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Joseph L. Davidson
CENTRE COUNTY RECORDER OF DEEDS

THE TOWNHOMES AT INDEPENDENCE

A CONDOMINIUM

DECLARATION OF CONDOMINIUM

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THE TOWNHOMES AT INDEPENDENCE**DECLARATION OF CONDOMINIUM****ARTICLE I
SUBMISSION**

BXAL, Inc., a Pennsylvania business corporation ("Declarant"), owner in fee simple of certain real estate described in Exhibit "A-1" attached hereto and made a part hereof, located in the Township of College, Centre County, Pennsylvania, hereby submits the real estate together with all easements, rights and appurtenances thereunto belonging and the buildings and improvements erected or to be erected thereon (collectively referred to as 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 The Townhomes at Independence (the "Condominium").

**ARTICLE II
DEFINITIONS**

2.1 Capitalized Terms. Capitalized terms not otherwise defined herein or in the Plats and Plans shall have the meanings specified or used in the Act.

2.2 Defined Terms. The following terms some of which are used or defined in general terms in the Act shall have specific meanings herein as follows:

(a) "**Act**" shall mean the Pennsylvania Uniform Condominium Act, 68 Pa.C.S. § 3101 et seq.

(b) "**Amendment**" shall mean that amendment to the Declaration or other condominium documents made in accordance with Article XVIII hereof.

(c) "**Association**" shall mean the Unit Owners' Association of the Condominium and shall be known as the "The Townhomes at Independence Condominium Association."

(d) "**Buildings**" means the structures erected on the Property located as shown on the Plats and Plans, and containing the Units.

(e) "**By Laws**" means such governing regulations as are adopted pursuant to the Pennsylvania Uniform Condominium Act for the regulation and management of the Property including such amendments thereof as may be adopted from time to time.

(f) "**Common Expenses**" means expenditures made or liabilities incurred by or on behalf of the Association other than individual Unit Expenses and Limited Common

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Expenses, together with any allocation to reserves and shall include, but not be limited to debt service or other loans, refuse removal, grounds keeping and maintenance repair and replacement of Common Elements.

(g) **"Common Expense Assessment"** means the liability for Common Expenses assessed to each Unit in accordance with its respective Percentage Interest.

(h) **"Common Expense Surplus"** means the balance, if any, of all common charges, income, profits and revenues from the Common Elements and facilities remaining after the deduction of Common Expenses.

(i) **"Condominium"** means for the purposes of this Declaration, the Buildings located on the Property wherein an individual Unit Owner in fee simple is entitled to the exclusive ownership and possession of his Unit, and being entitled to an exclusive easement for the use of the Limited Common Elements appurtenant to his Unit, and with each Unit Owner being entitled to an undivided interest in the Common Elements and facilities of the entire Property included in this Declaration.

(j) **"Condominium Documents"** means the Declaration of Condominium, the By-Laws, the Declaration Plan, and the Rules and Regulations promulgated by the Executive Board from time to time, and any and all exhibits, schedules and amendments to any of them.

(k) **"Condominium Management Agreement"** shall mean that certain agreement for the management of the Association between the Association and Keystone Hospitality, Inc. in the form attached hereto as Exhibit "A-4".

(l) **"Declarant"** means the Declarant described in Article I above and all successors to any Special Declarant Rights.

(m) **"Declaration Plan"** shall mean the Plats and Plans attached hereto as Exhibit "A-2" and made a part hereof, as the same may be amended from time to time.

(n) **"Executive Board"** means the board of natural individuals of the number stated in the By-Laws who are residents of the Commonwealth of Pennsylvania and, except for the initial Executive Board, the majority of which shall be Unit Owners, who shall manage the business, operation and affairs of the Association on behalf of the Unit Owners and in compliance with and subject to the provisions of the Pennsylvania Uniform Condominium Act, and who may take title to real or personal property as agent, nominee or trustee for the Association.

(o) **"Insurance Trustee"** means a lending institution in the vicinity of State College, Pennsylvania with trust powers designated by the Executive Board to receive and administer insurance proceeds as set forth in Section 15.1(n) of this Declaration.

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(p) **"Limited Common Elements"** means those portions of the Common Elements allocated to the exclusive use of a Unit pursuant to § 3209 of the Act or those portions of fixtures lying partially within and partially outside the designated boundaries of a Unit which serve only that Unit including but not limited to the decks, driveways, front and rear yards and the chutes, flues, ducts, wires, conduits, bearing walls and bearing columns appurtenant to and serving a single Unit pursuant to § 3202(2) of the Act.

(q) **"Related Common Expenses"** means the expenses, charges and fees associated with the maintenance, repair, replacement and use of Limited Common Elements to be borne by the owner of the Unit which is allocated or served by the Limited Common Element.

(r) **"Managing Agent"** shall mean Keystone Hospitality, Inc. or such other party appointed to serve as the manager of the Association as provided in Paragraph 13.1 hereof.

(s) **"Percentage Interest"** means the undivided ownership interest appurtenant to each Unit in the Common Elements as set forth in Exhibit "A-3" attached; share of all votes of the Unit Owners and share of Common Expense Assessments and surpluses.

(t) **"Posted Mortgage"** means a first mortgage to (i) the Declarant; (ii) the seller of a Unit; (iii) a bank, trust company, 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 Posted Mortgage is referred to herein as a "Posted Mortgagee."

(u) **"Person"** means a natural individual, corporation, partnership, association, trustee or other legal entity.

(v) **"Resident"** means any natural person who occupies a Unit either as an owner of such Unit or under written lease from a Unit Owner.

(w) **"Rules and Regulations"** means such Rules and Regulations as are promulgated by the Executive Board with respect to the use and enjoyment of the Property.

(x) **"Unit"** means a part of the Property designated or intended for any type of independent use, which has a direct exit to a public street or way, or to common Element or Common Elements leading to a road or way, or to an easement or right of way leading to a public street or way, and includes the proportioned undivided interests in the Common Elements, which is assigned thereto in this Declaration or any amendments hereto or as further defined in the Act. Unit number means the number, letter or combination thereof designating a Unit in the Plats and Plans.

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(y) "Unit Expenses" means the expenses, charges and fees associated with the maintenance, repair, replacement and use of the Unit and shall include but not be limited to electricity, water, heat, air conditioning and telephone as set forth with more particularity at Article XIV of the By-Laws.

(z) "Unit Purchase Agreement" shall mean and refer to that certain Agreement for the purchase of a Condominium Unit executed by the Declarant, as Seller, and each Unit Owner prior to a person acquiring title to a Unit. The rights, duties, and obligations of a Unit Owner and his heirs, successors and assigns with regard to a Unit and the Condominium Documents shall be subordinate and subject to the Unit Purchase Agreement.

(aa) "Unit Owner" means the person or persons owning a Unit in fee simple including the Declarant.

ARTICLE III UNIT IDENTIFICATION AND BOUNDARIES; MAINTENANCE RESPONSIBILITIES

3.1 Plats and Plans; Units/Common Elements. The location and dimensions of the Buildings and other structures and improvements comprising the Property and the Units, the Common Elements and the Limited Common Elements of the Condominium are shown on the Plats and Plans. The maximum number of Units in the Condominium, if and when constructed, shall be 52.

3.2 Unit Boundaries. Each Unit consists of the space within the following boundaries:

a) Upper and Lower Horizontal Boundaries: the upper and lower boundaries of the Unit shall be the following boundaries extended to the intersections with the vertical boundaries:

(1) Upper Boundary: The horizontal plane of the upper surface of the plasterboard ceiling of the third story of the Unit;

(2) Lower Boundary: The horizontal plane of the top surface of the unfinished concrete floor slab.

b) Vertical Boundaries: The vertical boundaries of the Unit shall be the vertical planes, extended to intersections with each other and with the upper and lower boundaries, of the Unit-side surface of the exterior walls, which do not separate the Unit from any other Unit, and of the center line of the party walls which separate the Unit from other Units.

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c) Each Unit shall include the items within the boundaries as described in Paragraphs (1) and (3) of §3202 of the Act and shall have the benefit of the use of all Limited Common Elements described in §3202 of the Act, or designated on the Plans, as being allocated to the Unit.

3.3 Maintenance Responsibilities. Notwithstanding the ownership of the various portions of the Common Elements and the Units by virtue of the foregoing boundary descriptions, the Units and Common Elements shall be maintained and repaired by each Unit Owner and by the Association in accordance with the provisions of § 3307 of the Act, except as expressly set forth to the contrary herein. All Common Expenses associated with the maintenance, repair and replacement of a Limited Common Element (other than the care and maintenance of the front or rear yard of a Unit) shall be assessed as a Limited Expense allocated to the Unit or Units to which such Limited Common Element was assigned or to which such Limited Common Element is appurtenant at the time the expense was incurred and in the same proportion as the respective Percentage Interest of all such Units. The ordinary maintenance and repair of all front and rear yards shall be a Common Expense. Structural repairs and/or replacements of the driveways and decks shall be the responsibility of the Association, the cost to be charged as a Limited Expense, allocable to the Unit to which such deck is appurtenant.

3.4 Relocation of Unit Boundaries; Subdivision and Conversion of Units. Subject to Section 7.1, 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. Subdivisions of Units by the Declarant pursuant to § 3215(c) of the Act may not result in any additional Units.

3.5 Alteration of Units. Subject to requirements of law and to applicable Rules and Regulations, a Unit Owner:

a) May make any improvements or alterations to his Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Buildings;

b) May not change the appearance of the Common Elements or the exterior appearance of a Unit or any other portion of the Condominium without permission of the Association;

c) After acquiring an adjoining Unit or an adjoining part of an adjoining Unit (adjacent above or below), may remove or alter any intervening partition or create apertures therein, even if the partition, in whole or in part, is a Common Element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

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d) Shall refrain from making any alteration that will adversely affect either the fire retardant or sound absorption quality of the Buildings or violate any applicable law, ordinance or governmental rule, regulation or order.

e) Shall obtain the approval of the Executive Board (which approval shall not be unreasonably withheld or delayed) for any alteration to the buildings prior to the commencement of any such alteration, subject to exemptions pursuant to the Rules and Regulations.

f) Shall expeditiously complete all alterations: (i) in accordance with the plans and specifications therefore which have been prepared at such Unit Owner's expense and which have been approved by the Executive Board prior to the commencement of such alterations, if required; and (ii) without incurring any mechanic's or materialmen's liens.

e) Shall pay all costs and expenses incurred in connection with the Executive Board's review, execution and recording of any amendment to the Declaration (including the Plats and Plans) needed in order to reflect the condition of the Buildings after completion of such alterations, which amendment shall be recorded by the Executive Board if such amendment conforms to the requirements of the Act and if such amendment is approved in writing by all Owners of all Units, the appearances of which on such amendment differ from their respective appearances on the Plats and Plans prior to such amendment, and such amendment shall not require any additional authorization or approval, notwithstanding anything contained elsewhere in this Declaration to the contrary.

f) Shall not permit installation, removal, reconstruction or repair of any electrical lighting, signal transmission and/or power circuit or electric outlet box or terminal device included in such outlet box, or any items of heating or air conditioning equipment, or any ventilation or exhaust duct or related equipment, any of which is located within an interior partition of a Unit or within the ceiling above a Unit, until after application has been made to and written approval has been received from the Executive Board. Such approval shall be granted only if the work performed shall be of similar or superior quality to that then prevailing in the Buildings and shall be performed by qualified personnel. The cost of such installation, removal, reconstruction or repair, whether undertaken by a Unit Owner or by the Association (under procedures which may be established by the Executive Board) shall be borne by the Unit Owner of the Unit benefited thereby.

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ARTICLE IV
ALLOCATION OF VOTES, COMMON ELEMENT INTERESTS
AND COMMON EXPENSE LIABILITIES

Attached as Exhibit "A-3" hereto is a list of all Units by their identifying numbers and the Percentage Interest appurtenant to each Unit. The Condominium consists of units for residential use. The Percentage Interest assigned to each Unit is identical, with each Unit being assigned a 1.923% Percentage Interest. All Common Expenses will be allocated between the Units on the basis of their respective Percentage Interests. Notwithstanding the foregoing, each Unit will have one (1) vote with respect to all matter coming before the Association.

ARTICLE V
DESCRIPTION, ALLOCATION AND RESTRICTION
OF COMMON ELEMENTS

5.1 Limited Common Elements. Portions of the Common Elements are marked on the Plans as "Common Elements which may be assigned as Limited Common Elements." These portions of the Common Elements are the driveways and the decks attached to each Unit, and the front and rear yards adjoining each Unit. The said driveways, decks and front and rear yards are assigned for the exclusive use of the Unit Owners to whose Units these driveways, decks, front and rear yards are appurtenant.

5.2 Reserved Common Elements. Reserved Common Elements are those parts of the Common Elements which the Executive Board may designate from time to time for use by less than all of the Unit Owners or by non-owners of any Units for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Executive Board.

ARTICLE VI
EASEMENTS AND RESTRICTIONS

In addition to and in supplementation of the easements provided for in § 3216, 3217 and 3218 of the Act, the following easements and restrictions are hereby created:

6.1 Utility Easements. The Units and Common Elements shall be, and are hereby, made subject to easements in favor of the Declarant (during any period in which there are any unsold units) and 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 6.1 shall include, without limitation, rights of Declarant, 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

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and ducts and vents over, under, through, along and on the Units and Common Elements. Notwithstanding the foregoing provisions of this Section 6.1, unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit shall be located within 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.

6.2 Access. The Units and the Limited Common Elements are hereby made subject to the following easements:

(a) In favor of the Association and its agents, employees and independent contractors, (i) for inspection of the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible, (ii) for inspection, maintenance, repair and replacement of the Common Elements or Limited Common Elements situated in or accessible from such Units or Limited Common Elements, or both, and (iii) for correction of emergency conditions in one or more Units or Limited Common Elements, or both, or casualties to the Common Elements, the Limited Common Elements and/or the Units, it being understood and agreed that 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; and

(b) In favor of the Unit Owner benefited thereby and the Association and its agents, employees and independent contractors for the installation, repair, maintenance, use removal and/or replacement of pipes, ducts, electrical, telephone, telegraph or other communication systems and all other utility lines and conduits which are part of the Common Elements and which pass across or through a portion of one or more Units.

6.3 Structural Support. To the extent necessary, each Unit shall have an easement for structural support over every other Unit in the Condominium and the Common Elements, and each Unit and the Common Elements shall be subject to an easement for structural support in favor of every other Unit in the Condominium and other Common Elements.

6.4 Rights of the Association. In addition to any other rights and powers that the Association may possess pursuant to this Declaration, the Bylaw, the Rules and Regulations and the Act, as they may be amended from time to time, the Association shall have:

(a) The right to grant permits, licenses and easements over the Common Elements for utilities and other purposes reasonable necessary or useful for the proper maintenance or operation of the Condominium; and

(b) A reasonable right of entry into any Unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance or operation of the Condominium. Each Unit Owner shall furnish the Association with a set of keys

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necessary to gain access to his Unit in the exercise of such rights at the time any locks are changed or installed in the doors to such Unit. The Association shall maintain appropriate security measures to prevent access to such keys by unauthorized persons. The Association shall also have the right (but not the obligation), at its election, to install security locks on doors leading to any Building and to issue copies of keys or entry cards to all Unit Owners requiring access to such areas. The Association is empowered to charge Unit Owners a reasonable fee for the cost of such security cards or keys.

6.5 Declarant's Easement to Correct Drainage. Declarant reserves an easement on, over and under those portions of the Common Elements not located within any 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 6.3 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 the Declarant shall use its best efforts to restore the affected property as closely to its original condition as practicable.

6.6 Easement for Unintentional and Non-Negligent Encroachments. If a Unit shall encroach upon any Common Element or upon any other Unit, by reason of the original construction or by the non-purposeful or non-negligent act of the Unit Owner or Declarant, then an easement appurtenant to such encroaching Unit to the extent of such encroachment shall exist. If any Common Element or Limited Common Element shall encroach upon any Unit by reason of the original construction or the non-purposeful or non-negligent act of the Association or the Declarant, then an easement appurtenant to such Common Element or Limited Common Element to the extent of such encroachment shall exist so long as such encroachment shall exist.

6.7 Declarant's Use for Sales Purposes. Declarant shall have the right to maintain models, management offices and sales offices on the Property and to relocate such models, management offices and sales offices from time to time anywhere within the Property. The models, management offices and sales offices shall be in Units owned by the Declarant and not within the Common Elements. Such model Units shall not exceed one (1) model for each type of Unit. The size of each such model shall be size of the Unit which is the model. In addition to the models maintained by the Declarant, Declarant shall have the right to maintain a single office for sales and/or management purposes. Such sales or management office may not exceed the size of the largest Unit in the Condominium.

6.8 Additional Easements. The Declarant (during any period in which there are any unsold Units) and the Association each shall have the right to grant such additional electric, telephone, drainage, irrigation, sprinkler, cable television or other utility or service easements the Declarant shall have the right, with the consent of the Association, to relocate any existing utility or service easements in any portion of the Condominium or Property, and to grant such access easements as the Declarant deems necessary for the proper operation and maintenance of the improvements or any portion thereof, or for the health and safety of the Unit owners, or for the purpose of carrying out any provisions of this Declaration; provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use of the Units for dwelling purposes.

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6.9 Independence Place Homeowner's Association. The Property and the owners of the Condominium Units are subject to and entitled to the benefits of certain protective covenants of Independence Place as set forth in detail in an Amended and Restated Declaration of Covenants, Conditions and Restrictions of Independence Place - A Planned Community dated August 21, 2002 and recorded in the Office of the Recorder of Deeds of Centre County at Record Book Volume 1408, page 1057. Each person who purchases a Unit automatically becomes a member of the Independence Place Homeowner's Association and is subject to the terms of the said Declaration of Covenants, Conditions and Restrictions of Independence Place Planned Community. All assessments against all Unit Owners made by the Independence Place Homeowners Association shall be paid by the Association as a Common Expense. Each Unit Owners will have the right to exercise all voting rights to which they are entitled by virtue of their membership in Independence Place Homeowner's Association.

ARTICLE VII USES, PURPOSES AND RESTRICTIONS

7.1 Use and Occupancy of Units and Common Elements. The uses of the Property and the purposes for which the Buildings and each of the Units therein, the Common Elements and the Limited Common Elements are intended shall be in accordance with the following provisions:

(a) **Subdivision.** No Unit may be divided or subdivided into a smaller unit. Any Unit may be added to or incorporated into another unit; provided that such combination of Units must be approved in writing by the Executive Board.

(b) **Structural Integrity, Combination of Units.** Nothing shall be done to any Unit or on or in the Common Elements which will impair the structural integrity of the Building or which will structurally change the Building. Additionally, all requirements set forth in §§ 3213 and 3215 of the Act and in Article XIII of the By-Laws and the Executive Board must be satisfied.

(i) Subject to the foregoing, two or more Units may be combined and doors, windows, stairways or other openings established between such Units with the written consent of the Executive Board subject to the following:

The percentage of undivided interests appertaining to any such combined Units shall be the sum of the percentages of the individual Units so combined;

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All work done in combining such Units shall be at the sole cost and liability of the Unit Owner carrying out such work;

The work shall be subject to all the requirements of the By-Laws and shall be carried out in a manner so as not to interfere with the use and enjoyment of the Common Elements on the other Units by the Unit Owners; and

Provided the conditions of this Article VII are satisfied, the required amendments to this Declaration and to the Declaration Plan will be made, the reasonable legal fees and recording costs therefore to be assessed against and borne by the Unit Owner(s) requesting such amendment.

(ii) Interior partitions or walls may be moved in accordance with this Declaration or openings may be made thereto at the sole risk and expense of then Unit Owner and subject to this Declaration and the By-Laws and approval of the Executive Board.

(c) **Use of Common Elements.** The Common Elements shall be used only for the furnishing of the services or facilities for which they are reasonably suited and which are incidents of the use and occupancy of the Units.

(d) **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 By-Laws and this Declaration, established and adopted pursuant to the provisions of § 3307 of the Act and of this Declaration which shall be recorded and as the same may be duly amended from time to time.

(e) **Reserve Funds.** The Executive Board shall have the power to create contingency reserve funds which funds shall be used for the benefit of Unit Owners and to assess the Unit Owners for contributions to the contingency reserve funds in accordance with their percentage of ownership of the Common Elements.

7.2 General Use Restrictions. The Property shall be subject to the following use restrictions:

(a) **Residential Use.** Except as expressly set forth herein, Units shall be used for residential purposes only, and no part of a Unit shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose.

(b) **Declarant's Use.** The Declarant shall have the irrevocable right to use its Units for sales or administrative purposes, until it has conveyed title to the last Unit. This right shall not be subject to amendment or modification by the Unit Owners.

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(c) **Aesthetics.** Each Unit Owner shall maintain the interior of his Unit in good condition, order and repair, at his own expense. No Unit Owner 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, including any satellite receiver, dish or structure, or addition of any kind whatsoever without prior written consent of the Executive Board.

(d) **Displays, Hanging Objects.** Unit Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of any of the Buildings and no sign, awning, canopies, shutters, or radio or television antennas shall be fixed or placed upon the exterior walls or roofs or any part thereof without the prior written consent of the Executive Board; provided, however, until such time as it has conveyed title to the last Unit, the Declarant shall have the irrevocable right to display signs pertaining to the sale of the Units within or on the outside of the Buildings, and this right shall be not subject to amendment by the Unit Owners.

(e) **Pets.** Upon moving in to a Unit, each Unit owner may keep within each Unit no more than two (2) prior owned domestic animals such as a dog, cat or bird. No new pets may be brought into a Unit after occupancy. Except as set forth above, no animals of any kind shall be raised, bred or kept in a Unit or in the Common Elements or elsewhere on the Property.

(d) **Offensive Activities.** No noxious or offensive activity shall be carried on in any Unit or elsewhere on the Property nor shall anything be done therein either willfully or negligently which may or become an annoyance or nuisance to the other Unit Owners or Residents.

(e) **Exposure of Objects.** No clothing, sheets, blankets, articles of any kind or any other articles may be hung or exposed in or on any part of the Common Elements or Limited Common Elements.

(f) **Insurance.** Without the prior written consent of the Executive Board, nothing shall be done or kept in any Unit or elsewhere on the Property which will increase the rate of insurance of the Buildings or the contents thereof beyond the normal rates applicable for its use. No Unit Owner shall permit anything to be done or kept in his Unit or elsewhere on the Property which would result in the cancellation of insurance on any portion of the Building or the contents thereof, or which will be in violation of any law. No refuse shall be permitted in the Common Elements or Limited Common Elements, except for trash containers placed outside of the Units no more than twenty-four (24) hours prior to the scheduled pick-up. There shall be no obstruction of the Common Elements or Limited Common Elements, nor shall anything be stored in those areas without the prior written consent of the Executive Board except as herein expressly provided.

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(g) **Refuse.** All garbage and trash must be placed in the trash areas as designated by the Executive Board and no garbage or trash shall be placed on the floor or elsewhere on any Common Element, except immediately prior to the time for collection. No garbage cans, containers or bags of any kind shall be placed anywhere other than designated trash areas for collection. Garbage shall be placed in sealed trash cans with lids and be promptly removed from the Common elements and returned to storage after collection.

(h) **Electricity.** No one may overload the electrical wiring of the Buildings or operate any machinery, appliance, accessories or equipment in such manner as to cause, in the judgment of the Executive Board, an unreasonable disturbance. This restriction includes the operation of high speed machinery or radio devices which disturbs television reception.

(i) **Parking Areas.** Except for motor vehicles of the type normally used for personal, daily transportation, no vehicles or other property including, but not limited to, motor homes, trailers, boats, dump trucks or heavy commercial vehicles may be parked or stored in driveways or parking areas.

(j) **Temporary Structures.** No trailer, tent, storage shack or other temporary structure may be maintained on the Property, other than what has been or shall be constructed on the Property by the Declarant as set forth in the Declaration Plan.

(k) **Fences and Clotheslines.** There shall be no fences, walls or similar structures erected or maintained on the Property, except as placed by the Declarant in its sole discretion or permitted by the Executive Board. There shall be no outside clotheslines permitted on the Property.

(l) **Use of Common Elements.** The Common Elements or common areas may be used by all Unit Owners and/or their tenants, assigns, successors in interest, family members, guests, and invitees, subject to the By-Laws, Rules and Regulations and such further Rules and Regulations as may be established from time to time by the Executive Board. 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 By-laws, and Rules and Regulations of the Executive Board.

(m) **Access to Public Roads.** Under no circumstances shall any Unit Owner's right of ingress or egress or right of access to and from any public area, public roads or over Common Elements, Common Areas and lands be impaired where the same has been designated for such use on the Declaration Plan.

(n) **Powers of the Executive Board** The Executive Board shall have the power to make such rules and regulations as may be necessary to carry out the intent of these restrictions, and shall have the right to bring suit to enforce the provisions of this

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Declaration, the By-Laws and the rules and regulations promulgated by the Executive Board. The Executive Board shall further have the right to levy fines for violations of the provisions of this Declaration, the By-Laws and the rules and regulations promulgated by the Executive Board; provided, however, that prior to levying any such fines, the Executive Board shall first notify the Unit Owner and, at his request, afford such Unit Owner an opportunity to be heard regarding the imposition of such fine. Any Unit Owner determined to be in violation of this Declaration, the By-Laws and rules and regulations promulgated by the Executive Board shall pay all attorney's fees and costs incurred by the Executive Board in the enforcement of the same against the Unit Owner and any fine levied by the Executive Board, provided that the fine for a single violation may not, under any circumstances, exceed \$100.00. For each day a violation continues after notice, it shall be considered a separate violation. Any fine so levied is to be considered as a Common Expense to be levied against a particular Unit Owner involved, and collection may be enforced by the Executive Board in the same manner as the Executive Board is entitled to enforce collections of Common Expense.

ARTICLE VIII LEASES AND CONVEYANCES

8.1 Leasing. With the exception of the Declarant, who shall have the right to lease Units owned by it for a term not exceeding one (1) year, Units Owners are not permitted to lease their Units.

8.2 Conveyances, Sales and Transfers. Prior to any sale, transfer or conveyance of a Unit, the Unit Owner shall furnish to the purchaser a copy of this Declaration, the By-Laws and Rules and Regulations of the Association and a certificate containing the information required under § 3707 (a) of the Act. The Association, within ten (10) days after a request from a Unit owner, shall furnish a certificate containing the information necessary to enable the Unit owner to comply with § 3407 (1) of the Act.

The foregoing provisions of this Section 8.2 shall not apply to a transfer to or purchase by an institutional mortgagee that acquires its title as a result of owning a mortgage upon the Unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor, his successors or assigns, or through foreclosure proceedings. The assignee or successor of a mortgage originally given to an institutional mortgagee shall enjoy the same rights, immunities and privileges as are herein granted to the said institutional mortgagee

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ARTICLE IX MORTGAGES

9.1 Posted Mortgages. A Unit Owner may not voluntarily encumber or subject his or its Unit to any lien, other than a lien of a Posted Mortgage. Whether or not they expressly so state, all such Posted Mortgages and the obligations secured thereby shall be deemed to provide, generally, that the Posted 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 Posted Mortgagee shall have no right (a) to participate in the adjustment of losses with insurers or in the decision (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 Posted Mortgage, or any obligation to be secured thereby, unless it has first notified the Executive Board of the name and address of the proposed Posted Mortgagee and of the amount of debt proposed to be so secured. When such a Posted Mortgage is delivered to the Posted Mortgagee, the Unit Owner shall simultaneously provide executed or conformed copies to the Executive Board. Upon receipt of such copy of a Posted Mortgage, the Secretary of the Executive Board shall instruct the insurer of the Property to add the name of the Posted Mortgagee to the mortgagee loss payable provision of the hazard insurance policy covering the property and to provide such Posted Mortgagee with a certificate of Insurance showing that the Posted Mortgagee's name has been so added. The lien of any proposed mortgage which does not comply with all of the requirements of this Article shall not attach to or affect the Property or any part thereof or interest therein and shall be of no force or effect as to and to the extent that it purports to relate thereto. The Secretary shall maintain a register of such Posted Mortgages, showing the names and addresses of the Posted Mortgagees.

ARTICLE X RIGHTS OF POSTED MORTGAGES

10.1 Reports and Notices. Upon the specific written request of a holder of a Posted Mortgage or its services, insurer, guarantor (all of whom are deemed to be Posted Mortgagees for purposes of notices and rights to information) to the Executive Board, the Posted Mortgagee shall be entitled to receive some or all of the following as designated in the request:

(a) Copies of the current Declaration, Bylaws, and Rules and Regulations and 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 Posted Mortgagee.

(b) Any audited or unaudited financial statements of the Association which are prepared for the Association and distributed to the Unit Owners;

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(c) Copies of notices of meetings of the Unit Owners and the right to designate a representative to attend such meetings;

(d) Notices of the decision of the Association to make any material amendment to this Declaration or to take any other action which requires the consent of a specific percentage of Posted Mortgagees;

(e) Notice of damage to or destruction of any Unencumbered by a Posted Mortgage held by the requesting Posted Mortgagee or any material part of the Common Elements;

(f) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any of the Property;

(g) Notice of any default by the owner of the Unit which is subject to the Posted 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 Association at any reasonable time;

(i) Notice of any decision by the Executive Board or the Association to terminate professional management and assume self-management of the property; or

(j) Notice of lapse, cancellation or material modification of any Association insurance policies.

The Executive Board may impose charges on Unit Owners for performance of the services described in this Section 10.1.

10.2 Content of Request. The request of a Posted Mortgagee or its servicer shall specify which of the above items it desires to receive and shall indicate the address to which any notice or documents shall be sent by the Executive Board. The Executive Board need not inquire into the validity of any request made by a Posted Mortgagee hereunder.

10.3 Non-Compliance. Failure to comply with the requirements set forth herein or in the By-Laws or rules and regulations shall in no way invalidate otherwise proper actions of the Association and the Executive Board.

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ARTICLE XI REAL ESTATE TAXES

11.1. **Real Estate Taxes.** It is understood that real estate taxes are to be separately assessed and taxed to each Unit for his Unit and its corresponding Percentage Interest in the Common Elements, as provided in the Act. For the year in which this Declaration is first recorded, real estate taxes shall be apportioned between the Declarant and each Unit Owner on a calendar year basis. In the event the real estate taxes for any year are not separately assessed against each Unit Owner, but rather are assessed against the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective Percentage Interest in the Common Elements and, in said event, such taxes shall be a Common Expense. The Executive Board shall have the authority to advance Association funds in payment of all or a portion of such taxes pending receipt from the respective Unit Owners of their proportionate share thereof.

ARTICLE XII POWERS OF THE EXECUTIVE BOARD

12.1 **Additional Powers.** In addition to the powers set forth in the Act and elsewhere herein, the Executive Board shall have the following additional powers:

(a) To appoint committees of the Board (which need not include any Board Members) and to delegate to such committees the Executive Board's authority to carry out certain duties of the Board, subject to the approval and control of the Board;

(b) To engage the services of a manager or managing agent, who may be any person, firm or corporation, upon such terms and compensation as the Executive Board deems fit, and to remove the manager or managing agent at any time, provided that with the exception of the Management Agreement to be entered into with BXAL, Inc as set forth in Section 13.1 hereof, any agreement with such manager or managing agent shall extend for not more than one (1) year and must be terminable by either party to such agreement without cause and without payment of a termination fee, upon ninety (90) days' or less prior written notice.

(c) To engage the services of any persons (including, but not limited to, accountants and attorneys) deemed necessary by the Executive Board at such compensation as is deemed reasonable by the Executive Board, in the operation, repair, maintenance and management of the Condominium, or in connection with any duty, responsibility or right of the Executive Board and to remove, at any time, any such personnel;

(d) To pay any amount necessary to discharge any mechanic's lien or other encumbrance levied against the Property or any part thereof which may in the opinion of the Executive Board constitute a lien against the Property or against the Common

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Elements, rather than merely against the interest therein of particular Unit Owners. Where one or more Unit Owners are responsible for the existence of such lien, then they shall be jointly and several liable for the cost of discharging it and any costs incurred by the Executive Board by reason of said lien or liens shall be specially assessed to said Unit Owners.

(e) To expend funds for the maintenance and repair of any Unit or any other portion of the Property which a Unit Owner is obligated to maintain or repair under the terms hereof, if such maintenance or repair is necessary, in the discretion of the Executive Board, to protect the Common Elements, or any other portion of the Property, and the owner of said Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Executive Board to said Unit Owner, provided that the Executive Board shall levy a special assessment against such Unit for the cost of said maintenance or repair.

(f) To establish user charges with respect to the swimming pool, health club, meeting room and other amenities. Such charges shall be billed to the Unit Owner who, or whose guest, makes use of such facilities. Nothing herein contained shall require the establishment of user charges with respect to all or any one or more of such amenities. Use of all such amenities shall be subject to the Rules and Regulations of the Executive Board.

(g) To enter into leases of portions of the Common Elements with any person or entity to provide such services as health club operation and valet services. All revenues from such leases shall be deposited in the Common Expense fund.

(h) In the event more than one Unit shall a common utility meter or if a portion of the Common Elements and one or more Units share a common utility meter, to determine the proper allocation of the cost of the utility service between or among the recipients of such utility service which determination shall be conclusive and binding.

(i) In the event of any condemnation, to represent the Unit Owners in any proceedings, negotiations, settlements or agreements with the condemning authority.

(j) To borrow money on the credit of the Association and, as security for any such borrowing, to assign the Association's rights to receive future income (including assessments) and/or pursuant to § 3318 of the Act, to encumber or convey the Common Elements, or any portion thereof.

(k) To grant permits, licenses and easements over the Common Elements subject to the limitations set forth in § 3302(a) of the Act.

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12.2 Disputes. In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any questions of interpretation or application of the provisions of this Declaration, the Plats and Plans, the Bylaws or the Rules and Regulations, the determination thereof by the Executive Board 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 12.2. All costs of obtaining a judgment shall be borne by the disputants, or in the absence of disputants, by the Association as a Common Expense.

ARTICLE XIII MANAGEMENT

13.1 Condominium Management Agreement. The Association has entered into a Condominium Management Agreement, a copy of which is attached hereto as Exhibit "A-4", whereby Keystone Hospitality Group, Inc. shall render management services on behalf of the Association for a term commencing on the first day of the month in which the Declarant closes on the purchase of the first Condominium Unit and ending one (1) year after that date. Under the terms of the Condominium Management Agreement Keystone Hospitality, Inc. will manage the affairs of the Association, and will be paid therefore five (5%) percent of all Common Expense Assessments collected by it on behalf of the Association. The Association is given the right to terminate the Condominium Management Agreement at any time after the Executive Board elected by the Unit Owners pursuant to § 3303(e) takes office upon not less than ninety (90) days' notice to BXAL.

Each Unit Owner, his heirs, successors, personal representatives and assigns shall be bound by the Condominium Management Agreement for the purposes therein expressed, including, but not limited to, adopting, ratifying and confirming the execution thereof by the Association; covenanting to perform each of the undertakings to be performed by Unit Owners; and agreeing that the persons acting as directors and officers of the Association entering into such Condominium Management Agreement have not breached any of their duties to the Association.

ARTICLE XIV BUDGETS; COMMON EXPENSES; ASSESSMENTS AND ENFORCEMENT

14.1 Annual Assessments. All Common Expense assessments made in order to meet the requirements of the Association's annual budget shall be deemed to be adopted and assessed against the Unit Owners on an annual basis payable in monthly installments in advance on the first day of each month. Special assessments shall be due and payable in one or more monthly installments, in advance, on the first day of each month, as determined by the Executive Board. Insurance costs of the Association shall be assessed as part of Common Expenses.

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14.2 Subordination of Certain Charges. Any fees, late charges, fines and interest which may be levied by the Executive Board pursuant to §§ 3302(1)(10), (11) and (12) of the Act and that have not been reduced to liens against a Unit at the time of recordation of a Posted Mortgage, shall be subordinate to the lien of a Posted Mortgage on a Unit.

14.3 Working Capital Fund. At the closing for the initial transfer of title from the Declarant to a non-Declarant purchaser of each Unit, the Association shall collect from such purchasers an amount equal to two (2) months (calculated pursuant to the then current Association budget) installments of estimated Common Expenses assessed against the Unit transferred, which monies shall be deposited into an initial working capital fund under control of the Association. At the time of transfer of control of the Association by the Declarant, the Declarant shall pay such sums attributable to unsold Units to the Association (which shall deposited such funds into a segregated account) and may be reimbursed by purchasers of such Units when unsold Units are sold. While Declarant controls the Association, it cannot use any of the working capital funds to defray its expenses, reserve contributions, or construction costs or to make up any budget deficits. No Unit Owner is entitled to a refund of these monies by the Association upon the subsequent conveyance of his Unit or otherwise. Such payments do not constitute advance payment of regular assessments.

14.4 Accounting. On or before the 1st day of April each calendar year commencing after the recordation of this Declaration of Condominium, the Executive Board shall supply to all Unit Owners an itemized accounting of the Common Expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the annual budget or assessments and leases owned or managed by the Executive Board on behalf of the Association, and showing the net excess or deficit of income over expenditures plus reserves.

14.5 Further Assurances. If any annual budget proves inadequate for any reason including nonpayment of any Unit Owner's assessments, or any nonrecurring Common Expense or any Common Expense not set forth in the annual budget as adopted, the Executive Board may at any time levy further assessments according to each Unit Owner's Percentage Interest in the Common Elements. Such further monthly assessments shall be payable over such time as the Executive Board determines. The Executive Board shall serve notice of such further assessments on all Unit Owners by a statement in writing giving the amount and reasons therefor, and such further assessments shall become effective as determined by the Executive Board.

14.6 Acceleration. If a Unit Owner is in default in the payment of the aforesaid charges or monthly installments of assessments for sixty (60) days, the Executive Board may, in addition to all other remedies in the Act or Declaration contained, accelerate all other charges and monthly installments of assessments to become due for the next twelve (12) months on the basis of the budget for the calendar year in which such default occurs; provided, however, a foreclosing Posted Mortgagee shall be entitled to automatic subordination of such assessments in excess of the amounts given priority over mortgage liens in the Act.

14.7 Collection Charges. Any delinquent Owner shall also be obligated to pay (i) all expenses of the Executive Board, including reasonable attorney's fees, incurred in the collection

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of the delinquent assessments by legal proceedings or otherwise, (ii) a late fee of 5% of any delinquent payment; (iii) interest at the rate of 10% of amounts due and payable which remain unpaid; and (iv) any amounts paid by the Executive Boards for taxes or on account of superior liens or otherwise to protect its liens, which expenses and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessments and shall be collectible as such, subject to Paragraph 14.3, above.

14.8 Confession of Judgment IN ORDER TO EXPEDITE THE EXECUTIVE BOARD'S COLLECTION OF ANY DELINQUENT ASSESSMENT, EACH UNIT OWNER (BY THE ACCEPTANCE OF THE DEED TO HIS UNIT SHALL BE DEEMED TO HAVE APPOINTED ANY ONE OR MORE EXECUTIVE BOARD MEMBERS THE ATTORNEY-IN-FACT FOR SUCH UNIT OWNER IN ANY COURT OF COMPETENT JURISDICTION IN PENNSYLVANIA, FOR ANY SUCH UNPAID ASSESSMENT(S), WHICH APPOINTMENT (BEING FOR SECURITY) SHALL BE IRREVOCABLE; AND FOR SO DOING A COPY OF THIS ARTICLE XIV AND SAID DEED, BOTH VERIFIED BY AFFIDAVIT, SHALL BE IRREVOCABLE; AND FOR SO DOING A COPY OF THIS ARTICLE XIV AND SAID DEED, BOTH VERIFIED BY AFFIDAVIT, SHALL BE A SUFFICIENT WARRANT. THE AUTHORITY GRANTED HEREIN TO CONFESS JUDGMENT SHALL NOT BE EXHAUSTED BY ANY EXERCISE THEREOF BUT SHALL CONTINUE FROM TIME TO TIME AT ALL TIMES UNTIL THE DECLARATION SHALL BE TERMINATED.

14.8 Surplus. The budget of the Association shall segregate Limited Common Expenses from General Common Expenses and surplus shall be credited and applied as provided in § 3313 of the Act.

ARTICLE XV INSURANCE

15.1 Generally. The Executive Board shall acquire and pay for insurance as required by the Act in addition to and subject to the following:

a) Such insurance as the Executive Board deems advisable in the operation, and for the protection, of the Common Elements and the Units, including, without limitation, flood insurance to the extent appropriate and available..

b) The amount of property insurance obtained pursuant to the Act shall be equal to the full insurable replacement value of the property (including land, foundations, excavations or other items that are usually excluded from coverage) without deduction for depreciation. Full insurable value replacement cost coverage is to be assured by either (i) a Guaranteed Replacement Cost Endorsement (pursuant to which the insurer agrees to replace the insurable property regardless of the cost) and an Agreed Amount Endorsement (which waives the requirement for coinsurance) if a coinsurance clause is included, or (ii) a Replacement Cost Endorsement (pursuant to which the insurer agrees to pay up to

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100% of the property's insurable replacement cost, but no more) and an Agreed Amount Endorsement if a coinsurance is included. It shall insure against all risks of direct physical loss commonly and covered by the standard "all risk" endorsement, if available, and such other risks as FNMA, FHLMC or the Federal Housing Administration (or successors) may require by reason of their holding one or more Posted Mortgages. If an "all risk" endorsement is not available, a "broad form" policy will be obtained. Such insurance policy(ies) may, at the option of the Executive Board, contain a "deductible" provision in an amount to be determined by the Board but not to exceed (unless a higher amount is required by Pennsylvania law) the lesser of the maximum sum permitted by the then applicable FNMA or FHLMC regulations (or their successors), \$10,000 or one (1%) percent of the policy face amount.

c) Each Unit Owner and the Executive Board hereby waives and releases any and all claims he or it may have against any other Unit Owner, the Association, the Executive Board, and members thereof, the Declarant and their respective employees and agents, for damage to the Common Elements, the Units, or to any personal property located in the Units or Common Elements, caused by fire or other casualty or any act or omission of any such party to the extent that such damage is covered by fire or other form of hazard insurance.

d) If the act or omission of a Unit Owner, or of a member of his family, a household pet, guest, occupant or visitor of such Unit Owner, shall cause damage to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Executive Board, to the extent such payment is not waived or released under the provisions of subparagraph (c) above.

e) Any release or waiver referred to in subparagraph (c) and (d) hereof shall be valid only if such release or waiver does not affect the right of the insured under the applicable insurance policy to recover thereunder. The Unit Owners and the Executive Board, with regard to the insurance carried by each of them, shall use their best efforts to see that their insurance carriers agree that such release or waiver does not affect their rights to recover.

f) If the Executive Board fails within sixty (60) days of an insured loss to initiate a claim for damages recoverable under the property insurance policy(ies) obtained pursuant to the Act, the holder of any Posted Mortgage may initiate such a claim on behalf of the Board. The Executive Board shall from time to time at such times as it shall deem appropriate, cause an appraisal of the property to be made for the purpose of determining the current full insurable replacement value of the insured property, without considering depreciation, and the Board shall change the amount of property insurance on the property to the amount of the then current full insurable replacement value of the property, without considering depreciation, and the Board shall change the amount of

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hazard insurance on the Property to the amount of the then current full insurable replacement value of the Property as determined by the appraisal.

g) The Association's property insurance shall cover fixtures, equipment, and other personal property and supplies of the Association and fixtures, equipment and other personal property within the Units as of the date of the initial sale of the Unit by the Declarant, whether or not part of the Common Elements. Each Unit Owner, other than the Declarant, shall notify the Board in writing of any additions, alterations or improvements to his Units and he shall be responsible for any deficiency in the insurance loss recovery resulting from his failure so to notify the Association. The Board shall use its reasonable efforts to obtain insurance on any such additions, alterations and improvements if such Unit Owner requests to do so and if such Unit Owner shall make arrangements satisfactory to the Board to reimburse it for any additional premiums attributable thereto; and in the absence of insurance on such additions, alterations or improvements, the Board shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements.

h) Comprehensive general liability and property damage insurance as required by the Act shall be in such limits as the Board shall deem desirable provided that such limit shall not be less than Two Million (\$2,000,000.00) Dollars per occurrence, for personal injury and/or property damage, insuring the Association, the Board members, the managing agent, if any, and their respective agents and employees, and the Units Owners from any liability to the public or to the Units Owners, their tenants or invitees, relating in any way to the ownership and/or use of the property or any part thereof. The policy shall cover bodily injury and property damage that results from the operation, maintenance or use of the Condominium's Common Elements, and any legal liability that results from lawsuits related to employment contracts in which the Association is a party. If a policy does not include "severability of interest" in its terms, it must include a specific endorsement to preclude the insurer's denial of a Unit Owner's claim because of negligent acts of the Association or of other Unit Owners.

i) The Board may obtain such other forms of insurance as the Board shall elect to effect including Board Members and officers liability insurance and such Workmen's Compensation insurance as may be necessary to comply with applicable laws.

j) The Association shall obtain blanket fidelity insurance to protect against dishonest acts on the part of Board members, officers, agents, employees, volunteers and all others who handle, or are responsible for handling, funds of the Association. Such bond or bonds of insurance shall name the Association as an obligee or insured and shall be in the amount as the Board deems appropriate, but not less than the greater of : (i) the maximum funds that will be in the custody of the Association or its agents at any time, or (ii) the sum of three (3) months' Common Expense assessments against all Units, plus the amount of the Association's reserve funds equal to 150% of the then current Common Expense budget or such higher amount as the Board deems appropriate. Such insurance

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shall contain a waiver of defense based upon the exclusion of persons who serve without compensation from the definition of "employee" or other appropriate provisions to assure coverage of such persons. Any managing agent shall be required to maintain its own insurance with the same coverage as set forth above.

k) Except as otherwise provided in this Declaration, premiums for all insurance obtained or maintained by the Board, fees and expenses of the insurance trustee, if any, and the cost of any appraisal which the Board deems advisable in connection with any insurance, shall be Common Expenses.

l) The Board shall use its best efforts to secure policies providing that the policies cannot be canceled, invalidated or suspended on account of the conduct of any one or more individual Unit Owners or any officer or employee of the Board or managing agent, without prior demand in writing that the Board or managing agent, as the case may be, cure the defect within a reasonable period of time thereafter in which to cure the same. Association policies shall provide that the policy will be primary, even if a Unit Owner has other insurance that covers the same loss. The policy must require the insurer to notify in writing the Association, any Insurance Trustee and each mortgagee named in a mortgage clause at least ten (10) days before it cancels or substantially changes coverage.

m) Insurance coverage on the furnishings and other items of personal property belonging to a Unit Owner and insurance for his personal liability to the extent not covered by insurance maintained by the Board shall be the responsibility of each such Unit Owner.

n) All physical damage insurance policies purchased by the Executive Board shall be for the benefit of and name as insured the Association for the use and benefit of the Unit Owners and their Posted Mortgagees, as their interests may appear, and shall provide that, with respect to any single loss, if the proceeds thereof exceed \$250,000, then all such proceeds shall be paid in trust to such lending institution in the vicinity of State College, Pennsylvania with trust powers as may be designated by the Executive Board (which trustee is herein referred to as the "Insurance Trustee") and the policy loss payable provisions shall provide that such proceeds are payable to the Insurance Trustee as trustee for each Unit Owner and each Unit's mortgagees. If such proceeds do not exceed \$250,000, then the policy loss payee provision shall provide that all such proceeds shall be paid to the Executive Board to be applied pursuant to the Act as trustee for each Unit Owner and each Unit's mortgagees. If proceeds are payable to the Insurance Trustee, the Executive Board shall enter into an Insurance Trust Agreement with the Insurance Trustee which may provide that the Insurance Trustee shall not be liable for payment of premiums, the renewal of the policies, the sufficiency of coverage, the form of contents of the policies, the correctness of any amount received on account of the proceeds of any insurance policies nor the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in this Declaration and the Act, for the benefit of the insureds and their beneficiaries thereunder.

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

The Townhomes at Independence Place Condominium Owners Association, for the use and benefit of the individual owners, or their authorized representatives, of the Condominium Units contained in The Townhomes at Independence.

15.2 Repair and Reconstruction After Fire or Other Casualty.

(a) *When Repair and Reconstruction are Required.* Except as otherwise provided in subparagraph (d) of this Section 15.2, in the event of damage to or destruction of the Buildings or any part thereof as a result of fire or other casualty, the Executive Board, under direction of the Insurance Trustee if an Insurance Trustee is required, shall arrange for and supervise the prompt repair and restoration of the Buildings, as required by the Act. Notwithstanding the foregoing, each Unit Owner shall have the rights to supervise the redecorating of his own Unit.

(b) *Procedure for Reconstruction and Repair.*

(i) *Cost Estimates.* Immediately after a fire or other casualty causing damage to the Buildings, the Executive Board shall obtain reliable and reasonably detailed estimates of the cost of repairing and restoring the Buildings as required by the Act to a condition as good as existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Executive Board or Insurance Trustee (if any) determines to be necessary.

(ii) *Assessments.* If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of the reconstruction and repair the funds for the repayment of the costs thereof are insufficient, the amount necessary to complete such restoration and repair may be obtained from the appropriate reserve for replacement funds and/or shall be deemed a Common Expense (and/or Limited Expense) and special monthly assessments therefor shall be levied. The funds shall be paid out of the General Common Expense fund, one or more of the Limited Expense funds, or both, depending on whether or not the source of the shortfall can be properly determined in the opinion of the Executive Board. If such source cannot be properly determined, then the shortfall shall be allocated among the funds referred to above in proportion to the relative costs of restoration in each of the categories. Costs of restoration of a Unit to the extent required to be done by the Executive Board shall be paid out of the General Common Expense Fund unless the shortfall is due to failure of the Unit Owner to notify the Association of improvements made to his Unit, in which event the shortfall so caused shall be assessed against the particular Unit Owner. Unit Owners may apply the proceeds from their

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individual property insurance policies, if any, to the share of such Common Expense or Limited Expense, or both, as may be assessed to them. The Executive Board shall be responsible for restoring the Property only to substantially the same condition as it was immediately prior to the damage, and each Unit Owner shall personally assume the additional expense of any improvements to his Unit which he desires to restore it beyond such condition.

(iii) *Plans and Specifications.* Any such reconstruction or repair shall be substantially in accordance with the construction of the Property as it existed immediately prior to such casualty.

(c) *Disbursement of Construction Funds.*

(i) *Construction Fund and Disbursement.* The proceeds of insurance collected on account of casualty, and the sums received by the Executive Board or Insurance Trustee from collections of assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

(A) If the estimated cost of reconstruction and repair is less than \$250,000, then the construction fund shall be disbursed in payment of such costs upon order of the Executive Board;

(B) If the estimated costs of reconstruction and repair is \$250,000 or more, then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Pennsylvania and employed by the Insurance Trustee to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other persons who have rendered services or furnished materials in connection with the work and stating that: (a) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; (b) there is no other outstanding indebtedness known to such architect for the services and material described; and (c) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested, taking into account retainage.

(ii) *Surplus.* It shall be presumed that the first monies disbursed in pay of the cost of reconstruction and repair shall be from insurance proceeds and, if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be

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used first to reimburse Unit Owners for sums paid to cover shortfalls under subparagraph b(ii) above in proportion to the sums so paid until full reimbursement and any remaining balance shall be divided among all Unit Owners in proportion to their Percentage Interests and shall be distributed in accordance with the priority of interests at law or in equity in each Unit.

(iii) *Certificate.* The Insurance Trustee shall be entitled to rely upon a certificate executed by the President or Vice-President, and the Secretary, certifying (i) whether the damaged Property is required to be reconstructed and repaired; (ii) the name of the payee and the amount to be paid with respect to any disbursement from any construction fund or whether surplus funds to be distributed are less than the assessment paid by the Unit Owners; and (iii) all other matters concerning the holding and disbursing of any construction fund. Any such certificate shall be delivered to the Insurance Trustee promptly after request.

(iv) *When Reconstruction Is Not Required.* In the event of insubstantial damage to the Common Elements and if the Executive Board shall elect not to repair the same or in the event there is to be no repair or replacement pursuant to § 3312(g) of the Act, then in either such event any insurance proceeds received on account of such damage shall be expended and/or distributed in accordance with § 3312 of the Act. If the Condominium shall be terminated pursuant to § 3320 of the Act, the provisions of § 3320 of the Act shall apply.

ARTICLE XVI LIMITATION OF LIABILITY

16.1 Fiduciary Duty. 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.

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

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(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 has knowledge concerning the matter in question which would cause his reliance to be unwarranted.

16.3 Limited Liability of the Executive Board. The Executive Board, and its members in their capacity as members, officers and employees:

(a) Shall not be personally liable for the failure of any service to be obtained by the Executive Board and paid for by the Association, or for injury or damage to persons or property caused by the elements or by another Unit Owner or Person on the Property, or resulting from electricity, gas, water, rain, dust or sand which may leak or flow from the outside or from any part of the Building, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless in each such instance such injury or damage has been caused by the willful misconduct or gross negligence of the Association or the Executive Board;

(b) Shall not be liable to the Unit Owners as a result of the performance of the Executive Board members' duties for any mistake of judgment, negligence or otherwise, except for the Executive Board members' own willful misconduct or gross negligence;

(c) Shall have no personal liability in contract to a Unit Owner or any other person or entity under any agreement, check, contract, deed, lease, mortgage, instrument or transaction entered into by them on behalf of the Executive Board or the Association in the performance of the Executive Board members' duties;

(d) Shall not be liable to a Unit Owner, or such Unit Owner's tenants, employees, agents, customers or guests, for loss or damage caused by theft or damage to personal property left by such Unit Owner or his tenants, employees, agents, customers or guests in a Unit, or in or on the Common Elements or elsewhere on the Property, except for the Executive Board members' own willful misconduct or gross negligence;

(e) 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 or for them, except for the Executive Board members' own willful misconduct or gross negligence in the performance of their duties; and

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(f) Shall have no personal liability arising out of the use, misuse or condition of any Building, or which might in any other way be assessed against or imputed to the Executive Board members, as a result or by virtue of their performance of their duties, except for the Executive Board members' own willful misconduct or gross negligence.

16.4 Indemnification. Each member of the Executive Board, in his 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 may become involved by reason of his being or having been a member and/or officer of the Executive Board, or any settlement of any such proceeding, whether or not he 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 guilty of willful misconduct or gross negligence in the performance of his duties; 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 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 has 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 as such costs are incurred, either prior or subsequent to resolution of any such proceeding and shall constitute a Common Expense and shall be assessed and collectible as such. In the event any Executive Board member or officer receives any payment hereunder and is later determined not to be entitled to indemnification, he shall promptly repay such sums to the Association. 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.

16.3 Defense of Claim. 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 the holders of any mortgages on Units and such complaints shall be defended by the Association. The Unit Owners and the holders of mortgages on Units shall have no right to participate in such defense other than through the Association.

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ARTICLE XVII
DECLARANT'S RIGHTS

17.1 Control.

(a) Until the 60th day after conveyance of twenty five (25%) percent of the Units to Unit Owners other than Declarant, Declarant shall have the right to appoint and remove any and all officers and members of the Executive Board. After twenty five (25%) percent of the Units have been conveyed to Owners other than Declarant, two (2) of the five (5) members of the Executive Board shall be elected by Unit Owners. Declarant may not unilaterally remove any members of the Executive Board elected by Unit Owners other than Declarant.

(b) Not later than 60 days after conveyance of seventy five (75%) percent of the Units to Unit Owners other than Declarant, three (2) of the five members of the Executive Board shall be elected by Unit Owners other than Declarant.

(c) Not later than the earlier of (i) seven years after the date of recording of this Declaration, or (ii) 180 days after one hundred (100%) percent of the Units have been conveyed to Unit Owners other than Declarant, all remaining Declarant appointed members of the Executive Board shall resign, and the Unit Owners (including the Declarant to the extent of Units owned by Declarant) shall elect their successors.

ARTICLE XVIII
AMENDMENT OF DECLARATION

18.1 Amendment Generally.

(a) This Declaration may be amended only in accordance with the procedures specified in § 3219 of the Act, the other Sections of the Act referred to in § 3219 thereof and the express provisions of this Declaration.

(b) No action to challenge the validity of an amendment adopted by the Association pursuant to this Section may be brought more than one (1) year after the amendment is recorded.

(c) Every amendment to the Declaration must be recorded in Centre County, Pennsylvania in the same records as are maintained for the recording of deeds of real property. An amendment is effective only on recordation.

18.2 Rights of Posted Mortgagees. Subject to the limitations imposed by § 3221 of the Act and except as set forth below, no amendment of this Declaration may be made without the prior written approval of all record holders of first mortgages on Units if and to the extent that

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approval is required by the Act. Approval of holders of first lien Posted Mortgages on Units representing at least 67% of all votes is required if and to the extent that such amendment would have the effect of terminating or abandoning the Condominium (except for termination or abandonment as a result of substantial destruction or a taking by eminent domain).

Amendments of a material nature to the declaration or Bylaws must be agreed to by Unit Owners representing at least 67% of the total allocated votes of the Association. In addition, approval must be obtained from first lien mortgage holders representing at least 51% of the votes of Units that are subject to mortgages held by Posted Mortgagees. A change to any of the provisions or requirements in the declaration or the Bylaws governing the following would be considered material: voting rights; assessment liens, the priority of assessment liens or increases in assessment that raise previously assessed amounts by more than 25%; reductions in reserves for maintenance, repair and replacement of Common Elements; responsibility for maintenance and repairs; reallocation of interests in the general or Limited Common elements or rights to their use; redefinition of Unit boundaries; convertibility of Units into Common Elements or vice versa; expansion or contraction of the Condominium; hazardous fidelity insurance requirements; the imposition of restrictions on the leasing of Units; imposition of restrictions of a Unit Owners' rights to sell or transfer his or her Unit; a decision by the Association to establish self-management; restoration or repair of the Buildings (after damage or partial condemnation) in a manner other than that specified herein; any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or, any provisions that expressly benefit mortgage holders, insurers or guarantors. Termination of the legal status of the condominium for reasons other than substantial destruction or condemnation of the Property shall not be effectuated without the approval of holders of Posted Mortgages that represent at least 67% of the votes of the mortgaged Units.

18.3 Rights of Declarant. No change, modification or amendment which adversely affects the rights, privileges or obligations of the Declarant which are granted in this Declaration, the Bylaws or the Act shall be effective without the prior written consent of the Declarant, until such time as the Declarant owns five (5) or fewer Units.

ARTICLE XIX TIMESHARES

19.1 Limitation. No Units may be owned in any time-share estates.

IN WITNESS WHEREOF, the said Declarant has executed these presents on this 5th
day of MAY, 2005.

BXAL, INC.

by: 

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COMMONWEALTH OF PENNSYLVANIA)

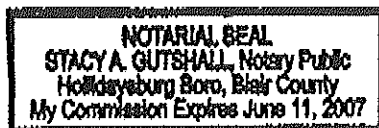
COUNTY OF BLAIR)

I, Stacy Gutshall, a Notary Public in and for the said County, in the State aforesaid, do hereby certify that P. Jules Fett, being the ^{Pres.} President of BXAL, Inc., personally appeared before me this day, and he acknowledged and swore that he signed, sealed and delivered the said instrument as his free and voluntary act and deed for the uses and purposes therein set forth and that the statements therein contained are true.

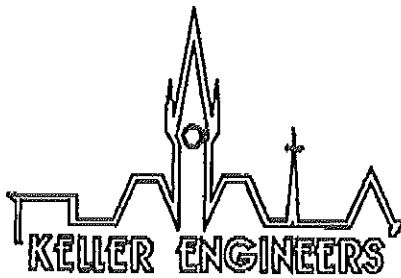
Given under my hand and notarial seal this 6th day of May, 2005.

My Commission Expires:

Notary Public



Stacy A. Gutshall



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Exhibit "A-1"

Keller Engineers, Inc
420 Allegheny Street
Post Office Box 61
Hollidaysburg, PA 16648
Phone: (814) 696-7430
Fax: (814) 696-0150
<http://keller.nb.net>

**LEGAL DESCRIPTION FOR
INDEPENDENCE PLACE PHASE III
(PHASE III-A and PHASE III-B)
PROJECT NUMBER 51-29
DATE: FEBRUARY 2005**

All that certain piece or parcel of ground, lying and being situate in College Township, Centre County, Pennsylvania, being more particularly bounded and described as follows:

Beginning at a point in the centerline of Independence Avenue on the common dividing line between Phase I, Phase III and Phase IV of the Independence Place Subdivision; thence along the said Phase I line **NORTH 34 DEGREES 52 MINUTES 45 SECONDS WEST** a distance of **429.06 FEET** to a point on the southerly right-of-way line of Constitution Avenue; thence along the same and through Constitution Avenue **NORTH 34 DEGREES 54 MINUTES 19 SECONDS WEST** a distance of **11.00 FEET** to a point in the centerline of a Constitution Avenue; thence along the centerline of Constitution Avenue and along a portion of Phase IV **NORTH 55 DEGREES 08 MINUTES 03 SECONDS EAST** a distance of **506.88 FEET** to a point; thence continuing along the Phase IV line **SOUTH 34 DEGREES 52 MINUTES 45 SECONDS EAST** a distance of **401.89 FEET** to a point; thence along the same **SOUTH 52 DEGREES 21 MINUTES 08 SECONDS WEST** a distance of **156.26 FEET** to a point in the centerline of Independence Avenue; thence along the centerline of Independence Avenue and continuing along Phase IV with a curve turning to the right with a **RADIUS** of **52.00 FEET**, a **CHORD BEARING** of **SOUTH 31 DEGREES 12 MINUTES 48 SECONDS WEST**, a **CHORD LENGTH** of **37.51 FEET**, and an **ARC LENGTH** of **38.37 FEET** to a point; thence along the same **SOUTH 52 DEGREES 21 MINUTES 08 SECONDS WEST** a distance of **316.88 FEET** to a point; which is the point and place of beginning, having an area of **4.926 Acres**.

Being a portion of Tract No. 2 in deed of P. Jules & Pamela J. Patt to BXAL, Inc. dated October 27, 1999, and recorded in Centre County Record Book 1123 at page 166, and being all of Lot 2 on the Final Subdivision Plan of Independence Place Phase III-A recorded in Centre County Plot Book 70 at pages 177-180.

Property is subject to any and all easements and right-of-ways as more fully appear on the above referenced Final Subdivision Plan.

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EXHIBIT A-2

DECLARATION PLAN

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*EXHIBIT A-3**ALLOCATION OF PERCENTAGE INTERESTS*THE TOWNHOMES AT INDEPENDENCE
BUILDING #'S AND ADDRESSES

Building 1 includes:

Percentage Interest

1A	140 Quincy Avenue	<u>1.9230%</u>
1B	138 Quincy Avenue	<u>1.9230%</u>
1C	136 Quincy Avenue	<u>1.9230%</u>
1D	134 Quincy Avenue	<u>1.9230%</u>
1E	132 Quincy Avenue	<u>1.9230%</u>
1F	130 Quincy Avenue	<u>1.9230%</u>

Building 2 includes:

2A	141 Quincy Avenue	<u>1.9230%</u>
2B	139 Quincy Avenue	<u>1.9230%</u>
2C	137 Quincy Avenue	<u>1.9230%</u>
2D	135 Quincy Avenue	<u>1.9230%</u>
2E	133 Quincy Avenue	<u>1.9230%</u>
2F	131 Quincy Avenue	<u>1.9230%</u>

Building 3 includes: (Not Yet Addressed)

3A	140 Lincoln Avenue	<u>1.9230%</u>
3B	138 Lincoln Avenue	<u>1.9230%</u>
3C	136 Lincoln Avenue	<u>1.9230%</u>
3D	134 Lincoln Avenue	<u>1.9230%</u>
3E	132 Lincoln Avenue	<u>1.9230%</u>
3F	130 Lincoln Avenue	<u>1.9230%</u>

Building 4 includes: (Not Yet Addressed)

4A	141 Lincoln Avenue	<u>1.9230%</u>
4B	139 Lincoln Avenue	<u>1.9230%</u>
4C	137 Lincoln Avenue	<u>1.9230%</u>
4D	135 Lincoln Avenue	<u>1.9230%</u>
4E	133 Lincoln Avenue	<u>1.9230%</u>
4F	131 Lincoln Avenue	<u>1.9230%</u>

Building 5 includes:

5A	112 Quincy Avenue	<u>1.9230%</u>
5B	110 Quincy Avenue	<u>1.9230%</u>

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5C	108 Quincy Avenue	<u>1.9230%</u>
5D	106 Quincy Avenue	<u>1.9230%</u>
5E	104 Quincy Avenue	<u>1.9230%</u>
5F	102 Quincy Avenue	<u>1.9230%</u>
5G	100 Quincy Avenue	<u>1.9230%</u>

Building 6 includes:

6A	113 Quincy Avenue	<u>1.9230%</u>
6B	111 Quincy Avenue	<u>1.9230%</u>
6C	109 Quincy Avenue	<u>1.9230%</u>
6D	107 Quincy Avenue	<u>1.9230%</u>
6E	105 Quincy Avenue	<u>1.9230%</u>
6F	103 Quincy Avenue	<u>1.9230%</u>
6G	101 Quincy Avenue	<u>1.9230%</u>

Building 7 includes: (Not Yet Addressed)

7A	112 Lincoln Avenue	<u>1.9230%</u>
7B	110 Lincoln Avenue	<u>1.9230%</u>
7C	108 Lincoln Avenue	<u>1.9230%</u>
7D	106 Lincoln Avenue	<u>1.9230%</u>
7E	104 Lincoln Avenue	<u>1.9230%</u>
7F	102 Lincoln Avenue	<u>1.9230%</u>
7G	100 Lincoln Avenue	<u>1.9230%</u>

Building 8 includes: (Not Yet Addressed)

8A	113 Lincoln Avenue	<u>1.9230%</u>
8B	111 Lincoln Avenue	<u>1.9230%</u>
8C	109 Lincoln Avenue	<u>1.9230%</u>
8D	107 Lincoln Avenue	<u>1.9230%</u>
8E	105 Lincoln Avenue	<u>1.9230%</u>
8F	103 Lincoln Avenue	<u>1.9230%</u>
8G	101 Lincoln Avenue	<u>1.9230%</u>

TOTAL		99.99%
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