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RECORDER OF DEEDS

## **DECLARATION OF CONDOMINIUM**

**OF**

### **NITTANY GROVE CONDOMINIUM COMMUNITY**

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

**October 16, 2009**

## DECLARATION OF CONDOMINIUM

### NITTANY GROVE CONDOMINIUM COMMUNITY

County of Centre  
Commonwealth of Pennsylvania

THIS DECLARATION OF CONDOMINIUM (this "Declaration") is made this 16<sup>th</sup> day of October, 2009, by Aguer-Nobori Properties (the "Declarant"), as owner in fee simple of the Property (hereinafter described).

#### ARTICLE I SUBMISSION

**Section 1.1** Property; County Name. The Declarant, the owner in fee simple of the property described in Exhibit "A" attached hereto (the "Property"), located in the County of Centre, Pennsylvania, for itself, its successors, and assigns, hereby submits the Property, including all easements, rights, and appurtenances, and the Building (as defined herein) and improvements erected or to be erected on it 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 NITTANY GROVE CONDOMINIUM COMMUNITY (the "Condominium").

**Section 1.2** Title. The Declarant obtained fee title to the Property by deed recorded in Centre County Record Book 1930 Page 907. Until the recording of this Declaration, the Declarant continues to hold the Condominium for itself. After the recording of this Declaration, the Declarant will convey individual residential units for consideration. PB 82 pg. 128

#### ARTICLE II DEFINITIONS

**Section 2.1** Terms Defined in the Act. Capitalized terms not otherwise defined herein or in the Plats and Plans (as defined herein) have the meanings specified or used in the Act.

**Section 2.2** Terms Specifically Defined in this Declaration. In addition to the terms defined above, the following terms have the following specific meanings in this Declaration, the Bylaws, and Plats and Plans:

- (a) **"Agreement of Sale"** means an agreement of sale entered into between the Declarant and the prospective purchaser of a Unit.
- (b) **"Association"** means the Unit Owners' Association of the Condominium, which is known as Nittany Grove Condominium Community Association."

- (c) **"Budget"** means the annual budget approved by the Association for the expenses of the Condominium.
- (d) **"Bylaws"** means the document having that name and providing for the governance of the Association, pursuant to section 3306 of the Act, as it may be amended from time to time.
- (e) **"Common Elements"** means all portions of the Condominium (other than the Limited Common Elements and the Units) and any improvements on the Property that are intended to be used in common by the Unit Owners.
- (f) **"Condominium Documents"** include the Declaration, Plats and Plans, Bylaws, and Rules and Regulations, if any.
- (g) **"Executive Board"** or **"Board"** means the executive board of the Association.
- (h) **"General Common Expenses"** means common expenses.
- (i) **"Manager"** means the Person if appointed by the Association, as its agent to whom there has been a delegation of certain duties, powers, or functions of the Association.
- (j) **"Monthly Assessment"** means a Unit's individual share of the anticipated General Common Expenses for each month of the Association's fiscal year as reflected in the Budget adopted by the Executive Board for such fiscal year.
- (k) **"Mortgagee"** means a lender who holds a mortgage encumbering a Unit and is registered in accordance with the provisions of Article IX of this Declaration.
- (l) **"Mortgagee Majority"** means Mortgagees that represent at least fifty-one percent (51%) of the votes of Unit Owners who own Units that are subject to mortgages.
- (m) **"Percentage Interest"** means the undivided interest in the Common Elements, and the share of all votes of Unit Owners and the share of General Common Expenses appurtenant to a Unit.
- (n) **"Period of Declarant Control"** means the period commencing on the date of the first conveyance of a Unit to a Person other than the Declarant and ending no later than the date on which the events set forth in Section 12.1 occur.
- (o) **"Person"** means any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, or other legal entity or organization.
- (aa) **"Plats and Plans"** means the Plats and Plans attached to this declaration as Exhibit "B" and recorded herewith, as it may be amended from time to time.

- (bb) **“Residential Unit”** means one of the planned residential condominium dwellings in the Condominium, as described herein and in the Plats and Plans.
- (cc) **“Residential Unit Owner”** means an individual owner of a Residential Unit, but does not include the Declarant.
- (dd) **“Rules and Regulations”** means any rules and regulations that are promulgated by the Executive Board from time to time with respect to the use of all or any portion of the Property.
- (ee) **“Special Assessment”** means a Unit’s individual share of any assessment made by the Executive Board in addition to the Monthly Assessment.
- (ff) **“Unit”** means a Unit shall consist of a single family residential lot and designated as a Unit in the Plats and Plans.
- (gg) **“Unit Owner”** means the Person or Persons or other legal entity or entities, including the Declarant, any Residential Unit Owner, holding fee simple title to a Unit.

**Section 2.3**        Provisions of the Act. The Property will be a condominium created and operated under the Act. The provisions of the Act will apply to and govern the operation and governance of the Condominium, except to the extent that contrary provisions, not prohibited by the Act, are contained in one or more of the following: this Declaration, the Plats and Plans, or the Bylaws.

### **ARTICLE III**

#### **UNIT BOUNDARIES AND MAINTENANCE RESPONSIBILITIES**

**Section 3.1**        Unit Boundaries. Each Unit consists of the space, excluding any Common Elements passing through the title lines as defined by section 3202 of the Act, within the title lines or boundaries of each Unit, which are situated as shown on the Plats and Plans.

##### **3.1 Use and Percentage Interest Allocation**

The Condominium shall initially consist of 54 Lots/Units for residential use and 1 Convertible/Withdrawable Unit.

3.1.1 Attached as Exhibit “C” hereto is a list of all Units by their identifying numbers, the Percentage Interest appurtenant to each Unit, and the vote so based and assigned. The Percentage Interest shall determine the portion of the votes in the Association and the share of Common Expense Liability and respective Surpluses appurtenant to each Unit.

3.1.2 Each Unit shall have a single vote in the Association. Cumulative voting shall not be

permitted.

3.1.3 The share of Common Expense Liability appurtenant to each Unit shall be in proportion to its Percentage Interest.

3.1.4 Declarant reserves the right to change the total number of Units, and the location of Units and boundaries.

3.1.5 The cost of Plan Amendments to accommodate the establishment or relocation of Unit boundaries to accommodate approved designs shall be born by Declarant.

3.1.6 Conversion of Units from Convertible Real Estate shall occur, subject to the terms of Article VI.

### **Section 3.2            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 Section 3307 of the Act, except as expressly set forth to the contrary herein. All expenses associated with the maintenance, repair and replacement of the Common Elements of the Condominium shall be the responsibility of the Condominium Association.

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

3.2.1(a) May not change the appearance of the Common Elements or any other portion of the Condominium without permission of the Association.

3.2.1(b) Shall obtain the approval of the Executive Board for any alteration to the buildings prior to the commencement of any such alteration subject to exceptions pursuant to the Rules and Regulations, if any.

3.2.1(c) 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 mechanics or materialmen's liens.

3.2.1(d) Shall pay all costs and expenses incurred in connection with the Executive Board review and approval process and appropriation review, execution, 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 or all units.

**3.2.2 General Responsibilities.** The Association shall be responsible for ensuring that the following main tasks, or sets of activities, are carried out for Common Elements:

- (a) maintenance (including minor repairs)
- (b) operation
- (c) repairs (major repairs)
- (d) replacement.

The first two are ongoing activities. In the case of Common Elements, the costs shall be charged as Common Expenses and paid for out of the Association's annual operating budget.

The latter two activities are intermittent. In the case of Common Elements, the costs shall be charged as Common Expenses and shall be paid for out of the Association's Reserve fund. If necessary, a Special Assessment shall be made.

**3.2.3 Quality and Character of Repairs and Replacements.** All repairs and replacements shall be of the same or similar quality and craftsmanship and, to the extent practicable, similar in character to the original construction or installation that existed before the repairs or replacements became necessary. Repairs and replacements may be done using contemporary technology and building materials, but shall be executed so that the generally uniform architectural style of the Condominium is maintained.

**3.2.4 Specific Responsibilities for Common Elements.** The Association shall be responsible for the maintenance, replacement and repair of all Common Elements, as listed in the definition of Common Elements in Article 2.2 and the Unit-related Common Elements.

In particular, the Association shall be responsible for the following with respect to Common Elements:

- (a) The maintenance, repair and replacement of all exterior paving on public roadways.
- (b) The removal of snow from all exterior paving on public roadways.
- (c) Subject to the landscaping exclusions set forth in the Bylaws, the landscaping maintenance of all areas, including all plantings (trees, shrubs, hedges, lawn, and meadows);
- (d) All drainage within the perimeter fence, including swales, all exterior drains and detention areas.
- (e) All pumps, wells, water treatment and septic systems in compliance with all PA DEP Regulations.

Maintenance of the Common Elements shall be under the control of and the discretion of the Board. Expenses for maintenance of the Common Elements shall be assessed by the Board as Common Expenses.

3.2.5 Damage by Negligent Acts. If due to the negligent act or omission of a Unit Owner or a resident, or of a family member, guest, employee or agent of such Unit Owner or resident, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs and replacements shall be required that 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 Board.

#### 3.2.6 Maintenance, Repair and Replacement Responsibilities Unit Owners.

Except as otherwise provided in Article 3.2 and the relevant Bylaws, the Owners of each Unit shall, at their own expense, be responsible for maintaining, repairing and replacing all portions of their Unit as are separate and private to them.

The Board shall be responsible for such maintenance, repairs and replacements as may be required for the bringing of all utilities to the Unit, as part of the Common Expenses.

Unit Owners shall be responsible for maintaining, repairing and replacing refrigerators, ranges,, dishwashers and other kitchen appliances, lighting fixtures, HVAC systems, other electrical or electronic appliances or devices at their own expense.

Unit Owners shall furnish and be responsible for and at their own expense, all of the interior and exterior decorating within their own Unit, including re-painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings.

### **Section 3.3            Relocation of Unit Boundaries; Subdivision and Conversion of Units**

Relocation of boundaries between Units will be permitted subject to compliance with the provisions therefore in §3214 and 3215 of the Act. Subdivision or conversion of Units by the Declarant pursuant to §3215(c) of the Act may not result in the addition of additional Units unless more land is added to the property.

## **ARTICLE IV** **DESCRIPTION OF COMMON ELEMENTS**

### **Section 4.1            Common Elements.**

(a) The Common Elements include all real estate not included within the title lines of any Unit

and any improvements on the real estate but excluding any Limited Common Elements.

(b) The operation of the Common Elements will be conducted by the Association.

**Section 4.2**        Location and Dimensions. The location and dimensions of the Common Elements are shown on the Plats and Plans, to the extent feasible to do so.

**Section 4.3**        Units Owned by Declarant. In accordance with section 3215 of the Act, the Declarant reserves the right to convert any Unit, or portion thereof, owned by the Declarant to Common Elements. If the Declarant converts all of a Unit to Common Elements, the Declarant must notify the Association of such conversion and the Association must prepare, execute, and record an amendment to the Declaration, including the Plats and Plans, that identifies the converted Unit as Common Elements. The Amendment must reallocate the Percentage Interest and voting strength formerly allocated to the converted Unit on a pro rata basis.

**ARTICLE V**  
**ALLOCATION OF PERCENTAGE INTERESTS;**  
**GENERAL COMMON EXPENSES AND VOTING RIGHTS;**  
**SUBDIVISION NUMBER OF UNITS**

**Section 5.1**        Percentage Interests. Each Unit will have the respective Percentage Interest set forth on Exhibit "C". Each Unit will bear a share of the General Common Expenses equal to its Percentage Interest.

**Section 5.2**        Allocation of Unit Owner's Voting Rights. Each Unit Owner will have a vote in the Association equal to the Unit Owner's Percentage Interest. There will be no cumulative voting.

**Section 5.3**        Subdivision and Combination of Units. The Declarant will have the right to subdivide Units owned by it and to sell such subdivided Units separately, and to combine Units and to sell such combined Units.

**Section 5.4**        Adjustment of Percentage Interests. As Residential Units in the Condominium are developed, and if the addition of any Convertible Real Estate or the subdivision of any Residential Unit (if and as allowed herein) increases the number of Residential Units, the Residential Units Percentage Interests will be adjusted based on the then total number of Residential Units.



**ARTICLE VI**  
**SPECIAL DECLARANT RIGHTS**

**Section 6.1**      Convertible/Withdrawable Real Estate.

(a) The Declarant hereby reserves the option to convert certain property currently designated as Common Elements to Units or Limited Common Elements ("Convertible Real Estate"). The Convertible Real Estate will consist of the area referenced in the Plats and Plans. The Declarant is under no obligation to convert or develop such property. Declarant's option to convert any or all of the Convertible Real Estate into Convertible Units will expire seven (7) years after the recording of this Declaration with the Recorder of Deeds. Only the expiration of the above seven (7) year period will terminate the Declarant's option to convert any or all of the Convertible Real Estate. Portions of the Convertible Real Estate may be converted at different times. No assurances are made hereunder with respect to when portions of the Convertible Real Estate may be converted.

(b) The Declarant hereby reserves the option to withdraw real estate ("Withdrawable Real Estate") from the Condominium. The Withdrawable Real Estate will consist of the area referenced in the Plats and Plans and the Declarant's Unit. The Declarant's option to withdraw any or all of the Withdrawable Real Estate from the Condominium will expire seven (7) years after the recording of this Declaration with the Recorder of Deeds. Only the expiration of the above seven (7) year period will terminate the Declarant's option to withdraw any or all of the Withdrawable Real Estate. No assurances are made herein with respect to which, if any, units will be withdrawn. The Declarant may withdraw any portion of the Withdrawable Real Estate, including a portion of the Declarant's Unit or a portion of any other Withdrawable Real Estate. If the Declarant withdraws any of the Withdrawable Real Estate, such real estate will no longer be part of Nittany Grove Condominium, and it may be sold or developed by the Declarant in any way the Declarant elects. Upon such withdrawal, Nittany Grove Condominium will have no liability for or rights in the Withdrawn Real Estate.

(c) The interest of Unit Owners in the Association, the relative voting strength of Unit Owners of the Association, and the share of the Common Expenses owed by each Unit Owner may be altered by the conversion of any or all of the Convertible Real Estate. A maximum number of one additional Unit ("Convertible Units") may be converted. All Convertible Units will be restricted exclusively to residential use, except any Convertible Units the Declarant uses for sales or construction purposes or for purposes otherwise related to the maintenance or for the benefit of the Common Elements or Units. No assurances are made with respect to whether the Convertible Units created or any Buildings erected on the Convertible Real Estate will be compatible with the other Units or Buildings in the Condominium in terms of architectural style, quality of construction, principal materials employed in construction, or size. No assurances are made with respect to the location of any buildings or other improvements that may be made within the Convertible Real Estate. No assurances are made regarding the Limited Common Elements that may be created within the Convertible Real Estate or that any Limited Common Elements created within the Convertible Real Estate will be of the same general types and sizes as those within other parts of the Condominium. No assurances are made regarding whether the

proportion of Limited Common Elements to Units created within the Convertible Real Estate will be approximately equal to the proportion of Limited Common Elements to Units in other parts of the Condominium. In the event that Convertible Units are added to the Condominium, the formula used to allocate the Percentage Interest will be the same as that set forth in Article V hereunder and the formula used to allocate votes in the Association will be the same as that set forth in Article V hereunder. Any assurances made herein regarding the creation of Units or Limited Common Elements or the construction of Buildings on the Convertible Real Estate do not apply if the Convertible Real Estate is not converted hereunder.

## **ARTICLE VII**

### **EASEMENTS; TITLE MATTERS**

**Section 7.1**      Additional Easements. In addition to and in supplementation of the easements provided for by sections 3216, 3217, and 3218 of the Act, the following easements are hereby created:

(a) The Declarant will have the right of access, for itself, its employees, agents, contractors, guests, and prospective customers, throughout the Property in connection with its efforts to sell or lease Units, and to conduct sales and marketing activities, and may maintain and operate marketing offices and model units and may use space in the lobby and other Common Elements, and in unsold Units, for marketing and sales purposes.

(b) The Units and Common Elements will be and are hereby made subject to easements in favor of the Declarant, appropriate utility and service companies, and governmental agencies or authorities for any utility and service lines and equipment that may be necessary or desirable to serve any portion of the Property. The easements created in this Section 7.1(b) include, without limitation, rights of the 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), electrical wires, conduits and equipment, and ducts and vents over, under, through, along, and on the Units and Common Elements. Notwithstanding the foregoing provisions of this Section 7.1(b), unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit must be located either in substantially the same location as the 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. With respect to any utility lines or equipment serving only the Condominium and located upon the Common Elements, the Executive Board has the right and power to dedicate and convey title to those lines or equipment to any private or public utility company. In addition, the Executive Board has the right and power to convey easements over the Common Elements for the installation, maintenance, repair, and replacement of those lines or equipment to any private or public utility company or governmental agency or authority.

(c) The Declarant reserves an easement on, over, across, through, and under those portions of

the Common Elements 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 7.1(c) expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil, or to take any other action reasonably necessary, following which the Declarant must restore the affected property as closely to its original condition as practicable.

(d) The Declarant reserves an easement to go upon any and all of the Property for the purposes of construction, reconstruction, maintenance, repair, renovation, replacement, or correction of the Units or Common Elements.

(e) The Declarant has the right to rent any unsold Units.

(f) The Declarant reserves an easement for itself, its successors and assigns, its employees, agents, contractors, and the Unit Owner and their tenants, to install and maintain signs on the Common Elements and outside of certain model Units used by the Declarant, its employees, and agents to conduct sales and marketing activities and to decorate doors accessing such model Units.

(g) The Common Elements are hereby made subject to an easement in favor of the Unit Owners and their invitees, employees, tenants and servants, the Association, and the agents and employees of the Association for access, egress, and ingress on, over, through, and across each portion thereof, and for the enjoyment and use thereof, pursuant to any requirements and subject to any charges that the Executive Board may from time to time prescribe.

(h) The Common Elements are hereby made subject to an easement in favor of the Association, and its agents, employees, and independent contractors for the purpose of the inspection, upkeep, maintenance, repair, and replacement of the Common Elements.

(i) The Units 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 in order to verify the performance by Unit Owners of all items of maintenance, cleaning, repair, and replacement for which they are responsible, (ii) for inspection, maintenance, cleaning, repair, and replacement of the Common Elements situated in or accessible from such Units, (iii) for correction of emergency conditions in one or more Units, or casualties to the Common Elements and/or the Units, and (iv) for any of the purposes set forth in Section 7.1(h) or Section 7.1(i) hereof. The Association and its agents, employees, and independent contractors will take reasonable steps to minimize any interference with a Unit Owner's use of his or her Unit resulting from the Association's exercise of any rights it may have pursuant to this Section, Section 7.1(i)(B), or both;

(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 that are part of the Common Elements and that pass across or through a portion of one or more Units.

(j) All easements, rights, and restrictions described and mentioned in this Declaration are easements appurtenant, running with the land and the Property, including (by way of illustration but not limitation) the Units, and (unless expressly otherwise provided in the instrument creating them), will continue in full force and effect until the termination of this Declaration, as it may be amended from time to time.

**Section 7.2**      Title Matters. In addition to those easements described in Section 7.1 above, the Property is submitted under and subject to the matters of record and those listed on the Exhibits, attached hereto. Only to the extent that such matters continue to affect the Property, the Declarant expressly disclaims any intent to revive or extend any such matters that do not presently affect the Property.

## **ARTICLE VIII**

### **RESTRICTIONS ON USE; LEASES OF UNITS**

**Section 8.1**      Residential Uses. The following restrictions apply to the use of the Residential Units.

(a) The Residential Units in the Condominium are restricted to residential use and may not be used for any other purposes. However, Residential Units may also be used for accessory uses that are customarily incidental to the residential use, provided that any such use conforms with the applicable zoning regulations of the Township of Harris, as they may be amended from time to time, including, without limitation, the use of the Residential Unit as a home office. No Residential Unit Owner may permit the related Residential Unit to be used or occupied for any prohibited purpose; furthermore, no such use may permit the operation of any commercial or professional activity or business in or from the Residential Unit that involves patients, clients, customers, or other business invitees coming into and out of the Building or inventory being brought in and out of the Building.

(b) No more than two (2) cats or dogs, weighing not more than 40 pounds, may be kept by a Residential Unit Owner or the Residential Unit Owner's family, tenants, invitees, or guests as a household pet ("Residential Pet") in the Residential Unit. The Residential Pet: (i) must not be kept, bred, or maintained for any commercial purposes; (ii) must be kept in strict accordance with any Rules and Regulations relating to household pets or domestic animals from time to time adopted or approved by the Executive Board; (iii) must not, in the sole judgment of the Executive Board, constitute a nuisance or danger to others; (iv) must not be permitted to roam at large or unleashed within the Condominium; and (v) must be confined within a Residential Unit Owner's Residential Unit or be under the direct control of a Person capable of controlling the

**Residential Pet.** Any Residential Unit Owner keeping a Residential Pet will be absolutely liable to other Unit Owners and their families, guests, tenants, and invitees for any unreasonable noise or damage to person or property caused by any Residential Pet. The Executive Board has the right to prohibit the keeping of any Residential Pet that constitutes, in the opinion of the Executive Board, a nuisance to any other Unit Owner.

**Section 8.2**            General Restrictions. The following restrictions apply to the use of the Condominium.

- (a) No Unit Owner may obstruct the Common Elements in any way. No Unit Owner may store or leave anything in or on the Common Elements without the prior written consent of the Executive Board. The Common Elements may be used only for the benefit or enjoyment of all Unit Owners and all occupants and invitees of the Units.
- (b) Without limiting the previous provisions of this Section, no Unit Owner may carry on any practice or permit any practice to be carried on that unreasonably interferes with the quiet enjoyment by the occupants of any other Unit. The Property is to be maintained in a clean and sanitary condition. No Unit Owner may place any garbage, trash, or rubbish anywhere on the Property other than in the Unit Owner's Unit and in or on parts of the Common Elements that may be designated for such purpose by the Executive Board.
- (c) No Unit Owner may erect or display any sign, advertising, or other display on or in the Unit Owner's Unit that is visible from outside the Unit or from the Common Elements, without in each instance having obtained the prior written permission of the Executive Board. This does not apply to the Declarant in connection with its marketing, sale, or leasing of any Unit and other signs identifying management or other operation-related functions in the Building. This provision is not intended to prevent the Executive Board from maintaining on the Common Elements a register of Unit occupants, or Unit Owners, or both.
- (d) The Executive Board may, from time to time, promulgate reasonable Rules and Regulations that do not conflict with the provisions of this Declaration, concerning the use and enjoyment of the Property. Copies of the then-current Rules and Regulations and any amendments to them must be furnished to all Unit Owners by the Association promptly after the adoption of the Rules and Regulations and any amendments to them.
- (e) Each Unit Owner will be responsible for maintaining his or her Unit in good order and repair, at the expense of the Unit Owner, including, without limitation, cleaning and replacing glass panes in any window serving the Unit.
- (f) Drapes, curtains, shades, and other window coverings may be hung on the interior of the windows of the Units. Any drapes, curtains, shades, or other window coverings that are visible from the outside of the Unit must meet standards of consistency or appropriateness as determined by the Association. Any window coverings deemed inconsistent or inappropriate must be removed by the Unit Owner. Unit Owners must not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the Building or in the

Common Area, except as permitted in writing by the Executive Board, and no sign, awning, canopy, shutter, appliance, radio or television or cable antenna, or other telecommunications receiving or transmission equipment may be affixed to or placed in any window or upon the exterior walls or roof or any part thereof, without the prior written consent of the Executive Board.

(g) Except as provided in Section 8.2(h) below, Residential Unit Owners may not change the appearance of the Common Elements or the exterior appearance of the Residential Unit Owner's Unit, without prior written permission from the Executive Board. The Executive Board's permission may be conditioned upon, among other things, submission of plans and specifications for review by the Executive Board, architects, and/or engineers and compliance with the Rules and Regulations and all applicable laws.

(h) Except by the Declarant in accordance with Section 5.3, none of the Units may be subdivided into two or more Units. Except by the Declarant in accordance with Section 5.3, two or more Units may be combined into one Unit only with the prior written approval of the Executive Board. The Percentage Interest allocated to the new combined Unit will be the aggregate Percentage Interests of the combined Units. In connection with any subdivision or combination of Units, the location of a doorway may not be changed, except (i) by the Declarant in the event a Unit is subdivided or combined in accordance with Section 5.3 in connection with the sale by the Declarant of a Unit or Units, which the Declarant may do without the consent of the Executive Board, and (ii) by a Unit Owner who subsequently combines two Units with prior written permission from the Executive Board. The Executive Board's permission may be conditioned upon, among other things, submission of plans and specifications for review by the Executive Board, architects, and/or engineers and compliance with the Rules and Regulations and all applicable laws.

(i) As determined by the Executive Board in its sole discretion, no noxious, hazardous, excessively noisy, or offensive activity is to be conducted in any Unit or in any Common Element, nor may anything be done or any object placed in any Unit or Common Element that is or may become a nuisance or cause disturbance or annoyance to other Unit Owners.

(j) No Unit Owner, tenant, occupant, or prospective owner or occupant of a Unit may apply for or obtain any zoning exception, variance, change, or zoning classification or other relief with respect to a Unit without the prior written approval of the Executive Board.

(k) Nothing may be done or kept in any Unit or in the Common Elements that will or could increase the rate of insurance on the Property, including, without limitation, any use that would increase the fire insurance premiums for the Property, or its contents, applicable for permitted uses, without the prior written consent of the Executive Board. This consent may be conditioned, among other things, upon the Unit Owner being required to bear the full amount of such increase. No Unit Owner may cause or permit anything to be done or kept in the Unit Owner's Unit or in the Common Elements that could or will violate any law, statute, ordinance, or regulation of any governmental body or that could or will result in the cancellation of any insurance maintained by the Executive Board or the Association.

**Section 8.3**        Nuisance. No noxious or offensive activity may be carried on by any person or entity in, on, or about the Unit, or Common Element, nor may anything be done or permitted to be done that would constitute or create a public nuisance thereon or therein. At no time hereafter may any Unit Owner, his or her family, guests, invitees, or lessees, use any object or thing that creates noise, smoke, odor, soot, or vibrations in such manner as to disturb any other Unit Owner or lawful user of the Common Elements. The Association has the right to determine in accordance with the Bylaws and any Rules and Regulations if any such noise, smoke, odor, soot, or vibration, or any activity producing such outcome, constitutes a nuisance. No Residential Unit Owner may erect, install, or place any awnings, canopies, shutters, signs, flags, banners, pennants, flashing lights, wires, exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes), clothes, or any other object, upon the exterior walls of any Unit, or within any Unit or elsewhere on the Unit in such a manner that they are in any way visible to passersby. However, American flags and flags of other countries will be permitted to be flown or hung on appropriate occasions, and electric lights of a flashing nature will be permitted to be used during the year-end holiday season. No Unit Owner may permit any noxious or offensive activity to be carried on by any person or entity in, on, or about the Unit or permit anything to be done therein or thereon that would constitute or create a public nuisance. No Owner may permit anything to be done or kept in the Unit or the Property that would increase the rate of insurance on the Unit or that would obstruct or interfere with the rights of the Owner of any other Unit.

**Section 8.4**        No Signs, Fences, Etc. Other than marketing signs used by the Declarant and address signs identifying each Unit, no sign, "for sale" sign, "for rent" sign, poster, display, billboard, or other advertising device of any kind may be displayed to the public view on any portion of the Property or on any Unit. No fences (including, without limitation, electronic or "invisible" dog fences), light standards, or other devices or appurtenant structures of any kind may be erected, installed, or placed upon any of the Common Elements, or any Residential Unit except those specifically approved by the Declarant, or, after the Declarant has completed construction of the Residential Units, the Association. The Association has the power to remove any such sign or device and to charge the costs incurred in their removal to the person responsible for erecting the sign or device.

**Section 8.5**        Automobiles and Other Vehicles. Automobiles and all other passenger vehicles under 5500 pounds curb weight may be parked only in areas designated for parking within the Common Elements. No Unit Owner may park or allow to be parked anywhere on the Property more than two (2) automobiles or passenger vehicles, neither of which may exceed 5500 pounds curb weight, per Unit, owned or leased by the Unit Owner or members of his or her household, guests, invitees, or permittees. No Unit Owner may leave any non-operating vehicle or a vehicle not licensed to be operated anywhere on the Property. No Unit Owner may park or permit to be parked anywhere on the Property any of the following: snowmobiles, recreation vehicles, trailers, boat trailers, boats, jet skis, all-terrain vehicles, golf carts, tractor-trailers, motorcycles, motorbikes, or any other vehicle that does not fit in a standard parking space on the Property. No Unit Owner may operate, or permit to be operated on the Property, any motor vehicles other than automobiles, including, by way of illustration only, all-terrain vehicles, motor scooters, and snowmobiles, regardless of whether such motor vehicles are licensed or not. No

Unit Owner may conduct repairs or restorations of any motor vehicle, boat trailer, aircraft, or other vehicle or trailer upon any portion of the Property.

**Section 8.6**      Animal Restriction. No animals, livestock, reptiles, or poultry of any kind may be raised, bred, or kept on any Unit, except for two household pets, either cats or dogs, provided that they are not kept, bred, or maintained for commercial purposes. No Unit owner may allow any pet to roam at large or unleashed within the Property. The Declarant or the Association has the right to prohibit maintenance of any animal that constitutes, in the opinion of the Declarant or the Association, a nuisance to any other Unit Owner. Animals belonging to Unit Owners, occupants, or their tenants or invitees within the Property must be confined within an Owner's Unit or be under the direct control of a person capable of controlling the animal, unless the Declarant has provided a specific area in which animals are allowed. Any Unit Owner will be absolutely liable to other Unit Owners, their families, guests, tenants, and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Property by a Unit Owner or by members of his or her family, tenants, or guests. It is the absolute duty and responsibility of each Unit Owner to clean up after such animals that have used any portion of the open space areas. No private doghouse, kennel, or other structure to house animals will be permitted on the Property.

**Section 8.7**      Outdoor Activities. No garbage, refuse, rubbish, cuttings, or other waste materials may be deposited, kept, or permitted upon or around any Unit. Trash must be put out for pickup at the times and in the manner determined by the Association. No decorations outside a Unit will be permitted without the approval of the Committee. No hunting, including hunting with firearms, bow and arrows, or other weapons, will be permitted, and the discharge of firearms or the use of fireworks for any reason will not be permitted. No riding of ATVs, dirt bikes or snowmobiles or other unlicensed vehicles shall be permitted on any of the Common Elements.

**Section 8.8**      Construction Materials and Equipment. Except for building materials and equipment of the Declarant, no building materials or equipment of any kind or character may be placed or stored outside of the Residential Units, except within the confines of an enclosed structure, or except in connection with construction approved as provided in this declaration. If building materials or equipment are placed in or around the Residential Units in connection with such approved construction, that construction must be promptly commenced and completed with reasonable speed.

**Section 8.9**      Outside Installations.

(a) Any exterior lighting installed on the Units must either be indirect or of such controlled focus and intensity that it does not disturb the residents of the Property. The source of illumination must be shielded so as not to be visible from any location off the Unit. Except for exterior lighting installed by the Declarant as part of the lighting package provided by it to Unit Owners, no exterior lighting may be installed by Unit Owners.

(b) No used, previously created, or temporary house structure or house trailer, and no



temporary, nonpermanent outbuilding including, but not limited to, storage sheds, may ever be placed, erected, or allowed to remain on the Units or Common Elements, except by the Declarant or during construction activities approved as provided in this declaration.

The Association has the right to establish additional rules and regulations as to locations and screening of any externally placed signal receptor not in conflict with FCC regulations.

**Section 8.10**        Drainage. Unit Owners must not interfere with any drainage systems established within the property.

**Section 8.11**        Mailboxes. No mailbox and no newspaper tubes may be erected on or near any Unit. Only the group mailboxes supplied by the Declarant, or replacement mailboxes supplied by the Association, and located on the Common Elements, will be permitted on the Property.

**Section 8.12**        Declarant Exemption. The Declarant or its representatives, successors, or assigns will undertake the work of constructing Units and completing the Common Elements. The completion of that work and the sale, rental, and other disposal of Units is essential to the establishment and welfare of the Property as a residential community. As used in this section and its subparagraphs, the words "its representatives, successors, and assigns" specifically do not include purchasers of Units. In order that work may be completed and the Property established as a fully occupied residential community as rapidly as possible, no Unit Owner may do anything to interfere with, and nothing in this Declaration will be understood or construed to:

- (a) prevent the Declarant, its representatives, successors, or assigns, or its contractors or subcontractors, from doing on any Unit owned by them whatever they determine to be necessary or advisable in connection with the completion of their work, including, without limitation, the alteration of its construction plans and designs as the Declarant deems advisable in the course of development;
- (b) prevent the Declarant, its representatives, successors, or assigns, or its contractors or subcontractors, from erecting, constructing, and maintaining on any Unit, or portion thereof, owned or controlled by the Declarant or its successors or assigns, any structures that may be reasonably necessary for the conduct of its or their business or completing the work and establishing the Property as a residential community and disposing of Units by sale, lease, or otherwise;
- (c) prevent the Declarant, its representatives, successors, or assigns, or its contractors or subcontractors, from conducting on any Unit, or any portion thereof, owned or controlled by the Declarant or its representatives, successors, or assigns, their business of developing, subdividing, grading, and constructing Units and other improvements in the Property as a residential community and of disposing of Units on the Property by sale, lease, or otherwise;
- (d) prevent the Declarant, its representatives, successors, or assigns, or its contractors or subcontractors, from maintaining any sign or signs on any Unit, or controlled by any of them as

may be necessary, including, without limitation, safety and Unit identification signs in connection with construction, sales, leasing, or other marketing of Units in the Property;

(e) prevent the Declarant, at any time prior to acquisition of title to a Unit by a Unit Owner, from granting any additional licenses, reservations, and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property;

(f) prevent the Declarant, its representatives, successors, or assigns, from maintaining offices and models on any Unit owned by the Declarant or in the Common Element portion of the Property in connection with the management of or sale or rental of Units owned by the Declarant in the Condominium; or

(g) prevent the Declarant, its representatives, successors, or assigns, from developing any other property adjacent to or nearby the Property or elsewhere.

**Section 8.13**      Insurance Rates. Nothing may be done or kept in the Property that will increase the rate of insurance on any property insured by the Association without the approval of the Executive Board, nor may anything be done or kept in the Property that would result in the cancellation of insurance on any portion of the Property or improvements insured by the Association or that would be in violation of any law. Furthermore, the Executive Board has the right to implement any requirements that may be imposed from time to time by underwriters of insurance maintained on any portions of the Property.

**Section 8.14**      Lease of Units.

(a) The Declarant may lease a Unit or Units owned by the Declarant at any time and from time to time without restriction. A Unit Owner, other than the Declarant, may lease the Unit Owner's Unit or Units at any time and from time to time provided that:

- (A) No Unit owned by a Residential Unit Owner may be leased for an initial term of less than one year or without a written lease;
- (B) A unexecuted copy of such lease (other than leases entered into by the Declarant) containing the name and address of the prospective lessee must be furnished to the Executive Board no later than fourteen (14) days prior to the intended execution thereof, together with a reasonable fee as may be established from time to time by the Executive Board for the registration of the lease; and
- (C) The rights of any lessee of any Unit (under a lease whose current term or current renewal or extension commences on or after the date of recordation of this Declaration) will be subject to, and each such lessee will be bound by, the covenants, conditions, and restrictions contained in this Declaration and any Rules and Regulations promulgated by the Association; however,

this does not impose any direct liability on any lessee of a Unit to pay any Monthly Assessments or Special Assessments on behalf of the Unit Owner of the Unit.

(b) The Association, for the benefit of the Association and every Unit Owner, has the rights of enforcement of any lease directly against the lessee(s) including, without limitation, the right to terminate any lease by reason of violation of the provisions of the lease, this Declaration, or the Rules and Regulations and to then, at the option of the Association, evict the lessee from the Unit without liability to the Unit Owner or Lessee. All Unit Owners agree to be bound by the foregoing for the common good of all Unit Owners, although some financial loss may be suffered by the Unit Owner of the affected Unit by reason of these conditions.

## **ARTICLE IX**

### **RIGHTS OF MORTGAGEES**

**Section 9.1**            Restrictions on Mortgagees. Every mortgage encumbering a Unit must provide generally, whether or not it so states, that the mortgage and the rights and obligations of the parties thereto will be subject to the terms and conditions of the Act, this Declaration, the Plats and Plans, and any Rules and Regulations, and, specifically but without limitation, that the obligation secured by the mortgage will be prepayable, without premium or penalty, upon the happening of a termination of the condominium form of ownership of the Property, and that the Mortgagee will have no right to:

- (a) participate in the adjustment of losses with insurers or in the decision as to whether or not or how to repair or restore damage to or destruction of the Property; or
- (b) receive or apply the proceeds of insurance to the reduction of the mortgage debt or otherwise, except in the event and to the extent either of a distribution of such proceeds to Unit Owners pursuant to section 3312(g) of the Act, or of insurance proceeds in excess of the cost of repair or restoration being received by the Unit Owner of the Unit encumbered by the mortgage; or
- (c) accelerate the mortgage debt or to be entitled to exercise any other remedies by virtue of waste or alleged waste or other conditions occurring elsewhere in the Property other than within the Unit encumbered by the mortgage.

**Section 9.2**            Notice of Mortgagees. Every Unit Owner or prospective purchaser of a Unit must, prior to the delivery of any mortgage or obligation to be secured by it, notify the Executive Board in writing of the name and address of its Mortgagee or Mortgagees. When a mortgage is delivered to the Mortgagee, the Unit Owner must simultaneously provide an executed or conformed copy of it to the Executive Board.

**Section 9.3**            Register. Upon receipt of the copy of the mortgage encumbering a Unit, the Secretary of the Association must instruct the insurer of the Property to add the name of the

Mortgagee to the mortgagee loss payable provision of the hazard insurance policy covering the Property and to provide the Mortgagee with a certificate of insurance showing that the Mortgagee's name has been added. The Secretary must maintain a register of mortgages, showing the name and address of the holder of the mortgage and the amount secured by it.

**Section 9.4**        Notice of Unit Owner Default. With respect to each Mortgagee registered with the Secretary of the Association pursuant to Section 9.3 above, the Executive Board must:

- (a) give prompt notice to a Mortgagee of any default in the Unit mortgagor's obligations under the Condominium Documents, including failure to pay General Common Expenses or Limited Common Expenses when due and payable, which is not cured within sixty (60) days after the occurrence of such default;
- (b) promptly after the Association has received written notice of any pending acquisition of any portion of the Property by means of eminent domain, give to all Mortgagees written notice of any such proceedings;
- (c) agree in writing to notify the appropriate Mortgagee whenever (i) damage to a Unit covered by the mortgage held by the Mortgagee exceeds Ten Thousand Dollars (\$10,000.00), and (ii) damage to Common Elements or related facilities exceeds Fifty Thousand Dollars (\$50,000.00);
- (d) give prompt notice to a Mortgagee of any lapse, cancellation, or material modification of any insurance policy maintained by the Association or maintained for the benefit of the Association; and
- (e) give prompt notice to a Mortgagee of any proposed action that requires consent of the Mortgagee Majority.

**Section 9.5**        Liability for Use and Charges. A Mortgagee who obtains title to a Unit pursuant to the remedies provided in a mortgage for foreclosure of the mortgage will not be liable for the Unit Owner's unpaid assessments or charges that accrue prior to the acquisition of the title to the Unit by the Mortgagee, except to the extent otherwise provided for under section 3315 of the Act and except to the extent that the Mortgagee is liable as a Unit Owner for the payment of the unpaid assessment or charge that is assessed against the Mortgagee as a result of all Unit Owners being reassessed for the aggregate amount of the deficiency.

**Section 9.6**        Insurance and Condemnation Rights. No provision of this Declaration will give a Unit Owner, or any other party, priority over any rights of the Mortgagee of a Unit pursuant to its mortgage in the case of distribution to the Unit Owner of insurance proceeds or condemnation awards for loss to or a taking of one or more Units and/or Common Elements.

**Section 9.7**        Approval of Mortgages. Except as otherwise provided below, the prior written approval of a Mortgagee Majority must be obtained for the following:

- (a) the abandonment of the condominium status of the Property, except for abandonment

permitted by the Act in case of substantial loss to the Units and Common Elements;

(b) a change in the Percentage Interest allocated to each Unit, other than any amendment made pursuant to Section 11.3 hereof;

(c) the abandonment, encumbrance, sale, or transfer of the Common Elements; and

(d) any amendment of any provision contained in the Condominium Documents that would have a material adverse impact upon the Mortgagees;

provided, however, a Mortgagee's consent can be deemed to have been obtained if the Mortgagee fails to submit a response to a request for written approval within sixty (60) days after receipt thereof and the request was delivered via certified or registered mail with return receipt requested.

**Section 9.8** Books and Records. Any Mortgagee registered pursuant to Section 9.3 of this Declaration has the right (exercisable by written notice to the Executive Board) to examine the books and records of the Association and to require that they be provided with a copy of each annual report of the Association and other financial data of the Association reasonably requested by the Mortgagee.

**Section 9.9** Miscellaneous. The Executive Board may impose reasonable charges on Unit Owners for performing the services described in this Article. Failure to comply with the requirements of this Article will in no way limit or invalidate otherwise proper actions of the Association or the Executive Board.

## **ARTICLE X** **INSURANCE**

**Section 10.1** The Association shall have authority to and shall obtain such insurance coverages as it from time to time deems appropriate to the needs and interests of the Association.

**Section 10.2** EACH UNIT OWNER SHALL MAINTAIN CASUALTY INSURANCE TO INCLUDE HAZARD INSURANCE AGAINST ALL PHYSICAL LOSS AND LIABILITY INSURANCE COVERAGE FOR THE UNIT.

## **ARTICLE XI** **UNITS SUBJECT TO CONDOMINIUM DOCUMENTS; EMINENT DOMAIN**

**Section 11.1** Applicability of Condominium Documents. Each present and future Unit Owner, lessee, occupant, and Mortgagee of a Unit will be subject to and must comply with the provisions of the Act, this Declaration, the Plats and Plans, the Bylaws, and the Rules and

Regulations, and with the covenants, conditions, and restrictions as set forth in this Declaration, the Plats and Plans, the Bylaws, the Rules and Regulations, and the deed to the Unit; nothing contained in this Declaration may impose upon any lessee or Mortgagee of a Unit any obligation that the Act or one or more of the documents, or both, make applicable only to Unit Owners (including, without limitation, the obligation to pay assessments for General Common Expenses). The acceptance of a deed or mortgage to any Unit, or the entering into of a lease or the entering into occupancy of any Unit will constitute an agreement that the provisions of the Act, this Declaration, the Plats and Plans, the Bylaws, the Rules and Regulations, and the covenants, conditions, and restrictions set forth in the deed to the Unit are accepted and ratified by the grantee, Mortgagee, or lessee. All such provisions will be covenants running with the land and will bind any Person having at any time any interest or estate in the Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage, or lease of the Unit.

**Section 10.2**        Eminent Domain. Whenever all or part of the Common Elements will be taken, injured, or destroyed by eminent domain, each Unit Owner will be entitled to notice of that fact and to participate in the proceedings incident thereto, but in any proceedings for the determination of damages, the damages will be determined for the taking, injury, or destruction as a whole and not for each Unit Owner's interest in it.

## **ARTICLE XII**

### **EXECUTIVE BOARD OF THE ASSOCIATION**

**Section 12.1**        Members.

(a) The Executive Board will consist of three (3) members. The Declarant reserves the right to appoint members of the Executive Board during the period of Declarant Control in accordance with section 3303 of the Act. The members of the initial Declarant-controlled Executive Board will be appointed, removed, and replaced from time to time by the Declarant without the necessity of obtaining resignations. The Declarant-appointed members of the Executive Board will be replaced with Unit Owners in accordance with the provisions of paragraphs (b), (c), (d), and (e) of this Section and the Bylaws.

(b) Until the earlier of five (5) years after recording of this Declaration or the conveyance of 75% of the Units to Unit Owners other than the Declarant, the Declarant will have the right to appoint and remove any and all officers and members of the Executive Board except for any members of the Executive Board elected by Unit Owners other than the Declarant.

(c) No later than the earlier of (i) five (5) years after the date of the first conveyance of a Unit to a purchaser other than the Declarant, or (ii) one hundred eighty (180) days after conveyance of seventy-five percent (75%) of Units to Unit Owners other than the Declarant, a special meeting of the Association will be held at which all of the members of the Executive Board representing the Residential Units must resign and the Unit Owners, including the Declarant if the Declarant owns one or more Units, will thereupon elect successor members of the Executive Board to act in

place of those resigning. Thereafter, the terms of the office of the Executive Board members will be two (2) years.

(d) The Executive Board will possess all of the duties and powers granted to the Executive Board by the Act.

**Section 12.2**      Disputes. In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any questions or interpretation or application of the provisions of this Declaration, the Plats and Plans, the Bylaws, or the Rules and Regulations, the determination of the dispute by the Executive Board will be final and binding on all Unit Owners. The Executive Board has 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. All costs of obtaining such a judgment will be borne by the disputants, or in the absence of disputants, by the Association as a General Common Expense.

**Section 12.3**      Amendments to the Condominium Documents. The Condominium Documents will be amended in accordance with the Act and the Condominium Documents. In the event of an amendment to the Condominium Documents resulting from a permitted relocation of boundaries between adjoining Units undertaken by the Unit Owners as a result of the acquisition of an adjoining Unit or portion of an adjoining Unit, in accordance with and permitted by sections 3213 and 3214 of the Act, the costs associated with any such amendment will be borne by the Unit Owners. Despite any other provisions of this Declaration to the contrary, if any amendment is necessary in the judgment of the Executive Board to cure any ambiguity or to correct or supplement any provisions of the Condominium Documents that are defective, missing, or inconsistent with any other provisions thereof (including, by way of illustration, changes required to comply with the Americans with Disabilities Act), or if such amendment is necessary to conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages on units in condominium projects (such as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation), then at any time and from time to time the Executive Board may effect an appropriate corrective amendment without the approval of the Unit Owners or the holders of any liens on all or any part of the Property, upon receipt by the Executive Board of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this sentence. Each amendment of the type described in this Section will be effective upon the recording of an appropriate instrument setting forth the amendment and its due adoption, which instrument has been executed and acknowledged by one or more officers of the Executive Board.

**Section 12.4**      Abating and Enjoining Violations by Unit Owners. The violation of any Rules and Regulations adopted by the Executive Board, the breach of any provision contained in the Bylaws, or the breach of any provision of this Declaration or the Act by any Unit Owner or any tenant of the Unit Owner will give the Executive Board the right, in addition to any other rights to which it may be entitled, to enjoin, abate, or remedy by appropriate legal proceedings, either by law or in equity, the continuance of any such breach.

### **ARTICLE XIII**

#### **MANAGEMENT**

During the Period of Declarant Control, the Declarant has the right, itself or through a managing agent, to oversee the daily operation of the Condominium, in accordance with the provisions of the Act, this Declaration, the Bylaws, and the Rules and Regulations. After the Period of Declarant Control, the Association has the right to employ a Manager who will oversee the daily operation of the Condominium, in accordance with the provisions of the Act, this Declaration, the Bylaws, and the Rules and Regulations.

### **ARTICLE XIV**

#### **LIMITATION OF LIABILITY**

**Section 14.1**        Limited Liability of the Executive Board. The Executive Board, and its members in their capacity as members, officers, and employees:

- (a) Will not be 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 that may leak or flow from the outside or from any part of the Building, or from any of the pipes, drains, conduits, appliances, or equipment, or from any other place unless in each instance such injury or damage has been caused by the willful misconduct or gross negligence of the Association or the Executive Board;
- (b) Will 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 in the performance of the Executive Board members' duties;
- (c) Will have no personal liability in contract to a Unit Owner or any other Person under any agreement, check, contract, deed, lease, mortgage, instrument, or transaction entered into by them on behalf of the Executive Board of the Association in the performance of the Executive Board members' duties;
- (d) Will not be liable to a Unit Owner, or the Unit Owner's tenants, employees, agents, customers, guests, or invitees, for loss or damage caused by theft of or damage to personal property left by the Unit Owner or his or her tenants, employees, agents, customers, or guests in a Unit, or in or on the Common Elements, except for the Executive Board members' own willful misconduct or gross negligence in performance of the Executive Board members' duties;
- (e) Will have no personal liability in tort to a Unit Owner or any other Person, direct or implied, 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



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

**Section 14.2**      Indemnification. Each member of the Executive Board in his or her capacity as an Executive Board member, officer, or both, will be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him or her in connection with any proceeding in which the member or officer may become involved by reason of being or having been a member and/or officer of the Executive Board, or any settlement of any such proceeding, whether or not he or she is an Executive Board member, officer, or both at the time such expenses are incurred, except in cases wherein the Executive Board member and/or officer is adjudged guilty of willful misconduct or gross negligence in the performance of his or her duties. However, in the event of a settlement, this indemnification will apply only if and when the Executive Board (with the affected member abstaining if he or she is then an Executive Board member) approves such settlement and reimbursement as being in the best interests of the Association. The indemnification by the Unit Owners set forth in this Section will be paid by the Association on behalf of the Unit Owners and will constitute a General Common Expense and be assessed and collectible as such. This right of indemnification will not be deemed exclusive of any other rights to which the 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.

**Section 14.3**      Joint and Several Liability of Unit Owners and Lessees. Each Unit Owner will be jointly and severally liable with any lessee or sublessee of the Unit owned by the Unit Owner for all liabilities arising out of the ownership, occupancy, use, misuse, or condition of the Unit or any portion of the Common Elements.

**Section 14.4**      Defense of Claims. Complaints brought against the Association, the Executive Board, or the officers, employees, or agents thereof in their respective capacities as such, or the Condominium as a whole, must be directed to the Executive Board of the Association, which will promptly give written notice thereof to the Unit Owners and any Mortgagees, and such complaints will be defended by the Association. The Unit Owners and the Mortgagees have no right to participate other than through the Association in such defense. Complaints against one or more but less than all Unit Owners or Units will be defended by the Unit Owners who are defendants themselves and the Unit Owners will promptly give written notice of the institution of any such suit to the Association and to the holders of any mortgages encumbering the Units.

## **ARTICLE XV**

### **ASSESSMENTS; LIABILITY OF UNIT OWNERS**

**Section 15.1**      Creation of Lien and Personal Obligation of Assessments. The Declarant for each Unit owned by it within the Property hereby covenants, and each Unit Owner by acceptance of a deed for a Unit, whether or not it is so expressed in such deed, is deemed to covenant and

agree to pay to the Association: (i) Common Assessments for Common Expenses, and (ii) Special Assessments. Each such assessment, together with interest, costs, and reasonable attorneys' fees (if the assessment is not timely paid), will be the personal obligation of the person who was the Unit Owner of the Unit at the time when the assessment fell due, and if the assessment remains unpaid, the entire outstanding balance of the assessment will become effective as a lien against the Unit from the due date of the delinquent installment pursuant to section 3315 of the Act. Subject to provisions of this Declaration protecting first Mortgagees, the personal obligation for delinquent assessments as disclosed in the Resale Certificate will pass to the successors-in-title of the Unit Owner. The Executive Board will establish one or more separate accounts ("Operating Fund") into which will be deposited all assessments paid to the Association, and from which disbursements will be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration.

**Section 15.2**      Power to Assess. The Association, acting through the Executive Board in accordance with the Bylaws, has the power to fix and determine, from time to time, the sum or sums necessary and adequate to provide for the General Common Expenses, including, but not limited to, any amounts that are necessary for uncollectible assessments, budget deficits, any reserves that are hereinafter described, and any additional reserves that the Executive Board may deem necessary or prudent, and any other expenses specifically provided for in the Act, this Declaration, or the Bylaws. The Executive Board will establish one or more separate accounts (each, an "Operating Fund") into which will be deposited all such assessments paid to the Association, and from which disbursements will be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration.

**Section 15.3**      Initial Contributions by First Time Buyers and Resales.

(a) Upon the initial transfer of title from the Declarant to a non-Declarant purchaser of each Unit, the Association will collect from the purchasers and purchasers will pay to the Association a one time initial contribution in an amount equal to \$500.00, which will be deposited into an Operating Fund. No Unit Owner is entitled to a refund of these monies by the Association upon the subsequent conveyance of the Unit or otherwise.

(b) Upon transfer of title from a Unit Owner to a subsequent Unit Owner, the Association will collect from the purchasers and purchasers will pay to the Association a one time initial contribution in an amount equal to \$500.00, which will be deposited into an Operating Fund.

(c) The Executive Board shall have the authority to amend, modify or increase such contribution due on such re-sales from time to time by resolution of the Executive Board.

(d) The contributions collected pursuant to this Section 15.3 may be used and allocated by the Executive Board to set up and/or fund operating, repair/replacement or capital improvement reserves, or to defray current Common Expenses, in such manner as the Executive Board shall determine, subject to any limitations imposed by the Act.

**Section 15.4**      Date of Commencement of Monthly Assessment. Monthly Assessments

provided for herein will commence with the first day of the month after settlement on the first Unit to a non-Declarant purchaser or the first of the month after the first assessment is made by the Association. The Executive Board will arrange for the preparation of an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, including deposits in and withdrawals from the Operating Fund, and distribute a copy of each such statement to each Member, and to each first Mortgagee who has filed a written request for copies of it with the Executive Board, in the manner provided in the Bylaws of the Association. At least thirty (30) days prior to the beginning of each fiscal year, the Executive Board will prepare and distribute the Budget to the Unit Owners.

**Section 15.5**      Surplus. The Budget of the Association will segregate capital expenses from General Common Expenses. Any amounts accumulated from Common Assessments and Special Assessments and income from the operation of the Common Elements to which General Common Expenses pertain in excess of the amount required for actual General Common Expenses will be credited to each Unit in accordance with that Unit's Percentage Interest. Unless the Executive Board provides otherwise, these credits will be applied to the next monthly assessments of General Common Expenses against the Unit under the current fiscal year's Budget and thereafter until exhausted.

**Section 15.6**      Reserves. The Association will establish an adequate reserve fund for material capital expenditures, and repairs and replacement of those Common Elements that are anticipated to require replacement, repair, or major repair on a periodic basis. There will be no separate reserve for material capital expenditures. The reserve fund will be maintained in an account separate and apart from the Operating Fund. The reserve fund will be funded by monthly payments made as a part of the Common Assessment, and any capital improvement fee that the Executive Board may impose as authorized by the Act.

**Section 15.7**      Special Assessments. If the Budget proves to be insufficient to cover the actual General Common Expenses for the related fiscal year for any reason (including, by way of illustration and not limitation, any Unit Owner's nonpayment of his or her assessment), the Executive Board has the power, at any time (and from time to time) it deems necessary and proper, to levy one or more Special Assessments against each Unit Owner.

**Section 15.8**      Payment of Assessments. Each Owner must pay all assessments levied by the Association. Such assessments will be due and payable on a monthly basis as designated by the Executive Board.

**Section 15.9**      Failure to Fix New Assessments. If the Executive Board fails to fix new Monthly Assessments for General Common Expenses for the subsequent fiscal year before the expiration of any fiscal year, the Unit Owners will continue to pay the same sums they were paying for the Monthly Assessments during the fiscal year just ended and these sums will be deemed to be the new Monthly Assessments for the succeeding fiscal year. If the Executive Board changes the Monthly Assessment at a later date, the new Monthly Assessment will be treated as if it were a Special Assessment under Section 15.7 of this Declaration.

**Section 15.10**      No Exemption by Waiver. No Unit Owner may exempt himself or herself from liability with respect to the General Common Expenses by waiver of the enjoyment of the right to use any of the Common Elements or by the abandonment of his or her Unit or otherwise.

**Section 15.11**      Liability Related to Assessments.

(a) All sums assessed by the Association as a Monthly Assessment or Special Assessment will constitute the personal liability of the Unit Owner of the Unit so assessed and also will, until fully paid, constitute a lien against the Unit pursuant to section 3315 of the Act. The Association may take action for failure to pay any assessment or other charges pursuant to sections 3314 and 3315 of the Act. Any assessment, or installment thereof, not paid within five (5) days after due will accrue, and any delinquent Unit Owner must pay, a late charge in the amount of five percent (5%) of the overdue assessment or installment in addition to interest at the rate of fifteen percent (15%) per annum or any greater amount permitted by applicable law from the date the assessment was due. In addition to any late charges assessed in accordance with section 3314 of the Act or this Declaration, the delinquent Unit Owner will be obligated to pay (i) any fines that may be assessed for nonpayment of fees and assessments, and (ii) all expenses of the Executive Board, including reasonable attorneys' fees, incurred in the collection of the delinquent assessment by legal proceedings or otherwise, and (iii) any amounts paid by the Executive Board for taxes or on account of superior liens or otherwise to protect its lien. These expenses and amounts, together with accrued interest, will be deemed to constitute part of the delinquent assessment and will be collectible as such.

(b) Notwithstanding Section 15.11(a) above (but subject to the provisions of section 3407(c) of the Act), upon the voluntary sale, conveyance, or any other voluntary transfer of a Unit or any interest therein, the grantee will be jointly and severally liable with the grantor for all unpaid Monthly Assessments and Special Assessments that are a charge against the Unit as of the date of consummation of the sale, conveyance, or transfer, but such joint and several liability will be without prejudice to the grantee's right to recover from the grantor the amount of any unpaid Monthly Assessments and Special Assessments that the grantee may have paid, and until any of the Monthly Assessments and Special Assessments are paid, they will continue to be a lien against the Unit, which may be enforced in the manner set forth in section 3315 of the Act.

**Section 15.12**      Unpaid Assessments Upon Execution Sale Against a Unit. Any unpaid assessments that cannot be promptly collected from the former Unit Owner may be reassessed by the Executive Board as a General Common Expense to be collected from all of the Unit Owners, including (by way of illustration and not limitation) the purchaser who acquired title at the sheriff's sale, his or her successors and assigns, and any holder of a mortgage who comes into possession of a Unit by deed in lieu of foreclosure or assignment in lieu of foreclosure.

**Section 15.13**      Subordination of Certain Charges. Any fees, charges, late charges, fines, and interest that may be levied by the Association pursuant to sections 3320(10), (11), and (12) of the Act will be subordinate to any first lien Mortgage.

**Section 15.14**      Acceleration. If a Unit Owner is in default in the payment of the charges or

monthly installments of assessments described in this Article for sixty (60) days, the Executive Board may, in addition to all other remedies contained in the Act or this Declaration, 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 fiscal year in which the default occurs and assuming the same Budget for the following year; however, a Mortgagee registered with the Secretary of the Association pursuant to Section 9.3 of this Declaration that is foreclosing pursuant to a first lien Mortgage will be entitled to automatic subordination of such sums in excess of the amounts that are prior in lien or payment to mortgage liens under the Act.

**Section 15.15**      Assignment of Income Rights. The Association may assign its rights to future income, including payments made on account of assessments for General Common Expenses, to secure any loan obtained by the Association for repairs, replacements, or capital improvements to the Common Elements, provided that any such assignment is authorized by the vote of not less than fifty-one percent (51%) of the members of the Executive Board.

## **ARTICLE XVI**

### **ARCHITECTURAL CONTROL**

**Section 16.1**      Architectural Control Committee. The Declarant shall initially appoint an Architectural Control Committee and shall fill any vacancies in said committee. After the Declarant has conveyed all of the units in Nittany Grove, then the Association shall thereafter appoint the Architectural Control Committee.

**Section 16.2**      Exterior Changes After Occupancy. After the initial occupancy of any mobile home located on a Unit, any erection of a structure (including but not limited to fences, walls and mailboxes); any addition or alteration to the exterior of a structure, or any change in the existing color or finish of any exterior surface of any building on a Unit shall not be done until plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Executive Board of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Executive Board as to harmony of external design, colors and location in relation to surrounding structures, and finished ground elevation topography. In the event said Executive Board, or its designated committee, fails to approve or disapprove such change, design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will be deemed to have been given.

## **ARTICLE XVII**

### **GENERAL PROVISIONS**

**Section 17.1**      Headings. The headings used in this Declaration and the Table of Contents are inserted solely as a matter of convenience for the readers of this Declaration and should not be relied upon or used in construing the effect or meaning of any of the provisions of this Declaration.

**Section 17.2**      Severability. The provisions of this Declaration will be deemed independent and severable, and the invalidity or unenforceability of any provision or portion hereof will not affect the validity or enforceability of any other provision or portion hereof unless such deletions would destroy the uniform plan of development and operation of the condominium project that this Declaration is intended to create.

**Section 17.3**      Applicable Law. This Declaration will be governed by and construed according to the laws of the Commonwealth of Pennsylvania.

**Section 17.4**      Interpretation. The provisions of this Declaration will be liberally construed in order to effect the Declarant's desire to create a uniform plan for development and operation of the condominium project and to permit compliance with the requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. Unless the context of this Declaration requires otherwise, (i) references to the plural include the singular, the singular include the plural, the whole includes the part, and the part includes the whole, (ii) references to any gender include all genders, (iii) "include" and "including" have the inclusive meaning frequently identified with the phrase "without limitation" and "but not limited to," and (iv) references to "hereunder," "herein," "hereby," "above," or "below" relate to this Declaration. The headings and subheadings in this Declaration are included for convenience and identification only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Declaration or any provision hereof. Section, subsection, schedule, and exhibit references are to this Declaration unless otherwise specified.

**Section 17.5**      Effective Date. This Declaration will become effective when it and the Plats and Plans have been recorded.

**Section 17.6**      Notices. All notices and other communications required or permitted to be given under or in connection with this Declaration must be in writing and will be deemed given when delivered in person or on the second business day after the day on which mailed by certified mail, return receipt requested, addressed at the address maintained in the register of current addresses established by the Association.

**Section 17.7**      Exhibits. All exhibits attached to this Declaration are hereby made a part of this Declaration.

IN WITNESS WHEREOF, the Declarant, intending to be legally bound hereby, has duly executed this Declaration, the day and year first above written.

WITNESS

AGUER-NOBORI PROPERTIES

Amy Lynn Rudolph

By: Kirk G. Aguer  
Kirk G. Aguer, Partner

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS  
COUNTY OF CENTRE )

ON THIS 16<sup>th</sup> day of October, 2009, before me, the undersigned officer, personally appeared KIRK G. AGUER, who acknowledged himself to be a Partner of AGUER-NOBORI PROPERTIES, a partnership, and that he as such Partner, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the partnership by himself as such Partner.

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

Amy Lynn Rudolph  
Notary Public

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Amy Lynn Rudolph, Notary Public  
State College Boro, Centre County  
My Commission Expires Dec. 3, 2012  
Member, Pennsylvania Association of Notaries

**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF PROPERTY**

All that certain tract of land situated in Harris Township, Centre County, PA, being Nittany Grove, as shown on a plan entitled, "Nittany Grove Manufactured Home Community Expansion, Final Land Development Plan, Phasing and Site Layout Plan" dated August 31, 2009, by PennTerra Engineering, Inc., State College, PA, being bounded and described as follows:

Beginning at an iron pin set, lying in a southerly R/W line of S.R. 322 (variable R/W) and being a westerly corner of lands owned now or formerly by Larry B. & Janet S. Sharer (Tax Parcel 25-5-8; D.B. 420, Pg. 365); thence, along said lands S23°15'36"E 1445.42 feet to an iron pin found; thence, continuing along said lands and along lands owned now or formerly by Garen W. & Laura Anne L. Smith Trust (Tax Parcel 25-5-9; R.B. 1128, Pg. 902) S57°06'00"W 789.10 feet to an iron pin found lying in a northerly line of the Smith Trust lands and being an easterly corner of lands owned now or formerly by John R. & Carol A. Kelly (Tax Parcel 25-5-21; R.B. 1431, Pg. 959); thence, along the Kelly lands, along lands owned now or formerly by Scott A. & Kimberly A. Burk (Tax Parcel 25-5-22; R.B. 1497, Pg. 213), and along lands owned now or formerly by John W. & Annette B. Callahan (Tax Parcel 25-5-20; R.B. 523, Pg. 136) N23°15'36"W 1450.54 feet to an iron pin found being a northerly corner of the Callahan lands and lying in a southerly R/W line of S.R. 322 (variable R/W); thence, along said R/W the following six bearings and distances: N62°23'00"E 11.95 feet to an iron pin set; thence, along a curve to the left having a chord bearing of N60°33'09"E, a chord distance of 165.91 feet, a radius of 2596.64 feet, and an arc length of 165.94 feet to an iron pin found; thence, N31°16'41"W 10.00 feet to an iron pin found; thence, along a curve to the left having a chord bearing of N57°57'39"E, a chord distance of 68.71 feet, a radius of 2586.64 feet, and an arc length of 68.71 feet to an iron pin set; thence, N57°12'00"E 419.78 feet to an iron pin found; thence, along a curve to the right having a chord bearing of N58°07'29"E, a chord distance of 121.99 feet, a radius of 3779.83 feet, and an arc length of 121.99 feet to an iron pin set, being the place of beginning, containing 25.842 acres.



**EXHIBIT “B”**  
**PLATS AND PLANS**

(See Attached)



[illegible]

**EXHIBIT "C"**  
**UNITS AND PERCENTAGE INTEREST**

<u>Units</u>	<u>Percentage</u>
1	
2	1.852%
3	1.852%
4	1.852%
5	1.852%
6	1.852%
7	1.852%
8	1.852%
9	1.852%
10	1.852%
11	1.852%
12	1.852%
13	1.852%
14	1.852%
15	1.852%
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