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DECLARATION OF CONDOMINIUM

OF

5859 BEACON

A CONDOMINIUM

Pursuant to the provisions of the
Pennsylvania Uniform Condominium Act,
68 Pa. C.S. §3101 *et. seq.*, as amended

Dated as of October 11, 2005

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**DECLARATION
OF
5859 BEACON

A CONDOMINIUM**

ARTICLE I

SUBMISSION; DEFINED TERMS

Section 1.1 Declarant; Property; County; Name. S & W Investment Properties, LLC, a Pennsylvania Limited Liability Company ("Declarant"), owner in fee simple of the Real Estate described in Exhibit "A" attached hereto, located in the City of Pittsburgh, Allegheny County, Pennsylvania, hereby submits the Real Estate, including all easements, rights and appurtenances thereunto belonging and the Buildings and improvements erected or to be erected thereon (collectively, the "Property") to the provisions of the Pennsylvania Uniform Condominium Act, 68 Pa. C.S. §3101 *et seq.* (the "Act"), and hereby creates with respect to the Property a condominium, to be known as "5859 Beacon" (the "Condominium"); in PBV 052, Page 6.

Section 1.2 Easements and Licenses. Included among the easements, rights and appurtenances referred to in Section 1.1 above are the following recorded easements and licenses, and the Real Estate is hereby submitted to the Act:

- (a) Coal and mining rights and all rights and privileges incident to the mining of coal heretofore conveyed or reserved by instruments of record; rights of surface, lateral or subjacent support; or any surface subsidence;
- (b) Easements and servitudes apparent from an inspection of the premises; and
- (c) Zoning ordinances of the City of Pittsburgh.

Section 1.3 Defined Terms.

(a) Capitalized terms not otherwise defined herein or in the Plats and Plans shall have the meanings specified or used in the Act.

(b) The following terms are used or defined in general terms in the Act and shall have specific meanings herein as follows:

- (i) "Annual Assessment" means an individual Unit's share of the anticipated Common Expenses for each fiscal year as reflected in

the budget (or any revision thereof) adopted by the Association for such year, and collected on a monthly basis.

- (ii) "Architect" means Renaissance 3 Architects ("R3A") and its successors and assigns.
- (iii) "Assessment" means Annual Assessment or Special Assessment, as the case may be.
- (iv) "Association" means the Unit Owners' Association of the Condominium and shall be known as the "5859 Beacon Condominium Association."
- (v) "Balcony" means those balcony(ies) appurtenant to some or all of the Units, as shown on the Plats and Plans.
- (vi) "Building(s)" means any building(s) included in the Property.
- (vii) "Bylaws" means the document having the name and providing for the governance of the Association pursuant to Section 3306 of the Act, as such document may be amended from time to time.
- (viii) "Common Elements" is defined in **Article IV**. The term "Common Elements" shall include Limited Common Elements unless otherwise designated and distinguished.
- (ix) "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocation to reserves.
- (x) "Condominium Documents" means, collectively, the Public Offering Statement, this Declaration, the Plats and Plans, the Bylaws, the Rules and Regulations, and the Maintenance Manual, as the same may be amended from time to time.
- (xi) "Condominium Property" means the Property described in **Section 1.1** above.
- (xii) "Deck(s)" means those deck(s) appurtenant to some or all of the Units, as shown on the Plats and Plans.
- (xiii) "Declarant" means the Declarant described in Section 1.1 above and all successors to any Special Declarant Rights.

- (xiv) "Declaration" means this document, as the same may be amended from time to time.
- (xv) "Executive Board" means the Executive Board of the Association.
- (xvi) "General Common Expenses" means Common Expenses excluding Limited Common Expenses.
- (xvii) "Limited Common Elements" means the Common Elements as defined in Section 4.2 and in the Act.
- (xviii) "Limited Common Expenses" means those Common Expenses described as such in Section 3314(c) of the Act, as modified by this Declaration, incurred in relation to Limited Common Elements.
- (xix) "Maintenance Manual" means the manual to be prepared and distributed to all Unit Owners and to the Association pursuant to Article VII of the Bylaws.
- (xx) "Material Improvements" is defined in Section 3.3.
- (xxi) "Outdoor Parking Area" means the outdoor area on the Plats and Plans used for the purpose of loading and unloading commercial vehicles, and as further defined in Section 18.4.
- (xxii) "Parking Garage" means the covered parking garage located in the lowest floor of the Building containing a minimum of forty-one (41) parking spaces as shown by the Plats and Plans, as further defined in Section 18.4.
- (xxiii) "Parking License" is defined in Section 18.4.
- (xxiv) "Patio" means the patio as shown on the Plats and Plans.
- (xxv) "Percentage Interest" means the undivided ownership interest in the Common Elements appurtenant to each Unit as set forth in Exhibit "B" attached, as the same may be amended from time to time in accordance with this Declaration and the Act.
- (xxvi) "Permitted Mortgage Holder(s)" is defined in Section 8.1.

- (xxvii) "Permitted Mortgage" means a [first] mortgage to (i) 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, real estate investment trust or like institutional investor or lender; and (iv) any other mortgagee approved by the Executive Board. A holder of a Permitted Mortgage is referred to herein as a "Permitted Mortgagee".
- (xxviii) "Plats and Plans" means the Plats and Plans attached hereto as **Exhibit "C"** and made a part hereof, as the same may be amended from time to time.
- (xxix) "Property" means the Property described in **Section 1.1** above.
- (xxx) "Public Offering Statement" means the statement issued by Declarant pursuant to Section 3402 of the Act.
- (xxxii) "Reserved Common Elements" means portions of the Common Elements which the Executive Board may designate as such from time to time pursuant to Section 3.12 hereof.
- (xxxiii) "Rules and Regulations" means the Rules and Regulations as may be adopted and amended from time to time by the Executive Board pursuant to the Act, the Declaration or the Bylaws, including without limitation, those related to the Parking Garage and the Outdoor Parking Area.
- (xxxiv) "Size" means the Size of a Unit as defined in **Section 2.1**.
- (xxxv) "Special Assessment" means an individual Unit's share of any assessment made by the Association in addition to the Annual Assessment.
- (xxxvi) "Unit" means a Unit as described herein and in the Plats and Plans.
- (xxxvii) "Unit Owner" means the owner of fee simple legal title to a Unit and not the purchaser of a Unit under an executory contract.

Section 1.4 Provisions of the Act. The provisions of the Act shall apply to and govern the operation and management of the Condominium Property, except to the extent that contrary provisions not prohibited by the Act, are contained in this Declaration or any other of the Condominium Documents.

EXHIBIT "1"

<u>Unit Number</u>	<u>% of Total</u>	
101	4.20%	
102	3.53%	
104	2.85%	
105	3.17%	
106	3.45%	
107	3.63%	
108	3.06%	
201	4.24%	
202	2.64%	
203	2.87%	
204	3.54%	
205	3.63%	
206	3.70%	
207	3.63%	
208	3.06%	
301	4.24%	
302	2.64%	
303	2.87%	
304	3.54%	
305	3.63%	
306	3.70%	
307	6.83%	
401	4.44%	
402	4.39%	
403	4.22%	
404	4.19%	
405	<u>4.10%</u>	
	100.00%	total

ARTICLE II

ALLOCATION OF PERCENTAGE INTERESTS, VOTES AND COMMON EXPENSE LIABILITIES; UNIT IDENTIFICATION AND BOUNDARIES

Section 2.1 Percentage Interests. Attached as Exhibit "B" hereto is a list of all Units by their Identifying Numbers and the Percentage Interest appurtenant to each Unit. The "size" of each Unit is the total number of square feet of floor space contained therein determined by reference to the dimensions shown on the Plats and Plans. The Percentage Interest is determined on the basis of size, by dividing the "size" of the Unit by the aggregate of the "sizes" of all Units. The Percentage Interest shall determine the portion of the votes in the Association and the share of Common Expense Liability appurtenant to each Unit.

Section 2.2 Unit Boundaries. Each Unit consists of the space within the Upper and Lower (Horizontal) Boundaries as set forth in below in Section 2.4 and Section 2.5.

Section 2.3 Relocation of Unit Boundaries; Subdivision and Conversion of Units. Relocation of boundaries between Units and subdivision or conversion of Units will be permitted subject to compliance with the provisions therefor in §§3214 and 3215 of the Act. Subdivision or conversion of Units by the Declarant pursuant to §3215(c) of the Act may not result in more than one (1) additional Unit.

Section 2.4 Upper and Lower (Horizontal) Boundaries. The upper and lower boundaries of a Unit shall be the following boundaries extended to an intersection with the vertical boundaries;

(a) Upper Boundaries. For the interior portion of all the Units, the upper boundary of the Unit shall be the horizontal plane of the bottom surface of the exposed steel decking. The Unit includes any finished ceiling material installed below the exposed steel decking.

(b) Lower Boundaries. For the interior portion of all Units, the lower boundary will be the horizontal plane of the top surface of the unfinished concrete floor. The Unit includes the thickness of any finishing material, such as carpeting, padding, wood, tile, linoleum or other similar flooring.

Section 2.5 Vertical Boundaries.

(a) For the interior portion of all Units, the vertical boundaries shall consist of the following:

- (i) For exterior walls, the boundary will be the vertical plane of the Unit side surface of the exterior metal studs used to attach the Unit drywall material and the Unit side surface of glass, window frames and door frames within the perimeters of the exterior metal stud frame walls;
- (ii) For other walls not including walls between two or more units, the boundary will be the vertical plane of the Unit side surface of the metal studs used to attach the Unit drywall material;
- (iii) For corridor walls which divide the Unit from the adjacent corridor, the Unit side surface of the metal studs used to attach the Unit drywall, and the Unit side surface of the door and door frame providing access to the Unit from the adjacent corridor; and
- (iv) For Units that abut another Unit, walls between two or more units, the boundary will be the vertical plane of the Unit side surface of the metal stud used to attach the Unit drywall which divides the Unit from an adjacent Unit.

The Unit shall include the thickness of any drywall, paint, wallpaper, or similar material attached to the material designating any such vertical boundary.

- (b) Unless other wise designated herein, all portions of the Property located within the Unit boundaries, including (by way of illustration and not limitation) the following, are part of the Unit:
 - (i) The air space enclosed within the Unit boundaries, except the air space displaced by structural member; by supporting walls; by furred utility shafts or pipes or similar conduits within or passing through each Unit and by other Common Elements within each Unit; such as chutes, flues, ducts, wires, conduits, chases, and pipe runs that serve more than one Unit;
 - (ii) All partitions and walls which are wholly contained within the Unit boundary lines, including, without limitation, door frames, hardware, electrical outlets and wiring, communication outlets and conduits, and other items and devices in such partitions (except to the extent otherwise expressly provided herein);
 - (iii) All glass, including the interior and exterior surfaces thereof; including that which is set in sash in the exterior wall of the Units.

The outside window sills (except the Unit-side surface of such window sills) are Common Elements;

- (iv) All paint, wall covering, ceiling covering, floor covering, drywall, wall board and similar materials and substances inside the Unit;
- (v) All plumbing fixtures, and their water and waste connections, which serve only such Unit;
- (vi) Bathroom and kitchen exhaust grills and registers which serve only the Unit;
- (vii) All items of kitchen equipment, and their water, waste, gas and electrical connections, which serve only the Unit and which are located within the Unit;
- (viii) Lighting devices, including, by way of illustration and not limitation, lamps and bulbs which are surface mounted on, recessed in, or suspended from, ceilings, walls and partitions within or on the perimeter of such Unit, provided such lighting devices are themselves located within the boundaries of such Unit;
- (ix) Wires, cables, conduits, circuits and related equipment transmitting electricity for lighting and power or transmitting electrical or communication signals (except to the extent otherwise specifically provided herein), which serve only such Unit;
- (x) Telephone and television outlets, wires, cables and conduits serving only such unit, whether or not such telephone outlets, wires, cables and conduits are located entirely within the boundaries of such Unit;
- (xi) Refrigerators, ranges, microwave ovens, freezers, dishwashers and other appliances and the portions of their water, waste, gas, electrical and exhaust connections which serve only such Unit and which are not located within any exterior wall, or interior wall or partition separating a Unit from any adjoining Unit or Common Element. However, this provision shall not be construed as granting any Unit Owner the right to operate any appliance in his Unit if such Unit Owner is obligated to obtain approval of such use by this Declaration, the Bylaws or the Rules and Regulations;

- (xii) All HVAC and or furnaces, condensing units and vents and all pipes, lines and other connections therefor which serve only such Unit and are located within said Unit; and
- (xiii) All drop-ceilings, tiles, supports and similar installations and all air space between the Upper Horizontal Boundary and such installation.

Section 2.6 Voting. The total number of votes allocated to all Units shall be 100, excluding any rounding of insignificant fractional interests. The number of votes allocated to each Unit shall be equal to the Percentage interest allocated to that Unit.

ARTICLE III

UNIT, COMMON ELEMENT AND LIMITED COMMON ELEMENT CONSTRUCTION AND MAINTENANCE RESPONSIBILITIES AND UNIT RECONSTRUCTION

Section 3.1 Initial and Subsequent Work. The provisions hereof shall apply to all work done for or on behalf of the initial Unit Owner of each Unit in preparing his or her Unit for occupancy and thereafter, as well as to all subsequent Unit Owners, except where the work is performed by or through Declarant.

Section 3.2 Unit Maintenance Responsibilities. Each Unit Owner shall be responsible for and shall pay the cost of the maintenance, repair and replacement of all or any portion of his Unit, including cleaning all interior or exterior doors and glass window panes in or appurtenant to his Unit. Notwithstanding the foregoing, the Association shall, upon notice from and at the sole cost of each Unit Owner, be responsible for the replacement of (a) all doors between the Unit and (i) the appurtenant Balcony and/or Deck or (ii) the adjacent corridor, and (b) glass windows in or appurtenant to the Units; if any exterior window glass shall break, the Unit Owner shall notify the Association, the Association shall repair such glass and charge the cost thereof to the Unit Owner, and such cost shall be treated as a Special Assessment due from such Unit Owner. All maintenance, repair, decoration and replacement by Unit Owners shall be in a manner which will not impair the structural integrity or appearance of the Building or impair any mechanical, plumbing or electrical system therein. The materials and workmanship used in such maintenance, repair, decoration or replacement by Unit Owners shall be of the same type and quality as were originally provided in the Unit and are subject to condominium specifications designated from time to time by the Executive Board and to the approval of the Executive Board.

Maintenance, repairs and replacements of flooring, trim, the refrigerators, ranges, and other kitchen appliances, HVAC system, equipment, vanities, mirrors, shelving and similar matters including, without limitation, all decorations, wall coverings and paint of any Unit shall be at the expense of such Unit Owner.

Limited Common Elements shall be maintained and repaired by each Unit Owner and/or by the Association if a Unit Owner fails to maintain a Limited Common Element. All Expenses associated with the maintenance, repair and replacement of a Limited Common Element not paid by a Unit Owner shall be assessed as a Limited Common Expense against the Unit to which such Limited Common Element was assigned and such cost shall be treated as a Special Assessment due from such Unit Owner. Limited Common Expenses relating to the maintenance, repair and replacement of Parking Space Limited Common Elements shall be assessed in equal shares against all Units to which Parking Space Limited Common Elements are assigned.

Section 3.3 Material Improvements. Any construction, maintenance, repair or replacement which might affect the structural integrity or appearance of the Building from the interior or the exterior or any other Unit or Common Elements or any mechanical, plumbing or electrical system (a "Material Improvement") shall require written approval of the Association as to materials and design. Further, any such undertaking which is inconsistent with the architectural design of the Condominium or Building is prohibited. Each Unit Owner shall be required to repair or replace, at such Unit Owner's sole expense, any portion of his Unit which, if not repaired and replaced, would adversely affect the structural integrity or appearance of the Building or Common Elements or adversely affect another Unit in any manner. If a penetration of any part of the dry wall or similar wall material results in damage to any part of an electrical system or in damage of any other nature or adversely affects the Building's fire rating, it will be the responsibility of the Unit Owner to promptly correct same and to pay any costs caused thereby or related thereto. At the discretion of the Executive Board, if a penetration of any part of the dry wall or similar material results in an interference with the ability of the Association or its agent to have access to the Common Elements behind the drywall, it shall be the responsibility of the Unit Owner to promptly remove the interference. If any Unit Owner fails to comply with any of the requirements of the preceding sentences, the Association may in its sole discretion make such repair or replacement and assess the expense thereof against such Unit Owner as a Special Assessment.

Section 3.4 Maintenance of Common Elements and Limited Common Elements. Except as set forth or referenced in Section 3.3, this Section 3.4 or Section 3.5, the operation, maintenance, repair, improvement and replacement of Common Elements shall be the responsibility of the Association. However, each Unit Owner shall be responsible for and shall pay the cost of the ordinary maintenance, repair and replacement of all or any portion of a Limited Common Element appurtenant to his Unit, including but not limited to those portions of furnaces and condensing units and all pipes, lines and other connections thereto not located within a Unit, and also Balconies and Decks, railings and fences.

Section 3.5 Decorating and Maintenance of Units. Each Unit Owner shall furnish and be responsible for, at his own expense, all of the decorating within his or her own Unit (after initial installation by Declarant, if any), including painting, wall papering, washing, cleaning paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and

interior decorating. Subject to any Rules and Regulations pertaining thereto, each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the Unit in good condition at the Unit Owner's sole expense. No work will be carried out by any Unit Owner which could affect any other Unit Owner or the Common Elements except in accordance with this **Article III**. The interior and exterior surfaces of all windows forming part of the perimeter wall of a Unit shall be cleaned or washed at the expense of each respective Unit Owner. The use of and the covering of the interior surfaces of the glass of all doors and windows, whether by draperies, shades or other items visible on the exterior of the Building or visible from the outdoors, shall be subject to the reasonable control of the Association as set forth in **Section 7.2**. **Decorating of the Common Elements, exclusive of the Limited Common Elements, shall be furnished by the Association as part of the General Common Expenses. Also see Section 7.2 hereof as to Balconies and Decks.**

Section 3.6 Maintenance of Equipment, Fixtures, etc. To the extent that equipment, facilities and fixtures within the Unit or Units shall be connected to equipment, facilities or fixtures affecting or serving other Units or the Common Elements, then the use thereof by the individual Unit Owners shall be subject to the control of the Association. The authorized representatives of the Executive Board, or of the manager or Managing Agent for the Building, shall be entitled to reasonable access to the individual Units as may be required in connection with maintenance, repairs, or replacements of or to the Property or any equipment, facilities or fixtures affecting or serving other Units or any other portion of the Condominium Property.

Maintenance, repairs and replacements of any lines or facilities for the bringing of water, electricity, communication services and other utilities to the Building and to any lines or facilities serving more than one Unit or a Unit and Common Elements, shall be furnished as a part of the Common Expenses. All such lines and facilities within the Unit or serving only a Unit, by way of illustration and not limitation, furnaces, water closets, air handling units servicing the Units, condensing units servicing the Units located on the roof, and service lines leading from a meter to the Unit or from the Unit to a line serving more than the Unit or the Unit and Common Elements, shall be a Unit Owner expense.

Section 3.7 Plan Approval. In addition to the requirements, rights and restrictions set forth in **Sections 3.1, 3.3, 3.5 and 3.6** above, any Material Improvement must be in accordance with **Sections 3.8 or 7.2 (n)** and must be carried out pursuant to plans and specifications prepared by an architect or engineer licensed in Pennsylvania and submitted to the Association for prior approval, said approval not to be unreasonably withheld or delayed. The Unit Owner shall pay the reasonable costs and expenses incurred by the Association in connection with such review and/or approval; such costs and expenses may be assessed against the applicable Unit Owner as a special assessment.

Section 3.8 Other Requirements. As to any construction, replacement or maintenance by a Unit Owner, excepting periodic cleaning:

(a) Any contractor(s) to be used must be approved by the Association. In deciding whether or not to approve such contractor(s), the Executive Board may consider, among other things, the financial responsibility and stability of the contractor(s) and its ability and capability to work harmoniously with other contractors then working in the Building.

(b) The Unit Owner shall at the Unit Owner's expense obtain all permits and licenses, including an occupancy permit if appropriate, necessary for any work and shall provide the Association with copies thereof. All contracts for which a mechanics' lien might be filed shall include a "no lien" agreement, and proof of filing same prior to construction start shall be provided to the Association. All work must comply with all applicable municipal codes, rules and regulations.

(c) All costs related to any Material Improvement or the approval thereof by the Association, including without limitation, the cost of the Association's architect's review, shall be paid by the Unit Owner. The Executive Board may require the posting of a deposit, surety bond or other financial security to cover such costs as it in its sole reasonable discretion deems necessary;

(d) The contractor shall provide evidence of general liability and worker's compensation insurance coverage in form and substance acceptable to the Executive Board;

(e) All work will be done under no-lien contracts.

Section 3.9 Maintenance Manual. Please refer to the Bylaws and to the Maintenance Manual and the obligations for maintenance to be carried out pursuant thereto.

Section 3.10 Remedies. Upon failure of any person to comply with the foregoing provisions, the Executive Board may, after notice to the Unit Owner, take such action as may be necessary to effect compliance with the foregoing and assess the cost thereof to such Unit Owner pursuant to **Section 10.6** as if it were a Common Expense. This Section shall not be deemed to limit any other remedy that the Executive Board may have.

Section 3.11 Parking and Storage Limited Common Elements. Portions of the Common Elements are marked on the Plats and Plans as "Limited Common Elements". Declarant reserves the right to make the initial assignment of the parking spaces pursuant to **Section 18.4** and storage areas as Limited Common Elements for the exclusive use of certain Unit Owners to whose Units these parking spaces and storage areas shall become appurtenant. Declarant may assign such Common Elements as Limited Common Element parking spaces or storage areas pursuant to the provisions of Section 3209(c) of the Act by making such an assignment in a written instrument of assignment or in the deed to the Unit to which such

Limited Common Element parking space and/or storage area shall be appurtenant or by recording an appropriate amendment to this Declaration. Such assignments by Declarant may be to Units owned by Declarant. Limited Common Element parking spaces may be owned only by Declarant or a Unit Owner for use by Declarant or Unit Owner or a tenant who resides in the building.

Section 3.12 Designation of Reserved Common Elements. Reserved Common Elements are those parts of the Common Elements which the Executive Board may designate time to time for use by less than all of the Unit Owners or by non-owners of any Unit for conditions for use as may be established by the Executive Board.

ARTICLE IV

DESCRIPTION OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 4.1 Common Elements. The Common Elements are all portions of the Condominium Property that are not included in any Unit but exclude parking spaces in the Parking Garage subject to Parking Licenses and all other Limited Common Elements. An undivided interest in such Common Elements is hereby allocated to all Units on the basis of their respective Percentage Interests. Common Elements include, without limitation, the following:

- (a) The foundations, structural parts, supports, main-walls, common walls separating Units from other Units, or from Common Elements, all roofs, lobbies, hallways, stairways and entrances and exits to the Condominium Property;
- (b) Yards, trees, shrubbery, grass, walkways, driveways, vehicular ramps and similar improvements, excepting that which is noted in **Section 4.2**;
- (c) All apparatus and installations existing for common use, including, without limitation, exterior building improvements, exterior patio(s), railings, fences and roofs;
- (d) Any furnaces, condensing units and all pipes, lines and other connections therefor that service the Common Elements;
- (e) Those areas defined as Common Elements in the Act;
- (f) All air space above the surface of the Land, excluding the air space enclosed by any Unit, and all soil and other elements below the surface of the Real Estate as the same may be limited by **Exhibit "A"**.
- (g) All elevators located within the Condominium Property and all areas

adjacent thereto, notwithstanding the fact that certain elevators may service only certain Units and may otherwise be considered Limited Common Elements under the Act; and

(h) Portions of the Parking Garage not subject to Parking Licenses until so licensed, and the Outdoor Parking Area.

Section 4.2 Limited Common Elements. Limited Common Elements shall, without limitation, include:

- (a) All utility lines, pipes and ducts which serve one or two Units combined but which are not located within the boundaries of such Unit or combined Units;
- (b) Those portions of the Common Elements which may from time to time be designated by the Executive Board as Limited Common Elements;
- (c) Parking spaces subject to Parking Licenses in the Parking Garage;
- (d) All portions of furnaces, condensing units and vents and all pipes, lines and other connections therefor which serve individual Units not within the boundaries of said Units or which are located on the Building roof;
- (e) Balconies and Decks, (including any railings or fences attached thereto), appurtenant to and which serve a Unit;
- (f) Doors between Units and the Balcony, Deck or adjacent corridor;
- (g) Any other areas designated as Limited Common Elements in the Plats and Plans or so defined in the Act, and not otherwise designated herein.

Section 4.3 Description of Common Elements as Limited Common Elements. The Executive Board (and the Declarant subject to Section 18.4 hereof) shall have the authority, pursuant to Section 3209(c) of the Act to allocate and designated portions of the Common Elements as Limited Common Elements.

Section 4.4 Balcony and Deck Boundaries. Each Balcony and Deck consists of the space within the Upper and Lower (Horizontal) Boundaries and the Vertical Boundaries as hereinafter set forth.

(a) Upper and Lower (Horizontal Boundaries). The upper and lower boundaries of a Balcony or Deck shall be the following boundaries extended to an intersection with the vertical boundaries:

- (i) Upper Boundaries. For all Balconies, the upper boundary shall be the horizontal plane of the bottom of the exposed steel decking. For all Decks, the upper boundary shall be ten (10) feet above the unfinished floor surface or paver stone, of the appurtenant Unit.
- (ii) Lower Boundaries. For all Balconies, the lower boundary shall be the top of the unfinished concrete floor surface of the Balcony. The lower boundary of a Balcony shall include any waterproofing membrane on top of the unfinished concrete floor. For all Decks, the lower boundary shall be the horizontal plane at the bottom of the unfinished paver stones.

(b) Vertical Boundaries. For all Balconies, the vertical boundaries shall be the Balcony side surface of all walls, railings or fences bordering such Balcony and vertical planes extending upward or downward therefrom to the intersections with the respective upper or lower boundary of such Balcony, including the exterior finished surface of any glass, window, window frame, door or door frame located therein. For all Decks, the vertical boundaries shall be the Deck side surface of the Building, walls, railings or fences bordering such Deck or to the extent that the Deck is not enclosed, the perimeter lines shown on the Plats and Plans, and vertical planes extending upward for ten (10) feet or downward therefrom to the intersections with the respective upper or lower boundary of such Deck, including the exterior finished surface of any glass, window, window frame, door or door frame located therein.

ARTICLE V

EASEMENTS

Section 5.1 Additional Easements. In addition to and in supplementation of the easements provided for by §§3216, 3217 and 3218 of the Act and those described in Section 1.2 hereof, the following easements are hereby created:

Section 5.2 Declarant's Use for Sales Purposes. Declarant shall have the right to maintain models, management offices and sales offices on the Property in Units or in Common Areas. The models, management offices, and sales offices shall be subject to the following requirements:

- (a) The number and use of any Unit owned by Declarant is subject to his discretion. Models may also be used as sales, management and construction offices;
- (b) Declarant shall have the right to place models, management offices, sales offices and advertising signs on any portion of the Common Elements in such locations as Declarant deems appropriate;

(c) Declarant may from time to time relocate models, management offices, sales offices and advertising signs to different locations within Units or the Common Elements. Upon the relocation of a model, management office or sales office constituting a Common Element, Declarant may remove all personal property and fixtures therefrom. Such activities by Declarant shall all be at Declarant's expense.

Section 5.3 Utility Easements. The Units and Common Elements shall be, and are hereby, made subject to easements in favor of the Declarant, the Association, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property. The easements created in this Section 5.4 shall include, without limitation, rights of Declarant, the Association, or the providing utility or service company, or governmental agency or authority to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise), electric wires, conduits and equipment and ducts and vents over, under, through, along and on the Units and Common Elements. Notwithstanding the foregoing provisions of this Section 5.3, unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Unit by the Declarant, or so as not to materially interfere with the use or occupancy of the Unit by its occupants.

Section 5.4 Easement to Correct Drainage. Declarant or Association reserves an easement on, over and under those portions of the Common Elements not located within a Building for the purpose of maintaining and correcting drainage of surface water in order to maintain reasonable standards of health, safety and appearance. The easement created by this Section 5.4 expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil, or to take any other action reasonably necessary to achieve this purpose, following which Declarant or the Association shall restore the affected property as closely to its original condition as practicable.

Section 5.5 Signs. Declarant shall have the right to maintain on the property such advertising signs as Declarant, in its sole discretion, may deem appropriate provided that such signs comply with applicable governmental requirements. Declarant may from time to time relocate such advertising signs.

Section 5.6 Construction Easements. Until the expiration of five (5) years after the date hereof, the Declarant shall have an easement through the Units and the Common Elements for access or any other purposes necessary to complete any renovations or work to be performed by the Declarant.

Section 5.7 Maintenance Easements. The Condominium shall be subject to the following easements:

(a) An easement over the Common Elements in favor of the Association, acting through its agents, employees and independent contractors for purposes of the inspection, operation, maintenance, repair, improvement and replacement of the Common Elements;

(b) An easement over the Common Elements in favor of each Unit Owner for the maintenance, use, repair, improvement, removal and replacement of pipes, ducts, heating, ventilating and air conditioning systems, electrical, telephone and other wiring and cables and all other utility lines and conduits which are a part of or serve a Unit and which pass across or through a different Unit or the Common Elements; provided, however, that any work performed within such Common Elements shall be performed by the Association but the work thereof shall be assessed as set forth herein;

(c) An easement over and through the Units in favor of the Association acting through its agents, employees and independent contractors: (i) for inspection of the Units in order to verify the performance by Unit Owners of all items of maintenance, repair and replacement for which they are responsible, (ii) to carry out inspections and maintenance required by the Maintenance Manual, (iii) for inspection, operation, maintenance, repair, improvement and replacement of the Common Elements and facilities contained therein situated in or accessible from such Units, and (iv) for correction of emergency conditions in one or more Units or Limited Common Elements, or both, or casualties to the Common Elements, Limited Common Elements and/or the Units. The Association and its agents, employees and independent contractors shall take reasonable steps to minimize any interference with a Unit Owner's use of his Unit resulting from the Association's exercise of any rights it may have pursuant to this **Section 5.7(c)**.

(d) Wherever in this Declaration and the Plats and Plans a boundary of a Unit is described as being the Unit-side surface of a designated portion of the Condominium Property, or the plane formed thereby, an easement exists in favor of the Unit Owner for the purposes of decorating such surfaces and affixing thereto and removing therefrom flooring and floor coverings, wall board, paint, wallpaper, other decorative material, pictures, mirrors, fixtures, wall systems and decorative articles, all at the sole cost, expense and liability of the Unit Owner of such Unit and subject to such Rules and Regulations as the Executive Board may adopt from time to time. The Unit Owners shall be liable to the Association for the cost of repair or restoration of any Common Elements damaged by the exercise of the easement, except to the extent that such damage is caused by a fire or a hazard for which the Association is insured or is required to be insured. The Association, acting on behalf of all Unit Owners, shall at all times while this Declaration is in effect retain the right and duty to maintain, repair, improve and/or replace the portions of the Condominium Property of which said surfaces are a part, notwithstanding the fact that such maintenance, repair, improvement or replacement may temporarily adversely affect the Unit Owner's aforesaid easement and right to use the Unit-side surface of such portion of the Condominium Property.

Section 5.8 Parking Easement. Pursuant to the Parking Easement, the Declarant has agreed to be solely responsible for, inter alia: (i) ice and snow removal, (ii) maintenance of pavement and landscaping and normal wear and tear and (iii) replacement of pavement in the Parking Easement area. The Association, upon recording of this Declaration, will assume all of the Declarant's benefits, obligations and liabilities under the Parking Easement arising and accruing after the date of recording of this Declaration; provided, however, that Declarant shall retain any benefits that it requires in order to complete construction of the Condominium or exercise its rights under the Declaration.

ARTICLE VI

AMENDMENT OF DECLARATION

Section 6.1 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 thereof and the express provisions of this Declaration.

Section 6.2 Rights of Secured Lenders. Notwithstanding the foregoing, subject to the limitations imposed by Section 3221 of the Act and Section 803-08N of the Federal National Mortgage Association (FNMA) requirements and any requirements imposed by the Federal Home Loan Mortgage Corporation (FHLMC), any amendments to or of the Declaration relating to:

- (a) terminating or abandoning the Condominium (except for termination or abandonment through a taking by eminent domain);
- (b) abandoning, encumbering, selling or transferring the Common Elements, except as to reconfiguring of Units;
- (c) partitioning, subdividing, or combining any Unit or the Common Elements (except for the relocation boundaries between Units, and except by the Declarant upon the initial Unit sales or as permitted by Sections 7.2(l) and (m) hereof);
- (d) changing the percentage interests of any Unit Owners (except to the extent square foot area of Units changes as a result of the relocation of boundaries between Units); or
- (e) the use of hazard proceeds for losses to any part of the condominium or its property for purposes other than restoration repair;

shall require approval of the Unit Owners having 67% of the votes in the Association and prior written approval of two-thirds (2/3) and of all Permitted Mortgage Holders, and further the prior

written consent of any Permitted Mortgage Holder with a lien upon any Unit directly affected by (c), (d) or (e) above.

Other amendments relating to: voting, assessments, liens, reserves, insurance, use of Common Elements, maintenance responsibilities, Unit boundaries, Common Element interest, leasing and restrictions on alienation, or Special Declarant's rights shall require approval of the Unit Owners having 67% of the votes in the Association, and of the Declarant so long as it is the owner of a Unit or Units. Any amendment to **Section 6.2** hereof shall require the consent of all of the then Permitted Mortgage Holders.

Section 6.3 Amendments to Cure Ambiguities. Notwithstanding the foregoing or any other provisions of the Declaration to the contrary, if any amendment is necessary in the judgment of the Executive Board to cure any ambiguity or to correct or supplement any provisions of the Condominium Documents that is defective, missing or inconsistent with any other provisions thereof or of the Act, then at any time and from time to time the Executive Board may effect an appropriate corrective amendment without the approval of the Unit Owners upon receipt by the Executive Board of an opinion from legal counsel to the effect that the proposed amendment is permitted by the Act and by the terms of this **Section 6.3**. Each amendment of the type described in this **Section 6.3** shall be effective upon the recording of an appropriate instrument setting forth the amendment and its due adoption, which instrument has been executed and acknowledged by one or more officers of the Executive Board.

ARTICLE VII

USE RESTRICTIONS

Section 7.1 Use of the Property. The use of the Units and of the Common Elements and Limited Common Elements, including the Parking Garage and the Outdoor Parking Area shall be only in accordance with the provisions of (i) the Act, these Declarations, the Plats and Plans, the Bylaws and the Rules and Regulations (in effect from time to time); (ii) all other applicable provisions of law, and of any rules, regulations, orders, decrees or requirements of any governmental or quasi-governmental body or agency or board of fire underwriters; (iii) any covenants, conditions and restrictions in the deed of any Unit; (iv) any mortgage or other instrument affecting that Unit or any other Unit; and (v) those matters set forth in this **Article VII**.

Section 7.2 Use and Occupancy of Units and Common Elements. The occupancy and use of the Units and Common Elements shall be subject to the following restrictions:

- (a) No Unit (except any Unit owned by the Declarant or the Association and used by either of them as manager's quarters or offices, sales offices, models or storage facilities) shall be used for any purpose other than as a residence for the use of one person or one family. For the purpose of this Section, "Family" shall mean (i) two or more

persons related by marriage, adoption or consanguinity or (ii) not more than four person who are not related but who function as a family unit;

(b) A Unit Owner may lease his or her individual Unit; provided however, that a Unit may not be leased by a Unit Owner for a term of less than one (1) year without the consent of the Executive Board. Any lease of a Unit shall be in writing in a form pre-approved by the Executive Board without any material changes, shall contain a clause that makes any breach of any of the Condominium Documents a breach of said lease, and a cause for termination thereof. A copy of each lease must be furnished to the Association within five (5) business days after execution thereof. The rights of any lessee of any Unit shall be subject to, and each of the leases shall be bound by, the covenants, conditions and restrictions contained in any of the Condominium Documents. The Unit Owner of any leased Unit shall be jointly and severally responsible with any tenant for full compliance with all the terms and conditions of the Condominium Documents. No Unit may be subleased;

(c) Declarant may carry on any activities permitted by **Section 5.2** hereof in any Unit owned by Declarant, and nothing contained within **this Article VII** or otherwise shall be deemed to limit its right to sell or lease any and all Units owned by Declarant and to sell Parking Licenses, which rights are expressly retained by the Declarant so long as Declarant owns any Unit. This provision may not be amended without the written consent of the Declarant so long as Declarant is such owner;

(d) Unit Owners may not install any window air conditioners, exhaust fans or any other item which protrudes through a window serving a Unit nor shall any structure or addition, which is visible from the outdoors be placed or maintained upon any exterior door, window, Balcony, Deck or any outside wall of the Building. Except as set forth below, no awning or screen which is visible from the outdoors may be placed or maintained upon any exterior door, window, Balcony, Deck or any outside wall of the Building, nor, without prior written approval of the Executive Board, may any decoration which is visible from the outdoors be placed or maintained upon any exterior door, window, Balcony, Deck or any outside wall of the Building. No Unit Owner (other than Declarant in connection with its marketing or sale of the Unit) may erect any sign on or in a Unit or any Common Element which is visible from the outdoors or the Common Elements;

(e) No awning or screen which is visible from the outdoors may be placed, parked, stored or maintained within or on any Balcony or Deck, without the prior written approval of the Executive Board. Subject to such Rules and Regulations as may be promulgated from time to time by the Executive Board and notwithstanding anything to the contrary contained in **Section 7.2(d)** above, and potted plants may be placed or maintained within or on any Balcony or Deck for personal use (but not for storage). Unit Owners may not modify any landscaping initially installed by the Declarant in or on any Deck or balcony without the prior written approval of the Executive Board;

(f) No industry, business, trade, occupation or profession of any kind, be it commercial, religious, educational or otherwise wherein:

- (i) Customers or clients visit the Unit; or
- (ii) Any merchandise or products are sold from or stored in the Unit; or
- (iii) Any person not a full time resident of the Unit is employed or otherwise engaged in the Unit; or
- (iv) Any smoke, dust or noise not usually found in a dwelling Unit is emitted; or
- (v) Any equipment or machinery is utilized other than a telephone, fax machine, personal computer or printer or similar equipment normally found in a residence;

may be conducted, maintained or permitted in any part of the Condominium Property, except in such areas of the Common Elements that the Executive Board may decide;

(g) No person shall cause or permit a nuisance on the Property and no use or practice shall be permitted on the Condominium Property, including any Balcony or Deck, which is a source of annoyance to Unit Owners or tenants, or which unreasonably interferes with the peaceful possession and proper use of all or any part of the Condominium Property by its Unit Owners and tenants;

(h) No cooking or grilling may be done on any Balcony or Deck unless the Unit Owner has had the gas grill hook up option offered by Declarant installed on the Balcony or Deck of their Unit;

(i) In addition to any restriction contained in the Condominium Documents, all laws, statutes, orders, ordinances, occupancy limitations, rules and regulations of all governmental and quasi-governmental bodies having jurisdiction thereof, including without limitation, zoning laws and regulations, shall be observed at all times;

(j) Nothing shall be done or kept in any Unit or in any Common Elements or Limited Common Elements which might increase the premiums for insurance coverage for the Condominium Property or any part thereof beyond the normal premiums applicable for residential space, without prior written consent of the Association. No Unit Owner shall permit anything to be done or kept in his Unit or the Common Elements (including Limited Common Elements) which will result in the cancellation of insurance on the Condominium Property or any part thereof, or which will be in violation of any law;

(k) The Condominium Property is to be maintained in a clean and sanitary condition, and subject to the rights of and otherwise permitted by, the Declarant in the Declaration, the Bylaws or the Act, no Unit Owner is to place or store any garbage, trash, rubbish, in the Common Elements, or store any personal property in the Common Areas, except as expressly provided for herein, or to permit any unsightly condition to exist therein or thereon or on any Balcony or Deck. There shall be no obstruction of the Common Elements, nor shall anything be stored in the Common Elements, without the prior consent of the Association, unless otherwise provided in the Rules and Regulations;

(l) Upon compliance with the requirements of **Section 7.2(n)** hereof and subject to Sections 3213, 3214 and 3215 of the Act, two or more entire adjacent Units, or with the prior written consent of the Association portions thereof on the same floor or on contiguous floors, may be combined, provided that both of the combined Units are under common ownership at the time of effecting such combination, whereupon the Percentage Interests in the Common Elements appurtenant to such combined Units shall be the sum of the respective Percentage Interests in the Common Elements appurtenant to each of the Units or portions thereof that have been combined. The votes allocated to each Unit resulting from such combination shall be equal to the Percentage Interests allocated thereto as set forth above. Such designation shall be made by the Executive Board pursuant to **Section 2.6** hereof with consent of, and at the expense of, the owner of the combined Units;

(m) No Unit may be subdivided by any Unit Owner unless the subdivided parts will be attached to another Unit and the Unit Owner obtains the prior written consent of the Executive Board, except that if Units have been combined pursuant to **Section 7.2(l)** above, they may later be subdivided, without the consent of the Executive Board, provided that after such subdivision they are the same as the Units that existed prior to the combination. In the event of any such subdivision, the subdivision shall comply with the provisions of Sections 3213, 3214 and 3215 of the Act, the Percentage Interest allocated to each Unit resulting from such subdivision shall be determined in the manner set forth in **Section 2.1**, and votes allocated to each such Unit shall be equal to the Percentage Interest allocated thereto as set forth above, and the subdivided Units will, if possible, revert back to their original designations and if reversion back to original designation is not possible, they will be given consistent designations, i.e., 601(a), 601(b), etc. Declarant may combine or subdivide Units owned by it, or convert any such Unit into two or more Units, Common Elements, or a combination of Units and Common Elements, subject to **Section 7.2(n)** hereof and Sections 3213, 3214 and 3215 of the Act;

(n) Any Unit Owner desiring to perform any alteration, division, subdivision or combination (hereinafter in this subsection (n) ("Alteration") of a Unit permitted hereby shall:

- (i) Refrain from making any Alteration that will impair or jeopardize the structural integrity of the Building or any

mechanical, plumbing or electrical or other service system therein, adversely affect either the fire retardant or sound absorbent quality of the Building, lessen the support of any portion of the Building, or violate any applicable law, ordinance or governmental rule, regulation or order;

- (ii) Obtain the approval of the Association (which approval shall not be unreasonably withheld and which shall not be required for the Declarant) prior to the commencement of any such Alteration involving a combination and/or division of Units;
- (iii) Comply with **Section 3.3** and **3.7** hereof;
- (iv) Pay all costs and expenses incurred in connection with the preparation, review, execution and recording of any amendment to this Declaration (including the Plats and Plans) needed in order to reflect the condition of the Building after completion of such Alterations, which amendment shall be in recordable form and shall be recorded by the Association in accordance with the Act.

(o) Nothing shall be done or be permitted to be done which would jeopardize the soundness and safety of the Building or impair any easement therein without the consent of all Unit Owners to such impairment;

(p) No Unit Owner shall keep or harbor any animals on the Condominium Property without the written consent of the Association, except for: (a) tropical fish, (b) a trained leader dog for a blind or handicapped resident of a Unit, (c) not more than two (2) pets, which may include cats, dogs or caged birds, which combined may not weigh more than a total of one hundred (100) pounds. Such consent, if given, may be upon such conditions as the Association may prescribe. No pet shall be maintained or harbored within a Unit so as to create a nuisance to any other Unit Owner. A determination by the Executive Board that a pet creates a nuisance to any other Unit Owner shall be conclusive and binding upon all parties. Upon such a determination, said pet must be immediately removed from the premises. No animals permitted under this **Section 7.2(p)** may be kept for commercial or breeding purposes. All dogs must be registered with the Association and licensed by the appropriate governmental authorities. It shall be the duty of a Unit Owner to supply the Executive Board on an annual basis with a Certificate of Vaccination from a qualified veterinarian for each dog or cat owned by the Unit Owner as permitted hereunder, certifying that such animal has had administered to it the inoculations which the Executive Board, in its sole discretion, deems necessary, including, by way of example, vaccinations to prevent rabies and distemper. In the event such pet is not so vaccinated, the Unit Owner shall indemnify and hold the Association harmless from any

and all liability or damage to persons or property arising as a result of said failure to vaccinate. No animal will be permitted outside the Unit, a Balcony or a fully enclosed Deck, owned by the owner thereof except on a leash or in a cage, provided, however, that no animal shall be left unattended; and, in any such instance, such owner shall be responsible for cleaning up after such animal, including on any Deck or on any Balcony. No other animals are permitted in the Units or on the Condominium Property;

(q) No Unit Owner shall paint nor make any alteration of any nature to a Balcony assigned to his or her Unit which will change in any respect the appearance of the Balcony when viewed from another Unit or the outdoors. No Unit Owner shall place any object or fixture (by way of illustration and not limitation, furniture, equipment, supplies, wood, landscaping or light fixtures or bulbs) which will materially change the exterior or interior appearance of the Building or which will endanger persons or property below the Balconies or Decks. Balconies or Decks shall be used in conformance with Rules and Regulations relating thereto from time to time adopted by the Executive Board;

(r) All window dressings including liners visible from the outside or from any other Unit must be white or off white;

(s) In the use or occupancy of a Unit at any time, the hard surface flooring material, such as wood, marble, ceramic tile, slate, quarry tile or other similar material, that is installed in rooms other than the bathrooms, shall have an approved sound underlayment over homosote in strict accordance with the Tile Council of America, Inc. standards. The Sound Transmission Class ("STC") and Impact Insulation Class ("IIC") ratings for the sound control of floor systems, including said sound underlayment, shall be a minimum of 55 for STC and 57 for IIC. No Unit Owner shall make any alteration in his Unit which will decrease the STC or IIC rating through any Common Element. The Executive Board shall have no obligation to enforce this restriction except upon a written complaint filed by a Unit Owner or tenant. The Executive Board shall attempt to resolve any complaint informally but shall, upon demand of any Unit Owner or tenant party to the complaint or upon its own discretion, refer the complaint to an architect or engineer for a final, binding decision as to STC rating or IIC rating. The decision of such architect/engineer shall be final and unappealable. The Association's costs of resolving the complaint, including, without limitation, reasonable architect or engineering fees and lab tests shall be borne solely by the losing Unit Owner or tenant party(ies) in the complaint. Upon a decision that material or installation fails to meet noise transmission requirements in a Unit, that Unit Owner shall immediately bring the Unit into compliance;

(t) Guests and visitors shall be admitted to the Condominium Property in strict conformance with Rules and Regulations relating to guests and visitors from time to time adopted or approved by the Executive Board;

(u) Children shall use the common area in strict conformance with

Rules and Regulations relating to children from time to time adopted or approved by the Executive Board;

(v) The Association may designate the Common Elements or portions thereof non-smoking;

(w) Except for a single small, non-illuminated name sign on the door of a Unit, no signs, advertising or other displays shall be maintained or permitted on any part of the Property. The right is reserved by the Declarant or its agent or agents to place "For Sale" or "For Rent" signs on any unsold or unoccupied Units, and on any part of the Common Elements, and the right is hereby given to any Permitted Mortgagee, who may become the Owner of any Unit, to place such signs on any Unit owned by such Permitted Mortgagee. Residential Unit Owners may not place signs in their windows or anywhere on the Common Elements or Limited Common Elements.

Section 7.3 Sale of Units. There shall be no restriction upon the sale, conveyance or other transfer of any Unit, but any sale, conveyance or other transfer (including, without limitation, mortgages and leases to the extent provided by law) shall be subject to the Act, the Condominium Documents and the provisions of the deed to the Unit.

Section 7.4 Powers of Executive Board to Enforce Rules and Regulations. The Executive Board shall have the power to enforce the above restrictions and to promulgate, amend, modify and repeal from time to time and enforce such additional Rules and Regulations on behalf of the Association as it may deem to be reasonably necessary or desirable, and shall have the right to bring actions at law or in equity to enforce any matter contained in the Condominium Documents. Copies of the new Rules and Regulations shall be furnished to all Unit Owners by the Executive Board promptly after the promulgation, amendment, modification or repeal of such Rules and Regulations. The Executive Board shall further have the right to levy fines for violations, provided that the fine for a single violation may not, under any circumstances, exceed One Hundred Dollars (\$100.00), except as provided below. Each day a violation continues after notice thereof may be considered a separate violation and the fine may be increased to Five Hundred Dollars (\$500.00) per day commencing with the fourth day following such notice. Any fine so levied is to be considered a Special Assessment levied specifically against the particular Unit Owner involved, shall be immediately due and payable, and collection may be enforced by the Executive Board in the same manner as the Executive Board is entitled to enforce collection of Special Assessments, and the Executive Board may also pursue any other remedies under the law.

ARTICLE VIII

MORTGAGES

Section 8.1 Permitted Mortgages. A Unit Owner other than the Declarant or the Executive Board may not voluntarily encumber or subject his, her or its Unit to any lien, other than the lien of a Permitted Mortgage. Whether or not they expressly so state, all such Permitted Mortgages and the obligations secured thereby shall be deemed to provide, generally, that the Permitted Mortgage, and the rights and obligations of the parties thereto, shall be subject to the terms and conditions of the Act and this Declaration and shall be deemed to provide specifically, but without limitation, that the Permitted Mortgagee shall have no right (a) 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, or (b) 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 prepayable, without penalty, upon the happening of any termination of the Condominium or determination not to restore or replace the affected Unit. No Unit Owner shall deliver any Permitted Mortgage, or any obligation to be secured thereby, unless it has first notified the Executive Board of the name and address of the proposed Permitted 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 VIII shall not attach to or affect the Property or any part thereof or interest therein and shall be of no force and effect as and 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 secured thereby.

Section 8.2 Rights of Permitted Mortgage Holders-Reports and Notices. Upon the specific written request of a Permitted Mortgage Holder or its servicer to the Executive Board, the Permitted Mortgage Holder shall be entitled to receive some or all of the following as designated in the request:

- (a) Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Executive Board to the Owner of the Unit covered by the mortgage;
- (b) Any audited or unaudited financial statements of the Association which are prepared for the Association and distributed to the Unit Owners;

- (c) Copies of notices of meetings of the Unit Owners and the right to designate a non-voting representative to attend such meetings;
- (d) Notice of the decision of the Unit Owners and the right to designate a non-voting representative to attend such meetings;
- (e) Notice of substantial damage to or destruction of any Unit, the repair of which would cost in excess of \$5,000.00, or any part of the Common Elements, the repair of which would cost in excess of \$10,000.00;
- (f) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Property;
- (g) Notice of any default by the Owner of the Unit which is subject to the mortgage, where such default is not cured by the Unit Owner within sixty (60) days after the giving of notice by the Association to the Unit Owner of the existence of the default;
- (h) The right to examine the books and records of the Executive Board at any reasonable time; or
- (i) Notice of any decision by the Executive Board to terminate professional management and assume self-management of the Property.

The request of a Permitted Mortgage Holder servicer shall specify which of the above items it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Executive Board. The Executive Board need not inquire into the validity of any request made by a Permitted Mortgage Holder hereunder.

Notwithstanding the foregoing in this Section 8.2, failure to comply with the requirements set forth above shall in no way invalidate otherwise proper actions of the Association and the Executive Board.

Section 8.3 Other Liens. A Unit Owner may permit or suffer liens, other than Permitted Mortgages, to be placed against his Unit; provided the holders of such liens shall not be entitled to any notices or any other rights, priorities or privileges of Permitted Mortgage Holders granted hereunder or under the Bylaws. In no event shall a holder of a lien on any Unit (excepting only a Permitted Mortgage Holder to such extent as may expressly set forth herein) have any right, title or interest in any insurance proceeds.

ARTICLE IX

LEASING

A Unit Owner may lease his Unit (but not less than his entire Unit) at any time and from time to time provided that (except for a lease made by (i) Declarant or (ii) a Permitted Mortgagee which is either in possession or is a purchaser at judicial sale): (1) no Unit may be leased for transient or hotel purposes or for an initial term of less than ninety (90) days; (2) no Unit may be leased without a written lease; (3) a copy of such lease shall be furnished to the Executive Board within ten (10) days after execution thereof; and (4) the rights of any lessee of the Unit shall be subject to, and each such lessee shall be bound by, the covenants, conditions and restrictions set forth in the Declaration, Bylaws and Rules and Regulations, and a default thereunder shall constitute a default under the lease or sublease; provided, however, that the foregoing shall not impose any direct liability on any lessee of a Unit to pay any Common Expense assessments on behalf of the Owner of that Unit.

ARTICLE X

BUDGETS; COMMON EXPENSES; ASSESSMENTS AND ENFORCEMENT

Section 10.1 Monthly Payments. All Common Expense assessments made in order to meet the requirements of the Association's annual budget shall be payable in equal monthly installments in advance on the first day of each month. Special assessments shall be due and payable in one or more monthly payments, in advance, on the first day of each month, as determined by the Executive Board.

Section 10.2 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.

Section 10.3 Surplus. The budget of the Association shall segregate Limited Common Expenses from General Common Expenses. Any amounts accumulated from assessments for Limited Common Expenses and income from the operation of Limited Common Elements to which such Limited Common Expenses pertain in excess of the amount required for actual Limited Common Expenses shall be held by the Association or its designated representative as reserves for future Limited Common Expenses. Any amounts accumulated from assessments for General Common Expenses and income from the operation of the Common Elements to which such General Common Expenses pertain in excess of the amount required for actual General Common Expenses shall be held by the Association or its designated representative as reserves for future General Common Expenses.

Section 10.4 Assignment of Income Rights. The Association may assign its rights to future income, including payments made on account of assessments for General Common

Expenses and Limited Common Expenses, to secure any loan obtained by the Association for repairs, replacements or capital improvements to the Common Elements, provided that any such assignment is authorized by the vote of not less than 60% of the members of the Executive Board.

Section 10.5 Annual Assessments. Until the Executive Board adopts a budget and makes any Annual Assessment for General Common Expenses and for Limited Expenses or Special Assessment based thereon, Declarant shall pay all expenses of the Condominium. The Executive Board may adopt a budget for each fiscal year commencing on January 1st of the year in which this Declaration is recorded, or later if the initial budget is not then adopted by the Executive Board, and for each such Fiscal Year thereafter on January 1st. Each Unit Owner shall pay an annual Assessment as to Common Expenses levied by the Association in accordance with the Bylaws which shall be due and payable in equal monthly payments on the first day of each month.

Section 10.6 Special Assessments. If the estimated cash requirement set forth in any budget shall prove to be insufficient to cover Common Expenses (including adequate reserves therefor) for any reason (including, without limitation, any Unit Owner's non-payment of his assessment), the Executive Board shall have the full power as permitted by law, at any time (and from time to time), as it deems necessary and proper, to levy one or more Special Assessments against each Unit Owner in accordance with his Unit's Percentage Interest.

Section 10.7 Initial Assessments. In order to provide the Association with working capital, an initial fee equivalent to two (2) months payment of the Annual Assessment for Common Expenses shall be due from each initial purchaser of a Unit from the Declarant at the time of the closing or conveyance of the Unit. This initial fee will not be credited toward any Annual Assessment or Special Assessment.

Section 10.8 Use of Assessments. All monies collected hereunder as Annual Assessments or Special Assessments shall be used for the purposes designated herein.

Section 10.9 Failure to Fix New Assessments. If the Association shall fail to fix Annual Assessments for the subsequent 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 Annual Assessments for the succeeding fiscal year. If the Association shall change the assessment at a later date, such new assessment shall be treated as a Special Assessment pursuant to Section 10.6 hereof.

Section 10.10 Special Costs. Any expense incurred by the Association due to the negligence or misconduct of any Unit Owner or his family or tenants, and their respective guests or invitees or as otherwise provided for in any Condominium Documents may be assessed against the Owner of the pertinent Unit as a Special Assessment and shall be treated as a Common Expense immediately due and payable by such Unit Owner.

Section 10.11 No Exemption By Waiver. No Unit Owner may exempt himself 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.

Section 10.12 Power to Confess Judgment to Collect Delinquent Assessments. AS A MEANS OF ENFORCING THE OBLIGATION OF THE UNIT OWNERS TO PAY ALL ASSESSMENTS LEVIED PURSUANT TO THIS DECLARATION, AND IN ADDITION TO AND NOT IN LIMITATION OF THE POWERS OF THE ASSOCIATION UNDER THE ACT, THE EXECUTIVE BOARD SHALL HAVE THE RIGHT AND POWER TO OBTAIN A JUDGMENT OR JUDGMENTS FOR DELINQUENT ASSESSMENTS BY CONFESSION AGAINST THE UNIT OWNER AGAINST WHOM SUCH DELINQUENT ASSESSMENTS HAVE BEEN LEVIED. ACCORDINGLY, EACH UNIT OWNER, BY HIS ACCEPTANCE OF THE DEED OF HIS UNIT, SHALL BE DEEMED TO HAVE APPOINTED ANY ONE OR MORE MEMBERS OF THE EXECUTIVE BOARD (DURING HIS TERM OF OFFICE) AND THE MANAGING AGENT AS THE ATTORNEY-IN-FACT FOR SUCH UNIT OWNER TO CONFESS A JUDGMENT AGAINST SUCH UNIT OWNER IN ANY COURT OF COMPETENT JURISDICTION IN THE COMMONWEALTH OF PENNSYLVANIA AS OF ANY TERM FOR ANY DELINQUENT ASSESSMENT OR ASSESSMENTS AND THE REASONABLE LEGAL FEES AND COSTS REQUIRED TO COLLECT SAME, FOR THE PURPOSE OF WHICH A COPY OF THIS SECTION 10.12 AND A COPY OF THE UNIT OWNER'S DEED TO HIS UNIT (BOTH VERIFIED BY THE AFFIDAVIT OF ANY MEMBER OF THE EXECUTIVE BOARD) SHALL BE SUFFICIENT WARRANT. THE AUTHORITY HEREIN GRANTED TO CONFESS JUDGMENT SHALL NOT BE EXHAUSTED BY ANY EXERCISE THEREOF BUT SHALL CONTINUE AND BE EFFECTIVE AT ALL TIMES WITH RESPECT TO EACH AND EVERY DELINQUENT ASSESSMENT. SUCH AUTHORITY TO CONFESS JUDGMENT AND THE AFORESAID APPOINTMENT OF ATTORNEYS-IN-FACT, BEING FOR SECURITY, SHALL BE IRREVOCABLE. The Executive Board shall not exercise its right to obtain a judgment by confession against any institution lender who has acquired title to a Unit by foreclosure sale or deed in lieu of foreclosure or assignment in lieu of foreclosure, nor shall such right be exercised against any Unit Owner except after the Executive Board shall have given the delinquent Unit Owner at least ten (10) days' notice of its intention to do so. Nothing herein is intended to limit the rights or remedies which the Association or the Executive Board may otherwise have under the Act.

Section 10.13 Personal Liability of Unit Owners. All sums assessed pursuant to the Article X shall constitute the personal liability of the Unit Owner of the Unit so assessed and also shall, until fully paid, constitute a lien against such Unit pursuant to Section 3315 of the Act. The Executive Board, on behalf of the Association, may take action for failure to pay any Assessment or other charges pursuant to Section 3315 of the Act and may assess a late charge for failure to pay any Assessment or other charge on the date which it is due. The delinquent Unit Owner shall be obligated to pay (a) all expenses of the Association, including reasonable

attorneys' fees, incurred in the collection of the delinquent Assessment by legal proceedings or otherwise, (b) any amounts paid by the Association for taxes or on account of superior liens or otherwise to protect its liens, which expenses and amounts, together with accrued interest before and after judgment, shall be deemed to constitute part of the delinquent Assessment and shall be collectible as such, and (c) interest, from the due date, on Assessments not paid within fifteen (15) days after due, at a rate per annum equal to four percent (4%) above the prime rate.

Section 10.14 Liability of Purchaser of Unit for Unpaid Assessments. Subject to the provisions of Section 3407(c) of the Act, upon the sale, conveyance or any other transfer of a Unit or any interest therein, any unpaid Assessments shall continue to be a lien against the Unit which may be enforced in the manner set forth in Section 3315 of the Act.

Section 10.15 Common Expenses.

(a) Common Expenses shall be any expenditure made or liability incurred by the Association (including any allocations to reserves) pursuant to the Act, this Declaration or the Bylaws, including, without limitation, the following:

- (i) Expenses of administration operation, maintenance, repair, improvement or replacement of the Common Elements;
- (ii) Expenses declared Common Expenses by the Act or by this Declaration or by the Bylaws;
- (iii) Expenses reasonably determined to be Common Expenses by the Executive Board and assessed against all Unit Owners;
- (iv) Expenses for maintenance of the driveways, sidewalks, Parking Garage, Outdoor Parking Area, lawns and gardens, collection of garbage, snow removal and exterior maintenance;
- (v) Expenses incurred pursuant to **Article XII** hereof;
- (vi) Salaries, wages and payroll taxes for employees and agents (including any Management Agent) of the Association;
- (vii) Legal, accounting and management fees incurred by the Association;
- (viii) Insurance premiums; and

- (ix) Costs and expenses incurred by or allocated to the Association or the Condominium Property pursuant to terms of the Parking Easement and/or the Development Agreement.
- (b) As, to utilities:
 - (i) The expense of gas, water and sewage service and such other utility and electric, television, phone and other electronic systems and services which may hereafter be supplied for the benefit and use of all or more than one (1) Unit and/or the Common Elements shall be a Common Expense; but
 - (ii) Any such service which is furnished for the exclusive benefit and use of any Unit and is separately metered or charged by the supplier for such purpose shall not be a Common Expense, but shall be payable on such basis by the Unit Owner of such Unit.

Section 10.16 Reserve Funds. The Association may establish an adequate reserve fund for maintenance, repair and replacement of those Common Elements which are anticipated to require replacement, repair or maintenance on a periodic basis. A reserve may also be established for maintenance required by the Maintenance Manual. Reserve funds shall be funded by monthly payments as a part of Common Expenses, as provided in the Bylaws.

ARTICLE XI

EXECUTIVE BOARD OF THE ASSOCIATION

Section 11.1 Powers of the Executive Board. The Executive Board of the Association shall possess all of the duties and powers granted to the Executive Board by the Act and by the Bylaws, including, without limitation, the power to promulgate Rules and Regulations. Any right or power vested in the Condominium or the Association under this Declaration shall be deemed to be vested in the Executive Board unless expressly stated to the contrary or otherwise required by the Act. The Executive Board shall consist of three (3) members who shall serve for a term of three (3) years and shall be elected for staggered terms at annual meetings of the Association, except as provided in this Article XI. Each Executive Board member shall hold office pursuant to the provisions relating thereto in the Bylaws.

Section 11.2 Disputes.

- (a) In the event of any dispute or disagreement between any Unit Owners relating to the Condominium Property or any questions of interpretation or application of the provisions of any of the Condominium Documents, the determination thereof by the

Executive Board 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 Section 11.2. All costs of obtaining such a judgment shall be borne by the disputants, or in the absence of disputants, by the Association as a Common Expense.

(b) To the full extent permitted by law, Declarant, for itself and all future Unit Owners, agrees that any disputes between Unit Owners or the Association, on one hand, and the Declarant or the Architect or a contractor who constructed or installed any portion of the Building, on the other, shall be submitted to mandatory non-binding mediation prior to any such party pursuing legal remedies at law or in equity, which mediation shall be conducted in accordance with the rules and procedures established by the American Arbitration Association.

Section 11.3 Managing Agent. The Executive Board, on behalf of the Association, may (but is not required to) engage a professional, experienced managing agent who shall oversee the daily operation of the Condominium Property, in accordance with and subject to the provisions of the Act and the Condominium Documents. Said managing agent may be an affiliate of Declarant.

ARTICLE XII

MECHANICS' LIENS

Any mechanics' liens arising as a result of repairs to or improvements of a Unit by or on behalf of any Unit Owner shall be liens only against such Unit and shall be paid by the Unit Owner of such Unit. Except as expressly set forth herein to the contrary, any mechanics' liens arising as a result of repairs to or improvements of the Common Elements, if authorized in writing pursuant to a duly adopted resolution of the Association, shall be the obligation of the Association and payment thereof shall be a Common Expense.

ARTICLE XIII

ENFORCEMENT

The Association or Declarant, so long as it is a Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Condominium Documents. Failure by the Association or Declarant to so enforce shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XIV

EFFECTIVE DATE; SEVERABILITY

This Declaration shall become effective when it and the Plats and Plans have been recorded. In the event that any provision of this Declaration or of any other Condominium Documents is determined to be invalid or unenforceable, it shall be considered severed and shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of the Condominium Documents and, in such event, all of the other provisions of the Condominium Documents shall continue in full force and effect as if such invalid provision had never been included therein. In the event of any conflict between the Condominium Documents and the Act, the Act shall control, except in those instances where the Act by its terms permits variations.

ARTICLE XV

DECLARANT'S RIGHTS/CONTROL

In accordance with the Act, and as more particularly set forth in the Bylaws,

- (a) Until the conveyance of 25% of the Units to Unit Owners other than Declarant, the Declarant shall have the right to appoint and remove any and all officers and members of the Executive Board. However, by the sixtieth (60th) day 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. Declarant may not unilaterally remove any members of the Executive Board elected by Unit Owners other than Declarant;
- (b) Not later than sixty (60) days after conveyance of 50% of the Units to Unit Owners other than Declarant, not less than 33-1/3% of the members of the Executive Board shall be elected by Unit Owners other than Declarant;
- (c) Not later than the earlier of (i) five (5) years after the date of conveyance of the first Unit by Declarant, or (ii) one hundred eighty (180) days after 75% of the Units have been conveyed to Unit Owners other than Declarant, all members of the Executive Board who have been appointed by Declarant shall resign, and the Unit Owners (including Declarant to the extent of Units owned by Declarant) shall elect a new Executive Board;
- (d) The Declarant may from time to time at its sole option, surrender or release to the Executive Board in whole or in part any special Declarant's right or control which it may have hereunder.

ARTICLE XVI

LIMITATION OF LIABILITY

Section 16.1 Standard of Conduct.

(a) In the performance of their duties, the officers and members of the Executive Board shall stand in a fiduciary relation to the Association and shall perform their duties, including duties as members of any committee of the Board upon which they may serve, in good faith, in a manner they reasonably believe 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.

(b) In discharging the duties of their respective positions, the Executive Board members and officers may, in considering the best interests of the Association, consider the effects of any action upon employees and upon suppliers of the Association and upon communities in which the Condominium is located, and all other pertinent factors. The consideration of those factors shall not constitute a violation of the standards described above.

(c) Absent breach of fiduciary duty, lack of good faith or self-dealing, actions taken as an Executive Board member or officer or any failure to take any action shall be presumed to be in the best interest of the Association.

Section 16.2 Good Faith Reliance. In performing his or her duties, an officer or Executive Board 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 other officers or employees of the Association whom the officer or Executive Board member reasonably believes to be reliable and competent in the matters presented;

(b) Counsel, public accountants or other persons as to matters which the officer or Executive Board member reasonably believes to be within the professional or expert competence of such person;

(c) A committee of the Executive Board upon which he does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the officer or Executive Board member reasonably believes to merit confidence.

An officer or Executive Board 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 reliance to be unwarranted.

Section 16.3 Limited Liability. No Executive Board member or officer, in his or her capacity as such, shall be personally liable for monetary damages for any action taken, or any failure to take any action, unless he or she has breached or failed to perform the duties of his office under the standards described above; provided, however, that the provisions of this Section 16.3 shall not apply to the responsibility or liability of an Executive Board member or officer pursuant to any criminal statute, or to the liability of an Executive Board member or officer for the payment of taxes pursuant to local, state, or federal law.

Section 16.4 Indemnification. To the extent permitted under Pennsylvania law, each member of the Executive Board, in his or her capacity as an Executive Board member, officer or both, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding in which he or she may become involved by reason of his or her being or having been a member and/or officer of the Executive Board, or any settlement of any such proceeding, whether or not he or she is an Executive Board member, officer or both at the time such expenses are incurred, except in such cases wherein such Executive Board member and/or officer is adjudged to be in breach of the standards of conduct described above; provided that, in the event of a settlement, this indemnification shall apply only if and when the Executive Board (with the affected member abstaining if he or she is then an Executive Board member) approves such settlement and reimbursement as being in the best interests of the Association; and provided further that, indemnification hereunder with respect to any criminal action or proceeding is permitted only if such Executive Board member and/or officer had no reasonable cause to believe his conduct was unlawful. The indemnification by the Unit Owners set forth in this Section 16.4 shall be paid by the Association on behalf of the Unit Owners and shall constitute a Common Expense and shall be assessed and collectible as such. Such right of indemnification shall not be deemed exclusive of any other rights to which such Executive Board member and/or officer may be entitled as a matter of law or agreement or by vote of the Unit Owners or otherwise.

To the extent permissible under Pennsylvania law, expenses incurred by an Executive Board member or officer in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding upon the request of the Executive Board member or officer, after the Association has received an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Association.

Section 16.5 D & O Insurance. The Executive Board shall obtain insurance to satisfy the indemnification obligation of the Association and all Unit Owners set forth in Section 16.4 above, if and to the extent available at reasonable cost.

Section 16.6 Defense of Claims. Complaints brought against the Association, the Executive Board or the officers, employees or agents thereof in their respective capacities as such, or the Condominium as a whole, shall be directed to the Executive Board of the Association, which shall promptly give written notice thereof to the Unit Owners and Permitted Mortgage Holders and such complaints shall be defended by the Association. The Association members and officers, Executive Board members and Permitted Mortgage Holders shall have no right to participate in such defense other than through that Association, unless joined in such action by the Association.

Section 16.7 Cost 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 counsel 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 of its members, or the Association or any of its officers, employees or agents, in their 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, but shall be borne solely by the plaintiff. In the event any suit or action is brought by any one or more Unit Owners against the Association or the Executive Board or any member thereof, challenging any decision, determination, action or ruling, made by or on behalf of the Association or the Executive Board pursuant to the act, or any Condominium Document, if such challenge is unsuccessful, the payment of all costs and legal fees incurred by the Association or the Executive Board or its members in defending against any such suit or action shall, to the full extent permitted by law, be the sole responsibility and liability of the Unit Owner or Owners initiating any such suit or action. The Executive Board may proceed to collect all sums payable in accordance herewith by all available means.

Section 16.8 Joint and Several Liability of Unit Owners and Lessees. Each Unit Owner shall be jointly and severally liable with any lessees of the Unit owned by such Unit Owner for all liabilities arising out of the ownership, occupancy, use, misuse or condition of such Unit or any portion of the Common Elements.

ARTICLE XVII

INSURANCE

Section 17.1 Types and Amounts. The Association shall obtain the following types and amounts of insurance (but in all events all insurance required by Section 3312 of the Act):

- (a) Hazard insurance, with an endorsement for extended coverage, or such other fire and hazard insurance as the Association may determine which provides equal or greater protection for the Unit Owners and Permitted Mortgage Holders, if any, in each

case complying with the applicable requirements of **Section 17.2** hereof. Such hazard insurance shall, if and to the extent reasonably available, provide coverage of all portions of the Condominium Property as originally constructed Units, but may not cover the betterments and improvements to a Unit. Such hazard insurance shall insure against all risks of direct physical loss commonly insured against, including, without limitation, fire, vandalism, malicious mischief, wind, storm and water damage, demolition and debris removal. If such hazard insurance becomes available in the future, the Association shall obtain such comparable insurance as is then available. The amount of any such hazard insurance obtained pursuant to this **Section 17.1** shall be reviewed annually by the Association, and shall be equal to the full insurance replacement value of the Common Elements and Limited Common Elements, without deduction for depreciation (i.e. exclusive of land, foundation, excavation and other items normally excluded from coverage), with an "agreed amount endorsement or its equivalent", if available, or an "inflation guard endorsement", if available;

(b) Comprehensive liability insurance, complying with the requirements of **Section 17.2** hereof, insuring the Unit Owners, in their capacity as owners of the Common Elements and Limited Common Elements and as Association members, against any liability to the public or to other Unit Owners, their tenants, invitees or licensees, relating in any way to the ownership and/or use of the Common Elements and Limited Common Elements or any part thereof. Such insurance policy shall contain a "severability of interest endorsement" or equivalent coverage which precludes the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or any Unit Owner. Limits of liability shall be at least Five Million Dollars (\$5,000,000.00) covering all claims for personal injury (including medical payments) and at least Five Hundred Thousand Dollars (\$500,000.00) covering property damage arising out of a single occurrence. The Association may arrange coverage meeting the requirements of the preceding sentence with such deductibles and umbrella policies as are reasonable for a structure of like size and use located in Allegheny County. Such insurance shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as are customarily covered. The scope and amount of coverage of all liability insurance policies shall be reviewed annually by the Association and may be changed in its discretion, provided that such shall continue to comply with the requirements of this **Section 17.1** and **17.2** hereof;

(c) At the option of the Executive Board, a fidelity bond or insurance coverage against dishonest acts on the part of such persons (including, without limitation, Executive Board and Association members, officers, trustees, agents, employees and volunteers where such coverage is available for volunteers) responsible for handling funds belonging to or administered by the Association;

(d) Such worker's compensation insurance as applicable law may require;

(e) Directors and officers insurance and such additional insurance as needed to satisfy the indemnification obligations of the Association and all Unit Owners set out in **Article XVI** hereof, if and to the extent available.

Section 17.2 Required Provisions. Insurance obtained by the Association shall be in accordance with the following provisions:

(a) Each Unit Owner shall be an insured party under such policies with respect to loss or liability arising out of his ownership of an undivided interest in the Common Elements and Limited Common Elements or membership in the Association;

(b) All policies shall be written with a company licensed to do business in the Commonwealth of Pennsylvania and, for the hazard insurance policy described in **Section 17.1(a)** hereof, such company must hold a rating of Class A + XIII or better by Best's Insurance Reports or by an equivalent rating bureau should Best's Insurance Reports cease to be issued. If such rating is not available at reasonable rates as determined by the Executive Board, the Executive Board may designate the required rating;

(c) Exclusive authority to adjust losses under policies hereafter in force on the Condominium Property shall be vested in the Association or its authorized representative. Prior to the adjustment of any such loss, the Association shall decide whether, if the Association uses a public adjuster in connection herewith, the proceeds of any applicable insurance policy on the Condominium Property are likely to be sufficiently increased through the efforts of such adjuster to warrant the additional expense of retaining such an adjuster. If such decision shall be in favor of using a public adjuster, the Association shall retain a public adjuster, licensed as such by the Commonwealth of Pennsylvania, which adjuster shall act solely in the capacity of advisor to the Association's authorized representative;

(d) Such policies shall contain an endorsement waiving all rights of subrogation against the Executive Board, the Association, any managing agent, the Unit Owners and their respective tenants, employees, agents and invitees;

(e) Such policies shall not be canceled, invalidated or suspended by means of the conduct of any one or more Unit Owners, all defenses based upon co-insurance or acts of the insured being waived by the insurer, and in no event shall cancellation, material modification, invalidation or suspension for any reason be effected without at least thirty (30) days' prior written notice to each Unit Owner and all Permitted Mortgage Holders whose names and addresses are on file with the insurer;

(f) Such policies shall not be canceled, invalidated or suspended on

account of the conduct of any officer or employee of the Association or any managing agent without a prior demand in writing that the Association or any managing agent, as the case may be, cure the defect, and without providing a reasonable period of time thereafter in which to cure such defect;

(g) Any "no other insurance" clause in such policies shall not prohibit Unit Owners from obtaining insurance on their individual Units;

(h) The name of the insured under each policy required pursuant to this **Article XVII** shall be stated in form and substance similar to the following:

"5859 Beacon Condominium Association for the use and benefit of the individual owners or their Permitted Mortgage holders as their interest may appear in the Condominium Units contained in 5859 Beacon."

(i) Each insurance policy required to be carried by the Association pursuant to this **Article XVII** shall be endorsed to provide that all proceeds shall be payable to the Association;

(j) Coverage may not be prejudiced by: (i) any act or neglect of one or more Unit Owners when such act or neglect is not within the control of the Association; (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Condominium Property over which the Association has no control;

(k) All policies of property insurance shall provide that, despite any provisions giving the insurer the right to elect to restore damage in lieu of a cash settlement, such options shall not be exercisable (i) without the prior written approval of the Association, or (ii) when in conflict with any requirement of law;

(l) Insurance coverage obtained and maintained by the Association pursuant to the requirements of this **Article XVII** may not be brought into contribution with insurance purchased by Unit Owners or their mortgages;

(m) The insurance required hereby may in whole or in part be carried under a master policy for the entire Building and the Condominium Property.

Section 17.3 Unit Owner Insurance.

(a) The Association shall have the power to require all Unit Owners to carry such types and amounts of insurance on their Units as the Association may reasonably require, including, without limitation, insurance on all portions of the Unit. All insurance carried by Unit Owners shall comply with the provision of **Section 17.3(b)** and **17.3(c)**

hereof and shall be carried with insurance companies satisfying the requirements of Section 17.2(b) thereof;

(b) All additional insurance obtained by any Unit Owner shall be at his own expense; provided, however, that: (i) such policies shall not be invalidated by the waivers of subrogation contained in this Declaration; and (ii) no Unit Owner shall be entitled to exercise the right to maintain insurance coverage in such a way as to decrease the amounts which the Association may realize under any insurance policy which the Association may have in force on the Condominium Property at any particular time;

(c) Any Unit Owner who obtains an individual insurance policy covering any portion of the Condominium Property (excluding a policy limited solely to the individual Unit of such Unit Owner of a policy insuring the personal property belonging to such Unit Owner), shall be required to file a copy of such individual policy with the Association within thirty (30) days after purchase of such insurance.

ARTICLE XVIII - MISCELLANEOUS

Section 18.1 Interpretation. The provisions of this Declaration shall be liberally construed in order to effectuate Declarant's desire to create a uniform plan for development and operation of a condominium project. The headings preceding the various paragraphs of this Declaration and the table of contents are intended solely for the convenience of readers of this Declaration and shall have no effect on the meaning or interpretation of any provision hereof. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the case may be.

Section 18.2 Applicability of Condominium Documents. Each present and future owner, tenant, occupant and mortgagee of a Unit shall be subject to and shall comply with the provisions of the Act, the Condominium Documents and the covenants, conditions and restrictions set forth in the deed to such Unit; provided that nothing contained herein shall impose upon any lessee or mortgagee of a Unit any obligation which the Act and/or one or more of the Condominium Documents make applicable only to Unit Owners. The acceptance of a deed or mortgage to any Unit, or the entering into a lease for the occupancy of any Unit shall constitute an agreement that the provisions of the Act, the Condominium Documents and the covenants, conditions and restrictions set forth therein are accepted and ratified by such grantee, mortgagee or lessee. All of such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

Section 18.3 Eminent Domain. Whenever all or any part of the Common Elements or Limited Common Elements shall be taken, damaged or destroyed by eminent domain, each Unit Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, but in any proceedings for the determination of damages, such damages shall be

determined for such taking, injury or destruction as a whole and not for each Unit Owner's interest therein.

Section 18.4 Parking.

(a) A one (1) level, enclosed parking garage (the "Parking Garage") is contained within the lowest floor of the Building. It contains not less than fifty (50) automobile parking spaces. One (1) exterior non-designated space (the "Outdoor Parking Area") will be located on the Condominium Property specifically for the use of delivery trucks, utility trucks, etc. Subject to the matters set forth below in this **Section 18.4**, the manner and hours of operation of the Parking Garage and the Outdoor Parking Area shall be subject to the discretion of the Executive Board. Notwithstanding the foregoing, (a) semi tractor-trailers are prohibited from driving and/or parking in the Outdoor Parking Area and the Parking Garage, and (b) vehicles wider than six and one-half feet (6' 6")(excluding side-view mirrors) may not be parked in the Parking Garage.

The Parking Garage shall initially be a Common Element. Declarant reserves the right to sell, designate and convey interests and/or easements in the Parking Garage for the purpose of granting licenses and/or easements ("Parking Licenses") for fifty (50) spaces in the Parking Garage as Limited Common Elements appurtenant to specific Units. On the date the last Unit is sold by Declarant, and subject to applicable law, Declarant shall assign to the Association all of Declarant's such rights in the fifty (50) spaces that have not been conveyed. Thereafter, parking spaces in the Parking Garage for which the Parking Licenses have not been granted by Declarant, may be granted and conveyed by the Association to any Unit Owner.

The consideration for sale of a Parking License by the Declarant shall be separate and in addition to the purchase price of a Unit. Such Parking License will adhere to the pertinent Unit and Unit Owner shall have the exclusive Parking License and right to use such space or spaces. Each Unit Owner, at the time of purchase of a Unit from the Declarant, shall have the opportunity to acquire a Parking License for not less than one undesignated space in the Parking Garage. Parking Licenses may be owned only by Unit Owners and a pertinent Parking License may be transferred upon sale of a Unit only to the purchaser of such Unit or to the Association for subsequent sale to another Unit Owner. A Unit Owner may also sell and transfer a Parking License to another Unit Owner any time with the prior consent of the Association, such consent not to be unreasonably withheld. Such Parking Licenses will be allocated and conveyed as Limited Common Elements pursuant to the provisions of Section 3209 of the Act, by a written instrument in recordable form or in a deed conveying a Unit. The price of a Parking License shall be determined by the seller thereof whether the Declarant, a Unit Owner or the Association. Except as may be otherwise provided by law, the Declarant's right to allocate parking spaces and sell Parking Licenses shall terminate on the date upon which the Declarant is no longer the legal owner of a Unit in the Condominium and thereafter all rights to the Parking Garage not previously sold and designated as Parking Licenses shall vest in the Association as a Common Element.

The parking spaces not sold and designated from time to time as Parking Licenses shall be Common Elements and may be allocated by the Association as visitors spaces, subject to Rules and Regulations determined from time to time by the Association. Notwithstanding the foregoing, no parking space, regardless of whether it is subject to a Parking License, may be leased or sold to a person other than a Unit Owner or a tenant under a lease permitted hereunder.

The cost of maintaining, replacing and operating the Parking Garage and the Outdoor Parking Area shall be a General Common Expense and neither the Declarant nor the Association shall have the right to collect rent or any other periodic charges on or relating to a Parking License. Further, subject to the approval of not less than two-thirds (2/3rds) of the Unit Owners, the cost of maintenance of the Parking Garage may be treated as a Limited Common Expense to be shared pro rata by those Unit Owners having a Parking License or Licenses.

- (b) This Section 18.4 may not be amended without the prior written consent of the Declarant so long as it owns a Unit;
- (c) The Parking Licenses shall terminate upon the termination of the Condominium.

Section 18.5 Architectural Committee. An architectural committee (the "Architectural Committee") composed of not less than three (3) Unit Owners may be established by the Executive Board from time to time. Said Architectural Committee shall have such authority as is delegated to it by the Executive Board, including but not limited to, the following:

- (a) Approval of all Material Improvements, as required by Sections 3.3 and 3.7;
- (b) Control of the use of and the covering of the interior surfaces of the glass of all doors and windows, whether by draperies, shades or other items visible on the exterior of the Building or visible from the outdoors, as permitted by Section 3.5;
- (c) Approval of any potted plant or similar decoration which is visible from the outdoors and to be maintained upon any exterior door, window, Balcony, Deck or any outside wall of the Building, as required by Section 7.2(d);
- (d) Approval of any awning or screen which is visible from the outdoors and to be placed, parked, stored or maintained on or within any Balcony or Deck, as required by Section 7.2(e);
- (e) Approval of any modification of any landscaping initially installed by the Declarant in or on any Balcony or Deck, as required by Section 7.2(e);
- (f) Approval of the subdivision of any Unit, as required by Section 7.2(m);

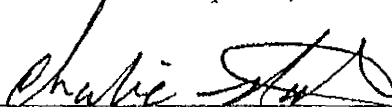
- (g) Approval of any Alteration of a Unit, as required by Section 7.2(n);
- (h) Approval of all window dressings including liners visible from the outside or from any other Unit, as required by Section 7.2(r); and
- (i) Authority granted to the Executive Board pursuant to Section 7.2(s).

Nothing contained in this Section 18.5 shall be construed to permit any alteration of a Unit, Common Element or Limited Common Element which is otherwise prohibited by this Declaration or any of the other Condominium Documents. If the Executive Board, or the Architectural Committee, if existing, fails to approve or disapprove any request submitted to it (or to otherwise request additional information) within thirty (30) days after receipt of said request, approval will not be required and this Section 18.5 shall be deemed to have been fully complied with. Nothing in this Section 18.5, or any other Article of this Declaration, or any of the Rules and Regulations adopted and promulgated pursuant to the provisions hereof, the Executive Board, Architectural Committee, and/or the Declarant during the period of development, or their respective agents, employees, successors and assigns, may come upon any Unit during reasonable hours for the purpose of enforcing and administering those provisions or Rules or Regulations; provided, however, that except in the case of an emergency, no entry shall be made except upon five (5) days' written notice to the Unit Owner or Unit Owners affected thereby to correct the deficiency. No one entering any such Unit for these purposes shall be deemed to have committed a trespass or wrongful or illegal act by reason of any such entry or inspection.

Section 18.6 Damage by Negligent or Willful Acts. In all events, if due to the negligent act or omission or willful misconduct of a Unit Owner, or of a resident, or of a member of the family or household pet or of a guest, invitee or other authorized occupant or visitor of such Unit Owner or resident, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or any other person is injured or property is damaged by such negligence, or maintenance, repairs and replacements shall be required which would otherwise be a Common Expense, then the pertinent Unit Owner shall have the obligation to pay for such damage or injury and such maintenance, repairs and replacements.

IN WITNESS WHEREOF, the said S & W Investment Properties, LLC has caused its name to be signed to these presents by its general partner on this day of , 2005.

S& W Investment Properties, LLC

By: 
Charlie Stalcy, Sole Member