Association's financial books and records and the Date of Termination of Declarant Control, shall be prepared by an independent certified public accountant in accordance with generally accepted accounting principles, the costs of which audit are to be borne equally by the Declarant and the Association. If the Condominium consists of not more than 12 units, a warranty from the Declarant to the Association that the books and records of the Association completely and accurately reflect all activities of the Association from its inception through the Date of Termination of Declarant Control may be substituted for the audit referred to in this Section.

Article 23: Limitation of Personal Liability of Board Members; Indemnification

23.01 Limitation of Personal Liability. A member of the Executive Board (hereinafter referred to as a "Member") shall not be personally liable for monetary damages as such for any action taken, or any failure to take any action, unless (i) the Member has breached or failed to perform the duties of his or her office as defined in Section 18.2 below and (ii) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness. This Section 18.1 shall not apply to the responsibility or liability of a Member pursuant to any criminal statute or the liability of a Member for the payment of taxes pursuant to local, state or federal law.

23.02 Standard of Care and Justifiable Reliance.

- i. A Member of the Executive Board shall stand in a fiduciary relationship to the Association, and shall perform his or her duties as a Member, including his or her duties as a member of any committee of the Executive Board upon which he or she may serve, in good faith, in a manner he or she reasonably believes to be in the best interests of the Association, and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. In performing his or her duties, a Member shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:
 - a. One or more officers or employees of the Association whom the Member reasonably believes to be reliable and competent in the matters presented;
 - b. Counsel, public accountants or other persons as to matters which the Member reasonably believes to be within the professional or expert competence of such person;
 - c. A committee of the Executive Board of upon which he or she does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the Member reasonably believes to merit confidence.

A Member shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that would cause his or her reliance to be unwarranted.

- ii. In discharging the duties of their respective positions, Members of the Executive Board, committees of the Executive Board and individual Members may, in considering the best interests of the Association, consider the effects of any action upon employees, upon persons with whom the Association has business and other relations and the community in which the Condominium is located, and all other pertinent factors. The consideration of those factors shall not constitute a violation of subsection (i) of this Section 23.02.

- iii. Absent breach of fiduciary duty, lack of good faith or self-dealing, actions taken as a Member of the Executive Board or any failure to take any action shall be presumed to be in the best interests of the Association.

23.03 Indemnification.

- i. The Unit Owners' Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suitor proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Unit Owners' Association), or in an appeal relating thereto, in which he may become involved as a party or otherwise by reason of his being a Member of the Executive Board or an officer, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Executive Board and Unit Owners' Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Executive Board or the Unit Owners' Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that its conduct was unlawful.
- ii. The Unit Owners' Association may indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Board or the Association to procure a judgment in its favor by reason of the fact that he is or was a Member of the Executive Board or an officer against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Executive Board or the Unit Owners' Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Board or the Unit Owners' Association unless and only to the extent that the Court of Common Pleas of Lancaster County or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Common Pleas or such other court shall deem proper.
- iii. To the extent that a Member of the Executive Board or an officer has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in the foregoing two paragraphs, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

- iv. Any indemnification under this Article 23 shall be made by the Executive Board on behalf of the Unit Owners' Association only as authorized in the specific case, upon a determination that indemnification of the Board member or officer is proper in the circumstances because he has met the applicable standard of conduct set forth in this Article 23. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of Board members who were not parties to such action, suit or proceedings, or (ii) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Board members so directs, by legal counsel in a written opinion, or (iii) by approval of Unit Owners holding a majority of the Percentage Interests as set forth in Exhibit "B" (herein, a "Majority Vote").
- v. Expenses incurred in defending a civil or criminal action, suit or proceedings may be paid by the Executive Board on behalf of the Unit Owners' Association in advance of the final disposition of such action, suit or proceedings, as authorized by the Board in the specific case, upon receipt of an undertaking by or on behalf of the Board member or officer to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the Unit Owners' Association as authorized in this Article.
- vi. The sums necessary to discharge the obligations of the Unit Owners' Association under this Article shall be Common Expenses.
- vii. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Unit Owners' Association or disinterested Members of the Executive Board, or otherwise, both as to action in its official capacity, and to action in other capacities while holding such office, and shall continue as to a person who has ceased to be a Member of the Executive Board or an officer.

Article 24: Miscellaneous Provisions

- 24.01 Costs of Suit. If any action is brought by one or more, but less than all Unit Owners on behalf of all Unit Owners and recovery is had, the Plaintiff's expenses, including reasonable attorneys' fees, shall be a Common Expense, but only to the extent that such expenses are less than the amount recovered on behalf of the Association. If, however, such action is brought against the Executive Board or any member thereof, or against the Association or any member, officer, employee or agent thereof, in their respective capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the Unit Owners, the plaintiff's expenses, including attorney's fees, shall not be charged to or borne by the other Unit Owners as a Common Expense or otherwise.
- 24.02 Notice. Any notice required or permitted to be given hereunder shall be given in writing. Notice shall be deemed given when hand delivered, placed in a Unit Owner's mailbox by

hand, or when deposited in the United States mails, first class, postage prepaid. Notice shall be addressed as follows:

- i. To the Association, at the principal office of the Association
- ii. To a Unit Owner, at the last known address of the Unit Owner as it appears on the books of the Association.
- iii. To Eligible Mortgages, at their addresses on the register to be maintained as provided in these Bylaws, or at such other addresses as they may from time to time designate by notice to Association.

24.03 Captions. Captions used in this Declaration are inserted solely as a matter of convenience and shall not define or limit any of the terms or provisions hereof.

24.04 Provisions Binding Upon Successors and Assigns: Covenants Running With Land; Interpretation. The present title to the Condominium, and title to each Unit, are hereby expressly declared and made subject to the terms and provisions of the Declaration, and all other Condominium Documents. Each Unit Owner, including the Declarant, is subject to all the rights and duties assigned to Unit Owners under the terms of the Condominium Documents. All provisions of the Condominium Documents shall be construed to be covenant running with the land and with every part thereof and interest therein, including but not limited to every Unit and the appurtenances thereto. Every Unit Owner of the Condominium or any part thereof, and their respective heirs, executors, administrators, successors and assigns, and any tenant or Mortgagee shall be bound by all of the provisions of the Condominium Documents shall be determined by the Executive Board, which determination shall be final.

24.05 Severability. If any provision of this Declaration or any section, sentence, clause, phrase or word, or the application thereof in any circumstances be judicially held in conflict with the laws of the Commonwealth of Pennsylvania, then the said laws shall be deemed controlling and the validity of the remainder of the Declaration and the application of any such provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby.

24.06 Gender, Singular, Plural. Whenever the context so permits, the use of the plural shall include the singular, the singular shall include the plural, and any gender shall be deemed to include all genders.

24.07 Effective Date. The Restated Declaration shall become effective on the date when it is Recorded.

Exhibit A

North Shippen Place, A Condominium

Land Comprising Condominium

ALL THAT CERTAIN lot or tract of land situate on the south side of East Walnut Street, on the east side of North Shippen Street and on the north side of Tobacco Avenue in the City of Lancaster, County of Lancaster, Commonwealth of Pennsylvania, as shown on the Declaration Plan for North Shippen Place, a Condominium, prepared by J.C. Engineering/Surveying, Inc. (now Rettew Associates), dated March 15, 1996, Drawing No. DP-1, said tract being more fully bounded and described as follows:

BEGINNING at a point at the intersection of the South right-of-way line of East Walnut Street and the East right-of-way line of North Shippen Street; thence along the South right-of-way line of said East Walnut Street, North eighty-one (81) degrees forty-five (45) minutes thirty-seven (37) seconds East, a distance of ninety-four and sixty-nine hundredths (94.69) feet to a point, the Northwest corner of property of Samuel M. Kline; thence along the property of said Samuel M. Kline, the following seven (7) courses and distances: (1) South eight (8) degrees twenty-four (24) minutes fifteen (15) seconds East, a distance of sixty-three and fifty-five hundredths (63.55) feet to a point, (2) North sixty-nine (69) degrees fifty-nine (59) minutes thirty-seven (37) seconds East, a distance of ten and eleven hundredths (10.11) feet to a point, (3) North eight (8) degrees twenty-four (24) minutes twenty-three (23) seconds West, a distance of thirteen and two hundredths (13.02) feet to a point, (4) North eighty-one (81) degrees fifty-four (54) minutes thirty-seven (37) seconds East, a distance of seventy-eight and eighty-five hundredths (78.85) feet to a point, (5) North eight (8) degrees forty-three (43) minutes twenty-three (23) seconds West, a distance of twenty-and fifty hundredths (20.50) feet to a point, (6) North eighty-one (81) degrees fifty-four (54) minutes thirty-seven (37) seconds East, a distance of forty-seven and fifty-six hundredths (47.56) feet to a point, and (7) North eight (8) degrees forty-three (43) minutes twenty-three (23) seconds West, a distance of twenty-eight and thirty hundredths (28.30) feet to a point on the south right-of-way line of aforesaid East Walnut Street; thence along the south right-of-way lines of said East Walnut Street, the following three (3) courses and distances: (1) North eighty-one (81) degrees forty-five (45) minutes thirty-seven (37) seconds East, a distance of one and fifty-nine hundredths (1.59) feet to a point, (2) on a curve to the right having a central angle of ten (10) degrees thirteen (13) minutes zero (00) seconds, a radius of six hundred twenty-one and no hundredths (621.00) feet, an arc of one hundred ten and seventy-three hundredths (110.73) feet, a tangent of fifty-five and fifty-one hundredths (55.51) feet, a chord bearing of North eighty-six (86) degrees fifty-two (52) minutes seven (07) seconds East, and a chord distance of one hundred ten and fifty-nine hundredths (110.59) feet to a point, and (3) South eighty-eight (88) degrees one (01) minute twenty-three (23) seconds East, a distance of twenty-nine and seventy-five hundredths (29.75) feet to a point, a corner of property of Weinstein Supply Corp.; thence along property of said Weinstein Supply Corp. the following three (3) courses and distances: (1) South one (01) degree fifty-eight (58) minutes thirty-seven (37) seconds West, a distance of sixty-five and twenty-five hundredths (65.25) feet to a point, (2) South seventy-five (75) degrees fourteen (14) minutes thirty-seven (37) seconds West, a distance

of forty-six and eighty-three hundredths (46.83) feet to a point, and (3) South nine (09) degrees forty (40) minutes twenty-three (23) seconds East, a distance of ten and forty-six hundredths (10.46) feet to a point, the northeast corner of property of Raymond R. Buckwalter; thence along property of said Raymond R. Buckwalter, the following four (4) courses and distances: (1) South seventy-five (75) degrees twenty-six (26) minutes thirty-seven (37) seconds West, a distance of one hundred forty-two and twenty-five hundredths (142.25) feet to a point, (2) South thirteen (13) degrees thirty-three (33) minutes twenty-three (23) seconds East, a distance of one and thirty hundredths (1.30) feet to a point, (3) South eighty (80) degrees fifty-eight (58) minutes fifty-two (52) seconds West, a distance of seventy-one hundredths (0.71) feet to a point, and (4) South nine (09) degrees thirteen (13) minutes zero (00) seconds East, a distance of seventy-two and thirty hundredths (72.30) feet to a point on the north line of Tobacco Avenue; thence along the north line of Tobacco Avenue, South eighty (80) degrees forty-three (43) minutes twenty-four (24) seconds West, a distance of one hundred seventy (170) feet to a point on the east right-of-way line of aforesaid North Shippen Street; thence along the east right-of-way line of said North Shippen Street, North nine (09) degrees thirteen (13) minutes zero (00) seconds West, a distance of one hundred eighty-seven and forty-six hundredths (187.46) feet to the point of **BEGINNING.**

CONTAINING 44,160 square feet (1.014 Acres).

UNDER AND SUBJECT to the following easements, licenses and reservations to the extent that they are presently in full force and effect:

1. Easement of one half (1/2) of a twenty (20) foot wide alley or space along the east properly line of the premises.
2. Reservations as more fully set forth in instrument recorded in Record Book O, Volume 64, Page 46.
3. Easement of an eleven (11) foot wide alley extending northwardly across the property from Tobacco Avenue to former railroad siding.
4. Grant of Easement in Declaration of Restrictive Covenants as set forth in Deed Book H, Volume 88, Page 119, and Amendment thereto as set forth in Deed Book W, Volume 88, Page 214.
5. All conditions, restrictions, easements, etc. shown on the Declaration Plan referred to above which is intended for recording in the Recorder's Office in and for Lancaster County, Pennsylvania.

Exhibit B
North Shippen Place, A Condominium
Schedule of Common Interest, Common Expense Liability and Votes

Unit No.	Use	Square Footage	Common Interest/	Common Expense Liability	Votes
<u>R.H. Brubaker Building</u>					
021	Commercial	975	1.81%		181
022	Commercial	1,410	2.61%		261
023	Residential	618	1.15%		115
024	Commercial	1,000	1.85%		185
025	Commercial	1,225	2.27%		227
120	Residential	985	1.83%		183
121	Residential	907	1.68%		168
122	Residential	800	1.48%		148
123	Residential	1,000	1.85%		185
124	Residential	1,155	2.14%		214
125	Residential	1,155	2.14%		214
220	Residential	1,027	1.90%		190
221	Residential	854	1.58%		158
222	Residential	1,174	2.18%		218
223	Residential	988	1.83%		183
224	Residential	1,155	2.14%		214
225	Residential	1,155	2.14%		214
320	Residential	1,027	1.90%		190
321	Residential	854	1.58%		158
322	Residential	1,174	2.18%		218
323	Residential	988	1.83%		183
324	Residential	1,155	2.14%		214
325	Residential	1,155	2.14%		214
420	Residential	1,027	1.90%		190
421	Residential	854	1.58%		158
422	Residential	1,174	2.18%		218
423	Residential	988	1.83%		183
424	Residential	1,155	2.14%		214
425	Residential	1,155	2.14%		214
<u>Franklin Bare Building</u>					
030	Commercial	2,500	4.63%		463
130	Residential	1,197	2.22%		222
131	Residential	1,197	2.22%		222
132	Residential	1,197	2.22%		222
133	Residential	1,197	2.22%		222
134	Residential	1,197	2.22%		222
<u>A.B. Hess Building</u>					
010	Commercial	814	1.51%		151
011	Residential	1,050	1.95%		195
012	Commercial	740	1.37%		137
110	Commercial	1,800	3.34%		334
111	Residential	1,170	2.17%		217
210	Residential	930	1.72%		172
211	Residential	1,069	1.98%		198
212	Residential	1,139	2.11%		211
310	Residential	962	1.78%		178
311	Residential	1,132	2.10%		210
312	Residential	1,150	2.13%		213
410	Residential	962	1.78%		178
411	Residential	1,132	2.10%		210
412	Residential	1,150	2.13%		213