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**5000 FIFTH AVENUE CONDOMINIUM**  
**GOVERNING DOCUMENTS**

- Declaration of Condominium
- Code of Regulations
- Rules and Regulations

Declaration of Condominium dated 1/31/80

Recorded in the Recorder of Deeds Office of Allegheny County,  
Pennsylvania  
in DBV G217, Page 653 to 674  
Recorded 1/31/80

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First Amendment dated 11/14/80

Recorded in the Recorder of Deeds Office of Allegheny County,  
Pennsylvania  
in DBV 6327, Page 9  
Recorded 12/2/80

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Second Amendment dated 6/6/85

Recorded in the Recorder of Deeds Office of Allegheny County,  
Pennsylvania  
in DBV 7174, Page 187  
Recorded 10/15/85

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Declaration Plan dated 1/31/80

PBV 113, Page 133

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Code of Regulations dated 1/31/80

Recorded in the Recorder of Deeds Office of Allegheny County,  
Pennsylvania  
in DBV 6217, Page 675  
Recorded 1/31/80

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Amendment to the Code of Regulations dated 6/6/85

Recorded in the Recorder of Deeds Office of Allegheny County,  
Pennsylvania  
in DBV 7174, Page 196  
Recorded 10/15/85

**DECLARATION OF CONDOMINIUM**

**OF**

**5000 FIFTH AVENUE**

THIS DECLARATION OF CONDOMINIUM, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, by MOREWOOD ASSOCIATES, a Pennsylvania partnership (hereinafter referred to as the "Declarant").

**WITNESSETH:**

WHEREAS, the Declarant is the owner of certain real property described in Section 1(a) hereof (hereinafter referred to as the "Land"); and

WHEREAS, the Declarant desires all the benefits and all the obligations of the Unit Property Act (as hereinafter defined) to apply to the Land;

NOW, THEREFORE, the Declarant, intending to be legally bound, hereby makes the following Declaration:

1. SUBMISSION OF LAND TO UNIT PROPERTY ACT: The Declarant hereby submits the Land to the condominium form of ownership and use as provided by the Unit Property Act of the Commonwealth of Pennsylvania, approved July 3, 1963, P.L. 196, Article I, 101 (68 P.S. 700.101 et seq.) as amended from time to time (hereinafter referred to as the "Act").

(a) The "Land" consists of that certain lot or piece of ground located at the southeast corner of the intersection of Morewood Avenue and Fifth Avenue in the Fourteenth (14th) Ward of the City of Pittsburgh, Allegheny County, Pennsylvania, known commonly as 5000 Fifth Avenue, as more particularly described in Exhibit A, attached hereto and incorporated herein by reference, together with all easements, rights and appurtenances belonging thereto. The Declarant owns the Land in fee simple. The "Building" which is hereby submitted to the condominium form of ownership consists of a 3 story building containing thirty (30) units and a total of approximately one hundred sixteen thousand (116,000) square feet. The Land and Building may hereinafter be referred to as the "Property".

(b) The Property will be known as "5000 Fifth Avenue", and shall consist of the Units and Common Elements shown in the Declaration Plans described in Section 3 hereof.

2. DEFINITIONS: Unless otherwise specified to the contrary herein or in the Code of Regulations, the terms used herein and in the Code of Regulations shall have the meaning stated in the Act, which is hereby incorporated herein by reference with the same effect as if set forth fully herein.

### 3. DECLARATION PLANS:

(a) The Building and other improvements on the Land have been or are being constructed by the Declarant and are shown in the plans prepared by Lee Goldman, dated June 30, 1979, which plans have been or are about to be recorded, and are hereby incorporated by reference (hereinafter referred to as "Declaration Plans").

(b) This Declaration and the Declaration Plans may be amended by filling such additional plans as may be required to describe adequately the completion of all improvements. Such completion may be shown by a certificate of an architect, engineer, or surveyor, certifying that the improvements have been constructed substantially as therein represented, or designating any changes made. Such plans or certificate when signed and acknowledged by the Declarant shall in themselves constitute an amendment to this Declaration and the Declaration Plans, notwithstanding the procedures for amendment described elsewhere in this Declaration, provided they conform with the requirement of the Act.

### 4. DESCRIPTION OF UNITS, UNIT DESIGNATION

(a) Each Unit shall consist of an apartment with balcony (in the case of Unit F-309, two (2) balconies), a storage space, and two (2) parking spaces (in the case of Units F-307 and F-309, three (3) parking spaces). Each Unit is identified on the Declaration Plans by numerical designations (herein referred to as the "Unit Designation"), being an F or T number for the apartment, an S number for the storage space, and a P number for each parking space. If the Unit consists of more than one level, or if any portion thereof is physically located on more than one level, the Unit Designations will appear on the Declaration Plan for each level of which the Unit is a part. The undivided interest in the Common Elements (as hereinafter defined) may be identified by solid or shaded areas as more fully described on the Declaration Plans. Nevertheless, the balconies, storage spaces and parking spaces shall be treated as Common Elements for purposes of maintenance, as more fully set forth below.

(b) Except for such portions thereof which are part of the Common Elements, the boundaries of the Units are as reflected by the Declaration Plans and are described as follows:

(i) The Unit-side surface of the masonry portion of exterior walls of the Building adjacent to such Unit;

(ii) The Unit-side surface of the masonry portion of interior masonry walls of the Building, either part of the perimeter of such Unit or which pass through such Unit;

(iii) The Unit-side surface of non-masonry walls located on the perimeter of such Unit or the Unit-side surface of non-masonry walls located within the perimeter of a Unit and which contain one or more Common Elements;

(iv) The lower surface of the masonry ceiling immediately above such Unit;

(v) The upper surface of the masonry floor of such Unit;

(vi) The exterior surface of windows, window frames, window tracks, and window sills set in the exterior walls of the Building which are adjacent to such Unit;

(vii) The exterior surface of doors (including sliding glass doors), door frames, door hinges, and doorsills, set in such interior or exterior walls of the Building which are adjacent to such Unit and are situated on the perimeter of such Unit.

(c) Each Unit consists of all portions of the Building located within the title lines described in Section 4(b) hereinabove, including, but not limited to:

(i) The air space enclosed thereby:

(ii) All walls, partitions and dividers which are wholly contained within said title lines, but excluding any bearing walls, pipes, ducts, wires, cables, conduits, insulation, furring, studs or other Common Elements (as defined in Section 5 hereof) contained wholly or in part within such walls, partitions or dividers.

(iii) Except for the exterior surfaces thereof, all doors, door frames, doorways, door hinges and doorsills, set in the interior and exterior walls of the Building which are adjacent to such Unit and are situated on the perimeter thereof, and all other doors, door frames, doorways, door hinges and doorsills wholly situated within the title lines of such Units;

(iv) Except for the exterior surfaces thereof, all windows, window frames, window tracks and window sills which are set in the interior and exterior walls of the Building and which are adjacent to such Unit;

(v) All electrical receptacles, outlets and fixtures located in the ceiling of such Unit or in a perimeter or interior wall thereof;

(vi) All plumbing fixtures located within such title lines;

(vii) All electrical equipment and wiring serving only such Unit and located within such title lines;

(viii) All baseboards located within such title lines;

(ix) The portion of the master television antenna connection system serving only such Unit and located within such title lines;

(x) The air-conditioning, heating and ventilating ducts servicing only such Unit and located within such title lines;

(xi) The air-conditioning and heating equipment servicing only such Unit;

(xii) The fresh water pipes, discharge pipes and all other plumbing, pipes and conduits serving only such Unit and located within such title lines;

(xiii) The hot water heaters servicing only such Unit;

(xiv) Such fixtures, appliances, machinery and equipment as are located wholly within such title lines and serve only such Unit; and

(xv) All other parts of the Building and its equipment even though located outside of the title lines of such Unit provided such equipment services only such Unit.

(d) Except as otherwise provided herein or in the Code of Regulations, Units may be sold, conveyed, mortgaged, leased or otherwise dealt with in the same manner as like dealings are conducted with respect to real property and interests therein. Every Unit, together with its undivided interest in the Common Elements, is, and for all purposes shall be, a separate parcel of real property, and the owner thereof shall have exclusive ownership and possession thereof subject to the covenants, restrictions, easements, rules, regulations, and decisions contained in this Declaration and the Code of Regulations or adopted pursuant thereto. Every written instrument dealing with a Unit shall specifically set forth the name by which the Property is identified and the Unit Designations identifying the Unit involved.

#### 5. COMMON ELEMENTS, PERCENTAGES INTEREST OF UNIT OWNERS:

(a) The Common Elements shall mean and include:

(i) The Land, the air space above the Building on said Land, and those portions of the Building which are not included within the title lines of any Unit and which are not made part of the Unit pursuant to Section 4(c) hereinabove.

(ii) The following parts of the Building: foundation, structural parts; supports; columns; beams; the masonry part of all interior masonry walls and exterior walls; non-masonry interior walls between Units and interior corridors, stairwells and/or entrance halls (except that surface of the wallboard or plaster on the Unit-side of such walls shall be part of the adjacent Unit and not part of the Common Elements); the masonry floor of each Unit and the masonry ceiling above each Unit, except for the Unit-side surface thereof; all parts of the Building above the lower surface of the concrete ceiling of a Unit on the top floor of the Building, except for such items as are made part of a Unit pursuant to Section 4(c) hereof; all portions of the Building below the upper surface of the concrete floor of the first floor level of the Building; corridors; stairwells; elevators; Building entrance halls; roofs; all freshwater, discharged water and sewer lines and associated equipment serving the Common Elements or more than one Unit; the master television antennas and the connections therewith to the extent that such connection system serves more than one Unit; and electric, T.V. and telephone wires, cables, lines, pipes, fixtures, meters

and associated equipment, if such wires, cables, lines, pipes, fixtures, meters and/or equipment serve the Common Elements or more than one Unit.

(iii) Portions of the Land and Building used exclusively for the management, operation or maintenance of the Common Elements, including, without limitation, the Unit occupied by the caretaker of the Property;

(iv) Installations of all central services and utilities and water, sewer, electric, telephone and other utility lines, pipes, fixtures, meters and associated equipment which serve the common Elements or serve more than one Unit.

(v) Chimneys and flues, but not the face wall of the fireplace, which shall be part of the Unit.

(vi) All other apparatus and installations existing for common use.

(vii) All other parts or elements of the Property necessary or convenient to the Property's existence, management, operation, maintenance and safety, or in common use and which are not herein or in the Declaration Plans made a part of a Unit, and such facilities as are designated herein and in the Code of Regulations as Common Elements.

(b) Whenever in this Declaration and the Declaration Plans a title line of a Unit is described as being the Unit-side surface of a designated part of the Building, it is intended thereby, and it is hereby declared, that the owner of such Unit shall have an easement for the purpose of applying and removing paint, wallpaper and panelling to and from such surface and otherwise decorating, cleaning and maintaining the same, it being understood and agreed that the Council, acting on behalf of all Unit Owners, shall, at all times while this Declaration is in effect, retain the right and duty to maintain, clean, repair or replace the balance of the walls, floors and ceilings, of which said Unit-side surfaces are a part, notwithstanding the fact that such maintenance, cleaning, repair or replacement may temporarily adversely affect the Unit Owner's aforesaid easement and right to use the Unit-side surface thereof.

(c) Whenever in this Declaration and the Declaration Plans, a title line of a Unit is described as being the exterior surface of a designated part of a Unit, it is intended thereby, that the Council, acting on behalf of all Unit Owners, shall retain the right to require such Unit Owner to clean, maintain, replace and/or repair the same in accordance with instructions of the Council and at the expense of such Unit Owner.

(d) The Initial Percentage of Undivided Interest in the Common Elements appurtenant to each Unit shall be as set forth on Exhibit B, attached hereto and made part hereof, and, except as otherwise provided herein or in the Code of Regulations, such percentage shall not be altered except by recording an amended Declaration duly executed by all of the Unit Owners affected thereby ("Unit Owners affected thereby" for purposes of this subparagraph (d) meaning only all Unit Owners at the time of said Amendment to this Declaration).

(e) "Common Expenses" means: (i) expenses of administration, maintenance, repair and replacement of the Common elements; (ii) expenses agreed upon as common by a majority of the Unit Owners; and (iii) expenses declared Common Expenses by the provisions of the Act, or by this Declaration or the Code of Regulations.

(f) Each Unit Owner shall be liable for a share of the Common Expenses, such share being the same as the undivided share in the Common Elements which is appurtenant to his Unit.

(g) "Common Receipts" means: (i) assessments and other funds collected from Unit Owners as Common Expenses or otherwise; and (ii) receipts designated as common pursuant to the Act or this Declaration or the Code of Regulations.

## 6. EASEMENTS:

(a) The Units and the Common Elements shall be, and are hereby made, subject to easements in favor of the appropriate utility companies for such utility services as are desirable or necessary to serve adequately the Property and all appurtenances thereto, including, without limitation, the right to install, lay, maintain, repair, relocate and replace water mains and pipes, sewer and drain lines, telephone wires and equipment, and electrical wires and conduits and associated equipment over, under, through, along and on the Property; provided, however, that any such easement through a Unit shall be located only as shown on the Declaration Plans or, if such easement is not shown on the Declaration Plans, only as the Building and Units are actually constructed on the effective date of this Declaration unless approved in writing by the Unit Owner or Owners affected thereby. Easements are also reserved to Declarant for installation and maintenance of cable T.V. lines and cables, line amplifiers and related equipment.

(b) The Common Elements and the parking space portion of the Units shall be, and are hereby made, subject to an easement in favor of the Unit Owners and their invitees, tenants and servants, the Council and the agents and employees of the Council (i) for pedestrian traffic on, over, through and across sidewalks as the same may from time to time exist, parking areas and the Building entrance halls, corridors, lobby, stairwells, and (ii) for pedestrian and vehicular traffic on, over, through and across such portions of the Common Elements as may from time to time be paved and intended for such purposes.

(c) The Common Elements shall be and are hereby made subject to the following easements (in addition to any other easements set forth in this Declaration) in favor of the Unit or Units benefitted thereby:

(i) For the installation, repair, maintenance, use, removal and/or replacement of any recessed medicine cabinet in the bathrooms of a Unit in the event that a part of such cabinet is located in the portion of a wall adjacent to such Unit which is a part of the Common Elements;

(ii) For the installation, repair, maintenance, use, removal and/or replacement of overhead lighting fixtures, electrical receptacles and the like which are located in a portion of the



ceiling or wall adjacent to a Unit which is part of the Common Elements; provided, that the installation, repair, maintenance, use, removal or replacement of such fixtures, receptacles and the like will not unreasonably interfere with any part of the Common Elements or impair or structurally weaken a portion of the Building;

(iii) For driving and removing nails, screws, and bolts from the Unit-side surface of the walls of a Unit into the portion of such walls which are part of the Common Elements; provided, that such action will not unreasonably interfere with the use of any part of the Common Elements or impair or structurally weaken the Building;

(iv) For the installation, repair, maintenance, use, removal and/or replacement of pipes, ducts, electrical wiring and all other utility lines and conduits which are a part of a Unit and which pass across or through a portion of the Common Elements and connect into the Common Elements; and

(v) For the repair, maintenance, use, removal and/or replacement of air conditioning equipment located on the roof of the Building.

(d) To the extent necessary, each Unit shall have an easement for structural support over the Common Elements and over every other Unit in the Building, and each Unit and the Common Elements shall be subject to an easement for structural support in favor of every other Unit in the Building and the Common Elements.

(e) The Units shall be, and are hereby made, subject to the following easements:

(i) In favor of the Council, or its designee, for inspection of the Units for the purpose of verifying performance by Unit Owners of all maintenance and repair for which they are responsible; for inspection of the condition of the Common Elements and balcony(s) situated in or accessible from such Unit; for correction of emergency conditions in each Unit or casualties to such Common Elements therein or elsewhere in the Building; for abatement of any violation of law, orders, rules or regulations of any governmental authorities having jurisdiction; and for such other purposes as may be reasonably required to carry out its duties, it being understood and agreed that the Council and its agents shall take reasonable steps to minimize any interference with a Unit Owner's use of his Unit resulting from the Council's exercise of the foregoing rights pursuant to this Section or any other provision of the Declaration; and

(ii) In favor of the Common Elements benefitted, for the installation, repair, maintenance, use, removal and/or replacement of pipes, ducts, electrical wiring and all other utility lines and conduits which are part of the Common Elements and which pass across or through a portion of a Unit or Units.

(f) If a Unit or Units shall encroach upon any Common Element or upon any other Unit by reason or original construction or a cause other than the purposeful or negligent act or omission of the Unit Owner, than an easement appurtenant to such encroaching Unit, to the

extent of such encroachment, shall exist for so long as such encroachment shall exist. If any Common Element shall encroach upon any Unit by reason of original construction or a cause other than the purposeful or negligent act or omission of the Council, then an easement appurtenant to such Common elements, to the extent of such encroachment, shall exist for so long as such encroachment shall exist. In the event the Building is partially or totally destroyed and then rebuilt, encroachment upon the Common Elements and/or Units, as and to the extent described above, shall be permitted, and a valid easement for said encroachments and the maintenance thereof shall exist for so long as such encroachment continues to exist.

(g) All easements and rights described and mentioned in this Declaration are easements appurtenant to the Units and Common Elements, in accordance with the Act and shall remain in full force and effect throughout the term of this Declaration, and at all times shall inure to the benefit of and be binding upon the Council, any Unit Owner, purchaser, mortgagee, and any other person having an interest in the Land, Units, Common Elements or any portion thereof.

## 7. GENERAL PROVISIONS

(a) Use: All Units shall be used only for private, single family residential purposes.

(b) Utilities: Unless obtained by the Council and designated as a Common Expense, all services furnished by any utility company or the municipality to any Unit Owner shall be charged to and paid by the Unit Owner receiving such services. Separate meters are furnished for all Units to measure consumption of utility services.

(c) Assessments and Taxes: Each Unit and its proportionate undivided interest in the Common Element, as determined by this Declaration and any amendments thereof, shall be assessed and taxed for all purposes as a separate parcel of real estate, and each Unit Owner is charged with the payment of all such taxes, municipal claims and liens assessed, liened or filed against his Unit.

(d) No Partition of Common Elements: The Common Elements shall not be partitioned through judicial proceedings or otherwise until this Declaration is terminated and the Property is withdrawn from its terms or from the terms of any statute applicable to condominium ownership as herein provided; provided, however, that if any Unit shall be owned by two or more co-owners as tenants in common or as joint tenants, subject to the provisions of Sections 9 and 10 hereof, nothing herein contained shall be deemed to prohibit a voluntary or judicial partition of said Unit ownership as between such co-owners.

(e) No Severance of Ownership: The undivided interest in the Common Elements may not be separated from the Unit to which such interest pertains and shall be deemed to be conveyed, leased or encumbered with the Unit even through such interest is not expressly referred to in the deed, lease, mortgage or other instrument.

(f) Incorporation by Reference: Reference to the easements and rights in any part of this

Declaration, in the deed of conveyance of any Unit, or in any mortgage or other evidence of obligation secured by any Unit shall be sufficient to create and reserve such easements and rights to the Declarant, its successors or assigns, and to the respective grantees and mortgagees of such Units as fully and completely as though such easement and rights were recited fully and set forth in their entirety in such documents.

(g) Maintenance and Repair of Units: No Unit Owner shall do or cause to be done any work affecting his Unit which would jeopardize the soundness or safety of the Property, reduce the value thereof, or impair any easement or hereditament therein. It shall be the responsibility of each Unit owner: (i) to maintain, repair or replace, at his own expense, all portions of his Unit (except structural elements of the balcony portion of his Unit, and his parking spaces which shall be maintained as a Common Expense despite being part of the Unit) which may cause injury or damage to the other Units or to the Common Elements, (ii) to maintain the interior surfaces of all walls, ceilings and floors within the Unit and otherwise to keep the Unit and all alterations, improvements and fixtures therein in good order, condition and repair; (iii) to refrain from repairing, altering, replacing, painting or otherwise decorating or changing the appearance of any portion of the Common Elements without first obtaining the consent, in writing, or the Council; and (iv) to refrain from repairing, altering, replacing, painting, decorating or changing the exterior appendages, whether or not exclusively used by the Unit Owner, without obtaining the written consent of the Council.

#### 8. SUBDIVISION:

(a) If one or more Unit Owners desire to combine their Units or to subdivide their previously combined Units so as to restore the original Unit boundaries, and such combination or subdivision would not alter the Common Elements (other than the interiors of walls abutting such Units and attachments thereto) or the percentage of the share of the Common Elements appurtenant to any Unit and, as reasonable determined by a majority of Council, would not weaken, impair or endanger any of the Common Elements or any Unit, such Unit Owner or Unit Owners may apply in writing to the Council for approval of such combination or subdivision and submit plats and plans therefor to the Council depicting the alterations and identifying the Units and the proposed relocation of the boundaries thereof. Such combination or subdivision may be effected upon the written approval thereof by the Council and the submission to the Council of the written approval of the holders of all Permitted Mortgages encumbering the Units being combined or subdivided, as long as all expenses incurred in connection with accomplishing such combination or subdivision may be effected upon the written approval thereof by the Council and the submission to the Council of the written approval of the holders of all Permitted mortgages encumbering the Units being combined or subdivided, as long as all expenses incurred in connection with accomplishing such combination or subdivision, including, without limitation, attorneys' fees and recording costs, shall be paid by the Owners of the Units involved prior to approval by the Council. Such Unit Owners shall be jointly and severally liable for the payment of such expenses.

(b) If one or more Unit Owners desire to combine their Units, or to combine their Units

and transfer a portion of a Unit or Units to the Owner of a Unit or Units adjacent thereto, and if, as reasonably determined by the Council, such combination, subdivision, or combination and transfer would not alter the Common Elements (other than the interiors of walls abutting such Units and attachments thereto), and would not weaken, impair or endanger any of the Common Elements (other than any such wall or fixture) or any Unit, but would reallocate the percentage of the share of the Common Elements appurtenant to one or more of the Units involved, such combination, subdivision, or combination and transfer may be effected in accordance with the procedures delineated in subsection 8(a) above and by the Unit Owners involved submitting to the Council, along with their application, proposed amendments to this Declaration and the Declaration Plans (i) containing plats and plans of the proposed alteration of the affected Unit or Units and Common Elements, if any, (ii) assigning identifying numbers to any Units created by any such subdivision and (iii) setting forth the proposed reallocation of the percentage of the share of the Common Elements appurtenant to such affected Unit or Units. Furthermore, any Unit Owner desiring to alter any part of the Common Elements separating and located between and exclusively serving one or more Units to be transferred and combined pursuant to the provisions of this subsection shall also comply with the applicable provisions of subsection 8(d) below. No such proposed subdivision or combination and transfer shall be effective unless first approved in accordance with the procedure delineated in subsection 8(b) above. If so approved, such proposed combination, subdivision, transfer or combination thereof shall be effective upon the preparation on behalf of the Association, and the recording in the Office of the Recorder of Deeds of Allegheny County, Pennsylvania, of amendments to this Declaration and the Declaration Plans, consistent with and reflecting said combination, subdivision or combination and transfer, complying with the requirements for amendments delineated in clauses (i), (ii), (iii), and (iv) of the first sentence of this subsection, with such amendment executed by the Association, the Owner of the Unit or Units altered thereby and all holders of Permitted Mortgages encumbering such Units.

(c) That part of the Common Elements separating, located between, and exclusively serving two or more adjacent Units used together (including without limitation portions of any hallway and any walls) may be altered to afford ingress and egress to and from such Units and to afford privacy to the Occupants and Owners of such Units when using such Common Elements, and that part of the Common Elements to altered may be used by the Owner or Owners of such Units as a licensee pursuant to a license agreement with the Association; provided (i) such alterations shall not weaken, impair or endanger any of the Common Elements (ii) the Unit Owner or Unit Owners desiring to make such alterations shall obtain from the Council written approval thereof, (iii) the expense of making such alterations shall be paid in full by the Unit Owner or Unit Owners shall be jointly and severally liable therefore, (iv) such Unit Owner or Unit Owners shall be jointly and severally liable for the payment in full of the expense of restoring such Common Elements to their condition prior to such alteration in the event that such Units shall cease to be used together, as permitted above, and (v) such alteration shall not interfere with the use and enjoyment of the Common Elements (other than the part of the Common Elements described above separating such adjacent Units), including without limitation reasonable access and ingress to and egress from the other Units in any hallway affected by any such alteration.

9. MAINTENANCE OF COMMUNITY INTEREST: In order to maintain a community or congenial residents and thus protect the value of the community of congenial residents and thus protect the value of the Units and in order to assure the financial ability of each Unit Owner to pay assessments made against him, the transfer of any Unit shall be subject to the following provisions of the Act, which provisions each Unit Owner covenants to observe.

(a) No Unit Owner may sell or lease his Unit or any interest therein except by complying with the provisions of this Section 9.

(b) Any Unit Owner who receives a bona fide offer for the sale or lease of his Unit (hereinafter called an "Outside Offer") which he intends to accept, shall give notice to the Council of name and address of the proposed purchaser or lessee, as the case may be, together with a copy of such Outside Offer containing a full description of the terms thereof and such other information as the Council may reasonably require. The Unit Owner shall offer to sell or to lease such Unit, as the case may be, to the Council, or its designee, corporate or otherwise, on behalf of the owners of all other Units, on the same terms and conditions as contained in such Outside Offer to the Council on behalf of the other Unit Owners that such Unit Owner believes the Outside Offer to be bona fide in all respects. Within 15 days after receipt of such Unit Owner, to purchase or to lease such Unit, as the case may be (or to cause the same to be purchased or leased by its designee, corporate or otherwise), on behalf of all other Unit Owners, on the same terms and conditions as contained in the Outside Offer and as stated in the notice from the Unit Owner.

(i) In the event the Council shall elect to purchase such Unit or to cause the same to be purchased by its designee, corporate or otherwise, title shall close, in accordance with the terms and conditions as contained in said Outside Offer, at the office of the title company designated by Council on the date specified in the Outside Offer, or if no date is specified, 45 days after the giving of notice by the Council of its election to accept such Outside Offer.

(ii) In the event the Council elects to lease any Unit, promptly after receipt of the notice of such election by the Council, the offering Unit Owner shall execute and deliver to the Council, or to its designee, a lease between the Unit Owner, as landlord, and the Council, or its designee, as tenant, covering such Unit, on the terms and conditions contained in such Outside Offer. In the event Council leases any Unit, Council shall have the right to sublet the same to a subtenant acceptable to Council.

(iii) In the event the Council or its designee shall fail to accept such offer within 15 days, the Unit Owner shall be free, within 60 days after the expiration of the period in which the Council or its designee might have accepted such offer, to contract to sell or to lease such Unit, as the case may be, to the outside offeror on the terms and conditions set forth in the notice from the Unit Owner to the Council of such Outside Offer.

(c) Any deed to an outside offeror shall provide that the acceptance thereof by the grantee shall constitute an assumption of the provisions of the Declaration, the Code of

Regulations and the Rules, as the same may be amended from time to time. Any lease to an outside offeror shall be consistent with this Declaration and the Code and shall provide that it may not be modified, amended, extended, or assigned, without the prior consent in writing of the Council, that the tenant shall not sublet the Unit, or any part thereof, without the prior consent in writing of the Council, and that the Council shall have power to terminate such lease and to bring summary proceedings to evict the tenant in the name of the landlord thereunder, in the event of default by the tenant in the performance of such lease or compliance with the Declaration, Code of Regulations or Rules. Council may require that a uniform lease be used with respect to any lease of a Unit.

(d) In the event the offering Unit Owner shall not, within such 60 day period, contract to sell or to lease such Unit, as the case may be, to the outside offeror on the terms and conditions contained in the Outside Offer, or if such a contract is entered into but not fulfilled, then the Unit Owner shall be required to comply again with all of the terms and provisions of this Section in order to sell or to lease the Unit.

(e) The subleasing of any Unit or any interest therein shall be subject to the same limitations as are applicable to the leasing thereof. The liability of the Unit Owner under law, the Declaration, the Code of Regulations and the Rules shall continue during any tenancy or subtenancy created hereunder.

(f) The right of first refusal contained in these provisions may be released or waived by the Council in writing, in which event the Unit may be sold, conveyed, or leased, free and clear of the provisions of this Section.

(g) Upon written request of any prospective transferee, purchaser, tenant, or an existing or prospective holder of a Permitted Mortgage (as defined in Section 10 hereof) on any Unit or any interest therein, the Council shall immediately, or, if any time period is stated, before the end of such time period, issue an acknowledged certificate in recordable form, which certificate shall be conclusive evidence of the facts contained therein, evidencing that:

(i) With respect to a proposed lease or sale under Section 9 hereof, proper notice was or was not given by the selling or leasing Unit Owner and that the Council did or did not elect to exercise its option to purchase or lease;

(ii) With respect to a deed to a holder of a Permitted Mortgage or its nominee in lieu of foreclosure, and a deed from such holder or its nominee pursuant to Section 9(h) hereof, such deeds were or were not in fact given in lieu of foreclosure and are or are not subject to the provisions of Section 9(b) hereof;

(iii) With respect to any contemplated transfer which is neither a sale or a lease, the transfer is or is not subject to the provisions of Section 9(b) hereof.

(h) If any Unit Owner shall default under a Permitted Mortgage secured upon his Unit

or any interest therein, which default shall entitle the holder thereof to foreclosure, including delivery of a deed to such holder in lieu of such foreclosure, the delivery of such deed shall be made free and clear of the provisions of Section 9(b) hereof, and the purchaser (or grantee under such deed in lieu of foreclosure) of such Unit or any interest therein shall be thereupon and thereafter subject to the provisions of this Declaration, the Code of Regulations and the Rules and Regulations. If such holder of a Permitted Mortgage or his nominee is the purchaser at such foreclosure sale (or grantee under the deed given in lieu of such foreclosure), such holder or nominee may thereafter sell and convey such Unit or any interest therein free and clear of the restrictions of Section 9(b) hereof, but its grantee shall be subject to all of the provisions thereof.

(i) No Unit Owner shall be permitted to convey, mortgage, pledge, hypothecate, sell or lease his Unit unless and until he shall have paid in full to the Council all unpaid common charges theretofore assessed by the Council against his Unit, and until he shall have satisfied all unpaid liens against such Unit, except Permitted Mortgages.

(j) If any Unit Owner attempts to sell or lease his Unit or any interest therein without giving the Council the right of first refusal as herein provided, such sale or lease shall be void and shall confer no title or interest whatsoever upon the intended purchaser or lessee.

(k) The rights granted to Council in this Section 9 shall terminate upon the lapse of twenty-one (21) years from the date of death of the last survivor of: (i) all persons and the children of such persons who, as of the date of recording of this Declaration, are bound under Agreements of Sale to purchase Units; and (ii) all of the members of Council and children of said Council members who are living on the date of recording of this Declaration. It is the intention of Declarant that the rights granted to Council in this Section 9 shall not violate the Rule Against Perpetuities, so that the rights so granted to Council shall terminate only upon termination of the Condominium pursuant to the terms of this Declaration.

#### 10. MORTGAGES:

(a) A Unit Owner may not voluntarily encumber or subject his Unit to any lien, other than the lien of (i) a mortgage to a bank, trust company, bank and trust company, savings bank, savings and loan association, building and loan association, insurance company, pension fund or like institutional investor, or (ii) a purchase money mortgage to Declarant, or (iii) a purchase money mortgage to the seller of a Unit (any of such mortgages being sometimes referred to herein as "Permitted Mortgages" and the holders of any such mortgages being sometimes referred to herein as "Permitted Mortgagees"). In any event, such mortgage and the obligation secured thereby shall provide that the mortgage and the rights and obligations of the parties thereto shall be subject to the terms and conditions of the Act, this Declaration, the Code of Regulations and the Rules and Regulations, and specifically, but without limitation, that the mortgagee shall have no right (a) to participate in the adjustment of losses with insurers or in the decision as to whether or not or how to repair or restore damage to or destruction of the Property (except to the extent required by the Permitted Mortgagee, and, then, only to the extent of the Unit Owner's proportionate share of the Common Elements); (b) to receive or apply the proceeds of insurance

to the reduction of the mortgage debt or otherwise, except in the event and to the extent of a distribution thereof to Unit Owners pursuant to Section 802 of the Act or of insurance proceeds being received in excess of the cost of repair or restoration; or (c) to accelerate the mortgage debt or to have any other remedies by virtue of waste or alleged waste or other conditions occurring anywhere on the Property other than within the affected Unit, and the obligations secured shall be prepayable, without penalty, upon the happening of any termination as aforesaid.

(b) No Unit Owner or prospective purchaser of a Unit shall deliver any mortgage, or any obligation to be secured thereby unless it has first notified the Council of the name and address of the proposed mortgage and of the amount of the debt proposed to be so secured. When a Permitted Mortgage is delivered to the Permitted Mortgagee, the Unit Owner shall simultaneously provide executed or conformed copies to the Council. The Secretary shall maintain a register of Permitted Mortgages, showing the name and address of the Permitted Mortgagee and the amount secured thereby. The holders of Permitted Mortgages, including holders of Permitted Mortgages referred to in Section 10(c) hereof, shall be entitled on written request to receive from Council a written statement of any delinquent assessments and of any other defaults by the Unit Owner, copies of any notices of default sent to the Unit Owner and copies of budgets and financial reports sent to the Unit Owner. Permitted Mortgages shall be permitted to examine the books of account of Council during regular business hours at Council's office.

(c) The Property is subject to the first lien of a construction mortgage with Equibank N.A., as mortgagee, and for all purposes hereunder, such mortgage and any modifications thereof that may be required from time to time by the holder thereof, shall be deemed a Permitted Mortgage against the Unit or Units not released from the lien of such mortgage.

(d) For purposes of this Declaration, the Declarant shall be deemed to include, in addition to the Owner submitting the Property to the Act, the institutional lender providing the construction mortgage financing for the Units, in the event such lender shall acquire title to any of the Units owned by Declarant pursuant to a deed in lieu of foreclosure or any judicial sale under such mortgage or the accompanying obligation; providing, however, in the event such lender shall so acquire title to any of the Units owned by Declarant, such lender, at its sole options, may be a written document waive its right to be deemed the Declarant and in such event such lender shall be a Unit Owner with all rights, benefits, obligations and liabilities hereunder of any other Permitted Mortgagee who becomes a Unit Owner and shall hold such units free and clear of any unpaid assessments for common expenses whether or not such charge has been reduced to a lien against the Unit(s).

11. **PURCHASE OF UNITS BY COUNCIL:** The Council shall have the power to purchase Units, subject to the following provisions:

(a) **Decision:** The decision of the Council to purchase a Unit shall be made without approval of the Unit Owners except as elsewhere provided in this Section.



(b) Limitation: If at any one time the Council shall be the owner or agreed purchaser of three (3) or more Units, it may not purchase any additional Units without the prior written approval of Unit Owners who in the aggregate hold at least 75% of the total undivided interest in the Common Elements. A Unit Owner whose Unit is the subject matter of the proposed purchase shall be ineligible to vote thereon. The foregoing limitation shall not apply to Units to be purchased at public sale resulting from a foreclosure or enforcement of the Council's lien for delinquent assessments if the bid of the Council does not exceed the amount found due the Council, plus the costs of the sale and the amount of any prior liens, or to Units to be acquired by the Council in lieu of foreclosure or enforcement of such lien if the consideration therefor does not exceed the amount of such lien plus the costs of the sale and the amount of any prior liens.

12. COMPLIANCE AND DEFAULT: Each Unit Owner shall be governed by and shall comply with the terms of this Declaration, the Code of Regulations and the Rules and Regulations adopted pursuant thereto and said documents and Rules and Regulations as they may be amended from time to time. Failure of the Unit Owner to comply therewith shall entitle the Council or other Unit Owners to the following relief in addition to other remedies provided in this Declaration and the Act:

(a) Suits: Failure to comply with the terms of this Declaration, the Code of Regulations and the Rules and Regulations adopted pursuant thereto, as they may be amended from time to time, shall entitle the Council or an aggrieved Unit Owner to sue for such sums as it may be damaged or to sue for injunctive relief or both. Such relief shall not be exclusive of other remedies available at law or in equity.

(b) Costs and Attorney's Fees: In any proceeding arising because of an alleged failure of a Unit Owner to comply with the terms of this Declaration, the Code of Regulations and Rules and Regulations adopted pursuant thereto, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorney's fees; provided, no attorney's fees may be recovered against the Council in any such action unless the court first expressly finds that the Council acted in bad faith.

(c) No Waiver of Rights: The failure of the Declarant, the Council, or any Unit Owner to enforce any covenant, restriction or other provisions of the Act, this Declaration, the Code of Regulations or the Rules and Regulations adopted pursuant thereto shall not constitute a waiver of the right to do so thereafter.

13. AMENDMENTS: Subject to the other provisions of this Declaration relative to amendment, this Declaration may be amended in the following manner:

(a) Notice: Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

(b) Resolution: An amendment may be proposed by either the Council or twenty (20)

percent of the Unit Owners. A resolution adopting a proposed amendment must bear the approval of those Unit Owners holding not less than seventy-five (75%) percent of the proportionate undivided interests in the Common Elements. Owners not present at the meeting considering the amendment may express their approval to the Secretary of Council, in writing, given before such meeting or within thirty (30) days following such meeting.

(c) Agreement: In the alternative, an amendment may be made by an agreement signed and acknowledged by all of the record owners of the Units in the Condominium in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the public records of Allegheny County, Pennsylvania.

(d) Proviso: No amendment shall discriminate against any Unit Owner nor against any Unit or class or group of Units unless the Unit Owners and Permitted Mortgagees so affected shall consent in writing; and no amendment shall change any Unit nor the share in the Common Elements, nor any other of its appurtenances nor increase the Unit Owner's share of the Common Expenses unless the owner of the Unit concerned and any Permitted Mortgage thereon shall join in the execution of the amendment. No amendment of this Declaration shall make any change which would in any way affect any of the rights, privileges, powers, and options of the Declarant unless the Declarant shall join the execution of such amendment. If more than one Unit is concerned, percentage interests of the Units affected shall be duly apportioned. If, in the judgment of the Council, any amendment is necessary to cure any ambiguity or to correct or supplement any provision of this Declaration or the Code of Regulations, which is defective or inconsistent with any other provision hereof or thereof or with the Act, or to change, correct or supplement anything appearing or failing to appear in the Declaration Plans which is incorrect, defective or similarly inconsistent, the Council may effect an appropriate corrective amendment, without the approval of Unit Owners, upon its receipt of an opinion from counsel stating that the proposed amendment is permitted by the tiers of this provision, together with a like opinion from a registered architect or licensed professional engineer in the case of any such amendment to the Declaration Plans. Each such amendment shall be effective upon the recording of an appropriate instrument setting forth the amendment and its due adoption, duly executed and acknowledged by the appropriate officer of the Council and recorded in the office of Recorder of Deeds of Allegheny County, Pennsylvania.

(e) Execution and Recording: A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted. The certificate shall be executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Council with the formalities of a deed. The amendment shall be effective when such certificate and copy of the amendment are recorded in the office of Recorder of Deeds of Allegheny County, Pennsylvania.

14. **TERMINATION:** The Condominium may be terminated in the following manner:

(a) By Statute: As provided by the Act.

(b) Destruction: In the event it is determined in the manner provided in the Code of Regulations that the Building shall not be reconstructed after casualty, the Condominium plan of ownership will be thereby terminated. The determination not to reconstruct after casualty shall be evidenced by a certificate of the Council described in Section 14(c).

(c) General Provisions: The termination of the Condominium shall be evidenced by a certificate of the Council executed by its President and Secretary certifying as to facts affecting the termination, which certificate shall become effective upon being recorded in the office of Recorder of Deeds of Allegheny County, Pennsylvania. When the Property has been removed from the provisions of the Act, the former Unit Owners shall, at the time such removal becomes effective, become tenants in common of the Property, and the holders of mortgages, judgements and other liens against the Unit or Units formerly owned by such Unit Owners shall have mortgages, judgements, or liens upon the respective undivided common interest of the Unit Owners in the entire Property. The undivided interest in the Property owned in common which shall appertain to each Unit Owner following such removal shall be the same percentage as the interest previously owned by such Unit Owner in the Common Elements. All funds held by the Council and all insurance proceeds, if any, shall be and continue to be held for the Unit Owners in proportion to the amount of their respective Common Interests. The costs incurred in connection with such removal shall be a Common Expense.

If the Property shall be removed from the provisions of the Act, then the Property shall be subject to an action for partition by any Unit Owner or lienor as if owned in common, in which event the net proceeds of sale shall be divided among all the Unit Owners in proportion to their respective Common Interests; provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such net proceeds all liens or charges on his Unit. Such removal of the Property from the provisions of the Act shall not preclude its subsequent submission to the provisions thereof in accordance with the terms of the Act.

(a) Declarant shall have the right at any time to sell, transfer, lease, re-let, subdivide, combine or otherwise alter, any Units which Declarant continues to own after this Declaration has been recorded, without regard to any restrictions relating to the sale, transfer, lease, form of lease, subdivision or combination of Units contained herein or in the Code of Regulations, and without the consent or approval of the Council or any other Unit Owner being required.

(b) For so long as Declarant owns six (6) or more Units, a majority of the members of the Council shall be selected by the Declarant; provided, however, that so long as Declarant owns any Units, one (1) member of Council may be selected by Declarant.

(c) Declarant does not make, and specifically disclaims any intent to have made, any warranty or representation in connection with any Unit, the Common Elements, the Property of the condominium documents exempt as specifically set forth herein or in any agreement of sale for a Unit, and no person shall rely upon any warranty or representation not so specifically made therein.

(d) No amendment may be made to the condominium documents without the written consent of Declarant so long as Declarant owns one (1) or more Units.

(e) The Declarant shall have the right to transact on the Property any business necessary to consummate the sale or leasing of Units, including, but not limited to, the right to maintain models, display signs, and employees in the office and to use the Common Elements.

(f) During the period of time in which the Building and Units are under construction by the Declarant and not completed, no Assessments for Common Expenses shall be made against the Declarant as the owner of Units which have not been completed until the completion thereof, and the Common Expenses shall be assessed against the Unit Owners (including the Declarant) of those Units which shall have been completed in the proportions which their respective Common Interest in the Common Elements bear to each other, inter se.

15. SEVERABILITY: The invalidity in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, and any exhibits attached hereto, shall not affect the remaining portions thereof.

16. COUNCIL: FIRST COUNCIL: A board of natural individuals, who need not be Unit Owners, of the number stated in the Code of Regulations shall be known as the Council and shall manage the business, operation and affairs of the Property on behalf of the Unit Owners.

The names of the first members of Council are:

1. Alan L. Ackerman
2. Joel H. Kranich
3. Mervin A. Snyder
4. Leonard H. Rudolph

17. CODE OF REGULATIONS: The operation of the Property shall be governed by the Code of Regulations, which shall be recorded forthwith.

18. BINDING EFFECT: The provisions of this Declaration and the Code of Regulations shall be binding upon and shall inure to the benefit of the Declarant, its successors and assigns.

19. HEADINGS: Paragraph headings are intended for ease of reference only and shall not affect or alter the provisions hereof.

IN WITNESS WHEREOF,

WITNESS:

MOREWOOD ASSOCIATES

By \_\_\_\_\_  
Alan L. Ackerman, Partner



**EXHIBIT A**

ALL THAT CERTAIN LOT OR PIECE OF GROUND situate in the 4th Ward (formerly 22nd Ward) of the City of Pittsburgh, County of Allegheny and Commonwealth of Pennsylvania, being bounded and described as follows:

BEGINNING at the southeasterly corner of Fifth Avenue and Morewood Avenue, thence Northeastwardly along the Southerly side of Fifth Avenue a distance of 368.62 feet to a point of the property line of lands formerly of A. Chambers; thence South 3 degrees 30' East a distance of 175 feet to the property line of lands formerly of Walton Ferguson; thence Southwestwardly along said lands a distance of 193.62 feet to a point; thence North 3 degrees 30' West a distance of 31 feet to a point; thence South 77 degrees 30' West along the property line of lands formerly of W.H. Donner a distance of 177.14 feet to the Easterly side of Morewood Avenue, thence along the said side of Morewood Avenue North 3 degrees 30' West, 172.53 feet to Fifth Avenue, at the place of beginning.

BEING also designated as Block 52-K, Lot 84 in the lot and block identification records maintained in the Deed Registry Office of Allegheny County.

**EXHIBIT B**

<u>Unit Designations</u>	<u>Percentage of Undivided Interest in Common Elements (Also Determinative of Voting Rights) and Pro Rata Share of Common Expenses</u>
F-101	3.24182
F-102	3.24182
F-103	3.24182
F-104	3.24182
F-105	3.24182
F-106	3.24182
F-107	3.24182
F-108	3.43228
F-109	2.80268
F-110	3.24182
F-201	3.24182
F-202	3.24182
F-203	3.24182
F-204	3.24182
F-205	3.24182
F-206	3.24182
F-207	3.24182
F-208	3.43228
F-209	2.80268
F-210	3.24182
F-301	3.24182
F-302	3.24182
F-303	3.49144
F-304	3.24182
F-305	3.24182
F-306	3.24182
F-307	4.74374
F-308	3.43228
F-309	4.54258
F-310	<u>3.24182</u>
	100.00000