

DECLARATION OF CONDOMINIUM  
FOR  
ATHERTON ASSOCIATION

THIS DECLARATION is made on the date hereinafter set forth by HFL CORPORATION, hereinafter referred to as "DECLARANT."

WHEREAS, DECLARANT, is the owner of certain property located on the Easterly side of South Atherton Street and numbered 415 South Atherton Street in the Borough of State College, Centre County, Pennsylvania, which is more particularly described in Article II, Section 2 herein, and which DECLARANT desires be of condominium use and ownership.

NOW, THEREFORE, DECLARANT hereby declares that it is the express purpose, desire and intention of the DECLARANT to submit and the DECLARANT hereby does submit said property, including the improvements thereon, to the provisions of the Pennsylvania Unit Property Act (68 P. S. §700.101, et seq.) (hereinafter called the "Act") for the specific purpose of creating and establishing Atherton Association, and accordingly said property shall be used, held, sold, and conveyed subject to: (i) the provisions of the aforesaid Act, and to: (ii) the provisions of this Declaration, and to: (iii) the Declaration Plan, and to: (iv) the Code of Regulations; each as is recorded or to be recorded, and subject also to: (v) such Rules and Regulations as the condominium Council may duly adopt, and each and all of the aforesaid five provisions being for the purpose of effecting this condominium and of protecting the value and desirability of said property and of each part thereof, which provisions shall run with the real property and be binding on all parties having any right, title, or interest in the property or any part thereof, and their heirs, administrators, successors and assigns, and shall inure to the benefit of each owner thereof.

ENTERED FOR RECORD

Recorded in the office for the recording  
of Deeds, etc. in and for Centre County  
in Map Book No. 449 at page 36 of 2.  
5 day of March, A.D. 1980  
Witness my hand and seal of office

BOOK 149 PAGE 362

*John W. Miller* Recorder

ARTICLE I  
DEFINITIONS

The following terms shall have the meanings herein ascribed to them, unless the context clearly indicates otherwise:

SECTION 1. "Building" means the twenty-seven apartment type residence structures, as well as improvements comprising a part thereof, as are the subject thereof, and which has been constructed on the property.

SECTION 2. "Code of Regulations" means those so designated and as are or intend to be publicly recorded under the Act, and as pertain to the subject property of this Declaration, and includes such amendments thereof as may be adopted from time to time, all of the same being deemed to be a part hereof as if attached hereto.

SECTION 3. "Common Elements" or "Common Areas" means and includes: (a) the land on which the building is located and those portions of the building as are not included in any Unit; (b) the foundations, structural parts, supports, halls and stairways; (c) the yards, and driveways; (d) portions of the land and buildings used exclusively for the management, operations or maintenance of the Common Elements; (e) installations and systems as comprise all central services and utilities; (f) all apparatus and installations existing for common use; (g) all other elements of each building necessary or convenient to its existence, management, operation, maintenance, and safety, and normally in common use; and (h) such areas and facilities as are so designated on the Declaration Plan; but does not include such, or such parts or features of the foregoing as are of entirely private use within a Unit.

SECTION 4. "Limited Common Elements" or "Limited Common Areas" means all those areas designated in this Declaration or the Declaration Plan or by resolution of the Council as reserved for the use of certain Unit or

Units to the exclusion of other Units. Such right of use may be reserved as an interest appurtenant to a particular Unit or Units, but in all other respects shall be and remain Common Elements or Common Areas.

SECTION 5. "Common Expenses" means and includes: (a) expenses of administration, maintenance, repair and replacement of the Common Elements; (b) expenses agreed upon as common by all the Unit Owners; (c) expenses declared common by the provisions of the Act, or by this Declaration or of the Code of Regulations; and (d) expenses duly declared common by the Council pursuant to the provisions of this Declaration or of the Code of Regulations; and as provided under any amendments made to said Act or instruments.

SECTION 6. "Council", as provided by said Act, means a board of natural individuals of the number stated in the Code of Regulations who are residents of Pennsylvania, who may or may not be Unit Owners, and who shall manage the business, operations and affairs of the property on behalf of the Unit Owners and in compliance with the Act.

SECTION 7. "Declaration" means this instrument by which the Property is submitted to the provisions of the act, and any amendments hereto.

SECTION 8. "Declaration Plan" means a professionally prepared plan of the property under §402 of the Act. Said plan is recorded or to be recorded.

SECTION 9. "Atherton Association" or "Association" means all of the Unit Owners in the buildings, bound individually and as a group pursuant to this Declaration and to the Code of Regulations.

SECTION 10. "Majority" or "Majority of the Unit Owners"

means the owners of more than fifty percent (50%) in the aggregate or ownership in the Common Elements, tabulated according to votes so based and assigned in Exhibit "B" under Article III, Section 4.

Section 11. "Person" means a natural individual, corporation, partnership, association, trustee or legal entity.

Section 12. "Property" means and includes the land, the building, all improvements thereon and therein, and all easements, rights and appurtenances belonging thereto, which are represented in the Declaration Plan and are declared by this instrument to be submitted to the provisions of the Act.

Section 13. "Recorded" means that an instrument has been duly entered of record in the Office of the Recorder of Deeds of Centre County, Pennsylvania.

Section 14. "Recorder" means the Recorder of Deeds of Centre County, Pennsylvania.

Section 15. "Revocation" means an instrument signed by all of the Unit Owners and by all holders of liens against the Units by which the property is removed from the provisions of the Act.

Section 16. "Unit" means a residence component as a part of a building designed and intended for independent private use, and designated as a unit by the Declaration Plan, and the same shall include its assigned proportionate undivided interest in the Common Elements, and shall include also all of the rights, privileges, immunities, and obligation attaching thereto as is provided and referred to herein.

Section 17. "Unit Designation" means the number thereof used for designating each Unit in the Declaration Plan.

Section 18. "Unit Owners" means the person or persons owning a Unit by deed as provided in said Act.

## ARTICLE II

### Name and Descriptions

SECTION 1. Name. The name by which the Property will be known is **ATHERTON ASSOCIATION**. The name under which the business operation and affairs of the Property and Unit Owners shall be managed on behalf of the Unit Owners is "**ATHERTON ASSOCIATION**", a collectivity of unit owners under the Pennsylvania Unit Property Act.

SECTION 2. Description of Property. The Property herewith submitted to the condominium form of ownership under the Act is described on Sheet No. 1 of the Declaration Plan, as **ATHERTON ASSOCIATION**, a Condominium, and is also legally described as set forth on Exhibit "A" attached hereto as a part hereof.

## ARTICLE III

### Units and Common Elements

SECTION 1. Identification of Units. The Property consists of Units and Common Elements shown on the Declaration Plan professionally verified in accordance with Section 402 of the Act. Each Unit is identified on the Declaration Plan by the Unit Designation assigned to each Unit. The Declaration Plan is, or is to be recorded in the Office of the Recorder concurrently with the recordation hereof and of the Code of Regulations referred to below. For any and all purposes, each Unit may be identified and shall be deemed fully and accurately described solely by reference to the letter or number appearing on the Declaration Plan.

SECTION 2. Description of Units. Each Unit is intended for independent residence use and consists of the following portions of a building; (1) the interior portion enclosed within walls, ceilings

and floors, including all interior walls, ceilings and floors (i.e., all dry walls, plaster and lath, tile and other wall and ceiling covering and all floor covering), and such space underlying the same as is necessary for the use and enjoyment of each Unit for residential purposes, but excluding all pipes, ducts, wires, cables, and conduits as may be of service to more than one Unit or to Common Elements, and (ii) all doors, windows, grills, and vents in such walls, ceiling and floors, including but not limited to latches, hinges, locks, frames and other portions of such doors, windows, grills, and vents; and (iii) separate heating, and all separate hot and cold water systems, all ranges, dishwashers, disposals, sinks, tubs, showers, water closets, separate sewer lines, cabinets, light fixtures, all separate electrical systems, electrical switches and outlets, floor covering, and including the proportionate undivided interest in Common Elements assigned to it.

Section 3. Description of Common Elements. The Common Elements are as defined above and consist of all parts and portions of the Property not included in Units, and not including such portions of the Property or rights therein as are otherwise owned and reserved. The Common Elements specifically include all items of service, use, or benefit to more than one unit and as so designated, installed, and provided by declarant, or by the Council.

Section 4. Interest in Common Elements. Each Unit Owner shall own an undivided interest in the Common Elements (expressed as a percentage) allocated to the respective Unit owned by such Unit Owner as set forth in the Schedule attached hereto as Exhibit "B" and incorporated herein by reference. Such ownership runs with title to each Unit and may not be separated therefrom; provided, however, that the proportionate undivided interest in the Common Elements (expressed as a percentage) may be altered by the

recording of an amendment to this Declaration, duly executed by all Unit Owners affected thereby. At all times the total of all undivided interests shall aggregate 100%.

Section 5. Special Uses. Certain parts or portions of the Common Elements may be specially assigned by the Council for use by particular Unit Owners, and such assignments shall be reasonably made with consideration for such assignees as well as for others as may be concerned or affected.

Section 6. Easements:

(a) Each Unit Owner shall have easements and shall be subject to easements as set forth in Article VII hereof.

(b) The Property and all parts thereof are subject to rights of way, easements, covenants, restrictions or conditions as may be set forth in prior instruments of record, and to rights of way for utilities now or hereafter established or granted by Declarant or by the Council.

ARTICLE IV

Use, Purposes and Restrictions

The Property, including the buildings, the Units, and the Common Elements are intended to be used for the following purposes, and their use is hereby restricted as follows:

Section 1. Unit Restrictions. No Unit may be divided or subdivided into a smaller unit, nor may any portion of any Unit be added to or incorporated into another Unit, nor any portion less than all thereof sold or otherwise transferred without first amending the Declaration to show the changes in the Units to be affected thereby.

Section 2. Residential Use. Each Unit is hereby restricted to residential use by the Unit Owner thereof, his tenants, his

immediate family, guests and invitees. Each of the Units is intended for independent use and shall be used only as a residence and for purposes incidental to such uses. Further use restrictions are more fully set forth in the Code of Regulations for ATHERTON ASSOCIATION, executed on even date herewith. The Declarant however shall have the right to use any Units owned by it for models and for sales and administrative offices.

SECTION 3. Use with Care. No Unit Owner shall do or permit any act which would jeopardize the soundness or safety of the Property, or of any part of it, or impair any easement or appurtenance or any rights of others, without the unanimous consent of the Unit Owners affected thereby.

SECTION 4. Leasing. A Unit may be rented for residential purposes by the owner thereof under a lease for a term of at least one month, providing that the lease is made subject to all provisions as affect the owner himself to the end that the tenant shall be bound at least as is the owner with reference to possession, use, and occupancy, and in all ways pertaining thereto.

SECTION 5. Use of Common Elements. The Common Elements or Common Areas may be used by all Unit Owners and/or tenants, their families, guests, and invitees, subject to the Code of Regulations and such rules and regulations as may be established by the Council. Each Unit Owner may use the Common Elements in accordance with the purposes for which the Common Elements are intended without hindering or encroaching upon the lawful rights of other Unit Owners, and subject to the provisions hereof, the Code of Regulations and the Rules of the Council.

SECTION 6. Access to Public Roads. Under no circumstances shall any Unit Owner's right of ingress or egress to and from public roads, over Common Areas and lands be impaired where the same has been designated for such use.

SECTION 7. Maintenance and Repair of Common Elements.

The maintenance and repair of Common Elements and the making of additions or improvements thereto shall be carried out only as provided under the Code of Regulations, established and adopted pursuant to the provisions of Section 302 of the Act and recorded or to be recorded, as aforesaid, and as the same may be duly amended from time to time.

ARTICLE V

Common Expenses

SECTION 1. Condominium Expenses. The Declarant, for each

Unit owned, hereby covenants and each subsequent Unit Owner, by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is conclusively deemed to covenant and agree to pay to the Council or its designee, as representative of ATHERTON ASSOCIATION, a Condominium, such assessments and/or charges as may be levied by the Council to cover the reasonable share of Common Expenses incurred in maintaining, improving and managing ATHERTON ASSOCIATION, a Condominium. Such assessment and/or charges shall run with the land and shall be a continuing lien upon each Unit until paid. Such assessments and/or charges may be enforced in any court of law or equity having jurisdiction thereof, as provided by the Act. The lien of the assessments and/or charges provided for herein shall be subordinate to the lien of any first mortgage.

SECTION 2. Special Expenses. Where in the judgment of the Council it is determined that an expense is peculiar to, caused by or of special benefit to only certain Units, one or more, and

is not foreseeably to be repeated generally throughout the property, it shall make a special assessment on such account against only such Units as are so affected, and the same shall be subject to the foregoing provisions of Section 1, hereof, like any other assessment. The provisions hereof shall be applicable under Art. VII, Sec. 1., (e) below.

#### ARTICLE VI

##### Encroachments

If any portion of a Unit or Common Element encroaches upon another Unit, a valid easement for the encroachment and the maintenance of same, so long as it stands, shall and does exist. In the event a building is partially or totally destroyed and then rebuilt, encroachments aforesaid may continue as a part of any restoration.

#### ARTICLE VII

##### Easements

Section 1. Unit Owners and Council. (a) Each Unit Owner, as needed, shall have an easement in common with all other affected Unit Owners to have, use and repair, or to have repaired or replaced, as necessary, all pipes, wires, ducts, cables, conduits, chimneys, public utility lines and other elements in any way located in any Unit or forming any part of the Common Elements. In addition, each Unit shall be subject to, and shall have, such easements of support and shelter from, under, against and over such other Units, as may be necessary for the soundness and quiet enjoyment of each Unit, and as may be necessary for the soundness and needs of structural Common Elements. (b) The Council shall have the right to reasonable access to each Unit to inspect the same, and to provide for removal of violations therefrom and

generally to the extent set forth under the Code of Regulations, and to provide for service, maintenance, repair or replacement of Common Elements as necessary and to service, maintain, repair, and replace such other equipment or elements as may be the responsibility of the Council. (c) All repair work contemplated by this Article shall be performed solely through the Council; provided however, that nothing contained herein shall be construed to prevent the levying of a special assessment and/or charge on one or more Unit Owners for work performed in relation to the easements provided and referred to herein. (d) All such easements shall run with the land and inure to the benefit of and be binding upon the Council, each Unit Owner and each mortgagee, lessee, occupant, or other person having any interest in any Unit or in Common Elements. (e) Assessments, as special assessments under Art. V., Sec. 2, above, shall be made by the Council after it determines that one or more Unit Owners are responsible for the problems which necessitated the work performed.

ARTICLE VIII  
Council and Voting

SECTION 1. First Council Members. The names of the first members of Council are: Henry D. Sahakian, Eugene A. Fasick, John L. Geiser, Thomas Daley and Daniel Wallace. They shall serve until their successors have been elected at the first annual meeting of the Unit Owners, held pursuant to the Code of Regulations, and after Deeds have been recorded, placing title to at least 90% of the Units in the names of owners other than Declarant. Should any of the above-named die, resign, or otherwise become unwilling or unable to serve as members of Council, the remaining members shall elect a successor or successors to serve for the balance of the term.

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Section 2. Voting. Each Unit Owner is automatically a member of the Association. Upon termination of his ownership of a Unit, his membership thereupon automatically terminates and thereupon transfers and inures to the new Unit Owners, each Unit Owner shall be entitled to the same number of votes as are assigned to his Unit hereunder and under any amendments hereto. The first such meeting of Unit Owners shall take place in accordance with Section 1 of this Article and with the provisions of the Code of Regulations.

#### ARTICLE IX

##### Separate Mortgages, Taxes, Utility Charges

Section 1. Mortgages. Each Unit Owner shall have the right to mortgage or encumber only his own designated Unit together with only his proportionate undivided share in the Common Elements, and he shall have no right, power, or authority to in any way encumber or affect the title to any other part of or interest in the property.

Section 2. Taxes. It is understood that real estate taxes are to be separately taxed to each Unit Owner for his Unit and his undivided percentage of ownership in the Common Elements, as provided in the Act.

Section 3. Utilities. Each Unit Owner shall pay for his own telephone, electricity, and/or other utilities which are separately metered or billed to each user by the appropriate utility company. Utilities not separately metered or billed may be treated as part of the Common Expenses or in the event the said utility services are supplied to some Units but less than all Units, then Council may reasonably prorate these charges over the Units using such services, and require each Unit Owner to pay his prorata share of such charges, which shall become a

charge or lien against the Unit, enforceable under Art. V., Sec. 2, above. The decision of the Council to prorate, and its determination of prorata shares and charges shall be final and binding on all.

ARTICLE X

Insurance

Section 1. Hazard Insurance. The Council shall procure physical damage insurance on all of the real and personal property owned by the Association in the common elements, and on all Units, including improvements and betterments, as a Common Expense for the Association as the named insured.

(a) Full replacement cost on the buildings in an amount equal to the actual cash value, extended coverage and broad form and/or special form and such other exposures as may be deemed appropriate by the Council.

(b) Losses shall be adjusted with and payable to the Council of the Association and to the Unit Owners as their respective interests may appear.

(c) Values are to be reviewed annually with inflation of values taken into consideration.

(d) Subrogation waiver to the extent of insured perils against other Unit Owners, the Association and officers, developers and manager.

(e) The insurance shall not be affected or diminished as a result of other insurance carried by a Unit Owner.

Section 2. Liability Insurance. The Council to the extent available shall obtain and maintain comprehensive general

liability insurance in such limits as the Council may from time to time determine, insuring the Association, the Council, the manager, at the discretion of the board of directors, and each Unit Owner for claims arising out of or in connection with the ownership, operation or maintenance of any of the property, including Unit Owner liability coverage for claims arising in connection with that portion of the property used and occupied exclusively by a particular Unit Owner. Such comprehensive general liability insurance shall also cover cross-liability claims of one insured against the other. The Council shall review such limits once a year.

SECTION 3. Allocation of Cost of Insurance. The cost of the aforesaid hazard and liability insurance premiums shall be deemed a condominium expense, except that the charges made to Unit Owners containing more bedrooms shall be greater than the charges made to the owners of Units containing fewer bedrooms, the ratio of such charges to be the same as the ratio of the floor area of the different types of Unit indicated herein, or on some other reasonable basis reflecting the difference in cost of such premiums because of the difference in size of such units, if any.

SECTION 4: Unit Owners' Insurance. Each individual Unit Owner shall be responsible:

(a) For his own personal property coverage in his Unit and anywhere on the property, his automobiles, and additions and improvements to his unit which may be considered permanent improvements to the real estate.

(b) For any personal liability coverage desired beyond that provided by the Association as set forth hereinabove.

(c) For insurance coverage for additional living expenses, if not covered by the Association policy.

Section 5. Miscellaneous Insurance Provision. All insurance shall be obtained in accordance with the following provisions:

(a) In no event shall the insurance coverage obtained and maintained by the Council be brought into contribution with insurance purchased by individual Unit Owners or their Permitted Mortgagees.

(b) Each Unit Owner may obtain additional insurance at his own expense, provided, however, that (i) such policy shall contain waivers of subrogation and (ii) no Unit Owners shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Council, on behalf of the Unit Owners, may realize under any insurance policy which the Council may have in force on the Property at any time.

(c) Any Unit Owner who obtains individual insurance policies covering any portion of the Property other than personal property belonging to such owner shall be required to file a copy of such individual policy or policies with the Council within thirty (30) days after purchase of such insurance.

(d) The Council shall be required to make every reasonable effort to secure insurance policies covering the Property that will provide for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Council, the Managing Agent, the Unit Owners and their respective servants, agents, guests, tenants and other occupants; and

(ii) That the insurance policies issued to the Council on behalf of the Unit Owners and covering the Property cannot be cancelled, invalidated or suspended on account of the conduct of any one or more Unit Owners and in no event can cancellation, invalidation or suspension for any reason be effected

without at least thirty (30) days prior written notice to each Unit Owner and all holders of Permitted Mortgages on Units whose names and addresses are on file with the Secretary of the Council; and

(iii) That all policies covering the Property cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Council or Managing Agent without a prior demand in writing that the Council or Managing Agent cure the defect and without providing a reasonable period of time thereafter in which to cure the same; and

(iv) That any "no other insurance" clause in the Council's insurance policies exclude the individual Unit Owner's policies from consideration.

#### ARTICLE XI

##### Maintenance and Alterations

Each Unit Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Units. No alteration of any of the walls within any unit or of the heating system within any unit or of the Common Elements, or any additions or improvements thereto, shall be made by any Unit Owner without the prior written approval of the Council.

#### ARTICLE XII

##### Repair and Reconstruction

Damage to or destruction of the building which comprises the property shall be promptly repaired and restored by the Council using the proceeds of insurance held by the Council, if any, for that purpose, and the Unit Owners directly affected thereby shall be liable for assessment for any deficiency in proportion to their

respective undivided ownership of the Common Elements: Provided, however, that if there is substantially total destruction of the building on the property and if seventy-five percent of the Unit Owners duly resolve against repair or restoration, then, and in that event the salvage of such substantially destroyed building shall be subject to partition at the suit of any Unit Owner directly affected, in which event the net proceeds of such sale of salvage, together with the net proceeds of insurance policies held by the Council as one fund shall be divided among all Unit Owners directly affected enough to pay and discharge all liens in favor of the Council against any such Units and Unit Owners.

#### ARTICLE XIII

##### Unit Subject to Declaration, Code of Regulations, Rules and Regulations

All present and future Unit Owners, tenants, mortgagees and occupants of Units, shall be subject to and shall comply with the provisions of this Declaration, with those of the Code of Regulations, and with the duly promulgated rules and regulations adopted by the Council, and with all amendments of the same. The acceptance of a deed of conveyance or the acceptance of inheritance or the entering into a lease, or the entering into occupancy of a Unit, shall constitute agreement to be so bound and that the aforementioned instruments are accepted and ratified by each such Unit Owner, tenant, occupant, or mortgagee; and that all such provisions of the aforementioned instruments shall be deemed and taken to be covenants running with the land and shall bind every person at any time having any interest or estate in such unit as though all such provisions were set forth in full in each and every deed, or inheritance, or lease, or any other relevant document.

ARTICLE XIV

Liability and Indemnification

Section 1. Liability of Members of the Council and Officers. The members of the Council and the officers and any assistant officers (i) shall not be liable to the Unit Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or gross negligence; (ii) shall have no personal liability in contract to a Unit Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Council or Unit Owners in their capacity as such; (iii) shall have no personal liability in tort to a Unit Owner or any other person or entity direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or gross negligence, or acts performed for them, in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Property, or which might in any other way be assessed against or imputed to them as a result or by virtue of their capacity as such.

Section 2. Indemnification by Unit Owners. The Unit Owners shall indemnify and hold harmless any person, his heirs and personal representatives, from and against any and all personal liability, and all expenses, including counsel fees, incurred or imposed, or arising out or in settlement of any threatened, pending or completed action, suits or proceeding, whether civil, criminal, administrative or investigative, instituted by any one or more Unit Owners or any other persons or entities, to which he shall be or shall be threatened to be made a party by reason of the fact that he is or was a member of the Council or an officer

or assistant officer, other than to the extent, if any, that such liability or expense shall be attributable to his willful misconduct or gross negligence, provided, in the case of any settlement, that the Council shall have approved the settlement, which approval shall not be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or vote of Unit Owners or of the Council, or otherwise. The indemnification by the Unit Owners set forth in this Section 2 of Article XIV shall be paid by the Council on behalf of the Unit Owners and shall constitute a common expense and shall be assessed and collectible as such.

Section 3. Liabilities of Individual Unit Owners. The Unit Owners and any lessees or sublessees of a Unit shall be jointly and severally liable for liabilities arising out of their own conduct or arising out of the ownership, occupancy, use, misuse or condition (except when the result of a condition affecting all or other parts of the Property) of that Unit.

Section 4. Language Concerning Liability in Agreements. Every agreement, deed, lease, or other instrument entered into by the Council on behalf of the Unit Owners shall provide that the Council and the officers or assistant officers executing the same are acting only as agents for the Unit Owners and shall have no personal liability thereunder (except to the extent, if any, that they may also be Unit Owners at the time any such liability is assessed), that any claim by the other party or parties thereto with respect thereto or to the subject matter thereof shall be asserted against the Council, which shall act on behalf of the Unit Owners with respect thereto, and that any liability thereunder or with respect to the subject matters thereof shall be borne by those who are Unit

Owners at the time such liability may be assessed by the Council as a Common Expense, for which assessment each such Unit Owner shall be liable only severally to the extent of his percentage interest.

Section 5. Costs of Suit in Actions Brought by One or More Unit Owners on Behalf of All Unit Owners. 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's fees, shall be a Common Expense, provided that if such action is brought against all Unit Owners or otherwise against all other Unit Owners or against the Council, the officers, assistant officers, employees or agents thereof, 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 counsel fees, shall not be charged to or borne by the other Unit Owners, as a Common Expense or otherwise.

Section 6. Notice of Suit and Opportunity to Defend. Complaints brought against all Unit Owners, or the Council, or the officers, assistant officers, employees or agents thereof, in their respective capacities as such, or the Property as a whole, shall be directed to the Council, which shall promptly give written notice thereof to the Unit Owners and the holders of any Permitted Mortgages and shall be defended by the Council, and the Unit Owners and such holders shall have no right to participate other than through the Council in such defense. Complaints against one or more but less than all Unit Owners or Units alleging liabilities covered by Section 3 of this Article XIV shall be directed to such Unit Owners, who shall promptly give written notice thereof to the Council and to the holders of any Permitted

Mortgages affecting such Units, and shall be defended by such Unit Owners.

#### ARTICLE XV

##### Amendment

While the Declarant owns ten percent (10%) of the Units, this Declaration may not be amended by vote of Unit Owners, and mortgagees, subject to the restriction of the Act. Thereafter, when Declarant owns less than 10% of the Units, this Declaration may be amended, subject to the restrictions of the Act, by a majority vote of the Unit Owners and Mortgagees of the Common interests. No amendment shall be effective until properly recorded.

#### ARTICLE XVI

##### Removal

The property may be removed from the provisions of the Act by a written ratification, duly recorded, and executed by all Unit Owners, holders of all mortgages, judgments or other liens affecting the Units. Once the property has been removed, the former Unit Owners shall become tenants in common of the property as provided by the Act.

#### ARTICLE XVII

##### Interpretation

Matters of dispute or disagreement between Unit Owners or matters which require interpretation of this Declaration or the Code of Regulations or the Rules and Regulations of the Council shall be determined by the Council, whose determination shall be final and binding, on all Unit Owners.

#### ARTICLE XVIII

##### Severability

If any of the provisions of this Declaration or of the

Code of Regulations or of the Act are held invalid, the validity of the of the remaining provisions shall not be affected thereby.

## ARTICLE XIX

Captions

The captions herein are inserted only as a matter of convenience and in no way define, limit or describe the scope of the Declaration nor the intention of any provisions hereof.

## ARTICLE XX

Conflicts

This Declaration is set forth to comply with the requirements of the Act. In the event of any conflict between this Declaration and the provisions of the Act, the provisions of the Act shall control.

IN WITNESS WHEREOF, the DECLARANT has hereunto caused this Declaration to be executed at State College, Pennsylvania, this 26<sup>th</sup> day of February, 1980.

ATTEST

*[Signature]*  
Secretary

HFL CORPORATION

BY:

*[Signature]*  
President

COMMONWEALTH OF PENNSYLVANIA

:SS

COUNTY OF CENTRE

On this, the 26<sup>th</sup> day of February, 1980, before me, the undersigned officer, personally appeared JOHN D. PHILLIPS Henry D. Sahakian, who acknowledged himself to be the President of HFL Corporation, the foregoing corporation, and that he, being authorized to do so, executed the foregoing Declaration for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

*[Signature]*  
My commission expires:

JOHN A. J. ALLEN, Notary Public  
State College, Centre Co., PA.  
My Commission Expires Mar. 25, 1982

All that certain message, tenement and tract of land situate, lying and being in the Borough of State College, County of Centre and State of Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin on the Easterly side of South Atherton Street at the Northwesterly corner of premises now or late of Charles W. Stoddard, Jr. et ux, formerly of James A. Rice; thence along South Atherton Street in a Northerly direction, 80 feet, more or less, to lands of A. Laura and M. C. Mateer; thence in a Northeasterly direction along the line of the aforesaid Mateer premises 150 feet to a wooden stake in the line of an alley; thence along the line of said alley in a Southerly direction and nearly parallel with South Atherton Street, 80 feet, more or less, to the corner of a stone wall at the Northeasterly corner of premises of Elizabeth Rothrock, now or late of Theodore G. Fowler; thence along aforesaid Fowler and Stoddard premises in a Southwesterly direction 150 feet to the line of South Atherton Street and the place of beginning.

BOOK 149 PAGE 384

Exhibit "A"

ATHERTON ASSOCIATION

A Condominium

State College Borough

Centre County, Pa.

UNIT NUMBER	TYPE OF UNIT	% OF OWNERSHIP IN COMMON ELEMENTS	VOTES
A-1	1 Bd. Rm.	4.08%	1
A-2	Efficiency	3.41%	1
A-3	Efficiency	3.41%	1
A-4	1 Bd. Rm.	4.08%	1
A-5	Efficiency	3.41%	1
A-6	1 Bd. Rm.	4.08%	1
A-7	Efficiency	3.41%	1
A-8	Efficiency	3.40%	1
A-9	1 Bd. Rm.	4.08%	1
B-1	1 Bd. Rm.	4.08%	1
B-2	Efficiency	3.40%	1
B-3	Efficiency	3.40%	1
B-4	1 Bd. Rm.	4.08%	1
B-5	Efficiency	3.40%	1
B-6	1 Bd. Rm.	4.08%	1
B-7	Efficiency	3.40%	1
B-8	Efficiency	3.40%	1
B-9	1 Bd. Rm.	4.08%	1
C-1	1 Bd. Rm.	4.08%	1
C-2	Efficiency	3.40%	1
C-3	Efficiency	3.40%	1
C-4	1 Bd. Rm.	4.08%	1
C-5	Efficiency	3.40%	1
C-6	1 Bd. Rm.	4.08%	1

Continued

C-7	Efficiency	3.40%
C-8	Efficiency	3.40%
C-9	1 Bd. Rm.	4.08%

Exhibit "B"

A  
CODE OF REGULATIONS  
FOR  
ATHERTON ASSOCIATION  
A Condominium

ARTICLE I

Name and Location

The name of this condominium is: ATHERTON ASSOCIATION, a Condominium (hereafter called the "ASSOCIATION"). Its principal office is located at 415 South Atherton Street, State College, Pennsylvania.

ARTICLE II

Unless the context clearly indicates otherwise, the words and phrases used in this Code of Regulations have the same meaning as the identical words and phrases have in the Declaration of Condominium, duly recorded with respect to the Property known as ATHERTON ASSOCIATION.

ARTICLE III

Purpose

The purpose of the Association is to act on behalf of all Unit Owners as its members through their Council as their governing body with respect to the administration, maintenance, repair and replacement of certain Property which has been submitted to the Unit Property Act of Pennsylvania ( 68 P.S. 700.101, et seq., hereinafter called the "ACT"). The Association is to so operate on a nonprofit basis.

Recorded in the office for the recording  
of Deeds, etc. in and for Centre County  
in Mike Book No. 149 at page 387  
5<sup>th</sup> day of March A.D. 19 80

Witness my hand and seal of office

John W. Miles Recorder

ARTICLE IV

Identification of the Property

The Property which is subject to the provisions hereof has been submitted to the provisions of the Act by the recording of a Declaration of Condominium, and by the recording also of a Declaration Plan, in the Office of the Recorder of Deeds of Centre County, Pennsylvania. The Property is described on the Declaration Plan, as ATHERTON ASSOCIATION, a Condominium, and is also legally described as is set forth on Exhibit "A" attached hereto, as a part hereof.

ARTICLE V

Membership

SECTION 1. The members shall consist of all of the Unit Owners of the Property in accordance with the respective percentages of the ownership of the said Unit Owners in the Common Elements of the Property. Such respective percentages of ownership shall be determined in accordance with the provisions of the Declaration.

SECTION 2. Membership shall be personal to each Unit Owner. It shall terminate upon a sale, transfer, or other disposition of his ownership interest in the Property, accomplished in accordance with the provisions of the Declaration, and thereupon, the membership shall automatically transfer to and be vested in the new owner succeeding to such ownership interest.

There shall be no other arrangement for acquiring, having, and transferring of membership.

ARTICLE VI

Meetings

Section 1. Meetings of the membership shall be at the Property or at such other place in Centre County, Pennsylvania, as may be determined by provisions herein and as specified in the Notice of Meeting.

Section 2. No later than ninety (90) days following the recording of deeds of conveyances aggregating interests of 90% or more in the Common Elements the Declarant shall notify all Unit Owners and call the first meeting of the Unit Owners. The first annual meeting of the Unit Owners shall be held on the second Tuesday of the month of March or in the event that day is a legal holiday, on the following day. Thereafter, the annual meeting of the members shall be held on the second Tuesday of the month of March, or in the event that day is a legal holiday, on the following day. At such annual meetings there shall be elected by ballot of the members, those members of Council then due to be elected in accordance with the provisions of Article VII of this Code of Regulations. The members shall also transact such other business as may concern the Association and/or the Property.

Section 3. It shall be the duty of the President to call a Special Meeting of the members as directed by resolution of the Council or upon a petition signed by the owners of fifty (50%) percent of the ownership interest in the Common Elements. The notice of any Special Meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless with the consent of a majority of the members present, either in person or by proxy.

Section 4. It shall be the duty of the Secretary, or upon his failure or neglect, then any officer or member, to mail by United States Certified Mail, postage prepaid, a notice of each annual or special meeting, stating the purpose, the time and place thereof to each member of record, and addressed to him at his Unit if occupied, and if not, then addressed to him at such place as is known to be a currently good address for him.

Section 5. The presence, either in person or by proxy, of the owners of a majority of the ownership interest in the Common Elements shall be required for and shall constitute a quorum for the transaction of business at all meetings of members.

Section 6. If at any meeting of members a quorum shall not be in attendance, those members who are present may adjourn the meeting to a time not less than forty-eight (48) hours from the time at which the original meeting was called.

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Section 7. If any Unit Owner consists of more than one (1) person, the voting right of each Unit Owner shall not be divided but shall be exercised only as a Unit. The Declarant, as described in the Declaration, may exercise the voting rights with respect to all Units titled in the Declarant.

Each question presented at a meeting shall be determined by a majority vote of those present, unless by express provision of the ACT of this Code of Regulations or of the Declaration, a different vote is required.

Section 8. The vote of any corporate, partnership, or trust member may be cast on its behalf by any officer, partner, or trustee of such member and any such member may appoint its officer, partner, trustee or beneficiary, or any other member as its proxy. An individual member may appoint only his or her spouse or another member as a proxy. Each proxy must be filed in writing with the Secretary prior to the commencement of a meeting or at the time that proxies are called for.

#### ARTICLE VII

##### Council

Section 1. The business, operation and affairs of the Property and of the Collectivity of Unit Owners shall be managed on behalf of the Unit Owners by a board of five (5) natural individuals, who are each residents of Pennsylvania and who may but need not be Unit Owners, in compliance with and subject to the

ACT, the Declaration and the Code. Such board is herein and in the Declaration called the "COUNCIL."

SECTION 2. Powers and Duties. Subject to the limitations and restriction contained in the Act, the Declaration and this Code, the Council shall on behalf of the Unit Owners have all powers and duties necessary to administer and manage the business, operation and affairs of the Property, and of the Collectivity of Unit Owners. Such powers and duties of the Council include, by way of illustration, but are not limited to, the following:

A. The operation, maintenance, repair, improvement and replacement of the Common Elements and Limited Common Elements.

B. The power to estimate and adopt an annual operating budget and to make assessments against the Units and to provide for the collection of same from the Unit Owners according to their respective obligations;

C. The promulgation, distribution and enforcement of the Rules, subject to the right of a Majority of the Unit Owners to change any such Rules;

D. The power to engage and dismiss employees and to appoint and dismiss agents necessary for the management of the

business, operation and affairs of the Property and of the Collectivity of Unit Owners, and to define their duties and fix their compensation;

e. The power to enter into and to perform under contracts and any amendments thereto or replacements thereof, deeds, leases and other written instruments or documents on behalf of the Collectivity of Unit Owners and to authorize the execution and delivery thereof by its officers or assistant officers;

f. The opening of bank accounts on behalf of the Collectivity of Unit Owners and designating the signatures therefore;

g. The power to purchase, hold, sell, convey, mortgage or lease any one or more Units on behalf of the Collectivity of Unit Owners or its designee;

h. The obtaining of insurance pursuant to Article X of the Declaration;

i. To bring, prosecute, defend and settle litigation for and against itself, the Collectivity of Unit Owners and the Property, and to pay any adverse judgment entered therein, provided that it shall make no settlement which results in a liability against the COUNCIL, the Collectivity of Unit Owners or the Property in Excess of \$500.00 without the prior approval of a Majority of Unit Owners;

j. To repair or restore the Property following damage or destruction, or a permanent taking by the power or a

power in the nature of eminent domain or by an action or deed in lieu of condemnation, not resulting in a termination of the Condominium;

k. To own, purchase, or lease, hold and sell or otherwise dispose of, on behalf of the Unit Owners, items of personal property necessary to or convenient in the management of the business and affairs of the Collectivity of Unit Owners and the COUNCIL and in the operation and management of the Property, including without limitation, furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies;

1. To keep adequate books and records as required by Section 2, Article IX of the Code of Regulations;

m. The COUNCIL may employ a managing agent at a compensation from time to time established by the COUNCIL, to perform such duties and services as the COUNCIL shall authorize and direct.

Section 3. First Members of the Council. The first members of the COUNCIL shall be those persons designated by Declarant who are named in the Declaration. The first members, or their respective successors, if any, from time to time designated by Declarant, shall serve until the first meeting of Unit Owners referred to in Article VI, Section 2, to be held not later than ninety (90) days following the sale of 90% or

more of the Units. At such first meeting of Unit Owners, two (2) persons designated by Declarant shall constitute two of the five members of Council, each for a one (1) year term, and the Unit Owners shall elect three persons to serve on Council, two persons for a term to expire on the second Tuesday of March, 1982, and one person for a term to expire on the second Tuesday of March, 1983.

SECTION 4. Subsequent Election and Term of Office.

At first annual meeting of Unit Owners to be held on the second Tuesday of March, 1981, the Unit Owners shall elect two persons, one to serve for a term of three years or until 1984, and the other for a term of four years, or until 1985. At the second annual meeting of Unit Owners on the second Tuesday of March 1982, the Unit Owners shall elect two persons to Council, one to serve for a term of five years, or 1987, and the other to serve for a term of four years, or 1986. At such time the Council will be composed of five members whose terms expire in 1983, 1984, 1985, 1986 and 1987. At each annual meeting thereafter, the Unit Owners shall elect one person to serve for a period of five (5) years. PROVIDED, however, that until 100% of all of the Units have been settled by delivery of a deed by Declarant, Declarant shall appoint one (1) person as a member of Council, and if all Units are not

conveyed by deed prior to the annual meeting in 1982, the COUNCIL shall be composed of six (6) persons until all Units are sold, when the term of the appointee of Declarant shall expire.

Section 5. Removal of Members of the Council. At any regular or special meeting of Unit Owners, any one or more of the members of the COUNCIL (other than members designated by Declarant under Sections 3 and 4 of this Article III, who may be removed and replaced by Declarant at any time and from time to time) may be removed with or without cause by a Majority of Unit Owners and successors may then or thereafter be elected by a Majority of Unit Owners to fill any vacancies thus created. Any member of the Council whose removal has been proposed by the Unit Owners shall be given an opportunity to be heard at the meeting.

Section 6. Vacancies. Vacancies in the COUNCIL (other than vacancies in the term of the member to be designated by Declarant under Section 4 of this Article III, which shall be filled by Declarant) caused by any reason other than the removal of a member thereof by a vote of the Unit Owners, including without limitation by virtue of the expiration of Declarant's right to designate a member of the COUNCIL under Section 4 of this Article III shall be filled by a vote of a

majority of the remaining members of the COUNCIL, even though less than a quorum, promptly after the occurrence thereof, and each person so elected shall be a member of the COUNCIL for the remainder of the term so filled.

Section 7. Organization Meeting of the Council. At such organizational meeting, the COUNCIL shall elect the following officers, whose duties shall be as follows:

a. A President, who shall be the chief executive officer of the ASSOCIATION and shall have general charge and supervision over, and responsibility for, the business and affairs of the ASSOCIATION. Unless otherwise directed by the COUNCIL, all other officers shall be subject to the authority and supervision of the President. The President may enter into and execute in the name of the ASSOCIATION, contracts or other instruments in the regular course of business or if not in the regular course of business those which are authorized, generally or specifically, by the COUNCIL. He shall have the general powers and duties of management usually vested in the office of the president of a corporation.

b. A Vice President who shall perform such duties and have such authority as from time to time may be delegated to him by the President or by the COUNCIL. In the event of the absence, death, inability or refusal to act by the President, the Vice President shall perform the duties and be vested with

the authority of the President.

c. A Secretary who shall cause notices of all meetings to be served as prescribed by the Code of Regulations and shall keep or cause to be kept the minutes of all meetings of the Unit members and the COUNCIL. The Secretary shall perform such other duties and possess such other powers as are incident to that office or as are assigned by the President or the COUNCIL.

d. A Treasurer, who shall have the custody of the funds and securities of the ASSOCIATION and shall keep or cause to be kept regular books of account for the ASSOCIATION. The Treasurer shall perform such other duties and possess such other powers as are incident to that office or as shall be assigned by the President or the COUNCIL. All checks representing payment on behalf of the ASSOCIATION shall be signed by two officers of the Corporation, as designated by the COUNCIL, and the agreement with any bank shall at all times indicate such requirement. Any other bank accounts or financial assets of the ASSOCIATION shall be withdrawable only by the written execution by two officers of the COUNCIL, as appointed by the COUNCIL from time to time, and all such depository agreements or the like shall reflect such requirements.

e. An Assistant Secretary-Treasurer who shall perform such duties and have such authority as from time to

time may be delegated to him by the President or by the COUNCIL and in the event of the absence, death, inability or refusal to act by either the Secretary or the Treasurer, the Assistant Secretary-Treasurer shall perform the duties and be vested with such authority.

Section 8. Regular Meetings of the Council. Regular meetings of the COUNCIL may be held without call or notice, at such times and places as the COUNCIL may from time to time determine.

Section 9. Special Meetings of the Council. Special meetings of the COUNCIL may be called by the President or by two or more members of the COUNCIL, and held on notice by letter or telegram, mailed or delivered for transmission not later than three days prior to the meeting date, specifying the time, place and purposes of the meeting. No business may be transacted at a special meeting other than as specified in the notice thereof unless all members attend or waive notice.

Section 10. Place of Meetings. Meetings of the COUNCIL shall be held at the Property or at such other place within or without the Borough of State College, as the COUNCIL may specify.

Section 11. Waiver of Notice. Any notice of any meeting of the COUNCIL may be waived by any member thereof in writing prior to, at, or subsequent to the meeting, and attendance at the meeting shall constitute a waiver of notice thereof.

Section 12. Effect of Presence at Meetings of the Council. Any member of the COUNCIL present at any meeting thereof shall be deemed to have assented to any action taken thereat unless his dissent is entered on the minutes thereof or unless he shall file his written dissent with the Secretary at or immediately following the adjournment thereof, provided that no member may so dissent from any action for which he voted at the meeting.

Section 13. Quorum. A majority of the members in office shall constitute a quorum at any meeting of the COUNCIL, and the act of a majority of the members at a meeting at which a quorum is present shall be the acts of the COUNCIL. If less than a quorum is present at any meeting, a majority of those present may adjourn the meeting from time to time, and at any adjourned meeting at which a quorum is present any business may be transacted which could have been transacted at the meeting originally called, without further notice.

Section 14. Action by Written Consent. So long as the COUNCIL is composed entirely of designees of Declarant pursuant to Section 3 of this Article III, the members of the COUNCIL may act by unanimous written consent in lieu of a meeting. Thereafter, the COUNCIL shall act only at a duly constituted meeting thereof.

Section 15. Participation in Meetings by Communications Equipment. One or more members of the COUNCIL may participate in

and be counted for quorum purposes at any meeting of the COUNCIL by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.

Section 16. No Compensation of Members of the Council.

No member of the COUNCIL shall be compensated for acting as such.

Section 17. Personal Property Located in the Common

Elements. Title to any personal property from time to time held for the joint use and enjoyment of all the Unit Owners, whether situated in the Common Elements or elsewhere, shall be vested in all the Unit Owners in accordance with their respective Proportionate Interests and the COUNCIL shall have the power and duty on their behalf to purchase or otherwise acquire, hold, and lease, mortgage, sell or otherwise deal in, and to insure, repair or replace the same, as the COUNCIL shall from time to time determine.

ARTICLE IX

Fiscal Management

Section 1. The fiscal year of the ASSOCIATION shall begin on the first day of January each year, except the first fiscal year of the ASSOCIATION shall begin at the date of the recording of this Code of Regulations or at such other date as the COUNCIL shall decide.

Section 2. Books and accounts of the ASSOCIATION shall be kept by or under the direction of the Treasurer and in accordance with customary accounting principles and practices. Within

a reasonable time after the close of each fiscal year, but not later than by February fifteenth (15th) the COUNCIL shall furnish the Unit Owners with a reasonably detailed statement of the income and disbursements of the ASSOCIATION for such prior fiscal year.

Section 3.

(a) With respect to each fiscal year, and within ninety (90) days from the commencement thereof, the COUNCIL shall cause an estimated annual budget to be prepared based on its estimation of the next ensuing annual expenses, including but not limited to the following items: (a) management and administration expenses; (b) the estimated cost of repairs, maintenance, and replacements of Common Elements; (c) the cost of such utilities as may be furnished by the ASSOCIATION; (d) the amount of such reserves as may be reasonably established by the COUNCIL, including general operating reserves, reserves for contingencies, and reserves for replacements; (e) such other expenses of the ASSOCIATION as may be approved by the COUNCIL including operating deficiencies, if any, for prior periods.

(b) By December 1 of each year the COUNCIL shall determine and notify each Unit Owner what it has determined to be the estimated monthly assessments of the respective Unit Owners, according to their respective undivided interests in the Common Elements, and according to the needs of such estimated annual budget.

(c) On or before the first day of each month of the fiscal year covered by such estimated annual budget, each Unit Owner shall pay his respective monthly assessment so determined.

(d) In the event of delay in the making of the budget and in the announcement of monthly assessments, as above provided, Unit Owners shall continue to pay that amount which had been last established for each to pay as his regular monthly assessment.

(e) If any Unit Owner should fail or refuse to make payment as due, of each assessment duly made against his Unit and him, the amount thereof together with interest thereon as provided by law shall constitute a lien on the interest of such member in the Property. The COUNCIL shall have the authority to exercise and enforce any and all rights and remedies provided in the ACT, the Declaration, this Code of Regulations, and as are otherwise available at law or in equity for the securing and collecting of unpaid assessments.

Section 4. If at any time during the course of any fiscal year the COUNCIL shall deem existing monthly assessments to be inadequate by reason of revision in its determination of needs, the COUNCIL shall prepare a revised estimated annual budget for the balance of such fiscal year, and monthly assessments thereafter shall be determined and paid on the basis of such revision.

Section 5. The COUNCIL shall arrange to have available at all reasonable times for any Unit Owner copies of budgets and of revised budgets and reasonably detailed information as relates to same, and to contemplated changes in same.

Section 6. Upon the purchase of each Unit from the Declarant, at the request of the COUNCIL, each Unit Owner, not including the Declarant, shall deposit with the managing agent of the Property, or as may be otherwise directed by the COUNCIL a non-refundable amount equal to three (3) times the monthly assessment relating to such Owner's Unit. Such amount shall be held, together with the amounts similarly deposited by other Unit Owners, as an operating reserve for Common Expenses, and shall be used and applied as the COUNCIL may deem necessary. To the extent that the said operating reserve may be depleted, or in the judgment of the COUNCIL may be inadequate, the COUNCIL may increase the same by a special assessment of such Unit Owners in proportion to their ownership of the Common Elements. The said operating reserve on hand from time to time shall be deemed part of the Common Elements.

Section 7. With respect to any Units which have not been sold by the Declarant and which the Declarant continues to own, the Declarant, for one year from the date of the filing of the Declaration, shall be liable for and pay at the rate of one-half of the regular charges or assessments otherwise due for Units still in Declarant's name, and thereafter the Declarant's obligation as a Unit Owner shall be at the rate of full amounts as in the case of any other Unit Owner.

Section 8. Continuance of Lien. In the event Owner shall transfer his Unit while an assessment of any kind remains unpaid, the lien of the assessment shall continue to be a charge on the unit and shall continue as a lien until paid. The COUNCIL shall furnish any prospective purchaser with a certificate upon which all unpaid assessments shall be listed together with interest and costs, at any time upon request.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon the Properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

#### ARTICLE X

##### Use Restrictions

Section 1. Except as herein provided at Section 16 below, with respect to the uses permitted by the Declarant, no Unit shall be used for any other purpose than as a private

dwelling for a person and his immediate family, or by not more than three (3) unrelated persons, including a member or persons to whom the member shall have leased his Unit subject to all provisions with respect to use and occupancy and presence on the Property applicable to the Unit Owner himself. No one may permit or suffer anything to be done or kept upon the Property which will increase the rate of insurance on the Property or in the contents thereof, or which will obstruct or interfere with the rights of others or annoy them by unreasonable noises or otherwise, and no one may commit or permit any nuisance or commit or suffer any immoral or illegal act to be committed anywhere in or upon the Property.

Section 2. Each owner shall maintain his Unit in good condition, order, repair at his own expense. No Unit Owner shall display, hang, store, or use anything whatsoever on his stoop or outside his Unit other than as may be permitted in accordance with the rules and regulations established by the COUNCIL. No member may paint, decorate, or otherwise alter or modify in any way the outside of his Unit, or install outside of his Unit any canopy awning, covering, radio or television antenna, or structure or addition of any kind whatsoever without the prior written consent of COUNCIL.

Section 3. Trash, garbage, and other waste shall be kept only in sanitary containers and shall be disposed of in such

manner as may be prescribed from time to time in rules and regulations established by the Council. No articles or personal property belonging to any Unit Owner shall be stored in any portion of the Common Elements without the prior written consent of Council.

SECTION 4. No one may overload the electrical wiring in the building or operate any machinery, appliance, accessories, or equipment in such a manner as to cause, in the judgment of the Council, any unreasonable disturbance, or make any alterations to or connections with the heating or plumbing systems without the prior written consent of Council.

SECTION 5. Parking Rights. The Association shall maintain in Common Elements at such parking areas as space permits.

SECTION 6. Uses and Structures. No unit or any part thereof shall be used for any purpose except as set forth in Section 1 herein, nor shall any business of any kind be conducted therein. No motor vehicle other than a private passenger type

shall be stored or parked in the parking area or parked on the Property. No business or trade of any kind or noxious or offensive activity shall be carried on in any Unit nor shall anything be done thereon which may be or become an annoyance or nuisance to the occupants of other Units. No boat, trailer, tent, shack or other such structure shall be located, or erected or used on any part of the Property, temporarily or permanently.

Section 7. Signs. No sign of any kind shall be displayed to the public view on any Unit except one temporary sign of not more than three square feet, advertising the Property for sale or rent. No such sign shall be illuminated.

Section 8. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or on the Property except that dogs, cats or other domesticated household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose and provided that not more than one (1) pet in the aggregate may be kept in any such Unit, and said pets must be housed indoors, and conform to all Borough ordinances and regulations.

Section 9. Nuisances. No noxious or offensive activity shall be carried on upon any Unit, nor, shall anything be done thereon which may be or may become an annoyance or nuisance to the

neighborhood. The decision as to whether any activity is noxious or offensive shall be decided exclusively by the Council in such manner as it may elect to make such decision.

SECTION 10. MAILBOXES. Mailboxes shall be maintained as designated by the Council from time to time.

SECTION 11. Clotheslines. No outdoor clotheslines.

SECTION 12. Fences. No fence of any kind, wall, hedge or similar structure shall be placed, erected or maintained anywhere on the Property without the written consent of the Council.

SECTION 13. The Council may adopt such rules and regulations concerning use, occupancy or other matter, including provisions for reasonably limiting or suspending certain rights and/or privileges as it deems appropriate; and may alter such rules and regulations as from time to time it may determine.

SECTION 14. Violation of any rule or regulation of the Council and/or of any provision of the Declaration and/or hereof shall give the Council or any representative acting in its behalf. In addition to any other rights, the rights also:

(a) To enter the Unit in which, or in connection with, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing,

person, creature, and/or condition that may exist therein contrary to the intent and meaning hereof without being guilty of trespass or wrong otherwise.

(b) To enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

(c) To levy as an assessment or charge as a Common Expense pursuant to §702 of the ACT against any Unit Owner an amount equal to damages so sustained plus costs of suit and reasonable attorneys fees by virtue of such Unit Owner's committing and/or permitting such violation upon finding thereof by the COUNCIL.

Section 15. COUNCIL shall maintain, repair and replace all Common Elements, wherever situate, except that in the event such maintenance, repair or replacement was caused by negligence or misuse of a Unit Owner, or of any other occupant of his Unit, such expense shall be charged to such Unit Owner. Each Unit Owner shall maintain, repair and replace, at his own expense, all portions of his Unit as are separate and private to it and him. Each Unit Owner shall be responsible for damage to any other Unit and/or to any Common Elements caused intentionally, negligently, or by failure to properly take care of his own Unit, whether or not the fault is in him personally and/or in any other occupant of his Unit.

Section 16. Anything herein or elsewhere to the contrary notwithstanding, the Declarant shall have the right to utilize any Units owned by the Declarant as models or as general or sales offices for sale and promotion purposes including the sale and promotion of the Property or projects other than the Property and purposes and in such manner as the the Declarant deems it may reasonably require.

#### ARTICLE XI

##### Indemnification

Section 1. The Association shall reimburse or indemnify each COUNCIL member, officer, and employee of the ASSOCIATION for or against all liabilities and expenses reasonably incurred by or imposed upon him in connection with or resulting from any claim, action, suit, or proceeding whatsoever and however brought and whether the same be in proceedings civil, criminal, administrative, or investigative (hereinafter called "Action"), in which he may become involved as a party or otherwise by reason of his being or having been such COUNCIL member, officer, or employee, or by reason of any action taken or not taken and/or of anything done or not done in such capacity, whether or not he continues to be such at the time such liabilities or expenses are incurred and whether or not such action or omission to act occurred before or after the adoption of this Code of Regulations, provided that (a) the provisions hereof do not apply in respect of any action

by or in the right of the ASSOCIATION because such person was guilty of wrongdoing against the ASSOCIATION and (b) they do not apply in respect to all actions wherein such person acted in bad faith.

Section 2. As used herein the term "liabilities and expenses" shall include but not be limited to counsel fees and expenses, and disbursements and amounts of judgments, record cost, fines, or penalties, and amounts paid in settlement.

Section 3. Where such person has been wholly successful on the merits in such action, or where indemnification of such person has been awarded by a court, he shall be entitled to indemnification as of right; otherwise, including any instances where such action is terminated by a settlement, the ASSOCIATION shall reimburse or indemnify him only if it shall be determined that such person has met the standards set forth in Section 1, either (a) by the Council, acting by a quorum consisting of two or more members other than those involved in the action, or (b) if there are not at least two members then in office other than those involved in the action, by independent legal counsel, who shall deliver to the ASSOCIATION written advice to such effect.

Section 4. Expenses incurred with respect to any action may be advanced by the ASSOCIATION prior to the final disposition thereof, upon receipt of an undertaking by such

person to repay any amounts for which it shall ultimately be determined that he is not entitled to indemnification.

Section 5. The foregoing right of reimbursement or indemnification shall not be exclusive of other rights to which any such person may otherwise be entitled and, in the event of his death, shall extend to his legal representatives.

Section 6. The ASSOCIATION shall have the power to purchase and maintain insurance against liabilities as contemplated above on behalf of any person who is or was a Council member, officer, employee, or agent of the ASSOCIATION, or is or was in any capacity serving the ASSOCIATION or Council at the request of either, whether or not the ASSOCIATION would have the power to indemnify him against such insured against liability under the provisions of this section, or add such persons as additional insureds under other liability insurance purchased by the ASSOCIATION.

#### ARTICLE XII

##### Amendments

This Code of Regulations may be amended or modified at any time, or from time to time, by the action or approval of the Unit Owners owning a majority of the Common Interests; except that regulations affecting the rights of interests of the Declarant shall not be amended or modified without the written consent of the Declarant.