

**REQUEST FOR PROPOSAL TO PURCHASE  
IMPROVED COMMERCIAL CONDOMINIUM  
UNIT REAL ESTATE OWNED BY BOROUGH OF  
MIDDLETOWN, DAUPHIN COUNTY,  
PENNSYLVANIA, LOCATED AT 4 WEST EMAUS  
STREET, MIDDLETOWN, DAUPHIN COUNTY,  
PENNSYLVANIA, AND KNOWN AS “CONDO  
UNIT NO. 1” OF THE “UNION STREET  
CONDOMINIUM,” COMMONLY REFERRED TO  
AS THE “ELKS THEATER BUILDING,” AND  
DESIGNATED AS DAUPHIN COUNTY TAX  
PARCEL NO. 41-009-014.**

# **INVITATION FOR BIDS**

**Sealed proposals will be received** by Middletown Borough, Dauphin County, Pennsylvania, at the Borough Hall, 60 W. Emaus Street, Middletown, Pennsylvania 17057, **until 11:00 a.m. on December 7, 2021, to be opened for review at a regularly scheduled Council meeting that same day, beginning at 7:00 p.m.**, for the purchase on an AS-IS basis of a commercial condominium unit designated as **“Condo Unit No. 1”** of a two-unit condominium known as the **“Union Street Condominium,”** which unit being sold includes a currently unoccupied partially-renovated building described below that had been a theater, which is not currently connected to water and sewer, though public water and sewer are available, and which is not ready for immediate use and occupancy due to its partially renovated state. The subject Condo Unit No. 1 property located at **4 West Emaus Street**, Middletown, Dauphin County, Pennsylvania, is commonly referred to as the “Elks Theater Building,” and is designated as Dauphin County Tax Parcel No. **41-009-014.**

The details of the **Condo Unit No. 1** are more fully set forth in the Declaration of Condominium of Union Street Condominium and related Plats and Plans dated November 23, 2015 and recorded in the Dauphin County Recorder of Deeds Office on November 25, 2015 at instrument No. 20150030450, a copy of which is attached to the Request for Proposal bid package.

Interested bidders may obtain a bid package by contacting the Borough Secretary at the address referenced above or by telephone, **(717) 902-0706**. The Request for Proposal bid package includes this solicitation, the Summary of Property Information, a copy of the Condominium Declaration of the Union Street Condominium, with its Plats and Plans (“Appendix A”); a Copy of the Articles of Incorporation and Bylaws of the Condominium Association (“Appendix B”); a copy of the current Deed (“Appendix C”); a copy of the summary of the Dauphin County Tax Assessor’s record regarding the Property (“Appendix D”); and a required form of “Agreement For the Sale of Borough Real Estate Pursuant to Public Bids” (“Appendix E”).

All bids received in a timely fashion will be opened at the regular public meeting identified above. Award of the contract may or may not take place at that same meeting. **THE BOROUGH SPECIFICALLY RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS RECEIVED.**

The Proposals must be in the form of the completed Agreement For the Sale of Borough Real Estate Pursuant to Public Bids form provided by the Borough and sealed in an envelope marked with “Request For Proposal To Purchase Real Estate, Condo Unit. No. 1 of Union Street Condominium.”

# SUMMARY OF INFORMATION REGARDING SALE OF PROPERTY

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## **SECTION 100** **SCOPE OF AGREEMENT OF SALE**

### A. INTRODUCTION

Middletown Borough, a Pennsylvania municipality, organized and existing under the laws of the Commonwealth of Pennsylvania, specifically the Borough Code, 8 Pa.C.S. § 101 *et. seq.*, is owner of that certain **commercial condominium unit**

designated as “Condo Unit No. 1” of a two-unit condominium known as the “Union Street Condominium,” which unit being sold includes a currently unoccupied partially-renovated building described below that had been a theater, which is not currently connected to water and sewer, though public water and sewer are available, and which is not ready for immediate use and occupancy due to its partially renovated state. The subject Condo Unit No. 1 property located at 4 West Emaus Street, Middletown, Dauphin County, Pennsylvania, is commonly referred to as the “Elks Theater Building,” and is designated as Dauphin County Tax Parcel No. 41-009-014.

The details of the Condo Unit No. 1 are more fully set forth in the Declaration of Condominium of Union Street Condominium and related Plats and Plans dated November 23, 2015 and recorded in the Dauphin County Recorder of Deeds Office on November 25, 2015 at instrument No. 20150030450. The Borough holds title to such Condo Unit No. 1 by virtue of a Deed from the Middletown Borough Industrial and Commercial Development Authority to the Borough dated January 19, 2021, and recorded on January 21, 2021 in the Dauphin County Recorder of Deeds Office at Instrument No. 20210002273.

It is the desire of the Borough, as manifested through lawful actions of its Borough Council, to publicly market, advertise, promote, and, eventually, sell, transfer, and convey the said real estate. As advertised, the Borough reserves the right to reject any and all bids, including any bids the Borough determines are for less than the fair market value.

**THIS PROPERTY IS BEING SOLD BY THE BOROUGH ON AN “AS-IS,” “WHERE IS,” AND “WITH ALL FAULTS” BASIS.**

## **B. INTENTION AND LANGUAGE OF THE AGREEMENT**

The Agreement of Sale is intended to transfer ownership of the said Condo Unit No. 1 property owned by the Borough. The property is zoned **C-2 (Commercial-General)**. Public water and public sewer are available in the vicinity of the site, however, the water and sewer are not currently connected to the Property. The Property is not in a condition that it can be immediately occupied as a major renovation project had been started on the Property and never completed leaving the Property in a current condition in which it cannot be immediately lawfully occupied and used without additional work.

It would be the intention of the Borough to convey title by Special Warranty Deed for Condo Unit No. 1. The Agreement of Sale contemplates that there should be no conditions subsequent to the bid opening to limit the sale.

There would be no financing contingencies and no zoning contingencies. The time for due diligence, to the extent not performed prior to the bid opening date, would be limited to forty-five (45) days after the award, and Closing must occur within sixty (60) days in accordance with the Borough Code.

The Agreement of Sale will provide for the sale being in an “AS IS, WHERE IS, and WITH ALL FAULTS” basis, and will not be subject to negotiation. Any modifications of the specimen contract attempting to modify the terms of the Agreement will be rejected as unresponsive and not meeting the bid requirements in the Requests for Proposal.

Any inspection of the property, any additional environmental evaluation, any surveying, title work, floodplain determinations, or other evaluation may be done by the buyer with due regard for the time constraints set forth herein.

## C. CONDOMINIUM DOCUMENTS AND INFORMATION

### *The Condominium Form Of Ownership*

Condominiums are a well-established form of property ownership. The term “condominium” refers to a form of property ownership which, in effect, combines two older forms of ownership. A Unit Owner is, at the same time, both the sole owner of the Unit, which in the case of the Union Street Condominium is one of the two connected existing old commercial buildings, in its entirety, and also the land under the Unit, and each Unit owner is also one of multiple (here, two) mutual owners (in legal terms, “tenants in common”) of Common Elements which a Unit Owner may use and enjoy along with the Owner of the other Unit. Here, as is shown in detail in the Declaration of Condominium and its Plats and Plans attached at Appendix A, the Common Elements jointly used at the Union Street Condominium are very minor, including a few sidewalk areas.

Each individual Unit has a share, that is, an “undivided interest,” in the Common Elements, which means that both Unit Owners have a share in the ownership of all Common Elements. In the Union Street Condominium, the interest for each Unit is expressed as a decimal equivalent of a fraction, called the “Percentage Interest.”

### *Percentage Interests & Voting Interests*

As is more fully set forth in the attached Declaration of Condominium, each of the two Condo Units bears a 50% (Percentage Interest) of Common Expenses, and each has 500 of 1,000 total votes.

### *Common Costs/Annual Budget/Assessments*

Thus far in the life of the small Condominium the Common Expenses generally have been limited to the insurance costs for the Common Elements and for the Association’s Directors and Officers. The annual cost of that is less than \$3,500 total, split equally between the two units. There have been no formal monthly assessments.

### Condominium Documents

The Condominium Documents are attached as part of this package as Appendixes A and B. The Declaration is the formal legal document which creates the Condominium. The attached Declaration and the proposed Bylaws are complex legal documents. Copies of these documents are attached for review by you and any legal counsel or other advisors you may elect to retain.

The attached Declaration and the proposed Bylaws are complex legal documents. Copies of these documents are attached for review by you and any legal counsel or other advisors you may elect to retain. Some of the significant features of the Declaration and Bylaws are described in this Statement, but if there is any conflict between the description contained in this Public Offering Statement and the actual text of the Condominium Documents, the Condominium Documents will control.

#### **D. VOIDABILITY OF BIDDING PROCESS BEFORE BIDS OPENED; RESERVATION OF RIGHT TO REJECT ALL BIDS**

The Borough reserves the right to void the bidding process at any time prior to opening of bids in the event any issue or discrepancy arises in connection with the property at issue, including, but not limited to, its marketing, promotion, or advertisement. Any voiding of the bidding process shall not expose the Borough to any liability, costs, expenses, consequential or incidental damages incurred, or allegedly incurred, by any party participating in the bidding process. The Borough also reserves the right to reject all bids.

#### **E. REPRESENTATIONS RELIED ON BY BIDDING PARTIES**

Any party participating in the bidding process acknowledges that the only representations relied on to prepare and submit a bid for purchase are those contained in the bidding package. No oral representations have been made that a bidder can rely on. All other information regarding the property may be obtained from public sources including the offices at the Dauphin County Recorder of Deeds and Dauphin County Tax Assessor.

Further, bidders acknowledge that there are no promises or inducements made by the Borough, or on behalf of the Borough, regarding any changes that may occur in the status of this parcel of land including zoning, environmental, or the likely value of the property for tax assessment purposes. The parcel has been exempt from real estate taxation while owned by the Borough.

#### **F. DEFINITIONS**

“Specimen Contract” refers to the form Agreement For The Sale of Real Estate included as part of the bid package and which may not be altered, except as to the amount offered to purchase the parcel. The Agreement also contains clauses requiring that the

bid be submitted with a check for certified funds made payable to “Middletown Borough” in the amount of 10% of the bid price, which funds will be forfeited to the Borough if the bidder is successful, but opts, for whatever reason, not to proceed to Closing. This forfeiture is a liquidated damages provision.

“Borough Code” is the legislative foundation upon which the Borough was organized and existing and which dictates, inter alia, the conduct of the Borough Council, including limitations on the sale of Borough-owned real property.

## **SECTION 200**

### **STATUTORY AUTHORIZATION TO SELL**

The Borough is required by the Borough Code to sell real estate by advertising for bids. In addition, Borough Council may reject all bids if the bids are deemed to be less than the fair market value of the property or the minimum bid established by the Borough and identified in the Specimen Contract attached hereto and incorporated herein by reference as if fully set forth.

## **SECTION 300**

### **MISCELLANEOUS INFORMATION ABOUT PARCEL**

#### **A. PROPERTY ZONING**

As of the date of this solicitation for bids, the property is zoned C-2 (Commercial-General).

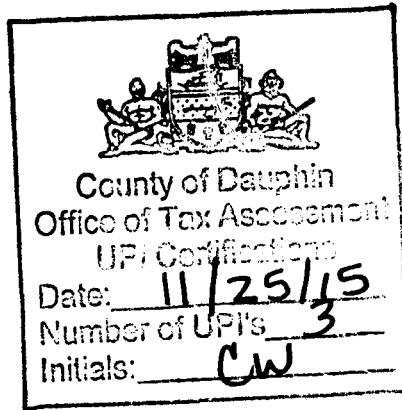
#### **B. PROPERTY INSPECTION**

Pre-bid non-mandatory property site inspections will be permitted for all interested bidders on November 23, 2021 between the hours of 1 p.m. and 2 p.m. Bidders are encouraged to inspect the Property prior to bidding.

## APPENDIX A

THIS SOLICITATION, THE SUMMARY OF  
PROPERTY INFORMATION, A COPY OF THE  
CONDOMINIUM DECLARATION OF THE  
UNION STREET CONDOMINIUM, WITH ITS  
PLATS AND PLANS





Tax Parcel Numbers  
41-009-060  
Unit 1 - 41-009-014  
Unit 2 - 41-009-059

The Recorder's Office is directed to index this Declaration against  
**MIDDLETOWN BOROUGH INDUSTRIAL AND COMMERCIAL DEVELOPMENT AUTHORITY,**  
as Declarant, in the grantor and grantee indexes,  
and **UNION STREET CONDOMINIUM,** the name of the Condominium, in the grantee index.

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**DECLARATION OF CONDOMINIUM  
OF  
UNION STREET CONDOMINIUM**

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

---

Prepared by, and after recording please return to:

Rhonda M. Weaver, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

Date: November 23, 2015

DECLARATION OF CONDOMINIUM  
FOR  
UNION STREET CONDOMINIUM

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**DECLARATION OF CONDOMINIUM**

**FOR**

**UNION STREET CONDOMINIUM**

**ARTICLE I**

**SUBMISSION; DEFINED TERMS**

Section 1.1. Declarant; Property; County; Name. **MIDDLETOWN BOROUGH INDUSTRIAL AND COMMERCIAL DEVELOPMENT AUTHORITY**, an economic development financing authority formed under the laws of the Commonwealth of Pennsylvania (the "Declarant"), owner of the Real Estate described in **Exhibit A** attached hereto, located in the Borough of Middletown, Dauphin County, Pennsylvania, hereby submits the said Real Estate, including all easements, rights and appurtenances thereunto belonging and the improvements erected or to be erected thereon (collectively, the "Property") to the provisions of the Pennsylvania Uniform Condominium Act, 68 Pa. C.S. §3101 et seq., as amended (the "Act"), and hereby creates with respect to the Property a non-flexible condominium to be known as "Union Street Condominium" (the "Condominium").

Section 1.2. Easements and Licenses. Included among the easements, rights and appurtenances referred to in Section 1.1 above are the recorded easements, rights and licenses listed on **Exhibit A-1** attached hereto.

Section 1.3. Defined Terms.

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

1.3.2. The following terms when used herein shall have the meanings set forth below:

"Annual Assessment" means a Unit's individual share of the anticipated Common Expenses or Limited Common Expenses for each fiscal year as reflected in the budget adopted by the Executive Board for such year.

"Association" means the Unit Owners' Association of the Condominium, which shall be a Pennsylvania non-profit corporation known as "Union Street Condominium Association" which shall have all of the powers provided in the Act, this Declaration and the Bylaws.

"Building(s)" means the building(s) currently existing on the Property and any other building(s) hereafter constructed upon the Property.

"Bylaws" means the document having that name and providing for the governance of the Association, pursuant to Section 3306 of the Act, as such document may be amended from time to time.

"Common Elements" means those parts of the Property either described in the Act as being Common Elements or described herein or in the Plats and Plans as being Common Elements.

"Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association relating to the Condominium, the Property or the Association or as is otherwise permitted by the Act (other than expenses incurred in connection with the operation, maintenance, repair, improvement and replacement of Limited Common Elements, or any remedial maintenance to a Unit or Common Element that shall be allocated to less than all of the Unit Owners pursuant to the terms hereof).

"Common Sidewalks" has the meaning set forth in Section 4.1 hereof.

"Condominium" means the Condominium described in Section 1.1 above.

"Condominium Documents" include the Declaration, Plats and Plans, Bylaws and any Rules and Regulations, as the same may be amended from time to time.

"Construction Plans" with respect to any improvements on a Unit, mean the architectural and engineering plans and specifications for such improvements, together with sample materials and any other related documents requested by the Executive Board, all as approved by the Executive Board prior to construction of such improvements, as required under Article V hereof.

"Declarant" means the Declarant described in Section 1.1 above and all successors to any Special Declarant Rights.

"Declaration" means this document, as the same may be amended from time to time.

"Eligible Mortgagee" means the holder of a first mortgage upon the fee simple title to a Unit which has notified the Association, in writing, of its name and address, and that it holds a first mortgage in a Unit and the Unit number on which it has a first mortgage.

"Executive Board" means the Executive Board of the Association.  
"First Settlement" has the meaning set forth in Section 10.7 hereof.

"Limited Common Elements" means those parts of the Common Elements either described in the Act as being Limited Common Elements or described herein or in the Plats and Plans as being Limited Common Elements.



"Limited Common Expenses" means all expenses identified as such in Section 10.3 hereof and/or Section 3314(c) of the Act.

"Notice and Comment" means the right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon. The procedures for Notice and Comment are set forth in Section 20.1 of this Declaration.

"Notice and Hearing" means the right of a Unit Owner to receive notice of an action proposed to be taken by the Association, and the right to be heard thereon. The procedures for Notice and Hearing are set forth in Section 20.2 of this Declaration.

"Party Wall" means a wall located at the perimeter of a Unit, which is a common wall shared with an adjacent Unit.

"Percentage Interest" appurtenant to a Unit means the undivided interest in the Common Elements appurtenant to such Unit, as set forth in **Exhibit B** hereto and as calculated pursuant to the formula set forth in Section 2.1 herein.

"Perimeter Wall" means any wall located at, or within, the perimeter of a Unit, which wall is part of the Unit and which coincides with the exterior of a Building.

"Plats and Plans" means the Plat referred to in **Exhibit C** and made a part hereof, as the same may be amended from time to time.

"Property" means the Property described in Section 1.1 above. "Real Estate" has the meaning set forth in Section 1.1 above.

"Rules and Regulations" means any such rules and regulations as are promulgated by the Executive Board from time to time, with respect to various details of the use or operation of all or any portion of the Property, either supplementing or elaborating upon the provisions in the Declaration or the Bylaws.

"Special Assessment" means a Unit's individual share of any assessment made by the Executive Board in addition to the Annual Assessment.

"Unit" means a Unit as described herein and in the Plats and Plans.  
"Unit Owner" means the holder of legal title to a Unit.

Section 1.4. Provisions of the Act. The provisions of the Act shall 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 this Declaration, the Plats and Plans or the Bylaws.

## ARTICLE II

ALLOCATION OF PERCENTAGE INTERESTS, VOTES AND  
COMMON EXPENSE LIABILITIES;  
UNIT IDENTIFICATION AND BOUNDARIESSection 2.1. Percentage Interests, Votes and Common Expense Liabilities.

2.1.1. Attached as **Exhibit B** hereto is a list of the two (2) Units being created by Declarant which sets forth their Identifying Numbers and the Percentage Interest appurtenant to each Unit. The Percentage Interest assigned to a Unit is based on criteria as may be determined by Declarant, including, but not limited to, one or more of the following: the number of square feet of floor area contained within the Unit, the intended use of the Unit, the marketability of the Unit, and any unique characteristics of the Unit as Declarant, in its sole discretion, may determine. The Percentage Interest allocations as set forth on **Exhibit B** are final and conclusive, and subject only to other provisions of this Declaration or the Act.

2.1.2. A Unit's Percentage Interest shall always be appurtenant to that Unit, and any separate conveyance, encumbrance, judicial sale or other transfer of such Percentage Interest, whether voluntary or involuntary, shall be void unless the Unit to which the Percentage Interest is allocated is also transferred. The Percentage Interest shall determine the Percentage Interest in the Common Elements, the number of votes in the Association and, except as may be expressly otherwise provided in this Declaration, the share of Common Expense liability appurtenant to each Unit.

2.1.3. The number of votes assigned to a Unit shall be determined by multiplying the Unit's Percentage Interest in the Common Elements by one hundred (100), as more particularly set forth on **Exhibit B**.

Section 2.2. Unit Boundaries.

2.2.1. The title lines or boundaries of each Unit are situated as shown on the Plats and Plans, and as described in this Section 2.2.1.

(a) Upper and Lower (Horizontal) Boundaries: There shall be no horizontal boundaries. By way of clarification and without limiting the breadth or generality of the foregoing, all structural and nonstructural portions of roofs and basement structures within the Unit Boundaries described in this Section 2.2.1 are part of a Unit.

(b) Vertical Boundaries: The vertical boundaries of a Unit shall be the vertical planes of the outermost exterior finished surface of the brick, stone, concrete block (or other material) covering the exterior of the Perimeter Walls of a Building, and the outermost vertical surfaces of eaves, brackets, stoops (and other similar protruding improvements), and the centerline of the Party Wall which enclose the Unit, all extended to intersections with each other. All windows and doors are within the Unit boundaries and therefore are part of the Unit and not Limited Common Elements appurtenant thereto. All exterior entry stairs, railings, fire escapes and roofs, canopies and

overhangs covering any of the foregoing and serving only one Unit are part of the Unit. All gutters and downspouts serving only one Unit are part of the Unit. All trim material and other decorative and architectural elements of the exterior surfaces of Perimeter Walls are part of the Unit to which they are attached.

2.2.2. Each Unit Owner may construct or have constructed improvements upon, above and beneath the surface of its Unit in accordance with this Declaration and with the provisions of all applicable laws and ordinances. Any such improvements shall be part of that Unit, and shall not be considered a Common Element. Notwithstanding the foregoing, any such improvement which is intended to serve more than one (1) Unit (such as a common utility line) shall be deemed to be subject to an easement in favor of all other Unit Owners which reasonably require the use of such improvement, further subject, nevertheless, to the right of the burdened Unit Owner to relocate such easement if required in the reasonable judgment of the burdened Unit Owner following prior written notice thereof to all other Unit Owners. Without limiting the foregoing, each Unit shall consist of the air space enclosed within the Unit boundaries, all structural components, exterior walls, windows, doors, floors, ceilings, roofs, plumbing, electrical, heating and ventilation systems, floor and wall coverings, fixtures, and all other property, real, personal or mixed, located within the Unit title lines and affixed to the Unit.

### ARTICLE III

#### SUBDIVIDING AND COMBINING UNITS

Section 3.1. Subdividing Units. Upon compliance with the requirements of Article V hereof and Sections 3214 and 3215 of the Act, as applicable, a Unit Owner may subdivide a Unit, provided such subdivision is effected in compliance with Section 3215 of the Act, as applicable, and further provided that each Unit shall not be subdivided into more than six (6) Units. The Percentage Interest assigned to the Unit being subdivided shall be reapportioned between or among the newly created Units according to the size of each such Unit so that the aggregate Percentage Interest of the new Units shall be equal to the Percentage Interest assigned to the subdivided Unit prior to such subdivision. The subdivided Units shall thereafter be known by the identifying number of the Unit being subdivided followed by a hyphen and a letter consecutively assigned beginning with "A".

Section 3.2. Combining Units. Upon compliance with the requirements of Article V hereof and Sections 3214 and 3215 of the Act, as applicable, a Unit Owner may combine two or more entire adjacent Units into a larger Unit (a "Combined Unit"), provided such combination is effected in compliance with Section 3214 of the Act, and further provided that all of the Units being combined are under common ownership at the time of effecting such combination. Upon the completion of such combination, the Percentage Interest appertaining to such Combined Unit shall be the sum of the respective Percentage Interests appertaining to each of the Units that have been combined. The Combined Unit shall be thereafter known by the identifying number (and letter, if any) of one of the Units followed by a hyphen and the identifying number (and letter, if any) of the other Unit being combined, which new identifying number shall be designated by the Unit Owner in its application to the Association..

Section 3.3. Relocating Boundaries Between Units. Upon compliance with the requirements of Article V hereof and Section 3214 of the Act, Unit Owners desiring to relocate the boundaries between adjoining Units shall submit an application to the Association in accordance with Section 3214 of the Act, and the Association shall have the powers and duties with respect to such application as set forth therein.

Section 3.4. Costs of Subdividing or Combining or Relocating Boundaries Between Units. As required by Section 3214 or 3215 of the Act, as applicable, the Association shall cause to be prepared and recorded an amendment to this Declaration, including the Plats and Plans, to evidence the subdivision or combination of Units, or the relocation of boundaries between Units. All costs and expenses associated with subdividing, combining and/or relocating the boundaries between Units, and the costs of preparing and recording any amendment to the Declaration and Plats and Plans required pursuant to Section 3214 or 3215 of the Act, shall be the responsibility of the Unit Owner or Owners effecting such Unit changes. All such costs and expenses shall be paid by the Unit Owner(s) within thirty (30) days after receipt of an invoice from the Association, and such costs shall be collectible as a Limited Common Expense allocated to such Unit Owner(s).

Section 3.5. Executive Board. In the event the subdividing or combining of Units or the relocation of boundaries between Units as permitted in this Article III results in the existence of more than two (2) Units in the Condominium, the Executive Board of the Association shall be increased to three (3) members elected in accordance with Section 12.2.3 hereof.

Section 3.6. Applicable Laws. Nothing in this Article III shall be construed as permitting Unit Owners or the Association to change Unit title lines without obtaining all necessary governmental approvals.

## ARTICLE IV

### COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 4.1. Description of Common Elements. In addition to the Common Elements shown on the Plats and Plans, Declarant hereby designates as Common Elements (i) the common sidewalks or portions thereof located on the Property (the "Common Sidewalks"); and (ii) the common sewer lateral serving the Building.

Section 4.2. Description of Limited Common Elements. Those portions of the Common Elements serving only one (1) or more, but fewer than all, Units within the Condominium are Limited Common Elements allocated only to the Unit or Units which they serve. Limited Common Elements shall be maintained by the Unit(s) that are served thereby and shall not be maintained by the Association. Without limiting the generality of Section 1.3.2 hereof, the following portions of the Property are hereby designated as Limited Common Elements:

4.2.1. Any utility lines, meters, plumbing, heating, electrical, ventilation or air conditioning apparatus or other utility or mechanical systems serving one (1) or more, but fewer than all, of the Units, which are located outside of a Unit's title lines;

4.2.2. Any entryways or receiving areas serving one (1) or more, but fewer than all, of the Units, which are located outside of a Unit's title lines, including without limitation the recessed entryway serving Unit 1, which shall be a Limited Common Element appurtenant to Unit 1; and

4.2.3. Any other areas shown and identified as such on the Plats and Plans.

Section 4.3. Subsequent Assignment of Limited Common Elements. Portions of the Property depicted on the Plats and Plans which are presently part of the Common Elements within the Condominium may be allocated subsequently to one or more Units as Limited Common Elements appurtenant thereto, as permitted under Section 3205(7) of the Act. Any such allocation shall be made by the Association in accordance with Section 3209(c) of the Act by a recorded Deed of Assignment of Limited Common Elements or by a recorded amendment to this Declaration.

## ARTICLE V

### CONSTRUCTION OR MODIFICATION OF BUILDINGS; DESIGN STANDARDS; ADDITIONS AND ALTERATIONS

Section 5.1. Construction or Modification of Buildings, Signs and Other Improvements.

5.1.1. Approval of Design and Exterior Appearance. No improvements (including signs) may be constructed upon any of the Units, or the exterior thereof modified (including changes of materials or colors) by or on behalf of any Unit Owner, unless and until the proposed Construction Plans are submitted to the Executive Board for its approval with respect to exterior design and aesthetics, which approval shall not be unreasonably withheld, delayed or conditioned. The objective of this Section 5.1.1 is (i) to insure that the design and aesthetics of all improvements existing or proposed within the Condominium, shall be mutually compatible and harmonious, (ii) to preserve the structural integrity of the Condominium, and (iii) that none shall materially adversely affect access to and from any Unit, visibility of any Unit from any streets without the prior consent of the affected Unit Owner(s).

5.1.2. Compliance with Laws. Before any Unit Owner constructs any improvements on its Unit or modifies its Unit, the Unit Owner shall first obtain all applicable governmental approvals, permits and licenses for performance of such work.

5.1.3. Construction Standards. All construction, alteration and repair work of any portion of the Condominium shall be accomplished in a first class, attractive and expeditious manner, in compliance with all laws, rules, regulations, orders, codes, permits, approvals and licenses of governmental authorities having jurisdiction. The Unit Owner undertaking such work shall take all necessary measures to minimize disruption or inconvenience caused by the work to other Unit Owners and occupants of the Condominium. Without limiting the generality of the preceding sentence, such work shall be performed in a manner which does not materially impede vehicular or pedestrian access to

any other Unit or the utilities serving any other Unit. The Unit Owner undertaking such work shall promptly repair at its own cost and expense any and all damage caused by such work to another Unit and/or to the Common Elements and shall restore the affected portions of the Condominium to a condition which is equal to or better than the condition which existed prior to the beginning of such work.

5.1.4. Staging Area. The times when the work described in this Article is performed by a Unit Owner and the location of the staging area for such work shall be subject to the reasonable approval of the Executive Board if such staging area is within the Common Elements of the Condominium.

5.1.5. Signs. The design and aesthetics of all signs placed within the Condominium, including any signs placed upon the Building, shall be subject to the prior written approval of the Executive Board, which approval will not be unreasonably withheld, delayed or conditioned.

Section 5.2. Modifications of Party Walls or Other Improvements Shared By Two or More Unit Owners. A Unit Owner may not undertake the installation, reinstallation, removal, modification, reconstruction or repair of any improvements in the Condominium that could materially adversely affect any other Unit Owner, including without limitation, any Party Wall or any portion of a mechanical or utility system, until after application has been made to and written approval has been received from the Executive Board and any Unit Owner(s) affected by such installation, reinstallation, removal, reconstruction or repair. Such approval shall be granted only if the work performed shall be of similar or superior quality to that then prevailing in the Building and shall be performed by qualified personnel. The cost of such installation, reinstallation, removal, reconstruction or repair, shall be borne by the Unit Owner requesting the work, or such other allocation as may be agreed upon by the affected Unit Owners.

Section 5.3. Alterations to a Common Element. Following the completion of any alteration to a Common Element pursuant to the approval of the Executive Board, the Executive Board may allocate a portion of the affected Common Element as a Limited Common Element to one (1) or more Units, as appropriate for the alteration. The Executive Board shall make such allocation by recording an appropriate amendment to this Declaration and to the Plats and Plans showing the area being allocated as a Limited Common Element, or by a recorded Deed of Assignment. All expenses associated with the alteration itself and with preparation and recording of any required amendment or assignment document, any increase in the Association's insurance premiums caused by such alteration, and any expenses incurred pursuant to Section 5.4 hereof, shall be the responsibility of the Unit Owner or Unit Owners (on the basis of their respective Percentage Interests) making the alteration.

Section 5.4. Applications for Governmental Permits and Approvals. Any applications to any department or to any governmental authority for a permit or approval to undertake construction of any addition, alteration or other improvement by a Unit Owner in or to any portion of the Condominium shall be the responsibility of and shall be executed by the proposing Unit Owner. Such execution will not, under any circumstances, create any liability on the part of the Association or any of its members (other than the Unit Owner making the application) to any contractor, subcontractor or materialman on account of such

addition, alteration or other improvement or to any person having any claim for injury to person or damage to property arising therefrom.

Section 5.5. Additions, Alterations and Improvements by Executive Board. Subject to the limitations of Sections 8.1.2, 10.4 and 10.5 of this Declaration, and to compliance with all applicable governmental requirements, the Executive Board may make any additions, alterations or improvements to the Common Elements which, in its reasonable judgment, it deems necessary or advisable.

Section 5.6. Indemnification. Each Unit Owner shall repair, at its own expense, any and all damage to the Common Elements caused by any construction, repair or alteration work upon its Unit and shall defend, indemnify and hold harmless the Association, all other Unit Owners and occupants of the Property (each an "Indemnified Party"), from and against all injury, loss, claims or damage to any person or property arising out of, or in any way connected with, any claims or action or proceeding brought thereon, including reasonable attorneys' fees (collectively "Damages") except claims made against an Indemnified Party for those Damages attributable to the gross negligence or willful misconduct of that Indemnified Party only. Further, such Unit Owner shall reimburse the Association for any costs incurred by the Association because of such Unit Owner's construction and use of the Common Elements and such reimbursement shall constitute a payment under Section 3302(a)(10) of the Act.

## ARTICLE VI

### MAINTENANCE, REPAIR AND REPLACEMENT RESPONSIBILITIES

Section 6.1. Maintenance Responsibilities. The Units, including all improvements constructed therein and all Limited Common Elements appurtenant thereto shall be maintained and repaired by each Unit Owner, and the Common Elements shall be maintained and repaired by the Association in accordance with the provisions of Section 3307 of the Act, except as expressly set forth to the contrary in the Condominium Documents.

#### Section 6.2. Common Elements.

6.2.1. Association Maintains Common Elements. The Association shall maintain, repair and replace all of the Common Elements (except any Limited Common Elements which are required by the Condominium Documents to be maintained, repaired or replaced by the Unit Owners) in good order and repair and in an attractive condition, and in connection therewith the Association shall continually keep and maintain, or cause to be continually kept and maintained, the improvements on the Common Elements (except the portions of the Limited Common Elements which are required by the Condominium Documents to be maintained, repaired or replaced by the Unit Owners) in good order and repair and in an attractive condition. Maintenance of the Common Elements by the Association includes maintenance, repair and replacement of (i) the Common Sidewalks in the Condominium and (ii) public sidewalks abutting the Condominium if and to the extent required by the Municipality. Maintenance of the Common Elements by the Association further includes the payment of any utility charges applicable solely to the Common

Elements (except the portions of the Limited Common Elements which are required by the Condominium Documents to be paid for by the Unit Owners).

6.2.2. Rights of Unit Owners if Common Elements Are Not Properly Maintained. If any Unit Owner believes that the Association is not maintaining the Common Elements in accordance with the requirements of this Section 6.2, then such Unit Owner after reasonable prior notice to the Executive Board may take such steps, on its behalf and not on behalf of the Association, to cause the Common Elements to be maintained in accordance with the requirements of this Section 6.2, and if such Unit Owner obtains a final unappealable decision of a court of competent jurisdiction determining that the Common Elements had not been maintained in accordance with the requirements of this Section 6.2, then the Executive Board shall, within sixty (60) days after the date of such decision (or otherwise in compliance with the decision), levy a Special Assessment against all Unit Owners for the reasonable costs incurred by such Unit Owner to maintain the Common Elements in accordance with the requirements of this Section and for the reasonable costs such Unit Owner incurred in obtaining such court decision, including without limitation, reasonable attorneys fees (the "Enforcement Costs"). The Special Assessment for the maintenance costs shall be made against all Unit Owners, including the Unit Owner who obtained such court decision in accordance with their respective Percentage Interests, or in accordance with a different allocation if the terms of this Declaration otherwise expressly provide that the particular maintenance costs are to be allocated among the Unit Owners on a basis other than their respective Percentage Interests, however all Enforcement Costs incurred by the prevailing Unit Owner shall be assessed against all other applicable Unit Owners except the said prevailing Unit Owner.

6.2.3. Special Allocation of Common Expenses for Sidewalks. Notwithstanding Section 10.2 hereof and the Percentage Interests set forth on **Exhibit B** hereto, Common Expenses for the maintenance, repair and replacement of the Common Sidewalks in the Condominium and public sidewalks abutting the Condominium if and to the extent required by the Municipality shall be apportioned as follows: Unit 1 shall be assessed thirty-three percent (33%) of the aggregate of such expenses and Unit 2 shall be assessed sixty-seven percent (67%) of the aggregate of such expenses. This allocation between Units is based on criteria such as location and use and is final and unappealable.

Section 6.3. Unit Owner Maintenance - General. Each Unit Owner shall maintain, repair and replace, at its own expense, all portions of its Unit and any portions of the Limited Common Elements designated to be maintained, repaired and replaced by a Unit Owner pursuant to the express terms of this Declaration or the Bylaws, in good order and repair and in an attractive condition, and in connection therewith each Unit Owner shall continually keep and maintain, or cause to be continually kept and maintained, the improvements on the Units and the applicable Limited Common Elements in good order and repair and in an attractive condition.

Section 6.4. Repairs Resulting From Negligence or Usage. Each Unit Owner shall reimburse the Association and any Unit Owners whose Units were damaged for any damages to the Common Elements or to any other Unit caused intentionally, negligently or by its failure to properly maintain, repair or make replacements to its Unit or to any Limited Common Elements which are the responsibility of such Unit Owner. The Association shall be responsible for damage to Units caused intentionally, negligently or by its failure to



maintain, repair or make replacements to the Common Elements which are the responsibility of the Association.

Section 6.5. Access to Remedy Unsatisfactory Conditions. Any person authorized by the Executive Board and any Unit Owner exercising its rights under Section 6.2.2 above shall have the reasonable right of access to all portions of the Property, including the Units, upon such notice, if any, as shall be reasonable under the circumstances, for the purpose of correcting any condition materially threatening damage to any other Unit or the Common Elements, and for the purpose of performing installations, alterations, maintenance or repairs; for the purpose of reading, repairing, or replacing utility meters and related pipes, valves, wires and equipment; and for other proper purposes, provided that all requests for entry upon a Unit are made in advance and that any such entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, reasonable attempts to notify a Unit Owner shall be made, however, the Executive Board's right of entry shall be immediate, whether or not the Unit Owner is present at the time.

## ARTICLE VII

### EASEMENTS

Section 7.1. Additional Easements. Subject to the limitations set forth in the Condominium Documents, each Unit Owner shall have the reasonable right of ingress and egress to and from its Unit over, upon and through the Common Elements. In addition to such and in supplementation of the easements provided for by Sections 3216, 3217, 3218 and 3302(a)(9) of the Act, the following additional easements are hereby created:

7.1.1. Utility Easements. The Common Elements and Units are hereby made subject to easements in favor of one or more of the Unit Owners, appropriate utility and service companies and governmental agencies or authorities (including Middletown Borough and municipal and sewer authorities) for such utility and service lines, ducts, meters and other equipment as may be necessary or desirable to serve any portion of the Property. The easements created in this section shall include, without limitation, rights of the Declarant or a Unit Owner, 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 and internet equipment and facilities (cable or otherwise), utility meters, electric wires, conduits and equipment and ducts and vents over, under, through, along and on the Common Elements and Units. Notwithstanding the foregoing, to the extent feasible, such easements shall be located to provide the least possible interference with the use or occupancy of any Unit by its occupants and the use of the Common Elements of the Condominium. The Executive Board shall have the right to execute and deliver easement agreements to effectuate the provisions hereof in connection with the Common Elements.

7.1.2. Reciprocal Nonexclusive Easement for Use of Utility Systems. Subject to compliance with applicable laws and regulations, and subject to obtaining the prior written consent of the Executive Board and any affected Unit Owner, which consents will not be unreasonably withheld, delayed or conditioned, the Common Elements (including but not limited to the Limited Common Elements) and Units shall be and are hereby made

subject to a permanent mutual, reciprocal non-exclusive easement and right in favor of each of the Unit Owners and the Association to tie into (and maintain and repair such tie in) and use the sanitary and storm sewers, water lines and other utilities as may be constructed on the Common Elements and Units for the mutual and reciprocal benefit of the Units, provided that such use shall not overburden such utilities or unreasonably interfere with the use thereof by the owners and occupants of the other Units. The Association shall have the right to dedicate any existing or future utilities to a public utility or other proper entity.

7.1.3. Reciprocal Nonexclusive Pedestrian Easements for Use of Common Sidewalks. Except as expressly provided to the contrary in the Condominium Documents, the Common Sidewalks shall be, and are hereby, made subject to a permanent, mutual, reciprocal non-exclusive easement and right in favor of each of the Unit Owners and the Association to use the sidewalks for pedestrian ingress, egress and regress among the Units and the Common Elements.

7.1.4. Easements for Construction and Maintenance. In connection with work performed within Unit title lines, incidental encroachments upon the Common Elements as a result of the use of ladders, scaffolding, barricades and similar facilities resulting in temporary obstruction of portions of the Common Elements shall be permitted as long as the encroachments caused by such construction, maintenance or repair work are reasonable and work is being diligently pursued.

7.1.5. Association's Easement to Correct Drainage. The Executive Board shall have the right to create an easement on, over and under the Common Elements and Units 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 expressly includes the right to take any action reasonably necessary to achieve this purpose, which does not materially interfere with the use and occupancy of the Property by any Unit Owner, following which the Executive Board shall restore the affected property as closely to its original condition as practicable.

7.1.6. Association's Easement for Inspection and Maintenance. The Units and Common Elements are hereby made subject to an easement in favor of the Association and its agents, employees and independent contractors, for inspection, operation, maintenance, repair, improvement and replacement of the Common Elements.

7.1.7. Easement for Structural Support. To the extent necessary, each Unit shall have an easement for structural support over and under the Common Elements and any adjoining Unit.

7.1.8. Rights of Burdened Unit Owners. The provisions of this Article VII grant certain easement rights over, across and within Units. Notwithstanding anything to the contrary contained in this Article VII or elsewhere, the Burdened Unit Owner is entitled to the following rights:

- (a) Neither the Association nor any Benefited Unit Owner, nor any public utility or other party, shall exercise any such rights without providing reasonable prior written notice of the nature and scope of such exercise to the Burdened Unit Owner. The Burdened Unit Owner shall have the right to

require reasonably detailed plans and specifications for any contemplated construction associated with the exercise of such rights. The plans and specifications shall be subject to the written approval of the Burdened Unit Owner, which approval shall not be unreasonably withheld, delayed or conditioned.

(b) The location across its Unit of any utility lines or other improvements which the Association or Benefited Unit Owner, or public utility or other party, intends to install across a Unit shall be subject to the prior written approval of the Burdened Unit Owner, which approval shall not be unreasonably withheld, delayed or conditioned.

(c) The Association, Benefited Unit Owner and/or public utility company or other party shall indemnify and hold harmless the Burdened Unit Owner for any and all damages, claims, personal injuries or expenses of any kind, including reasonable attorneys' fees and costs, arising out of the exercise of any rights conferred pursuant to this Article VII.

(d) A Unit Owner who desires to construct improvements upon its Unit may relocate existing utility lines located within its Unit if necessary or desirable for the construction of such improvements, provided:

(i) The Unit Owner provides prior written notice to the Association and any affected Unit Owner(s).

(ii) The relocation of such utility lines shall be at the sole cost and expense of the Unit Owner making such improvements.

(iii) The Unit Owner shall relocate such utilities at such times and in such manner as to cause no material interference or interruption of utility services to any other Unit Owner absent the prior written consent of such other Unit Owner.

7.1.9. Easement for Encroachments. To the extent that any improvements on one Unit or portion of the Common Elements encroach upon any other Unit or portion of the Common Elements because of the construction, reconstruction, repair, shifting, settlement or other movement of any portion of the improvements, a valid easement for the encroachment and its maintenance shall exist, provided that the physical boundaries of the Units after construction, reconstruction or repair will be in substantial accord to the descriptions thereof set forth in the Declaration. The easement shall extend for whatever period of time the encroachment continues to exist. This easement does not relieve a Unit Owner of liability in the case of willful misconduct.

## ARTICLE VIII

## USE RESTRICTIONS

Section 8.1. Use and Occupancy Restrictions. The occupancy and use of the Units and Common Elements shall be subject to the following restrictions:

8.1.1. Nonresidential Uses. The occupancy and use of the Units and Common Elements are restricted exclusively to nonresidential uses which conform to the applicable zoning and other laws, as they may be amended from time to time, and the use restrictions contained in the Condominium Documents.

8.1.2. No Barriers to Traffic. No walls, fences or barriers of any kind may be constructed or maintained on the Units or the Common Elements which prevent or materially adversely impair the use or exercise of any of the easements granted herein or the free access, including without limitation, pedestrian and vehicular traffic, between the Units and/or between the Units and the public streets that serve the Condominium.

8.1.3. Protection of Other Units. Nothing shall be done or permitted to be done by any Unit Owner which will jeopardize the soundness or safety of any Building or other improvement located on any other Unit or impair any easement therein without the consent of all affected Unit Owners.

8.1.4. Rules and Regulations. Reasonable Rules and Regulations, not in conflict with the provisions of this Declaration concerning the use and enjoyment of the Property may be promulgated from time to time by the Executive Board and shall be applied and enforced uniformly against all Unit Owners and any tenants of Unit Owners. Copies of the then current Rules and Regulations and any amendments thereto shall be furnished to all Unit Owners by the Executive Board promptly after the adoption of such Rules and Regulations or any amendments thereto.

Section 8.2. Association and Unit Owner Enforcement. The Declarant, the Association and the benefited Unit Owner shall have the right to take such action as may be necessary to assure compliance with, and enforcement of, the applicable Condominium Documents, including legal proceedings, to the fullest extent permitted by law. The Association and any Unit Owner shall be entitled to collect from the party violating any restriction described in this Declaration, in addition to all other rights and remedies available at law or equity, an amount equal to the damages incurred by the party bringing the action as a result of any such violation. Such damages for violation shall include, without limitation, attorney's fees and court costs.

## ARTICLE IX

## LEASING

Section 9.1. Leases. A Unit Owner may lease or sublease its Unit or any portion thereof at any time and from time to time provided that the following requirements are met:

9.1.1. All leases and rental agreements shall be in writing;

9.1.2. A Unit Owner shall deliver a copy of the Declaration, the Bylaws and Rules and Regulations to the Unit Owner's tenant at the time any lease or rental agreement is executed, and the tenant shall sign a receipt therefor. Copies of any amendments to the Declaration, the Bylaws and Rules and Regulations received by the Unit Owner during the term of the lease shall be forwarded to the tenant upon receipt if the said amendment(s) affect the tenant's occupancy of the Unit;

9.1.3. The rights of any lessee of a Unit shall be subject to the Condominium Documents, and each lessee shall be bound thereby so that a default thereunder shall constitute a default under the lease;

9.1.4. Notwithstanding that a lease may require the lessee to be responsible for the payment of the Common Expense assessments during the term of the lease, any such provision shall not relieve the Unit Owner of its obligation for payment of same in the event that lessee fails to do so; and

9.1.5. Each Unit Owner shall promptly, diligently and in good faith enforce the provisions of the Condominium Documents against any lessee or other occupant of its Unit that fails to comply therewith. The Executive Board shall have the right, but shall not be obligated, to take such action (including legal proceedings) as it deems appropriate and desirable against any Unit Owner and/or its lessee or other occupant to enforce the provisions of this Declaration, and all costs, including attorneys' fees, of so doing shall be charged against the Unit Owner who (or whose lessee or other occupant) has failed to fulfill the obligations imposed herein.

## ARTICLE X

### ASSESSMENT AND COLLECTION OF COMMON EXPENSES, INCLUDING LIMITED COMMON EXPENSES

Section 10.1. Definition of Common Expenses. Common Expenses shall include:

10.1.1. Expenses of administration, maintenance, and repair or replacement of the Common Elements;

10.1.2. Expenses declared to be Common Expenses by the Condominium Documents or the Act; and

10.1.3. Expenses agreed upon as Common Expenses by the Association;  
and

10.1.4. Such reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any real or personal property acquired or held by the Association.

Section 10.2. Apportionment of Common Expenses. Except as may be provided to the contrary in Sections 6.2, 10.3, or elsewhere in this Declaration, all Common Expenses shall be assessed against all Units in accordance with their respective Percentage Interests as shown on **Exhibit B** of this Declaration.

Section 10.3. Special Allocations of Expenses as Limited Common Expenses.

10.3.1. Any Common Expense associated with the maintenance, repair or replacement of any Limited Common Elements shall be assessed against the Units to which the Limited Common Elements were assigned at the time the expenses were incurred in the proportionate relationship that their respective Percentage Interests had to each other at the time the expenses were incurred.

10.3.2. Any Common Expense benefiting fewer than all of the Units shall be assessed exclusively against the Units benefited, in the proportionate relationship that their respective Percentage Interests had to each other at the time the expense was incurred, unless in the reasonable determination of the Executive Board a different proportionate allocation would be more appropriate.

10.3.3. Assessments to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was rendered, in proportion to their Common Expense liabilities, except as provided in Section 3319(c) of the Act.

10.3.4. If any Common Expense is caused by the negligence or misconduct of a Unit Owner, the Association shall assess that expense exclusively against its Unit.

10.3.5. Any increase in insurance premiums of the Association attributable to a particular Unit by virtue of activities in or improvements to the Unit shall be assessed against that Unit.

10.3.6. To the extent practical, all utilities and other services provided to the Property shall be separately metered and billed directly to Unit Owners; however, any utilities which are not separately metered and billed shall be treated as a Common Expense. Notwithstanding the foregoing, in the event that, in the estimation of the Executive Board, a Unit Owner uses a disproportionate amount of any utility service not separately metered or billed, the Executive Board shall have the right to engage a registered professional engineer or other qualified person to compute the Unit Owner's usage, to determine an equitable charge and to bill the Unit Owner both for the professional computation and for the disproportionate usage determined to exist. Any Unit Owner shall have the right to install, or cause to be installed, a separate utility meter for service solely to its Unit, provided that the Unit Owner complies with the requirements of Article V hereof, and that all such subsequent utility charges are billed to and paid by the said Unit Owner.

10.3.7. Fees, including attorneys' fees, late charges, fines and interest charged against a Unit Owner pursuant to the Condominium Documents and the Act are enforceable as Limited Common Expense assessments.

Section 10.4. Budget Adoption. The Executive Board shall cause to be prepared an estimated annual budget for each calendar year prior to each annual meeting of the Association held in accordance with Section 2.3 of the Bylaws or any other meeting set to consider budgeting matters in accordance with the provisions of the Act, Declaration and Bylaws and shall deliver a copy of the proposed budget to each Unit Owner with its notice of any such meeting. Immediately after adoption of any proposed budget or approval of any

capital expenditure for the Condominium, the Executive Board shall provide a copy or summary of the budget and notice of any capital expenditure approved by the Executive Board to all the Unit Owners. Unless Unit Owners holding a majority of the Percentage Interests in the Condominium vote to reject the budget or any capital expenditure approved by the Executive Board, within thirty (30) days after the Executive Board approval, the budget or capital expenditure shall be considered ratified by the Unit Owners. If within the thirty (30) day period, the proposed budget or capital expenditure is rejected by Unit Owners holding a majority of the Percentage Interests, the periodic budget last ratified by the Unit Owners shall be continued until such time as a subsequent budget is adopted by the Executive Board, and such subsequent budget is not rejected in accordance with this Section and Section 3303(b) of the Act.

Section 10.5. Adoption of Non-Budgeted Common Expense Assessments. If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 10.3 of this Declaration, the Executive Board shall immediately submit a copy or summary of such Common Expenses to the Unit Owners and such Common Expenses shall be subject to rejection in the same manner as a budget under Section 10.4. This right of rejection shall not extend to assessments made to cover shortfalls for budgeted items where the actual expenditures of the Association exceed estimated projections.

Section 10.6. Time of Payments. A Unit Owner's Annual Assessment shall consist of its allocated share of all Common Expenses and Limited Common Expenses assessed under Sections 10.2 and 10.3. The Annual Assessment shall be due and payable in monthly, quarterly or annual installments, as may be determined by the Executive Board in its sole discretion. Special Assessments shall be due and payable at such times and in such installments as determined by the Executive Board.

10.6.1. Any amounts accumulated from assessments for Common Expenses (excluding Limited Common Expenses), from income related to the operation of the Common Elements (excluding Limited Common Elements) or from reserves therefor, which are in excess of the actual amounts required for such expenses and reserves shall be held by the Association as additional reserves for future Common Expenses.

10.6.2. Any amounts accumulated from assessment for Limited Common Expenses, from income related to the operation of the Limited Common Elements or from reserves therefor, which are in excess of the actual amounts required for such expenses and reserves shall be credited in accordance with the allocations designated in Section 10.3 above to subsequent monthly installments of the Limited Common Expense Assessments imposed against each affected Unit until exhausted.

Section 10.7. Commencement of Common Expense Assessments. Common Expense assessments shall begin as of the date of the conveyance of the first Unit to a Unit Owner other than the Declarant (the "First Settlement").

Section 10.8. Personal Liability of Unit Owners. The Owner of a Unit at the time a Common Expense assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless such successor agrees to assume the obligation.

Section 10.9. No Waiver of Liability for Common Expenses. No Unit Owner may exempt itself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the assessments are made.

Section 10.10. Acceleration of Common Expense Assessments. In the event of default for a period of fifteen (15) days by any Unit Owner in the payment of any Common Expense assessment levied against its Unit, the Executive Board shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable.

Section 10.11. Lien.

10.11.1. The Association has a statutory lien on a Unit for any assessment levied against that Unit and/or fines imposed against the Unit Owner from the time the assessment or fine becomes delinquent. Fees, including attorneys' fees, late charges, fines and interest charged pursuant to the Act and the Condominium Documents are enforceable as assessments under this Section. If an assessment is payable in installments, and one or more installments is not paid when due, the entire outstanding balance of the assessment becomes effective as a lien from the due date of the delinquent installment.

10.11.2. Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this Section is required.

10.11.3. Any lien for delinquent Common Expense assessments or other charges that the Association has on a Unit will be subordinate to a first mortgage on the Unit, if the mortgage was recorded before the due date of the assessment or the due date of the unpaid installment, if the assessment is payable in installments.

10.11.4. If a holder of a first mortgage on a Unit forecloses that mortgage, the purchaser at the foreclosure sale is not liable for any unpaid assessments against that Unit which became due before the sale, other than assessments that come due during the six (6) months immediately preceding the date of a judicial sale of a Unit in an action to enforce collection of a lien against a Unit, in accordance with the provisions of the Act. Any unpaid assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Unit Owners, including the purchaser.

10.11.5. Any fees, including attorneys' fees, late charges, fines and interest which may be levied by the Executive Board pursuant to Sections 3302(a)(10), (11) and (12) of the Act, shall be subordinate to the lien of a first mortgage on a Unit.

10.11.6. The Association's lien may be foreclosed in like manner as a mortgage on real property.

10.11.7. This Section does not prohibit actions to recover sums for which this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.



10.11.8. A judgment or decree in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.

10.11.9. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the assessments become payable; provided, that if an Owner of a Unit subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

10.11.10. Notwithstanding any restrictive endorsement, designation or instructions placed on or accompanying a payment, any payments received by the Association in the discharge of a Unit Owner's obligation may, at the Association's discretion, be applied first to any interest accrued by the Association, then to any late fee, then to any costs and reasonable attorneys' fees incurred by the Association in collection or enforcement, and then to the delinquent assessment.

Section 10.12. Association Records. The Association shall keep financial records sufficiently detailed to enable the Association to comply with Sections 3312(g), 3313, 3314, 3315, 3316 and 3407 of the Act. All financial and other records shall be made reasonably available for examination by any Unit Owner and its authorized agents.

Section 10.13. Certificate of Payment of Common Expense Assessments. On written request, the Association shall furnish to a Unit Owner a statement in recordable form setting forth the amount of unpaid assessments currently levied against the Unit and any credits of surplus in favor of the Unit as required by Section 3315(g) of the Act and any credits of surplus in favor of the Unit pursuant to Section 10.6.2 of this Declaration and Section 3313 of the Act. The statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Executive Board and every Unit Owner.

## ARTICLE XI

### ELIGIBLE MORTGAGEE PROTECTIONS

Section 11.1. Introduction. This Article establishes certain protections for the benefit of Eligible Mortgagees. Whether or not it expressly so states, any mortgage upon a Unit and the obligations secured thereby shall be deemed to provide, generally, that the mortgage, and the rights and obligations of the parties thereto, shall be subject to the terms and conditions of the Act and this Declaration.

Section 11.2. Reports and Notices. If requested in writing by an Eligible Mortgagee, the Eligible Mortgagee shall be entitled to receive some or all of the following as designated in the request:

11.2.1. Notice of any condemnation which affects a material portion of the Condominium;

11.2.2. Notice of any violation under this Declaration by the Unit Owner whose Unit is encumbered by the mortgage if such violation 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 violation;

11.2.3. The right to examine the books and records of the Association at any reasonable time upon reasonable prior notice;

11.2.4. Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Association to the Unit Owner whose Unit is encumbered by the mortgage;

11.2.5. Any audited or unaudited financial statements of the Association which are prepared for the Association and distributed to the Unit Owners;

11.2.6. Copies of notices of meetings of the Unit Owners and the right to designate a representative to attend such meetings;

11.2.7. Notice of the decision of the Unit Owners to make any material amendment to this Declaration;

11.2.8. Notice of substantial damage to or destruction of any part of the Common Elements (the repair of which would cost in excess of Fifty Thousand Dollars (\$50,000.00));

11.2.9. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond required by the provisions of the Condominium Documents to be maintained by the Association; and

11.2.10. Any judgment rendered against the Association.

Section 11.3. Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and their successors, and may be enforced by any of them by any available means, at law, or in equity.

Section 11.4. Appointment of Trustee. In the event of damage or destruction to the Property or condemnation of all or a portion of the Condominium, any Eligible Mortgagee may require that proceeds arising out of such damage be payable to a Trustee established pursuant to Section 14.8 of this Declaration. Such Trustee may be required to be a corporate trustee licensed by the Commonwealth of Pennsylvania. Proceeds will thereafter be distributed pursuant to Article XV or pursuant to a condemnation award. Unless otherwise required, the members of the Executive Board, acting by majority vote through the president, may act as Trustee.

Section 11.5. Invalidation. Failure to comply with the requirements set forth in this Article XI shall in no way invalidate otherwise proper actions of the Association and the Executive Board.

## ARTICLE XII

## DECLARANT CONTROL OF THE ASSOCIATION; EXECUTIVE BOARD;

## SPECIAL DECLARANT RIGHTS

Section 12.1. Declarant Control of the Association.

12.1.1. Until the date of the First Settlement, Declarant shall have the right to appoint and remove any and all officers and members of the Executive Board.

12.1.2. As of the date of the First Settlement, the Executive Board shall be reconstituted in accordance with Section 12.2.2 hereof.

12.1.3. Within sixty (60) days of the First Settlement, Declarant shall deliver to the Association all property of the Association, together with all applicable items designated in Section 3320 of the Act.

Section 12.2. Executive Board.

12.2.1. The Executive Board shall initially consist of two (2) members, each being designated by Declarant.

12.2.2. As of the date of the First Settlement, any existing members of the Executive Board shall resign and the Executive Board shall thereafter consist of two (2) members, one (1) being designated by the Unit Owner of Unit 1 and one (1) being designated by the Unit Owner of Unit 2. For so long as the Executive Board consists of two (2) members, all decisions of the Executive Board shall be by unanimous vote.

12.2.3. In the event the subdivision or combining of Units or the relocation of boundaries between Units as permitted by Article III hereof results in the existence of more than two (2) Units in the Condominium, a special meeting of the Association shall be held at which all members of the Executive Board shall resign and the Unit Owners (including Declarant to the extent of Units owned by Declarant) shall thereupon elect a new three (3) member Executive Board in accordance with the provisions of this Article, the Bylaws and Section 5303 of the Act. In such case, each member of the Executive Board shall have one (1) vote and all decisions of the Executive Board shall be by vote of at least seventy-five percent (75%) of the members present at a meeting at which a quorum is present. Thereafter, the Unit Owners shall have the right to increase or decrease from time to time the number of members comprising the Executive Board in accordance with this Declaration, the Bylaws and the Act, by vote or agreement of Unit Owners of Units to which at least seventy-five percent (75%) of the votes in the Association are allocated.

Section 12.3. Special Declarant Rights. Notwithstanding the transfer by Declarant to the Unit Owners of control of the Association pursuant to Section 12.1 above, the Declarant reserves unto itself all Special Declarant Rights as defined in the Act for as long as Declarant owns any Unit within the Condominium. In addition, Declarant reserves unto itself the right to transfer any or all of Declarant's Special Declarant Rights to one or more successors, provided that the transfer(s) shall be effected in accordance with the provisions

of this Declaration and Section 3304 of the Act. Any successor to any Special Declarant Right shall have the liabilities and obligations set forth in Section 3304(e) of the Act.

## ARTICLE XIII

### LIMITATION OF LIABILITY

Section 13.1. Limited Liability of the Executive Board Members of the Association. To the fullest extent permitted by Pennsylvania law, as now in effect and as modified from time to time, a member of the Executive Board shall not be personally liable for monetary damages for any action taken or any failure to take any action.

Section 13.2. Indemnification of Executive Board Members and Officers of the Association.

13.2.1. Third Party Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that the person is or was an Executive Board member or officer of the Association, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by the person in connection with such threatened, pending or completed action, suit or proceeding.

13.2.2. Derivative Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that the person is or was an Executive Board member or officer of the Association, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by the person in connection with such threatened, pending or completed action or suit by or in the right of the Association.

13.2.3. Procedure for Effecting Indemnification. Indemnification under Subsections 13.2.1 and 13.2.2 shall be automatic and shall not require any determination that indemnification is proper, except that no indemnification shall be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness.

13.2.4. Expenses Advanced. The Association shall advance expenses incurred by an Executive Board member or officer of the Association who is entitled to be indemnified pursuant to the provisions of this Section 13.2 in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined by a court of competent jurisdiction that such person is not entitled to be indemnified by the Association.

13.2.5. Indemnification of Other Persons. The Association may, at the discretion of, and to the extent and for such persons as determined by the Executive Board

of the Association, (i) indemnify any person who neither is nor was an Executive Board member or officer of the Association but who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (and whether brought by or in the right of the Association), by reason of the fact that the person is or was a representative of the Association, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by the person in connection with such threatened, pending or completed action, suit or proceeding and (ii) pay such expenses in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined by a court of competent jurisdiction that such person is not entitled to be indemnified by the Association.

Section 13.3. Indemnification Insurance. The Executive Board may obtain insurance to satisfy the indemnification obligations set forth in Section 13.2 above, if and to the extent available at a reasonable cost.

## ARTICLE XIV

### INSURANCE

#### Section 14.1. Casualty Insurance Maintained By Unit Owners.

14.1.1. Each Unit Owner shall maintain "all-risk" (also known as "causes of loss - special form") property damage insurance ("Casualty Insurance") in an amount equal to full replacement value on all improvements located on and comprising its Unit, subject to commercially reasonable deductibles as determined by each Unit Owner in its sole but reasonable discretion. The Association shall be named as an additional insured at its interests may appear.

14.1.2. Each Unit Owner, for itself, and, to the extent it is legally possible for it to do so, on behalf of its insurer for its Casualty Insurance, hereby releases the Association and the other Unit Owner(s) and their respective tenants and occupants from any liability for:

14.1.2.1. any loss or damage to the property of each Unit Owner and its respective tenants and occupants located upon or in the Condominium;

14.1.2.2. any loss or damage to Buildings or other improvements on a Unit within the Condominium or the contents thereof; and/or

14.1.2.3. any other direct or indirect loss or damage caused by fire or other risks, which loss or damage under subparagraphs 14.1.2.1, 14.1.2.2 and/or 14.1.2.3 of this subsection is of the type covered by the Casualty Insurance. Each Unit Owner shall, to the extent such insurance endorsement is available, obtain for the benefit of the Association and the other Unit Owners and their respective tenants and occupants a waiver of any right of subrogation which the insurer for the Casualty Insurance may acquire against the Association or the other Unit Owners and their respective tenants and occupants by

virtue of the payment of any such loss covered by such insurance. The foregoing waiver and release shall be operative only so long as the same shall not preclude any Unit Owner from obtaining insurance, and shall have no effect to the extent that it diminishes, reduces or impairs the liability of any insurer or the scope of any coverage under any policy applicable to any portion of the Condominium or any Buildings therein.

Section 14.2. Unit Owner's Liability Insurance. Each Unit Owner shall maintain commercial general liability insurance with an AM Best rated A- or better (or equivalent) insurer that is authorized to issue such insurance in Pennsylvania with respect to the Condominium in the amount of at least Two Million Dollars (\$2,000,000.00) per occurrence and at least Four Million Dollars (\$4,000,000.00) in the aggregate combined coverage with respect to bodily injury or death and property damage.

Section 14.3. Insurance Maintained By Association. The Association shall obtain such types and amounts of insurance with respect to the Common Elements as it deems appropriate. The Association shall maintain at least the following insurance coverage:

14.3.1. Commercial general liability insurance naming the Unit Owners in their capacity as Unit Owners and Association members and any managing agent retained by the Association, against any liability to the public or to other Unit Owners, their tenants or invitees, relating in any way to the ownership and/or use of the Common Elements or any part thereof. Such insurance policy shall contain a "severability of interests endorsement" or equivalent coverage which precludes the insurer from denying a claim of a Unit Owner because of the negligent acts of the Association or any other Unit Owner, their respective tenants and invitees. Limits of liability shall be at least One Million Dollars (\$1,000,000.00) covering all claims for personal injury and/or property damage arising out of the single occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. The scope and amount of coverage for all liability insurance policies shall be reviewed periodically by the Executive Board and may be changed in its reasonable discretion.

14.3.2. Insurance to satisfy the indemnification obligation of the Association and all Unit Owners set forth in Article XIII hereof, if and to the extent available.

14.3.3. Workmen's compensation insurance if and as required to meet the requirements of the laws of the Commonwealth of Pennsylvania.

14.3.4. Directors' and officers' liability insurance, if reasonably available, covering all of the Executive Board members and officers of the Association in such limits as the Executive Board may, from time to time, determine to be advisable.

Section 14.4. Loss Adjustment. Exclusive authority to adjust losses under policies maintained by the Association shall be vested in the Executive Board or its authorized representative.

Section 14.5. Certain Policy Provisions. The Association shall endeavor to cause such policies to provide that:

14.5.1. the enforceability of such policy shall not be affected by any waiver of subrogation as to any and all claims against the Association, managing agent, the Unit

Owners and their respective tenants, employees, agents, customers and guests, such subrogation being hereby waived;

14.5.2. such policies cannot be cancelled, invalidated or suspended by means of any conduct of any one or more Unit Owners, all defenses based upon co-insurance or acts of the insured being waived by the insurer;

14.5.3. in no event shall cancellation, material modification, invalidation or suspension for any reason be effected without at least thirty (30) days' prior written notice to the Executive Board;

14.5.4. such policies cannot be cancelled, invalidated or suspended on account of the conduct of any officer of the Association or any managing agent employed by the Association without a prior demand in writing that the Association or such managing agent, as the case may be, cure the defect and without providing a reasonable period of time thereafter in which to cure the same; and

14.5.5. any "no other insurance" clause in such policy shall not prohibit Unit Owners from obtaining insurance on their individual Units.

Section 14.6. Waiver of Section 3312 of Act. The provisions of Section 3312 of the Act are waived in their entirety.

Section 14.7. Premiums. Insurance premiums and deductibles for insurance policies carried by the Association shall be a Common Expense.

Section 14.8. Insurance Proceeds. With respect to restoration required pursuant to Section 15.1, the insurance trustee, or if there is no insurance trustee, then the Association, shall hold any insurance proceeds in trust for the Association, Unit Owners and lien holders as their interests may appear. The proceeds shall be disbursed first, unless the Executive Board in the exercise of good business judgment elects otherwise, for the repair or restoration of the damaged Common Elements, and the Association, Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Common Elements have been repaired or restored to the extent required by the Executive Board, or if the Condominium is terminated.

## ARTICLE XV

### RESTORATION OF DAMAGE TO OR DESTRUCTION OF PROPERTY

Section 15.1. Association's Duty to Restore. Any portion of the Common Elements for which insurance carried by the Association is in effect shall be repaired or replaced promptly by the Association, unless the Executive Board in the exercise of good business judgment elects otherwise.

Section 15.2. Cost. The cost of repair or replacement pursuant to Section 15.1 not covered due to a deductible in the insurance policy, or which is in excess of insurance proceeds, shall be a Common Expense.

Section 15.3. Unit Owner's Duty to Restore. If the restoration of a damaged or destroyed Unit is necessary for the structural integrity of a Building if the Unit contains only part, but not all of, a Building, then the Unit Owner of the subject Unit shall restore its Unit which is damaged or destroyed by fire, casualty or other cause, whether or not any insurance maintained by the Unit Owner is adequate, to a condition that provides similar or better structural integrity to the remaining portions of the Building than existed prior to such casualty. All restoration shall be commenced as soon as reasonably possible and be prosecuted diligently. If restoration of a Unit is not required under the first sentence of this Section and the subject Unit Owner elects not to restore his damaged or destroyed Unit, the subject Unit Owner shall nevertheless raze its Unit and landscape that portion of the Condominium previously occupied by the razed Unit in a manner that is compatible with and in harmony with the other Units then located within the Condominium. In the event that a Unit Owner elects not to rebuild its Unit and razes the building constituting its Unit, the Unit Owner shall continue to be responsible for the payment of Common Expense Assessments based upon the "Percentage Interest" of the Unit prior to its damage or destruction.

## ARTICLE XVI

### AMENDMENTS TO DECLARATION

Section 16.1. Amendment Generally. Except in cases of amendments that may be executed by the Declarant in the exercise of its Special Declarant Rights, or by the Association pursuant to Section 16.7 below, or as otherwise permitted by the Act or other provisions of this Declaration, and except as limited by Section 16.4 of this Declaration, or by certain provisions of the Act, this Declaration, including the Plats and Plans, may be amended only by vote or agreement of Unit Owners of Units to which at least seventy-five percent (75%) of the votes in the Association are allocated.

Section 16.2. Limitation of Challenges. No action to challenge the validity of an amendment adopted by the Association pursuant to this Article may be brought more than one (1) year after the amendment is recorded.

Section 16.3. Recordation of Amendments. Every amendment to this Declaration shall be recorded in the county in which the Property is located and is effective only on recording. An amendment shall be indexed in the name of the Condominium in both the grantor and grantee index.

Section 16.4. When Unanimous Consent Required. Except to the extent expressly permitted or required by other provisions of the Act and this Declaration, no amendment may create or increase Special Declarant Rights, increase the number of Units, change the boundaries of any Unit, the Percentage Interest of any Unit, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

Section 16.5. Execution of Amendments. Amendments to this Declaration required by the Act to be recorded by the Association, which have been adopted in accordance with this Declaration and the Act, shall be prepared, executed, recorded and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.



Section 16.6. Special Declarant Rights. Provisions in this Declaration or in the Act creating Special Declarant Rights may not be amended without the consent of the Declarant.

Section 16.7. Corrective Amendments. If any amendment is necessary in the judgment of the Executive Board to cure any ambiguity or to correct or supplement any provision of this Declaration, including the Plats and Plans, that is defective, missing or inconsistent with any other provisions contained therein or with the Act, or if such amendment is necessary to comply with any statute, regulation, code or ordinance which may now or hereafter be made applicable to the Condominium or Association, or to make a reasonable accommodation or permit a reasonable modification in favor of the handicapped, as may be defined by prevailing federal or state laws or regulations applicable to the Condominium, Association, Unit Owners, or employees, 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 Section.

## ARTICLE XVII

### AMENDMENT TO BYLAWS

Section 17.1. Amendments to Bylaws. The Bylaws may be amended only by a unanimous vote of the members of the Executive Board, following Notice and Comment to all Unit Owners, at any meeting duly called for such purpose.

## ARTICLE XVIII

### POWERS OF THE ASSOCIATION

Section 18.1. Powers of the Association. Subject to the provisions of this Declaration, the Association shall have all of the powers designated in Section 3302 of the Act, including the right to assign its right to future income and the right to receive the payments made on account of assessments for Common Expenses including Limited Common Expenses.

Section 18.2. Delegation of Powers to Master Association. The Association shall have the right to assign or delegate any of its powers listed in Section 3302 of the Act to a master association, provided that such assignment or delegation is made subject to the provisions of Section 3222 of the Act. The Association shall also have the right to accept any assignment or delegation of powers from one or more condominium or other associations.

Section 18.3. Conveyance or Encumbrance of the Common Elements. Provided that Unit Owners entitled to cast at least ninety percent (90%) of the votes in the Association, including ninety percent (90%) of the votes allocated to Units not owned by Declarant, agree, portions of the Common Elements may be conveyed or subjected to a

security interest by the Association. Any conveyance or encumbrance of the Common Elements by the Association shall be effected in strict accordance with Section 3318 of the Act.

Section 18.4 Judgments Against the Association. Any creditor of the Association pursuant to a security interest obtained under Section 18.1 above shall exercise its rights against the Common Elements before its judgment lien on any Unit may be enforced. Otherwise, as a general rule, any judgment for money against the Association, upon perfection as a lien on real property, shall not be a lien on the Common Elements, but shall constitute a lien against all of the Units in the Condominium at the time the judgment was entered. Any Unit Owner may have its Unit released from the lien of the judgment upon payment of that portion of the lien attributable to its Unit in accordance with Section 3319(c) of the Act. After payment, the Association may not assess or have a lien against that Unit Owner's Unit for any portion of the Common Expense incurred in connection with that lien. A judgment indexed against the Association must be indexed against the Condominium and the Association, and when so indexed, shall constitute notice of the lien against the Units.

## ARTICLE XIX

### TERMINATION OF THE CONDOMINIUM

Section 19.1. Procedure for Termination. Except in the case of a taking of all of the Units in the Condominium by eminent domain, the Condominium may be terminated by agreement of Unit Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated, provided that such termination shall be effected in full compliance with the provisions set forth in Section 3220 of the Act.

## ARTICLE XX

### RIGHTS TO NOTICE AND COMMENT; NOTICE AND HEARING

Section 20.1. Right to Notice and Comment. Before the Executive Board amends the Bylaws or the Rules and Regulations, whenever the Condominium Documents require that an action be taken after "Notice and Comment", and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Unit Owner in writing and shall be delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association. The notice shall be given not less than fifteen (15) days before the proposed action is to be taken. The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.

Section 20.2. Right to Notice and Hearing. Whenever the Condominium Documents require that an action be taken after "Notice and Hearing", and at any other time the Executive Board determines, the following procedure shall be observed: The party proposing to take the action (e.g., the Executive Board, a committee, an officer, the manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interests would be significantly affected by the proposed action.

The notice shall include a general statement of the proposed action and the date, time and place of the hearing. The notice shall be given not less than fifteen (15) days before the earlier to occur of a hearing on the proposed action or the commencement of the proposed action. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

Section 20.3. Appeals. Any Person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of persons other than the Executive Board by filing a written notice of appeal with the Executive Board within fifteen (15) days after being notified of the decision. The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

## ARTICLE XXI

### WAIVER OF CHAPTER 34 OF ACT

Section 21.1. WAIVER OF CHAPTER 34 OF ACT. THE CONDOMINIUM AND THE UNITS THEREIN ARE RESTRICTED EXCLUSIVELY TO NON-RESIDENTIAL USES. THE DECLARANT IS SELLING EACH OF THE UNITS IN THE CONDOMINIUM IN AS-IS CONDITION WITH ALL FAULTS AND IS THEREFORE PROVIDING NO WARRANTY OF ANY KIND WHATSOEVER WITH REGARD TO STRUCTURAL OR OTHER DEFECTS. BY THE ACCEPTANCE OF A DEED TO A UNIT, EACH UNIT PURCHASER ACKNOWLEDGES AND AGREES TO BE BOUND BY THIS ARTICLE XXI AND EACH AND EVERY IMMEDIATE AND SUBSEQUENT PURCHASER OF A UNIT WAIVES EACH AND EVERY PROVISION CONTAINED IN CHAPTER 34 OF THE ACT, WITH THE EXCEPTION OF SECTIONS 3407 AND 3409. Nothing in this Article XXI shall be deemed to waive any express warranty provided to a purchaser of a Unit in an agreement of sale with Declarant.

## ARTICLE XXII

### INTERPRETATION

Section 22.1. Interpretation. The provisions of this Declaration shall be liberally construed in order to effectuate Declarant's desire to create a uniform plan for development and operation of a condominium project. The headings preceding the various paragraphs of this Declaration and the Table of Contents are intended solely for the convenience of readers of this Declaration.

ARTICLE XXIII

SEVERABILITY

Section 23.1. Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof unless such deletion shall destroy the uniform plan for development and operation of the condominium project which this Declaration is intended to create.

ARTICLE XXIV

EFFECTIVE DATE

Section 24.1. Effective Date. This Declaration shall become effective when it and the Plats and Plans have been recorded.

IN WITNESS WHEREOF, Declarant, intending to be legally bound hereby has duly executed this Declaration, as of this 23<sup>rd</sup> day of November, 2015.

WITNESS/ATTEST:

DECLARANT:

**MIDDLETOWN BOROUGH INDUSTRIAL AND COMMERCIAL DEVELOPMENT AUTHORITY**

*[Signature]*

By *[Signature]*  
Name: Matt Tunnell  
Title: Chairman

COMMONWEALTH OF PENNSYLVANIA

:

COUNTY OF DAUPHIN \_\_\_\_\_

:

SS:

:

On this, the 23<sup>rd</sup> day of November, 2015, before me, a Notary Public, the undersigned officer, personally appeared Matt Tunnell who acknowledged himself to be the Chairman of **MIDDLETOWN BOROUGH INDUSTRIAL AND COMMERCIAL DEVELOPMENT AUTHORITY**, an economic development financing authority formed under the laws of the Commonwealth of Pennsylvania, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation as such officer.

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

*[Signature]*  
Notary Public

(SEAL)

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Lisa R. Barker, Notary Public  
City of Harrisburg, Dauphin County  
My Commission Expires Nov. 5, 2016

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

ALL THAT CERTAIN lot or tract of improved land situate in the Borough of Middletown, County of Dauphin and Commonwealth of Pennsylvania, being more particularly bounded and described as follows, to wit:

ALL THAT CERTAIN piece or parcel of land situate at the southwest corner of Union and Emaus Streets fronting 60.00 feet on Union Street and extending in depth the same width throughout 200.00 feet to Union Alley.

BEING Lot No. 1 on the Plan of Lots of the Emaus Orphan House, which Plan is recorded in the Office of the Recorder of Deeds in and for Dauphin County, in Deed Book C, Volume 3, Page 601.

BEING the same premises which Greater Middletown Economic Development Corporation, a Pennsylvania non-profit corporation, by its Deed dated August 22, 2014 and recorded on September 19, 2014 as Dauphin County Instrument No. 20140022511, granted and conveyed unto Middletown Borough Industrial and Commercial Development Authority, an economic development financing authority formed under the laws of the Commonwealth of Pennsylvania, Declarant herein.

{A4803765:1}

**EXHIBIT A-1**

**LIST OF RECORDED EASEMENTS, RIGHTS AND LICENSES**

Included among the easements, rights and appurtenances referred to in Section 1.1 of the Declaration are the following recorded easements, rights and licenses:

1. All conditions shown on Plan of Lots of Emaus Orphan House, recorded in Record Book C3, Page 602; and page 601, if any.
2. Subject premises abuts an alley; subject to public and private rights therein.
3. Title to that part of the premises lying in the bed and right of way of all roads, driveways and alleyways is subject to public and private rights therein.

**EXHIBIT B****PERCENTAGE INTEREST IN COMMON ELEMENTS,  
SHARE OF COMMON EXPENSES  
AND VOTES APPURTENANT TO UNITS  
NEED TO CONFIRM**

<b>Unit Identifying Number</b>	<b>Percentage Interest (%)</b>	<b>Number of Votes (Percentage Interest times 100)</b>
Unit 1	50	500
Unit 2	50	500
<b>TOTAL (2 Units)</b>	100	1,000

{A4803765:1}



**EXHIBIT C**

**PLATS AND PLANS**

The Declaration Plat for Union Street Condominium, prepared by Herbert, Rowland & Grubic, Inc., dated November 25, 2015 and consisting of one (1) page, shall constitute the Plats and Plans for the Condominium and is being filed in the Office of the Recorder of Deeds in and for Dauphin County, Pennsylvania, concurrently with the filing of this Declaration, and said Plat is hereby incorporated herein and made an integral part hereof by this reference thereto.

{A4803765:1}

Instrument # 20150030450  
 Jim Zugay, Recorder of Deeds  
 Dauphin, PA  
 Record Date & Time: 11/25/2015 at  
 12:31 PM  
 Cashier By: SKREVSKY  
 UPLICount: 3  
 UPLIFee: 30  
 UPLIList: 41-009-060-000-0000,41-009-014-000-0000,41-009-059-000-0000

**SURVEY NOTES**

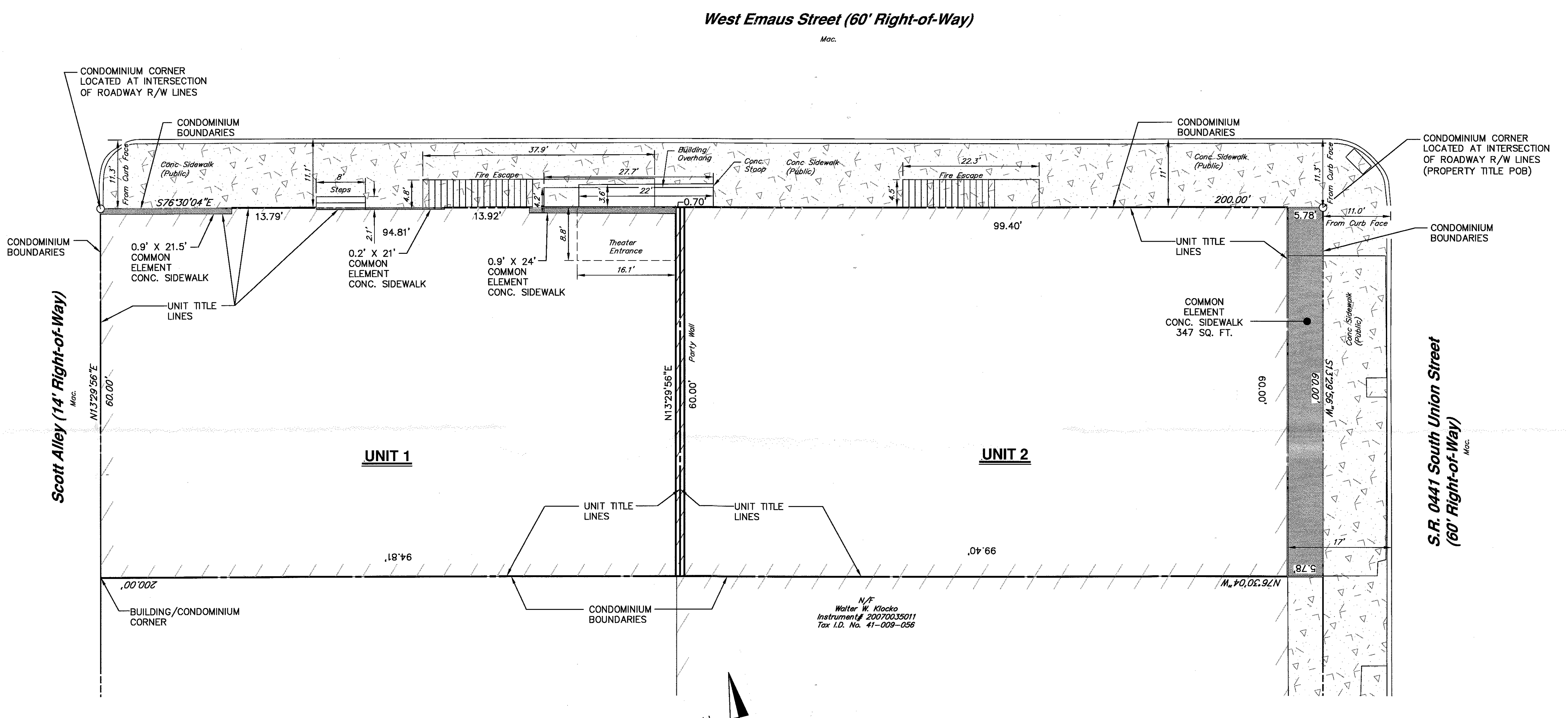
1. PROPERTY BOUNDARY LINES AND TOPOGRAPHY ON THIS PLAN ARE BASED ON A FIELD SURVEY BY HERBERT, ROWLAND AND GRUBIC, INC. ON SEPTEMBER 22, 2015
2. CONDOMINIUM BOUNDARIES ARE CONSISTENT WITH BUILDING FOOTPRINT EXCEPT AS SHOWN HEREON. ROADWAY RIGHT-OF-WAY LINES ARE CONSISTENT WITH CONDOMINIUM BOUNDARIES.
3. ALL DOORS, FIRE ESCAPES, STOOPS, PATIOS, PORCHES, EXTERIOR ENTRY STAIRS, RAILINGS, AND ROOFS COVERING ANY OF THE FOREGOING AND SERVING ONLY ONE UNIT ARE PART OF THE UNIT TO WHICH THEY ARE APPURTENANT.
4. THIS PLAN HORIZONTALLY REFERENCES THE NORTH AMERICAN DATUM OF 1983 NAD 1983 (2011) PENNSYLVANIA STATE PLANE COORDINATE SYSTEM, NORTH ZONE, AND VERTICALLY REFERENCES THE NORTH AMERICAN VERTICAL DATUM OF 1988 NAVD88 (GEOID 12A).

**CERTIFICATION**

THE UNDERSIGNED, MICHAEL D. KREIGER JR., BEING A PROFESSIONAL LAND SURVEYOR, PENNSYLVANIA LICENSE NO. SU053387, INDEPENDENT OF MIDDLETOWN BOROUGH INDUSTRIAL AND COMMERCIAL DEVELOPMENT AUTHORITY, THE DECLARANT FOR UNION STREET CONDOMINIUM, HEREBY CERTIFIES THAT THE PLAT CONSISTING OF ONE (1) PAGE TO WHICH THIS CERTIFICATION IS AFFIXED CONTAINS ALL INFORMATION REQUIREMENTS BY SECTION 3210 OF THE PENNSYLVANIA UNIFORM CONDOMINIUM ACT, AS AMENDED.

*[Signature]*  
 MICHAEL D. KREIGER JR.  
 Nov 24, 2015

MICHAEL D. KREIGER JR., PLS. AGENT  
 REGISTERED SURVEYOR, COMMONWEALTH OF PENNSYLVANIA  
 REGISTRATION NO. SU053387

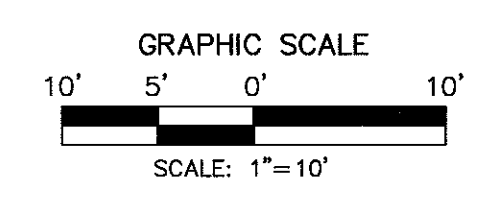


COMMONWEALTH OF PENNSYLVANIA  
 COUNTY OF Dauphin

ON THIS, THE 24th DAY OF November, 2015, BEFORE ME, A NOTARY PUBLIC, THE UNDERSIGNED OFFICER, PERSONALLY APPEARED MICHAEL D. KREIGER JR., KNOWN TO ME (OR SATISFACTORILY PROVEN) TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THIS INSTRUMENT, AND ACKNOWLEDGED THAT HE/SHE EXECUTED THE SAME FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.

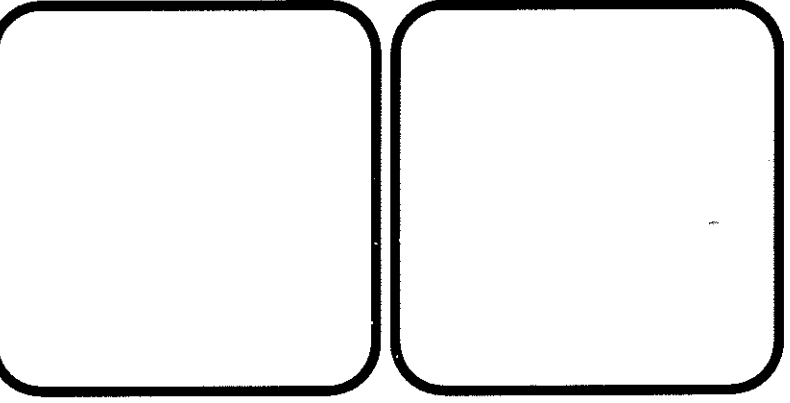
*[Signature]*  
 NOTARY PUBLIC  
 COMMONWEALTH OF PENNSYLVANIA  
 NOTARIAL SEAL  
 Jack L. Hildebrand, Notary Public  
 Seneca Twp., Dauphin County  
 My Commission Expires Aug. 27, 2018  
 MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES



**KEY:**  
 COMMON ELEMENT  
 PUBLIC CONCRETE SIDEWALK - NOT PART OF CONDOMINIUM

EXHIBIT C TO  
 DECLARATION OF CONDOMINIUM  
 FOR  
 UNION STREET CONDOMINIUM

NO.	REVISION	DATE	BY



**HRG**  
 Herbert, Rowland & Grubic, Inc.  
 Engineering & Related Services  
 AN EMPLOYEE-OWNED COMPANY  
 369 East Park Drive  
 Harrisburg, PA 17111  
 (717) 564-1121  
 Fax: (717) 564-1158  
 hrg@hrg-inc.com  
 www.hrg-inc.com

MIDDLETOWN BOROUGH INDUSTRIAL AND  
 COMMERCIAL DEVELOPMENT AUTHORITY  
 60 WEST EMAUS STREET  
 MIDDLETOWN, PA 17057  
 (717) 902-0706

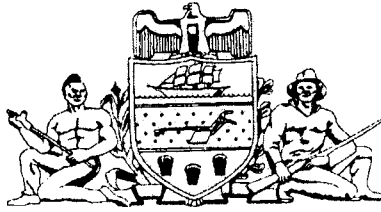
DECLARATION PLAT FOR  
 UNION STREET CONDOMINIUM  
 DECLARANT: MIDDLETOWN BOROUGH INDUSTRIAL AND  
 COMMERCIAL DEVELOPMENT AUTHORITY  
 BOROUGH OF MIDDLETOWN DAUPHIN COUNTY PENNSYLVANIA

PROJ. MGR. - EL
DESIGN -
CADD - DRZ
CHECKED - MDW
SCALE - AS NOTED
DATE - 2015.11.24

DRAWING NO.  
**CONDO**  
 SHEET NO.  
 1 OF 1  
 PROJECT R007459.0426

James M. Zugay, Esq.  
Recorder of Deeds  
(717) 780-6560

Candace E. Meck  
First Deputy



*Location:*  
Dauphin County Courthouse  
Room 102  
Front & Market Streets  
Harrisburg, PA 17101

## Recorder of Deeds

Harrisburg, Pennsylvania

### CERTIFIED END PAGE

INSTRUMENT #: 20150030450  
RECORD DATE: 11/25/2015 12:31:23 PM  
RECORDED BY: SKREVSKY  
DOC TYPE: DECL  
AGENT: MCNEES, WALLACE & NURICK LLC  
DIRECT NAME: MIDDLETOWN BOROUGH INDUSTRIAL & COMMERCIAL DEVELOPMENT AUTHORITY  
INDIRECT NAME:

RECORDING FEES - State: \$0.50  
RECORDING FEES - County: \$13.00  
ACT 8 OF 1998: \$5.00  
ADDITIONAL NAME FEE: \$76.00

MIDDLETOWN BORO

UPICount: 3  
UPIFee: 30  
UPIList: 41-009-060-000-0000,41-009-014-000-0000,41-009-059-000-0000

I Certify This Document To Be Recorded  
In Dauphin County, Pennsylvania.



James M. Zugay, Recorder of Deeds

---

THIS IS A CERTIFICATION PAGE

---

**PLEASE DO NOT DETACH**


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THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

## APPENDIX B

# ARTICLES OF INCORPORATION AND BYLAWS OF THE CONDOMINIUM ASSOCIATION

PENNSYLVANIA DEPARTMENT OF STATE  
BUREAU OF CORPORATIONS AND CHARITABLE ORGANIZATIONS

<input type="checkbox"/> Return document by mail to: Tiffany Schaefer - McNeese Wallace & Nurick LLC Name Counter Pickup Address City State Zip Code	Articles of Incorporation-Nonprofit  TCO160104JM1793
<input type="checkbox"/> Return document by email to: _____	

Read all instructions prior to completing. This form may be submitted online at <https://www.corporations.pa.gov/>.

Fee: \$125

Check one:  Domestic Nonprofit Corporation (§ 5306)     Nonprofit Cooperative Corporation (§ 7102)

In compliance with the requirements of the applicable provisions (relating to articles of incorporation or cooperative corporations generally), the undersigned, desiring to incorporate a nonprofit/nonprofit cooperative corporation, hereby state(s) that:

1. The name of the corporation is: Union Street Condominium Association
2. Complete part (a) or (b) – not both: (a) The address of this corporation's current registered office in this Commonwealth is: (post office box alone is not acceptable) 3 S. Union Street                      Middletown                      PA                      17057                      Dauphin Number and Street                      City                      State                      Zip                      County (b) The name of this corporation's commercial registered office provider and the county of venue is: c/o: Name of Commercial Registered Office Provider                      County
3. The corporation is incorporated under the Nonprofit Corporation Law of 1988 for the following purpose or purposes. See Addendum attached
4. The corporation does not contemplate pecuniary gain or profit, incidental or otherwise.
5. Check and complete one: <input checked="" type="checkbox"/> The corporation is organized on a nonstock basis. <input type="checkbox"/> The corporation is organized on a stock share basis and the aggregate number of shares authorized is _____

2015 DEC 29 PM 2:09

PA. DEPT. OF STATE

6. For unincorporated association incorporating as a nonprofit corporation only. Check if applicable:  
\_\_\_\_\_ The incorporators constitute a majority of the members of the committee authorized to incorporate such association by the requisite vote required by the organic law of the association for the amendment of such organic law.

7. For Nonprofit Corporation Only:  
Check one: \_\_\_\_\_ The corporation shall have no members.  
\_\_\_\_\_  The corporation shall have members.

8. For Nonprofit Cooperative Corporation Only:  
Check and complete one:  
\_\_\_\_\_ The corporation is a cooperative corporation and the common bond of membership among its members is: \_\_\_\_\_  
\_\_\_\_\_ The corporation is a cooperative corporation and the common bond of membership among its shareholders is: \_\_\_\_\_

9. The name(s) and address(es) of each incorporator(s) is (are) (all incorporators must sign below):  
Name(s) \_\_\_\_\_ Address(es) \_\_\_\_\_  
Tiffany Schaefer \_\_\_\_\_ 100 Pine Street, P.O. Box 1166 \_\_\_\_\_  
\_\_\_\_\_ Harrisburg, PA 17108 \_\_\_\_\_  
\_\_\_\_\_

10. The specified effective date, if any, is:  
upon filing \_\_\_\_\_  
month \_\_\_\_\_ day \_\_\_\_\_ year \_\_\_\_\_ hour, if any \_\_\_\_\_

11. Additional provisions of the articles, if any, attach an 8½ x 11 sheet.

IN TESTIMONY WHEREOF, the incorporator(s) has/have signed these Articles of Incorporation this  
29th day of December \_\_\_\_\_, 2015  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Signature

ADDENDUM TO ARTICLES OF INCORPORATION

UNION STREET CONDOMINIUM ASSOCIATION

Item 3:

The corporation is incorporated under the Nonprofit Corporation Law of 1988 for the following purposeful purposes:

to have unlimited power to engage in and to do any or all lawful activities for which corporations may be incorporated under the Nonprofit Corporation Law of 1988. Specifically, but without limiting the foregoing, the corporation shall have all powers necessary to function as a "unit owners' association" under the Pennsylvania Uniform Condominium Act, and shall perform all obligations and duties of the unit owners' association for Union Street Condominium as described in the Declaration of Condominium of Union Street Condominium as recorded in the Office of the Recorder of Deeds in and for Dauphin County, Pennsylvania, as the same may be amended from time to time.

The primary purpose of this corporation is to be a condominium unit owners' association that provides for the management, maintenance and care of the commercial condominium located in Middletown Borough, Dauphin County, Pennsylvania, known as Union Street Condominium.

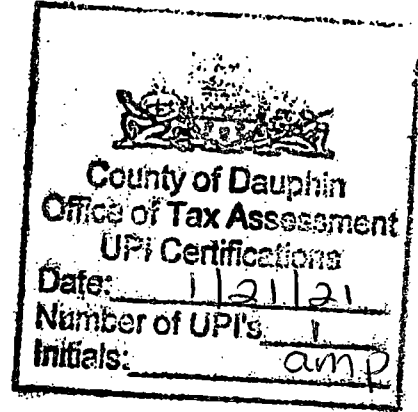
No part of the net earning of this corporation will be used for the benefit of any private member or individual other than by acquiring, constructing, or providing for the management, maintenance and care of association property or by a rebate of excess membership dues, fees, or assessments.

APPENDIX C  
CURRENT DEED



Record and Return to:  
James A. Diamond, Esquire  
Eckert Seamans, Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101

Tax Map Parcel No. 41-009-014



## DEED

THIS DEED is made the 19<sup>th</sup> day of January, 2021.

BETWEEN

**MIDDLETOWN BOROUGH INDUSTRIAL AND COMMERCIAL DEVELOPMENT**

**AUTHORITY**, an economic development financing authority formed under the laws of the Commonwealth of Pennsylvania ("Grantor"),

AND

**BOROUGH OF MIDDLETOWN**, a Borough organized under the laws of the Commonwealth of Pennsylvania, located in Dauphin County, Pennsylvania ("Grantee");

WITNESSETH

That the Grantor in consideration of One Dollar (\$1.00) paid by the Grantee to the Grantor, the receipt whereof is hereby acknowledged, does hereby grant and convey until Grantee, its successors and assigns,

ALL that certain Unit, being Unit No. 1 (the "Unit") of Union Street Condominium (the "Condominium"), located in the Borough of Middletown, Dauphin County, Pennsylvania, which Unit is designed in the Declaration of Condominium for Union Street Condominium (the "Declaration of Condominium") and related Declaration Plats and Plans recorded in the Office of the Dauphin County Recorder of Deeds as Instrument No. 20150030450, together with any and all amendments thereto.

TOGETHER with the undivided percentage interest in the Common Elements appurtenant to the Unit as more particularly set forth in the aforesaid Declaration of Condominium, as last amended.

TOGETHER with the right to use the Limited Common Elements (if any) applicable to the Unit being conveyed herein, pursuant to the Declaration of Condominium and Declaration Plats and Plans, as last amended.

UNDER AND SUBJECT to the Declaration of Condominium, to any and all other covenants, conditions, restrictions, easements and agreements of record in the aforesaid Office, and matters which a physical inspection or survey of the Unit and Common Elements would disclose.

BEING part of the same premises which Greater Middletown Economic Development Corporation, a Pennsylvania non-profit corporation, by its Deed dated August 22, 2014, and recorded September 19, 2014, in the Office of the Recorder of Deeds in and for Dauphin County, Pennsylvania, at Instrument No. 20140022511 granted and conveyed unto Middletown Borough Industrial and Commercial Development Authority, an economic development financing authority formed under the laws of the Commonwealth of Pennsylvania, the Grantor herein.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversions and remainders, rents, issues and profits thereof and all the estate, right, title, interest, property, claim and demand whatsoever of the Grantor, in law, equity or otherwise, of, in and to the same and every part thereof.

To Have and to Hold the above-described premises with the appurtenances unto the Grantee, Grantee's successors and assigns, forever.

Grantor hereby covenants and agrees that Grantor will warrant SPECIALLY and forever defend the property hereby conveyed.

**THIS IS A TRANSACTION BETWEEN AN AUTHORITY WHICH IS AN INSTRUMENTALITY OF THE COMMONWEALTH OF PENNSYLVANIA AND A BOROUGH WHICH IS A POLITICAL SUBDIVISION OF THE COMMONWEALTH, BOTH OF WHICH ARE EXEMPT PARTIES FOR THE PURPOSES OF PENNSYLVANIA REALTY TRANSFER TAXES.**





**REV-183**  
 BUREAU OF INDIVIDUAL TAXES  
 PO BOX 280603  
 HARRISBURG, PA 17128-0603

1830019105

**REALTY TRANSFER TAX  
 STATEMENT OF VALUE**  
 COMPLETE EACH SECTION

**RECORDER'S USE ONLY**

State Tax Paid: \_\_\_\_\_  
 Book: \_\_\_\_\_ Page: \_\_\_\_\_  
 Instrument Number: \_\_\_\_\_  
 Date Recorded: \_\_\_\_\_

**SECTION I TRANSFER DATA**

Date of Acceptance of Document 01/19/2021					
Grantor(s)/Lessor(s) Middletown		Telephone Number 717.902.0706		Grantee(s)/Lessee(s) Borough of Middletown	
Borough Industrial and Commercial Development Authority		Mailing Address 60 W. Emaus Street		Mailing Address 60 W. Emaus Street	
City Middletown		State PA		City Middletown	
ZIP Code 17057		State PA		ZIP Code 17057	

**SECTION II REAL ESTATE LOCATION**

Street Address 4 W. Emaus Street			City, Township, Borough Middletown		
County Dauphin		School District Middletown		Tax Parcel Number 41-009-014	

**SECTION III VALUATION DATA**

Was transaction part of an assignment or relocation?  YES  NO

1. Actual Cash Consideration -0-	2. Other Consideration + -0-	3. Total Consideration = -0-
4. County Assessed Value 97,200.00	5. Common Level Ratio Factor X 1.57	6. Computed Value = 152,604.00

**SECTION IV EXEMPTION DATA - Refer to instructions for exemption status.**

1a. Amount of Exemption Claimed \$ 152,604.00	1b. Percentage of Grantor's Interest in Real Estate 100 %	1c. Percentage of Grantor's Interest Conveyed 100 %
--	--	--

2. Fill in the Appropriate Oval Below for Exemption Claimed.

Will or intestate succession. \_\_\_\_\_ (Name of Decedent) \_\_\_\_\_ (Estate File Number)

Transfer to a trust. (Attach complete copy of trust agreement and all amendments.)

Transfer from a trust. (Attach complete copy of trust agreement and all amendments.)

Transfer between principal and agent/straw party. (Attach complete copy of agency/straw party agreement.)

Transfers to the commonwealth, the U.S. and instrumentalities by gift, dedication, condemnation or in lieu of condemnation. (If condemnation or in lieu of condemnation, attach copy of resolution.)

Transfer from mortgagor to a holder of a mortgage in default. (Attach copy of mortgage and note/assignment.)

Corrective or confirmatory deed. (Attach complete copy of the deed to be corrected or confirmed.)

Statutory corporate consolidation, merger or division. (Attach copy of articles.)

Other (Provide a detailed explanation of exemption claimed. If more space is needed attach additional sheets.)  
 TRANSACTION BETWEEN EXEMPT PARTIES -- Conveyance from an Authority that is an Instrumentality of the Commonwealth of Pennsylvania to a Borough that is a Political Subdivision of the Commonwealth of Pennsylvania -- per 72 P.S. § 8102-c.2.

**SECTION V CORRESPONDENT INFORMATION - All inquiries may be directed to the following person:**

Name James A. Diamond, Esquire		Telephone Number 717.237.6071	
Mailing Address Eckert Seamans Cherin & Mellott, 213 Market Street, 8th Floor		City Harrisburg	
State PA		ZIP Code 17101	

Under penalties of law, I declare that I have examined this statement, including accompanying information, and to the best of my knowledge and belief, it is true, correct and complete.

Signature of Correspondent or Responsible Party: *JAD* **SOLICITOR** Date: *1/21/2021*

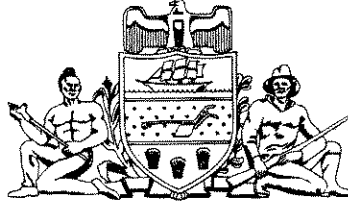
FAILURE TO COMPLETE THIS FORM PROPERLY OR ATTACH REQUESTED DOCUMENTATION MAY RESULT IN THE RECORDER'S REFUSAL TO RECORD THE DEED.



James M. Zugay, Esq.  
Recorder of Deeds  
(717) 780-6560  
jzugay@dauphinc.org

Candace E. Meck  
First Deputy  
www.dauphinc.org/deeds

## Dauphin County



## Recorder of Deeds

Harrisburg, Pennsylvania

### CERTIFIED END PAGE

*Location:*  
Dauphin County Courthouse  
Room 102  
101 Market Street  
Harrisburg, PA 17101

INSTRUMENT #: 20210002273  
RECORD DATE: 1/21/2021 4:04:26 PM  
RECORDED BY: CMECK  
DOC TYPE: DEED  
AGENT: ECKERT, SEAMANS, CHERIN & MELLOTT  
DIRECT NAME: MIDDLETOWN BOROUGH INDUSTRIAL & COMMERCIAL DEVELOPMENT AUTHORITY  
INDIRECT NAME: MIDDLETOWN BOROUGH OF

RECORDING FEES - State: \$0.50  
RECORDING FEES - County: \$13.00  
ACT 8 OF 1998: \$5.00

MIDDLETOWN BORO  
MIDDLETOWN  
AOPC: \$40.25  
AFFORDABLE HOUSING: \$13.00

DEMOLITION: \$15.00

UPICount: 1  
UPIFee: 20  
UPIList: 41-009-014-000-0000

I Certify This Document To Be Recorded  
In Dauphin County, Pennsylvania.

James M. Zugay, Recorder of Deeds



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THIS IS A CERTIFICATION PAGE

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**PLEASE DO NOT DETACH**

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT



James M. Zugay, Esq.  
Recorder of Deeds  
(717) 780-6560

Dauphin County Transaction #: **545585**  
Receipt #: **483825**  
Cashier Date: **1/21/2021 4:04:29 PM (CMECK)**



Print Date:  
1/21/2021 4:04:31 PM

Customer Information	Transaction Information	Payment Summary
(E4) ECKERT, SEAMANS, CHERIN & MELLOTT ONE S MARKET SQUARE BUILDING HARRISBURG, PA 17101	Date Received: 01/21/2021 Source Code: Over the Counter Q Code: Over the Counter Return Code: Pick-Up Trans Type: Recording Agent Ref Num:	Total Fees \$106.75 Total Payments \$106.75

#### 1 Payments



CHECK 6220

\$106.75

#### 1 Recorded Items



(DEED) DEED

Instrument #: 20210002273 Date: 1/21/2021 4:04:26 PM  
From: MIDDLETOWN BOROUGH INDUSTRIAL & COMMERCIAL DEVELOPMENT  
AUTHORITY To: MIDDLETOWN BOROUGH  
OF Municipality: MIDDLETOWN BORO

UPI Fee	1	\$20.00
TOTAL NAMES	2	\$0.00
AFFORDABLE HOUSING	1	\$13.00
AOPC	1	\$40.25
ACT 8 OF 1998	1	\$5.00
COMMONWEALTH OF PENNSYLVANIA	1	\$0.00
MUNICIPALITY	1	\$0.00
SCHOOL DISTRICT	1	\$0.00
RECORDING-COUNTY	1	\$13.00
DEMOLITION	1	\$15.00
RECORDING-STATE	1	\$0.50
TOTAL PAGES	5	\$0.00

#### 0 Search Items

#### 0 Miscellaneous Items

## APPENDIX D

# SUMMARY OF THE DAUPHIN COUNTY TAX ASSESSOR'S RECORD REGARDING THE PROPERTY



DAUPHIN COUNTY  
PENNSYLVANIA

Property & Taxes

I Want To...

- [Dauphin County Website](#)
- [Dauphin County GIS](#)
- [Interactive Maps](#)
- [Dauphin County Assessor's Page](#)
- [Dauphin County Tax Claims Page](#)
- [Dauphin County Treasurer's Page](#)

Information for Property 41-009-014-000-0000, Tax Year 2021

< First << Prev Property 1 of 1 See All Next >> Last >|

Property Information

Tax Year

2021

Township

MIDDLETOWN BORO

Neighborhood

C4104 - Secondary strip commercial

Owner Name and Address [Show Details]

BOROUGH OF MIDDLETOWN  
60 W EMAUS ST  
MIDDLETOWN, PA 17057

Property ID

41-009-014-000-0000

Property Use

E08 - MUNICIPAL EXEMPT

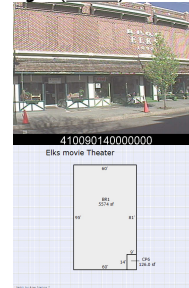
Site Address

4 W EMAUS ST

Mailing Name and Address

BOROUGH OF MIDDLETOWN  
60 W EMAUS ST  
MIDDLETOWN, PA 17057

Images (See All)



I'd Like To...

[Start a New Search](#)

View:

- [Assessment Info.](#)
- [Billing & Collection](#)
- [CAMA Information](#)
- [Delinquent Taxes](#)
- [Name Information](#)
- [Map/GIS](#)

Print:

- [Current Page](#)
- [Parcel Report](#)

Shop:

- [Pay Tax Claims](#)
- [View Cart \(empty\)](#)

Account Options:

[Log In](#)

Sales History

Year	Document #	Sale Type	Sale Date	Sold By	Sold To	Price
2021	20210002273	7 Family/Gift	01/21/2021	MIDDLETOWN BOROUGH INDUSTRIAL AND COMMERCIAL DEVELOPMENT AUTHORITY	BOROUGH OF MIDDLETOWN	\$1
2014	20140022511	9 Government Exempt to Exempt	09/19/2014	GREATER MIDDLETOWN ECONOMIC DEVELOPMENT CORP	MIDDLETOWN BOROUGH INDUSTRIAL AND COMMERCIAL DEVELOPMENT AUTHORITY	\$500,000
2005	0616200391	0 Valid	08/31/2005	MIDDLETOWN LODGE NO 1092 & ORDER OF ELKS	GREATER MIDDLETOWN ECONOMIC DEV CORP	\$350,000
1992	0189300054	Combination and Splits	12/31/1992		MIDDLETOWN LODGE NO 1092	\$1

Market Land Valuation

Property Type	Description	Land Type	Sq. Ft.	Calc. Acres	Deed Acres
COM - Commercial	Primary Site	S1 - Primary Site	6,000	0.1377	0.28

Retail Store (Structure 1 of 1)

Property Type	Description	Style	Quality	Living Area (sq. ft.)	Year Built	Age
COM - Commercial	Retail Store	Retail Store	XX-	17,640	1910	

Section 2

Heating and Cooling		5640.00	Physical / Functional			75.00
Theater - Cinema		100.00	Base Cost			5640.00
Exterior Walls		5640.00				





APPENDIX E

REQUIRED FORM OF AGREEMENT OF SALE

**AGREEMENT OF SALE  
OF BOROUGH REAL ESTATE  
PURSUANT TO PUBLIC BIDS**

THIS AGREEMENT OF SALE OF BOROUGH REAL ESTATE PURSUANT TO PUBLIC BIDS (this "Agreement") made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Borough of Middletown, Dauphin County, Pennsylvania, a Pennsylvania municipality (the "Seller") and \_\_\_\_\_, (the "Purchaser").

**WITNESSETH:**

1. *Property.* Seller, based on bids received after public advertisement, hereby agrees to sell and convey to Purchaser, on an **AS IS** basis, and Purchaser hereby agrees to purchase from Seller, upon the terms and conditions set forth herein, that certain commercial condominium unit designated as "**Condo Unit No. 1**" of two-unit condominium known as the "**Union Street Condominium,**" which is located at **4 West Emaus Street, Middletown, Dauphin County, Pennsylvania,** is commonly referred to as the "Elks Theater Building," and is designated as Dauphin County Tax Parcel No. **41-009-014,** together with all improvements, rights, easements, licenses and appurtenances thereon or pertaining thereto (collectively, the "Property").

2. *Purchase Price.* The purchase price of the Property shall be \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Purchase Price") which shall be paid by Purchaser as follows: (i) \_\_\_\_\_ Dollars (\$\_\_\_\_\_), **10%** of the Purchase Price, shall be paid to the Title Company (as defined below) ("Escrow Agent") to be held in escrow in a non-interest-bearing escrow account by Purchaser's good bank check or wire transfer upon full execution hereof (the "Deposit"); and (ii) the balance at the time of Closing (as such term is defined in Section 3 hereof) shall be paid by federal wire transfer, or title company check. In the event Purchaser has not terminated this Agreement on or prior to the expiration of the Environmental/Title Feasibility Period (as defined in Section 7(b)), the Deposit shall be non-refundable except as provided herein but shall be applicable against the Purchase Price at Closing.

3. *Closing.* This Agreement shall be consummated and the purchase and sale hereunder concluded at a closing which shall in accordance with the Borough Code take place at a mutually convenient location, on or before the **60<sup>th</sup>** day after effective date of this Agreement.

4. *Taxes.* The Borough is exempt from the payment of taxes. ***All realty transfer taxes shall be the responsibility of Purchaser.***

There shall be no pro-ration of real estate taxes at Closing.

5. *Conveyance.*

(a) Seller will convey by Special Warranty Deed to Purchaser for Condo Unit No. 1 at Closing, with no mortgages or monetary liens, but otherwise subject to all easements, restrictions, and matters of record, insurable by a licensed title insurer authorized to do

business in Pennsylvania at standard promulgated rates on a policy of the title insurance issued by the Title Company. Such good and marketable fee simple title shall be conveyed by special warranty deed, properly executed and delivered to Purchaser upon receipt by Seller of the Purchase Price due at Closing as provided herein. At or before Closing, Seller shall also provide to Purchaser a Resale Certificate from the Condominium Association confirming that there are no unpaid assessments owed by the Borough for Condo Unit No. 1.

(b) Purchaser shall be solely responsible for acquiring and paying for any desired title search and title insurance premium.

6. *Title and Survey.*

(a) On or before the last day of the Environmental/Title Feasibility Period (as defined in Section 7), Purchaser shall deliver to Seller (i) a title report respecting the Property prepared by a title company of Purchaser's choice (the "Title Company"), together with legible copies of all documents listed therein as exceptions, which title report shall be accompanied by the Purchaser's notice identifying all matters contained in such title report that Purchaser deems to be objections or defects in title to the Property, and (ii) if elected by Purchaser, a survey of the Property ("Survey") prepared by a surveyor of Purchaser's choice, accompanied by Purchaser's notice identifying all matters reflected in the Survey that Purchaser deems to be objections or defects in title to the Property.

(b) Within seven (7) days following Seller's receipt of the title report and the Survey and Purchaser's notices of objections or defects, Seller shall give written notice to Purchaser stating those objections or defects contained in Purchaser's notices, if any, which Seller agrees to correct at Seller's sole expense, prior to Closing under this Agreement, provided, that Seller shall be required to correct at Seller's sole expense prior to Closing any liens or monetary encumbrances which can be satisfied by or which may be cured or removed by the execution of a document requiring the signature of no party other than Seller or any party over which Seller has control (including any affidavits), and any matters of full execution of this Agreement. Seller's correction of any objections or defects to which Seller has so agreed or is so required to correct prior to Closing, shall be a condition to Purchaser's obligation to complete Closing under this Agreement.

(c) If Seller does not agree to correct all of the objections or defects mentioned in Purchaser's notices (exclusive of those objections or defects which Seller is required to correct pursuant to Subsection (b), *above*, Purchaser shall, as Purchaser's sole right and remedy therefore, give Seller written notice, on or before the date seven (7) days following receipt of Seller's response to Purchaser's title and Survey objections described in Section 6(b), *above*, of Purchaser's election of one of the following options (Purchaser's failure to timely to give such notice shall be deemed Purchaser's irrevocable election of option (i), *below*):

(i) to accept such title to the Property as Seller is willing and able to convey with no credit or other diminution in the Purchase Price; or

(ii) to terminate this Agreement, in which case the Deposit shall be returned promptly to Purchaser.

(d) Prior to Closing, Purchaser may order an updated title report respecting the Property prepared by the Title Company. In the event that such updated title report reflects any liens, encumbrances or other matters not reflected in the title report submitted by Purchaser to Seller pursuant to Section 6(b), *above* and not created by or as a result of any actions taken by Purchaser or Purchaser's employees, agents, contractors or subcontractors, Purchaser may give Seller written notice of any such new matters to which Purchaser objects, together with a copy of such updated title report, at least seven (7) days prior to the date of Closing, in which event Seller shall have the same rights and obligations with respect to such objections as are set forth in Subsections 6(b) and 6(c), *above*; except that Seller's response to Purchaser's notice under Subsection 6(c) shall be given within five (5) days following Seller's receipt of the updated title report and Purchaser's notice of objections, and the date of Closing shall be extended as necessary to allow Seller to cure any objections Seller elects to cure. In the event that Purchaser elects to terminate this Agreement pursuant to this Section 6, the Deposit shall be promptly refunded to Purchaser, and the parties shall be relieved of any further obligations hereunder, except for those which, by their terms, survive the Closing (the "Surviving Obligations").

#### 7. *Entry on the Property; Right of Termination.*

(a) The period which commences on the date of full execution of this Agreement and ends on the **forty-fifth (45th) day** thereafter is herein referred to as the "**Environmental/Title Feasibility Period.**" During the Environmental/Title Feasibility Period and, for so long as this Agreement remains in effect, the Purchaser, or its agent(s) or designee(s), shall have the right, at reasonable times and in a reasonable manner, to enter upon and inspect the Property at their sole risk, and the Seller shall make the Property available for inspection. The Purchaser shall have the right to have qualified consultants of Purchaser's choice inspect the Property and to make any necessary tests thereon at Purchaser's expense, including (without limitation) environmental tests. Any entry on the Property by Purchaser or its agents or representatives pursuant to this Section 7 shall be subject to the following terms and conditions:

(i) Purchaser agrees to indemnify, defend and hold harmless Seller from and against any and all claims, suits, actions, liabilities, losses, damages and expenses (including, without limitation, reasonable attorneys' fees) arising from any act or omission of Purchaser or any of its employees, contractors, subcontractors, agents or invitees while in, on or about the Property; provided that notwithstanding the foregoing, Purchaser shall have no responsibility to Seller for any damage to persons or property or any release arising from or out

of any negligence or willful misconduct on the part of Seller or its employees or contractors.

(ii) Purchaser agrees to repair any damage caused by such inspections to substantially the same condition as prior to inspection.

(b) In the event, and only in the event, that the results of Purchaser's environmental assessment, if any, determines that \_\_\_\_\_, Purchaser may terminate this Agreement by delivering written notice of such election to Seller within two (2) business days after the last day of the Environmental/Title Feasibility Period.

8. *No Real Estate Sales Commission.* The parties acknowledge and agree that this is a public sale and that there are no real estate sales commissions payable by Seller to any party.

9. *AS IS SALE.*

THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT IS AN "AS-IS" SALE BY PUBLIC BIDDING OF MUNICIPAL PROPERTY, AND PURCHASER HAS CONDUCTED, OR WILL CONDUCT, ITS OWN INDEPENDENT EXAMINATION OF THE PROPERTY AND RELATED MATTERS, INCLUDING BUT NOT LIMITED TO THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, BEFORE BIDDING OR, WITH RESPECT TO ENVIRONMENTAL AND TITLE MATTERS, BEFORE THE EXPIRATION OF THE ENVIRONMENTAL/TITLE FEASIBILITY PERIOD.

OTHER THAN THE MATTERS REPRESENTED IN SECTION 9 HEREOF, PURCHASER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF ANY SELLER PARTY OR ANY OF THE SELLER PARTIES' AGENTS OR REPRESENTATIVES, AND PURCHASER HEREBY ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS HAVE BEEN MADE. EACH SELLER SPECIFICALLY DISCLAIMS, AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER IT NOR ANY OTHER PERSON IS MAKING, ANY REPRESENTATION, WARRANTY OR ASSURANCE WHATSOEVER TO PURCHASER AND NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EITHER EXPRESS OR IMPLIED, ARE MADE BY SELLER OR RELIED UPON BY PURCHASER WITH RESPECT TO THE STATUS OF TITLE TO OR THE MAINTENANCE, REPAIR, CONDITION, DESIGN OR MARKETABILITY OF THE PROPERTY, OR ANY PORTION THEREOF, INCLUDING BUT NOT LIMITED TO (a) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (b) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (c) ANY RIGHTS OF PURCHASER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, (d) ANY CLAIM BY PURCHASER FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN OR UNKNOWN, WITH RESPECT TO THE IMPROVEMENTS, (e) THE FINANCIAL CONDITION OR PROSPECTS OF THE PROPERTY AND (f) THE COMPLIANCE OR LACK THEREOF OF THE LAND OR THE IMPROVEMENTS WITH GOVERNMENTAL REGULATIONS, IT BEING THE EXPRESS INTENTION OF SELLER AND PURCHASER THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PROPERTY WILL BE CONVEYED AND TRANSFERRED TO

PURCHASER IN ITS PRESENT CONDITION AND STATE OF REPAIR, “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS.”

PURCHASER REPRESENTS THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF ITS CONSULTANTS IN PURCHASING THE PROPERTY AND THAT IT IS RECEIVING REASONABLY EQUIVALENT VALUE IN CONSUMMATING THE TRANSACTIONS CONTEMPLATED HEREBY. PURCHASER IS ADVISED TO CONSULT WITH PURCHASER’S OWN LEGAL COUNSEL, AND HAS HAD THE OPPORTUNITY TO REVIEW THIS AGREEMENT WITH PURCHASER’S LEGAL COUNSEL. PURCHASER HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THIS AGREEMENT, AND UNDERSTANDS THE SIGNIFICANCE AND EFFECT THEREOF. PURCHASER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS AND OTHER AGREEMENTS ARE AN INTEGRAL PART OF THIS AGREEMENT FOR THE PUBLIC SALE OF MUNICIPAL PROPERTY, AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO PURCHASER FOR THE PURCHASE PRICE OF THE PROPERTY WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT. THE TERMS AND CONDITIONS OF THIS SECTION WILL EXPRESSLY SURVIVE THE PARCEL A CLOSING AND THE FINAL CLOSING.

10. *Limited Representations and Warranties of Borough Seller.*

(a) *Seller.* Seller makes only the following *limited* representations and warranties upon which Purchaser may rely in entering into this Agreement:

(i) Seller has full power and authority to enter into this Agreement and to assume and perform all of its obligations hereunder and the individual(s) executing this Agreement on behalf of Seller is/are duly authorized and empowered to act for and to bind Seller. The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not violate any provisions of law and do not and will not conflict with or result in the breach of any condition or provision of any contract, mortgage, lien, lease, agreement, instrument or judgment to which Seller is a party or which are or purport to be binding upon Seller, or constitute a default thereunder, or result in the creation or imposition of any lien, charge or encumbrance upon the Property.

(ii) There has not been filed by or against Seller a petition in bankruptcy or insolvency proceedings or for reorganization or for the appointment of a receiver or trustee, nor has Seller made an assignment for the benefit of creditors. Seller is not insolvent and has not admitted in writing to the inability to pay debts as they become due. Seller is not a party to any litigation respecting the Property and knows of no litigation or threatened litigation affecting the Property or of any proposed condemnation or annexation of the Property, and Seller has not received notice of the violation of any state or federal law or municipal orders, ordinances or requirements affecting the Property.

(iii) The Property is now zoned **C-2 (Commercial-General)**.

(iv) Seller is the record title holder of the Property. There are no rights, options or other agreements of any kind to purchase, otherwise acquire, sell, or otherwise dispose of the Property or any part thereof or interest therein. There are no contracts, agreements and/or leases in existence affecting the Property.

(b) *Purchaser.* Purchaser represents and warrants the following to Seller and acknowledges that Seller shall rely on such representations and warranties in entering into this Agreement (subject to the conditions set forth in Section 11):

(i) Purchaser has full power and authority to enter into this Agreement and to assume and perform all of its obligations hereunder.

(ii) The individual(s) executing this Agreement on behalf of Purchaser is/are duly authorized and empowered to act for and to bind Purchaser.

(iii) Each of the representations and warranties of Purchaser contained in this Agreement is acknowledged by Purchaser to be material and to be relied upon by Seller in proceeding with this transaction, shall be deemed to have been remade by Purchaser as of the date of Closing and shall survive Closing. Purchaser shall indemnify, defend and hold Seller, each Affiliate of Seller, and their respective partners, venturers, directors, officers, stockholders, agents, employees, spouses, legal representatives, successors and assigns, harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, reasonable, attorneys' fees) resulting from the breach by Purchaser of any of its representations or warranties.

11. *Seller's Undertakings Pending Closing.*

(a) *Operation of the Property.* Until the earlier of the Closing or the termination of this Agreement, Seller agrees:

(i) Not to do anything that would impair or adversely modify the status of title as shown on the Title Commitment or a Survey.

(ii) Not to enter into any lease, service contract or other contract that, following Closing, will be binding upon Purchaser or the Property without, in each instance, obtaining the prior written approval of Purchaser.

(iii) Not to cause or permit transfer, conveyance, sale, assignment, pledge, mortgage, or encumbrance of any portion of the Property.

(b) All of the limited representations and warranties of Seller contained in this Agreement shall be and remain true and correct on the date of Closing.

(c) Seller shall have performed all covenants and obligations and complied with all conditions required by this Agreement to be performed or complied with by Seller on or before the date of Closing.

12. *Failure of Conditions.* If any condition specified herein is not satisfied on or before the Closing, then Purchaser may, in its sole discretion, (a) waive such condition in writing; (b) terminate this Agreement by written notice thereof to Seller, and the parties shall thereupon be relieved of all further obligations hereunder other than the Surviving Obligations, or (c) if the failure of the condition is due to a breach by Seller hereunder, Purchaser may pursue any of its remedies under Section 17.

13. *Seller's Closing Deliveries.* At Closing, Seller will deliver the following documents:

- (a) The duly executed special warranty deed in recordable form.
- (b) A reasonable form of owner's affidavit in favor of the Title Company.
- (c) A FIRPTA affidavit.
- (d) Any other documents or returns as may be reasonably required for conveyance of fee title to the Property and recording of the deed.

14. *Notices.* All notices or other communications hereunder shall be in writing and shall be deemed to have been given when delivered in person, delivered by a nationally-recognized commercial overnight delivery service (such as Federal Express), or on the third day after being mailed by first-class registered or certified mail, postage prepaid, to the party concerned at the address set forth below or at such other place or address as may be designated by a party hereto:

If to the Purchaser: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Seller:                   Middletown Borough  
  c/o Eckert Seamans  
  213 Market Street, 8<sup>th</sup> Floor  
  Harrisburg, PA 17101  
  Attn. James A. Diamond, Esq.

15. *Assignment.* This Agreement may not be assigned by the Purchaser, without the express written consent of Seller, which may be denied in Seller's sole discretion.

16. *Default of Purchaser.* Purchaser shall be in default under this Agreement if Purchaser shall fail to tender to Seller either the Deposit or the remainder of the Purchaser Price as and when



due under the terms of this Agreement. If Purchaser so defaults hereunder, as Seller's sole remedy, Seller may retain the Deposit as liquidated damages for Purchaser's default, in which event this Agreement shall terminate and become null and void. Seller hereby waives any and all other remedies available to Seller at law or in equity on account of such default.

17. *Default of Seller.* Seller shall be in default under this Agreement if (i) Seller shall fail at Closing to tender its required deliveries pursuant to Section 13 hereof, or if (ii) Seller is otherwise in default hereunder, Purchaser may elect, in Purchaser's sole discretion, (a) to obtain the repayment of the Deposit as liquidated damages for Seller's default, in which event this Agreement shall terminate and become null and void; or (b) to apply the Deposit on account of the Purchase Price and to sue Seller for specific performance of its obligations under this Agreement; or (c) to terminate this Agreement and pursue Seller for damages; or (d) to pursue any and all other remedies available to Purchaser at law or in equity on account of such default.

18. *Eminent Domain; Casualty.*

(a) If, prior to Closing, the Property or any part thereof is taken by eminent domain, this Agreement, at Purchaser's option upon written notice to Seller within ten (10) days after Purchaser has received written notice from Seller of any such taking, shall be null and void. In the event such election is made by Purchaser, Escrow Agent shall promptly return the Deposit to Purchaser. Seller shall notify Purchaser in writing of any such taking or pending taking. If Purchaser elects to proceed to consummate the purchase despite said taking, there shall be no reduction and/or abatement of the Purchase Price; and at Closing Seller shall assign to Purchaser all Seller's rights, title and interest in and to any award or settlement made or to be made in the condemnation proceeding; and Seller shall not be deemed to have breached any covenant, representation or warranty of this Agreement.

(b) If at any time prior to Closing, any portion of the Property is destroyed or damaged as a result of fire or other casualty ("Casualty"), Seller shall promptly give written notice thereof to Purchaser (a "Casualty Notice"). If the Property is the subject of Casualty, Purchaser shall have the right, at its sole option, of terminating this Agreement by written notice to Seller given within ten (10) days after receipt of the Casualty Notice from Seller, in which case Escrow Agent shall promptly return the Deposit to Purchaser. If Purchaser does not terminate this Agreement, the proceeds of any insurance with respect to the Property paid between the date of this Agreement and Closing, together with an amount equal to Seller's deductible under such insurance policy, shall be paid to Purchaser at the time of Closing, and all unpaid claims and rights in connection with any Casualty to the Property shall be assigned to Purchaser at Closing without in any manner affecting the Purchase Price.

19. *Modifications.* This Agreement may be modified by an instrument in writing duly executed by the Seller and Purchaser or their successors or assigns.

20. *Time of the Essence.* Time is of the essence with respect to this Agreement.

21. *Entire Agreement; Severability.* This Agreement represents the entire agreement between the parties and any and all prior negotiations and agreements, written or oral are merged into this Agreement. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable because it conflicts with any other provision or provisions hereof or any Constitution or statute or rule of public policy, or for any other case or circumstances, such inoperability or unenforceability shall not be deemed to render this Agreement inoperative or unenforceable or to render any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

22. *Successors and Assigns.* The covenants and agreements in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, their heirs, distributees, executors, administrators, legal representatives, permitted assigns and successors in interest.

23. *Applicable Law.* This Agreement shall be governed by and interpreted under the laws of the Commonwealth of Pennsylvania. This Agreement shall be interpreted without regards to any presumption or rule requiring construction against the party who caused it to be drafted.

24. *Counterparts.* This Agreement may be simultaneously executed in several identical counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

25. *Waiver of Jury Trial.* **PURCHASER AND SELLER EACH HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER ARISING IN TORT OR CONTRACT) BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THIS AGREEMENT.**

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first hereinabove written.

Witness/Attest

[Purchaser]

\_\_\_\_\_

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

Attest

Middletown Borough

\_\_\_\_\_

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

### CONSENT OF ESCROW AGENT

The undersigned broker executes this Agreement in the space provided below, intending to be legally bound hereby, in order to confirm it is acting as Escrow Agent and has accepted the Deposit to be held in escrow pursuant to this Agreement.

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_