

DECLARATION CREATING AND ESTABLISHING  
THE BROOMALL CONDOMINIUM APARTMENTS

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DECLARATION CREATING AND ESTABLISHING  
THE BROOMALL CONDOMINIUM APARTMENTS

THIS DECLARATION, made this 27th day of February, 1979, by FRANK CREW, with offices at 900 North Broom Street, Wilmington, Delaware, 19806 (herein called the "Declarant");

W I T N E S S E T H T H A T:

WHEREAS, the Declarant and his wife, Mary M. Crew, are the owners in fee simple of the tract of land referred to herein and have constructed a residential building and other improvements thereon; and

WHEREAS, Mary M. Crew has executed and recorded a Power of Attorney authorizing Declarant to submit the land and improvements to the Unit Property Act of Delaware; and

WHEREAS, by this Declaration, the Declarant intends to submit that certain tract of land described more fully in Section 3 hereof, and the building and improvements erected and to be erected thereon, and the easements, rights and appurtenances thereunto belonging, to the provisions of the Unit Property Act of Delaware, 25 Del. C. CH. 22 for the specific purpose of creating and establishing THE BROOMALL CONDOMINIUM APARTMENTS.

NOW, THEREFORE, the Declarant, pursuant to the Act, does hereby declare and state on behalf of itself, its successors and assigns, and on behalf of all persons having or seeking to acquire any interest of any nature whatsoever in The Broomall Condominium Apartments, as follows:

§1. Definitions and Terms. The following terms when used in the Declaration and in the other instruments constituting the Condominium Documents are intended to be consonant with the meanings ascribed to them by the Act and are defined herein as follows:

"Act" means the Unit Property Act of the State of Delaware 25 Del. C. CH. 22.

"Assessment" means the sums assessed against a Unit by resolutions duly adopted by the Council for the share of Common Expenses chargeable to a Unit.

"Building" means the building designed for residential use and containing 40 Units, which does or will comprise part of the Property more particularly shown at the time of reference on the Declaration Plan, and any amendments thereto; the Building is describe

in §5 hereof, and is or will be erected upon the Land submitted to the provisions of the Act pursuant to the provisions of §2.

"Unit Owner" means the Person or Persons owning a Residential Unit in fee simple.

"Code of Regulations" means such governing regulations as are adopted pursuant to the Act for the administration, regulation and management of the Property, including such amendments thereof as may be adopted and Recorded from time to time.

"Common Elements" mean and include:

(a) The Land and all those portions of the Building and Property which are not included in and do not comprise part of the Units.

(b) The foundations; structural parts; supports, main, load bearing and exterior walls; non-load bearing walls and partitions not located within a Unit; party walls; columns; beams; roofs; floor slabs; pipe chases and interior walls and partitions, if any, enclosing said pipe chases and the space occupied by the foregoing; frames, tracks and sills of windows of the Units, except for the Unit-side surface thereof; and the doors and frames of doors leading from Units to the exterior of the Building except for the Unit-side surface thereof.

(c) All elevator cars, shafts, cables, equipment and machinery; the roof top and storage area, the first floor lobby, office area, powder room, janitorial room, mechanical room, fence with electrical gates (2) and canopy and supports.

(d) Lighting facilities; walkways; sidewalks; and parking areas.

(e) Portions of the Land and the Building and other improvements thereon and all personal property used for the management, operation, and maintenance of the Property; all other personal property existing or intended for common use.

(f) Installations of all central service and utilities, cable television reception systems, and water, gas, sewer, electric, telephone and other utility lines, meters, pipes, conduits, fixtures and associated equipment and facilities, which serve the Common Elements or serve more than one Unit or both.

(g) All other apparatus and installations existing or intended for common use.

(h) All other parts or elements of the Building, (more particularly shown at the time of reference on the Declaration Plan) and other improvements necessary for their existence, management, operation, maintenance, upkeep and safety, or normally in common use.

"Common Expenses" means and includes:

(a) Expenses of administration, maintenance, care, repair, upkeep and replacement of the Common Elements;

(b) Expenses agreed upon as common by all Unit Owners; and

(c) Expenses declared common by provisions of the Act, or by the Condominium Documents.

"Common Interest" means the proportionate undivided interest in the fee simple absolute in the Common Elements appertaining to each Unit as expressed in §8 hereof and set forth in Exhibit "A" attached hereto.

"Common Receipts" means: (i) Assessments and other funds collected from Unit Owners as Common Expenses or otherwise; (ii) rent and other charges derived from leasing or licensing the use of the Common Elements; and (iii) receipts designated as common by or pursuant to the Condominium Documents or the Act.

"Common Profits" means the excess, if any, of all Common Receipts over all Common Expenses during any fiscal year of the Condominium.

"Condominium" means The Broomall Condominium Apartments.

"Condominium Documents" or "Documents" means and includes this Declaration, the Code of Regulations, the Declaration Plan, and any rules and regulations governing the use and operation of the Property adopted by the Council from time to time, as the same may be amended or supplemented (and, if required, Recorded) from time to time.

"Council" means a board of natural individuals of the number stated in the Code of Regulations who are residents of the State of Delaware, who need not be Unit Owners and who shall manage

\*All Common Receipts obtained from the Unit Owners by assessment, and all Common Profits resulting from Unit Owner assessments, shall at all times be the collective monies of the Unit Owners which the Council merely holds in trust and administers as their agent.

the operation and affairs of the Condominium and the Property on behalf of the Unit Owners in compliance with and subject to the provisions of the Act.

"Declarant" means Frank Crew.

"Declaration" means this instrument and such amendments thereof as may be made and Recorded from time to time.

"Declaration Plan" means the three page survey and drawings of the Property prepared in accordance with Section 2220 of the Act, by Van Demark & Lynch, Inc., Professional Engineers and Surveyors, dated February 15, 1979, as hereinafter supplemented and amended from time to time.

"Detailed Rules" means such rules governing details of conduct, administration, operation, use and enjoyment of the Condominium as Council may from time to time promulgate.

"Land" means the lot or piece of ground submitted to the Act at the time of reference by this Declaration and all easements, rights, liberties, privileges, hereditaments and appurtenances belong or appertaining thereto.

"Majority" or "Majority of Unit Owners" means the Unit Owners of more than fifty per cent (50%) in the aggregate of the Common Interests in the Common Elements as specified in the Declaration.

"Person" means a natural individual, corporation, partnership, association, trustee or other legal entity, or any combination thereof.

"Property" means and includes the Land, Building and all other improvements erected or to be erected on the Land, all owned in fee simple, which have been or are intended to be submitted to the provisions of the Act by this Declaration or any amendments thereto.

"Recorded" means that an instrument has been duly entered of record in the appropriate place of recording in and for New Castle County, Delaware, i.e., the Office of the Recorder of Deeds.

"Revocation" means an instrument signed by all Unit Owners and by all holders of all mortgages, judgments or other liens against the Units, by which the Property is removed from the provisions of the Act.

"Unit" means any part of the Property located within the Building designed or intended for independent residential use as set forth in §6 hereof, which has a direct exit to a Common Element or Common Elements leading to a public street or way, and is described in §5 hereof and includes the Common Interest in the Common Elements which is assigned thereto pursuant to the provisions of Paragraph B of §8 of this Declaration.

"Unit Deed" means a deed of conveyance of a Unit in recordable form fulfilling the requirements of Section 2221 of the Act.

"Unit Designation" means the number or combination of letter and number designating a Unit as shown on the Declaration Plan and assigned to the Unit.

"Unit Owner" means any Person or Persons owning any Unit in fee simple.

§2. Submission of Property to Act. This Declaration is filed pursuant to the Act and Declarant hereby submits the Land described in §3 hereof and the Building and all improvements erected and to be erected thereon and all easements, rights, liberties, privileges, hereditaments and appurtenances belonging or appertaining thereto, to the provisions of the Act.

§3. Description of Land. The lot or piece of ground which is submitted to the provisions of the Act pursuant to §2 hereof is described as follows, to-wit:

That piece or parcel of land with the buildings thereon erected, situate in the City of Wilmington, County of New Castle and State of Delaware, bounded and described as follows, to-wit:

BEGINNING at a point formed by the intersection of the northerly side of Ninth Street with the easterly side of Broom Street; thence northwardly along said side of Broom Street one hundred and four (104) feet to a corner; thence eastwardly parallel



with Ninth Street, one hundred and ninety-eight (198) feet six (6) inches to a corner; thence southwardly parallel with Broome Street one hundred and four (104) feet to the aforesaid northerly side of Ninth Street; and thence thereby westwardly one hundred and ninety-eight (198) feet six (6) inches to the place of Beginning. Be the contents thereof what they may.

§4. Name. The name by which the Property shall hereafter be identified and known is "THE BROOMALL CONDOMINIUM APARTMENTS".

§5. Description of Improvements to be Erected. The Declarant intends and has constructed a modern eight-story high-rise building on the Land. The building is largely steel frame construction with reinforced and poured concrete floors and roof. There are curtain wall exterior panels consisting of steel panels covered with a colored cement. Panels are welded in place and are insulated. There are five (5) Units on each floor; each floor consists of two (2) 1700 square foot Units with 2 bedrooms, 2 baths, den and powder room; two (2) 1400 square foot Units with 2 bedrooms and 2 baths; one (1) 1300 square foot Unit with 2 bedrooms and 2 baths (all square foot figures are approximations only).

The location of the Building upon the Land is more particularly shown on the Declaration Plan. The Declarant declares that the Building, if not completed at the time of the recording of this Declaration, shall be deemed in all respects, when completed, to be subject to the provisions of this Declaration.

§6. Description of Units; Boundaries.

A. Subdivision into Units. Declarant, in order to implement the plan of ownership for the Property permitted by the Act, covenants, agrees and declares that Declarant hereby subdivides the Building into 40 separate parcels of real property, being the 40 Units referred to in this §6 and as shown on the Declaration Plan. Every Unit referred to above, together with its undivided Common Interest in the Common Elements, shall for all purposes be and it is hereby declared to be and constitute a separate parcel of real property.

The ownership of each Unit, together with its undivided Common Interest in the Common Elements, is for all purposes the ownership of real property. Subject only to the provisions of this Declaration, the Code of Regulations, and all covenants, restrictions, easements, rules, regulations, resolutions and decisions affecting the same and relating thereto as may be contained

in the Documents or as may from time to time be passed in accordance with the Declaration and the Code of Regulations, each Unit may be held and owned by one or more Persons in any form of ownership, real estate tenancy or relationship recognized under the laws of the State of Delaware; each Unit Owner of a Unit shall be entitled to the exclusive ownership and possession of his Unit; and each Unit, together with its undivided Common Interest in the Common Elements, may be sold, conveyed, mortgaged, leased or otherwise dealt with by the Unit Owner thereof in the same manner as is otherwise permitted by the laws of the State of Delaware for any other parcel of real property.

The Unit Designation of each Unit and the number of rooms therein, the location of each Unit and its dimensions and the Common Elements to which each Unit has direct exit and other data concerning each Unit's proper identification are shown in the Declaration Plan. In addition, the floor of the Building in which each Unit is located and the Unit Designation and area of each Unit contained within the Building is set forth in Exhibit "A".

### B. Boundaries.

Each Unit consists of: (i) the volumes or cubicles of space enclosed by and measured horizontally and vertically from the unfinished inner surfaces of the perimeter walls and the walls dividing the Units, the unfinished inner surface of the ceiling and floor of the Unit; (ii) all interior partition walls, floors and other partitions located within the Unit (including the space occupied by such walls, floors and partitions and the frames of any doors or other openings in such walls or partitions) excepting such part of such interior walls, floors and partitions located within the Units, if any, which may comprise part of the Common Elements; and (iii) the decorated inner surfaces of all said walls, ceilings and concrete slabs consisting of paint, plaster, plaster board, carpeting, floor tiles and other floor coverings, and all other finishing materials affixed or installed as a part of the physical structure of the Unit and all immediately visible fixtures, appliances, mechanical and electrical systems and equipment, heating and air cooling systems and equipment installed for the sole and exclusive use of the Unit, commencing at the point of disconnection from the structural body of any Building and from utility lines, pipes, or systems serving the Unit.

No pipes, wires, conduits or other public utility lines or installations constituting a part of the overall utility system designed for the service of any particular Unit, nor any of the structural members or portions of the Building, nor any other property of

any kind which is not removable without jeopardizing the soundness, safety, or usefulness of the remainder of the Building shall be deemed to be a part of any Unit.

The electricity supplied to each Unit is separately metered and is not a Common Expense. Water and sewer service supplied to each Unit, if not separately billed to each Unit, shall be a Common Expense. Each Unit will be individually heated and air-conditioned.

#### §7. Unit Deeds.

A Unit Deed conveying title to a Unit shall be Recorded and shall include the following: (i) the name by which the Property is identified, viz. "The Broomall Condominium Apartments"; a statement that the Property is located in the City of Wilmington, New Castle County, Delaware, (iii) a reference to the Declaration and the Declaration Plan, including reference to the place where the Declaration and the Declaration Plan, and any amendments thereof, are Recorded; (iv) the Unit Designation of the Unit in the Declaration Plan; (v) a reference to the last Unit Deed, if any, conveying such Unit, including the reference to the place where the same was Recorded; and (vi) the Common Interest in the Common Elements assigned to the Unit by the Declaration, and any amendments thereof.

Every Unit Deed, conveyance, lien or written instrument dealing with a Unit using the Unit Designation assigned to a Unit shall be deemed to include, without requiring specific reference thereto or enumerating them, all the appurtenances thereto, whether specifically described or not, and easements in favor of the Unit and similarly shall be subject to all easements in favor of others.

#### §8. Description of Common Elements and Provisions Applicable Thereto.

A. The Common Elements are described in §1 hereof and are more particularly set forth and shown in the Declaration Plan.

B. Each Unit has appurtenant and assigned to it a Common Interest in the Common Elements as set forth in Exhibit "A", hereof.

C. The Common Interest of a Unit in the Common Elements shall be inseparable from each Unit, and any conveyance, lease, devise or other disposition or mortgage or other encumbrance of any Unit shall extend to and include the Common Interest in the Common

Elements, whether or not expressly referred to in the instrument effecting the same. The Common Interests of the Units in the Common Elements and the fee titles to the respective Units conveyed therewith, shall not be separately conveyed, transferred, alienated or encumbered and each of said Common Interests shall be deemed to be conveyed, transferred, alienated or encumbered with its respective Unit notwithstanding the description in the instrument of conveyance, transfer, alienation or encumbrance may refer only to the fee title to the Unit; except as otherwise herein permitted below.

D. The Common Elements shall remain undivided and no action for partition or division of any part thereof shall be permitted, except as provided in Section 2239 of the Act; and the Common Elements shall not be abandoned, encumbered, sold or transferred unless there shall be unanimous written approval thereof by all Unit Owners and the holders of first mortgage liens thereon, except as otherwise herein permitted below.

E. The Common Interest appurtenant to each Unit shall have a permanent character, shall be inseparable from each Unit, but may be altered, transferred or exchanged pursuant to an amendment to the Declaration duly executed by all of the Unit Owners affected thereby and Recorded.

F. Except as their use may otherwise be limited by the Condominium Documents, each Unit Owner, tenant and occupant of a Unit, and the family members, guests, agents and employees of such Unit Owner, tenant and occupant, may use the Common Elements in common with all other Unit Owners and tenants or occupants of other Units, and their respective family members, guests, agents and employees, in accordance with the purposes for which they are intended without hindering or encroaching upon the lawful rights of the other Unit Owners.

G. No Unit Owner may exempt himself from liability with respect to the Common Expenses by waiver of the enjoyment of the right to use any of the Common Elements or by abandonment of his Unit or otherwise. Conversely, the Council's responsibility under paragraph K of this §8 shall be exercised without discrimination as between the various areas and types of Common Elements.

H. The Council, and the Council's agents and employees, shall have the irrevocable right and easement to have access to each Unit from time to time during reasonable hours (or at anytime in the event of an emergency) as may be necessary for the inspection, maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom or the making of any addition

or improvements thereto; or to make repairs to any Unit or the Common Elements if such repairs are reasonably necessary for public safety or to prevent damage to any other Unit or Units or the Common Elements; or to abate any violation of law, orders, rules or regulations of any governmental authorities having jurisdiction thereof.

I. The Council shall, if any questions arise, determine the purpose for which a Common Element is intended to be used. The Council shall have the right to promulgate rules and regulations limiting the use of the Common Elements to Unit Owners and their respective families, guests, invitees and employees, subject to the right of a Majority of the Unit Owners to change any such rules and regulations.

J. The maintenance, repair, replacement, cleaning, sanitation, management, operation and use of the Common Elements and the making of any additions or improvements thereto shall be the responsibility of the Council and shall be carried out as provided in the Code of Regulations, but nothing herein contained shall be construed so as to preclude the Council from delegating these duties to a manager or agent or to other persons, firms or other corporations.

K. The Common Expenses incurred or to be incurred for the maintenance, repair, replacement, cleaning, sanitation, management, operation and use of the Common Elements and the making of any additions or improvements thereto shall be assessed by the Council against, and collected from, the Unit Owners.

L. No Unit Owner shall do any work which would affect or alter any of the Common Elements, or jeopardize the soundness or safety of the Property, or impair any easement or hereditament therein without the unanimous consent of the Unit Owners affected thereby.

§9. The Declaration Plan. The Declaration Plan shows fully and accurately, among other things, the extent of the Property, the location of the Building on the Land, the floor plans of the Building, the Units, the Common Elements, the Unit Designation for each Unit and the name by which the Property is known.

The Declaration Plan is to be Recorded contemporaneously with the recordation hereof, and is hereby incorporated herein as if fully set forth herein. Any discrepancy or inconsistency between the Declaration and the Declaration Plan in the description of the Units, or the Common Elements, or both, shall be resolved in favor of the description contained in the Declaration Plan. All measurements and dimensions in the Declaration Plan shall be regarded as approximate and subject to as-built variations.

§10. Administration of the Property. The administration of the Property shall be governed by the Code of Regulations, a copy of which is to be Recorded immediately subsequent to the recording of the Declaration and the Declaration Plan.

The first members of the Council specified in §20 of this Declaration shall establish and adopt the original Code of Regulations. Thereafter, no amendment or change of the provisions of the Code of Regulations shall be effective unless it is adopted at a meeting of the Unit Owners by the affirmative vote of at least those Unit Owners who represent a majority of votes entitled to be cast at that meeting, and such amendment is Recorded.

§11. Duties of the Council. The duties of the Council shall include the following:

(a) The maintenance, repair and replacement of the Common Elements;

(b) The making of Assessments and collection of Common Receipts from Unit Owners for Common Expenses and the payment of Common Expenses;

(c) The promulgation, distribution, interpretation and enforcement of rules and regulations governing the details of the use and operation of the Property and of the Common Elements, subject to the right of a Majority of the Unit Owners to change any such rules and regulations; and

(d) The other duties set forth in the Declaration and the Code of Regulations.

§12. Powers of the Council. Subject to the limitations and restrictions contained in the Act, the Declaration and the Code of Regulations, the Council shall, on behalf of the Unit Owners:

(a) Have power to manage the operation and affairs of the Property and for such purposes to engage employees and appoint agents and managers and to define their duties and fix their compensations, enter into contracts and other written instruments or documents and to authorize the execution thereof by officers elected by the Council; and

(b) Have such incidental powers as may be appropriate to the performance of their duties.

§13. Voting Rights of Unit Owners. The voting rights of Unit Owners shall be computed on the basis of each Unit Owner's Common Interest in the Common Elements. The number of votes which each Unit Owner shall be entitled to cast at any meeting of the Unit Owners shall be equal to the respective figure shown opposite the Unit Designation of the Unit owned by such Unit Owner in Exhibit "A" hereof (representing the percentage of Common Interest in the Common Elements), multiplied in each case by 1,000 thereby resulting in 100,000 votes in the aggregate.

The right to cast the votes applicable to a particular Unit shall be established by the record title of such Unit. Thereafter, (i) except as hereinafter provided as to a Unit owned by a husband and wife, if a Unit is owned by more than one individual, the individual entitled to cast the votes for the Unit shall be designated by a certificate signed by all the record Unit Owners of the Unit and filed with the Secretary of the Council; (ii) if a Unit is owned by a corporation, the individual entitled to cast the votes for the Unit shall be designated by a certificate of appointment signed by the president or vice president, under its corporate seal, and attested by the secretary or assistant secretary of the corporation and filed with the Secretary of the Council, and (iii) if a Unit is owned by a partnership, the individual entitled to cast the votes for the Unit shall be designated by a certificate signed by all partners and filed with the Secretary of the Council.

Any such certificate shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned. A certificate designating the individual entitled to cast the vote of a Unit may be revoked by any Unit Owner thereof.

If a Unit shall be owned by a husband and wife, then they may, but shall not be required to, execute a certificate designating an individual to cast the votes for their Unit. If such a certificate shall not be executed and if both of them are unable to agree as to the manner in which the votes applicable to their Unit shall be cast, then the votes applicable to such Unit shall not be counted; provided, however, that if only one of them shall be present at a meeting of the Unit Owners, the spouse present may cast the votes applicable to the Unit unless prior thereto the other spouse, by written notice to the Secretary, shall deny authorization of the spouse present to cast such votes.

§14. Sharing of Common Expenses and Common Profits. The Unit Owners shall share, be liable and charged for and be bound to

contribute to, Common Expenses in the same proportion as their respective Common Interests in the Common Elements. The Unit Owners shall share, and be entitled to, Common Profits in the same proportion as their respective Common Interests in the Common Elements.

§15. Assessments and their Enforcement.

A. All Assessments levied by the Council against any Unit for the share of Common Expenses chargeable to that Unit shall constitute the personal liability of the Unit Owner of the Unit so assessed and shall, until fully paid, together with interest thereon as provided by law, constitute a charge against such Unit which shall be enforceable as provided in Section 2234 of the Act.

B. Any Assessment against a Unit may be enforced by suit by the Council acting on behalf of the Unit Owners in an action in assumpsit; provided that each suit when filed shall refer to the Act and to the Unit against which the Assessment is made and the Unit Owner thereof. Any judgment against a Unit and the Unit Owner shall be enforceable in the same manner as is otherwise provided by law.

C. In the event that title to a Unit shall be transferred by sheriff's sale pursuant to execution upon any lien against the Unit, the Council shall give notice in writing to the sheriff of any unpaid Assessments which are a charge against the Unit but have not been reduced to lien pursuant to Section 2234 of the Act. The purchaser at such sheriff's sale and the Unit involved shall not be liable for unpaid Assessments which became due prior to the sheriff's sale of the Unit. Any such unpaid Assessment which cannot be promptly collected from the former Unit Owner shall be reassessed by the Council as a Common Expense to be collected from all of the Unit Owners, including the purchaser who acquired title at the sheriff's sale, his successors and assigns. To protect the Council's right to collect unpaid Assessments which are a charge against a Unit, the Council may, on behalf of the Unit Owners, purchase the Unit at sheriff's sale provided such action is authorized by the affirmative vote of a majority of the members of the Council, and if the Council does effect such purchase, the Council shall thereafter have the power to sell, convey, mortgage or lease such Unit to any person whatsoever. Notwithstanding any foreclosure, tax sale, judicial, or other forced sale of a Unit, all applicable provisions of the Condominium Documents shall be binding upon any purchaser at such sale to the same extent as they would bind a voluntary grantee, except that such purchaser shall not be liable for unpaid Assessments chargeable to such Unit which became due prior to such sale except as otherwise provided in this Paragraph C.



D. Upon the voluntary sale or conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments which are a charge against the Unit as of the date of the sale or conveyance, but such joint and several liability shall be without prejudice to the grantee's right to recover from the grantor the amount of any such unpaid Assessments which the grantee may pay, and until any such Assessments are paid, they shall continue to be a charge against the Unit which may be enforced in the manner set forth in Section 2234 of the Act; provided, however, that any Person who shall have entered into a written agreement to purchase a Unit shall be entitled to obtain a written statement from the Treasurer of the Council setting forth the amount of unpaid Assessments charged against the Unit and the Unit Owner, and such statement shall be furnished within 10 days after written request therefor. If such statement does not reveal the full amount of the unpaid Assessments as of the date it is rendered, neither the purchaser nor the Unit shall be liable for the payment of an amount in excess of the unpaid Assessments shown thereon. Any such excess which cannot be promptly collected from the former Unit Owner may be reassessed by the Council as a Common Expense to be collected from all of the Unit Owners, including the purchaser, his heirs, executors, administrators and assigns.

§16. Maintenance and Repair of Units.

A. No Unit Owner shall make any structural modifications or alterations within his Unit without the written consent of the Council, nor shall he take any action under any circumstances which does or may tend to impair the structural integrity of, or adversely affect or jeopardize the soundness or safety of, any part of the Property or impair any easement, right or hereditaments appurtenant thereto or affect the Common Elements without the unanimous written consent of all Unit Owners who might be affected thereby. No Unit Owner shall contract for or perform any maintenance, repair, replacement, removal, alteration or modification of the Common Elements, except through the Council. No Unit Owner shall subdivide a Unit as a result of an action in partition or otherwise without the prior written approval of the Council and the holder of any first mortgage lien on such Unit.

B. It shall be the responsibility of the Council to maintain, repair or replace:

(1) All portions of any Unit which contribute to the support of the Building or other improvements on the Land, including

load bearing walls, but excluding paint, wall papering, plaster, decorating or other work on the interior surfaces of walls, ceilings and floors within such Unit;

(ii) All portions of any Unit which constitute a part of the exterior of the Building;

(iii) All Common Elements within any Unit; and

(iv) All incidental damages caused by work done in any Unit by direction of the Council.

C. It shall be the responsibility of the Unit Owner:

(i) To maintain, repair, or replace at his own expense all portions of his Unit which may cause injury or damage to the other Units or to the Common Elements except the portions thereof mentioned and described in §16B hereof;

(ii) To paint, wallpaper, plaster, decorate and maintain the interior surfaces of all walls, ceilings, doors, door frames, windows, window frames and vents, and floors within the Unit;

(iii) To pay the expenses incurred by the Council in making repairs or replacements of the Common Elements caused by his wilful or negligent act or failure to act;

(iv) To perform his responsibilities in such a manner and at such reasonable hours so as not to disturb other Unit Owners;

(v) 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 of the Council and to refrain from repairing, altering, replacing, painting, decorating or changing any exterior appendages to the Unit without obtaining the aforementioned consent;

(vi) To notify the Council or its agents prior to performing any repair work of any kind, the responsibility for which lies with the Council. The failure of the Council to take action on such notice shall not be deemed a waiver by it of its rights nor shall it be deemed to constitute its consent thereto or its agreement to pay for such work. The Unit Owner shall abide by any terms specified by the Council relating to the conduct of such repair work; and

(vii) To maintain a minimum temperature of 50 degrees in the Unit and to repair or replace at his own expense any damage to the water or sewer pipes by failure to maintain the aforesaid minimum temperature.

D. Nothing in the Condominium Documents contained shall be construed so as to impose a personal liability upon the members of the Council or officers of the Council for the maintenance, repair or replacement of any Unit or Common Element.

## §17. Restrictions and Covenants.

### A. General.

Every Unit Owner shall, and by his acceptance of his Unit Deed covenant on behalf of himself, his heirs, successors and assigns that he will comply strictly with the terms, covenants and conditions set forth in the Condominium Documents, the rules, regulations, resolutions and decisions adopted pursuant thereto, and the Unit Deeds, in relation to the use and operation of the Units, the Common Elements and the Property. Failure to comply with any of the foregoing shall be grounds for an action to recover sums due, for damages, or injunctive relief or any or all of them. Such action may be maintained by an aggrieved Unit Owner, or any member of the Council on its own behalf or on behalf of the Unit Owners, or by any Person who holds a mortgage lien upon a Unit and is aggrieved by any such non-compliance. In any case of flagrant or repeated violation by a Unit Owner, he may be required by the Council to give sufficient surety or sureties for his future compliance with said covenants, conditions, restrictions, Condominium Documents, rules, regulations, resolutions and decisions.

### B. Specific Restrictions on Use of Units.

(1) Each Unit is intended to be, and shall be, used as a private residence only.

(2) Any other use of a Unit shall be permitted only with the prior written consent of the Council and where permitted by law. Declarant may use Units as a sample or sales office.

(3) A Unit Owner shall not use, permit or allow the Unit or any part thereof to be used for an offensive or unlawful purpose and he shall not permit or allow any nuisance within the Unit and he shall not use, permit or allow the Unit to be used in a

manner which will be a source of annoyance to Unit Owners or other residents of the Property or which in any way interferes with the peaceful possession, enjoyment and proper use of the Property by the other Unit Owners or other residents thereof.

(4) No Unit Owner may lease less than the entire Unit. All leases shall be in writing and shall provide that the terms thereof shall be subject in all respects to the provisions of the Condominium Documents and that the failure by the tenant to comply therewith shall constitute a default under such lease.

### §18. Mechanics' Liens Against Units.

Any mechanic's lien arising as a result of repairs to or improvements of a Unit by a Unit Owner or by the Council shall be a lien only against such Unit. Any mechanic's lien arising as a result of repairs to or improvements of the Common Elements, if authorized in writing pursuant to a duly adopted resolution of the Council, shall be paid by the Council as a Common Expense and until so paid shall be a lien against each Unit in a percentage equal to the Common Interest in the Common Elements relating to such Unit.

### §19. Encroachments; Easements.

A. In the event that any Unit or any portion of the Common Elements has hitherto encroached upon or hereafter encroaches upon any other Unit or upon any other portion of the Common Elements as a result of: (i) settling, shifting or movement of the Land or any improvement thereon; or (ii) deviations arising from the original construction; or (iii) alterations, repairs or minor additions to any Unit or to any portion of the Common Elements; or (iv) condemnation or eminent domain proceedings relating to any Unit or any portion of the Common Elements, or, in the event that any encroachment by any Unit or any portion of the Common Elements upon any other Unit or upon any other portion of the Common Elements shall occur as a result of the partial or total destruction of any Unit or any portion of the Common Elements, and of the rebuilding or reconstruction thereof in substantially the same location, a valid easement with respect to any such encroachment and for the maintenance of the same shall exist for so long as the Units and/or Common Elements affected thereby shall stand.

B. In interpreting any and all provisions of the Condominium Documents, subsequent Unit Deeds to, and mortgages of, Units,

the actual location of the Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered notwithstanding any minor deviations, either horizontally, vertically or laterally, from the locations as indicated on the Declaration Plan.

C. A valid easement does and shall continue to exist throughout the Property for the purpose of installation, maintenance, operation, repair and replacement of sewer, water, electric, gas, power, telephone and television pipes, lines, mains, conduits, wires, poles, transformers and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility system; provided, however, any easements through a Unit for such utilities facilities shall be only at the original location thereof, unless approved in writing by the Unit Owner.

§20. First Members of the Council. The first members of the Council are Frank Crew, Mary Ann Maxwell, and Morris L. Stoltz, II.

§21. Insurance; Repair or Reconstruction. The Council shall maintain the insurance specified in the Code of Regulations. The premiums for such insurance shall be Common Expenses.

In the event of damage to or destruction of one or more of the improvements comprising part of the Property, the damage shall be repaired and such improvement or improvements restored as provided in the Code of Regulations, except that in the case of substantially total destruction of the Building, the same are not to be rebuilt and restored except as provided in the Code of Regulations.

§22. Eminent Domain. Whenever all or part of the Common Elements shall be taken, injured or destroyed as the result of the exercise of the power of eminent domain, each Unit Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, but in any proceeding for the determination of damages, such damages shall be determined for such taking, injury or destruction as a whole and not for each Unit Owner's interest therein. After such determination each Unit Owner shall be entitled to a share in the damages in the same proportion as his Common Interest in the Common Elements. The Code of Regulations contains provisions for restoration and rebuilding after a taking, injury or destruction of part of any improvement comprising part of the Property pursuant to the exercise of the power of eminent domain.

§23. Removal of Property from Act. The Property may be removed from the provisions of the Act at any time by a Revocation

expressing the intention to do so. No such Revocation shall be effective unless and until it is executed by all of the Unit Owners and by the holders of all mortgages, judgments and other liens affecting the Units, and is duly Recorded. 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, judgments and other liens against the Unit or Units formerly owned by such Unit Owners shall have mortgages, judgments and 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 Common 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.

§24. Amendment. Except as otherwise provided in the Declaration and/or the Act, the Declaration and the Declaration Plan may be amended in the following manner:

(i) Notice of the subject matter of the proposed amendment in reasonably detailed form shall be included in the notice of any meeting of the Unit Owners held in accordance with the provisions of the Code of Regulations at which a proposed amendment is to be considered.

(ii) A resolution adopting a proposed amendment may be proposed by either the Council or by a Majority of the Unit Owners at a meeting called for that purpose. Such amendment must be approved by not less than eighty percent (80%) of the Unit Owners voting in accordance with the procedures established by the Code

of Regulations for the project; and, if the amendment has a significant adverse effect upon the use or enjoyment of, or the services available to, a particular class of Units, then also by eighty percent (80%) of the Unit Owners of such class of Units and their first mortgagees, similarly voting.

(111) All amendments made as provided in this §24 shall be evidenced by a written instrument, executed and acknowledged by the members of the Council, which shall contain a certification that the amendments were approved in accordance with this §24. Such instrument shall be Recorded and shall become effective on the date upon which such instrument shall have been Recorded. Copies of such instrument shall be sent to each Unit Owner in the manner provided in the Code of Regulations for the giving of notices to Unit Owners, but the same shall not constitute a condition precedent to the effectiveness of such amendment.

§25. Provisions Applicable to Declarant.

Notwithstanding any other provisions herein or in the Code of Regulations contained, for so long as Declarant continues to own any of the Units the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve Declarant from any obligations of a Unit Owner to pay Assessments as to each Unit owned by Declarant in accordance with the Documents after the construction of the Unit has been completed.

(1) Declarant shall have the right at any time to combine or change the interior design of any Units which Declarant continues to own after the Condominium Documents have been Recorded, without regard to any restrictions relating to the combination or alteration of Units contained in the Condominium Documents, and without the consent or approval of the Council or any other Unit Owner being required therefor.

(11) For so long as Declarant owns 20% or more of the Building Units, a majority of the members of the Council shall be selected by the Declarant.

(111) 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 or the Condominium Documents except 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.

(iv) No amendment may be made to the Condominium Documents without the written consent of Declarant so long as Declarant retains the ownership of five or more Building Units.

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

(vi) Declarant shall be entitled to receive from the Condominium Council, at the time of the first conveyance of each and every Condominium Unit, reimbursement or credit for such portions of the Common Expense Assessments made against the Unit then being conveyed as shall not have been expended for electricity, gas, oil, water, sewer, maintenance, and insurance actually and directly consumed by that Unit (excluding its interest in the Common Elements) before its occupancy as a residence. The exact amount of such reimbursement shall be as reasonably determined in good faith by Council, with resolution of any doubtful issues being equally split between Seller and the Council. The sums needed by the Council to make such reimbursements or to give such credit, are hereby made a Common Expense by the agreement of the Unit Owners. Transfer of any Unit by Declarant to its mortgage lender shall not constitute a "conveyance" within the meaning of this provision.

The holder of any mortgage given by the Declarant to finance the construction of any improvements upon the Property shall have the same rights herein reserved to the Declarant should such holder acquire title to any Unit pursuant to judicial proceedings under such mortgage, or a deed in lieu of foreclosure, or obtain possession of any Unit as a mortgagee in possession.

§26. Captions. Captions used in this Declaration are inserted solely as a matter of convenience and shall not define or limit any of the terms or provisions hereof.

§27. Provisions Binding Upon Successors and Assigns; Covenants Running With Land. The present title to the Property hereby subjected to the provisions of the Act by the Declarant, and the title to each Unit which shall be hereafter conveyed or acquired in any manner, is hereby expressly declared and made subject to the terms and provisions of the Declaration, and the acquisition of title to a Unit by any Person shall be conclusively deemed to mean that the acquirer approves, adopts and ratifies the provisions of the Declaration, the Code of Regulations, the rules and regulations of the Council, and all other Condominium Documents and will comply therewith. All provisions of the Condominium Documents shall be construed to be covenants running with the land and with every part



thereof and interest therein, including but not limited to every Unit and the appurtenances thereto; and every Unit Owner and claimant of the Property or any part thereof or interest therein, and his heirs, executors, administrators, successors and assigns shall be bound by all of the provisions of the Condominium Documents. All provisions in the Documents shall be construed as having a cumulative effect with regard to the Unit Property Act, rather than as having a limiting effect on the Act; and any inconsistencies between the Act and any provision of these documents shall be resolved in favor of the Act.

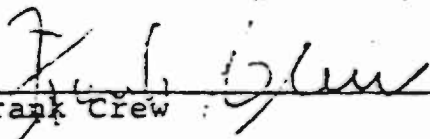
§28. Gender, Singular, Plural. Whenever the context so permits, the use of the plural shall include the singular, the singular shall include the plural, and any gender shall be deemed to include all genders.

§29. Severability. Any provision of the Condominium Documents which shall be unenforceable or invalid in any jurisdiction, be ineffective to the extent of such unenforceability or invalidity, without invalidating the remaining provisions of the Condominium Documents, and any such unenforceability or invalidity in any jurisdiction shall not render unenforceable or invalidate such provision in any other jurisdiction.

§30. Effective Date. The Declaration shall become effective on the date when it, the Declaration Plan and the Code of Regulations are Recorded.

IN WITNESS WHEREOF, the Declarant, individually and in his capacity as a duly authorized officer of the Condominium Council, intending hereby to be legally bound, and intending to adopt and make effective the Code of Regulations filed simultaneously herewith, has executed this Declaration the day and year first above written, both for himself and pursuant to the recorded Power of Attorney given to him by his wife, Mary M. Crew.

DECLARANT

  
\_\_\_\_\_  
Frank Crew

STATE OF DELAWARE )

: SS.

NEW CASTLE COUNTY )

BE IT REMEMBERED, that on this 27 day of February, 1979, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, FRANK CREW, personally known to me as such, and acknowledged this document to be his act and deed.

GIVEN Under my hand and seal of office the day and year aforesaid.

  
\_\_\_\_\_  
Notary Public

## EXHIBIT "A"

SCHEDULE SHOWING THE PERCENTAGE OF THE COMMON  
 INTEREST IN THE COMMON ELEMENTS ATTRIBUTABLE TO  
 EACH BUILDING UNIT.

<u>Floor</u>	<u>Area</u>	<u>Unit Designation</u>	<u>Percentage of Common Interest In Common Elements</u>
1	1700	1,5	2.83
1	1400	2,4	2.33
1	1300	3	2.18
2	1700	6,10	2.83
2	1400	7,9	2.33
2	1300	8	2.18
3	1700	11,15	2.83
3	1400	12,14	2.33
3	1300	3	2.18
4	1700	16,20	2.83
4	1400	17,19	2.33
4	1300	18	2.18
5	1700	21,25	2.83
5	1400	22,24	2.33
5	1300	23	2.18
6	1700	26,30	2.83
6	1400	27,29	2.33
6	1300	28	2.18
7	1700	31,35	2.83
7	1400	32,34	2.33
7	1300	33	2.18
8	1700	36,40	2.83
8	1400	37,39	2.33
8	1300	38	2.18

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Michael E. Kozikowski  
New Castle Recorder MISC

Tax Parcel Nos: 26-027.20-007 *et seq.*  
Prepared by and Returnable to:  
Michael J. Goodrick, Esquire  
P.O. Box 134  
Wilmington, DE 19899

**AMENDMENT TO DELCARATION PLAN FOR  
BROOMALL CONDOMINIUM APARTMENTS**

THIS AMENDMENT is made this 1<sup>st</sup> day of December, 2012 to the Declaration Plan of the Broomall Condominium Apartments as recorded in the Office of the Recorder of Deeds in and for New Castle County and the State of Delaware in Deed Record V, Volume 104, Page 72, *et seq.*, pursuant to the authority granted to the Broomall Condominium Apartments Council (the "Council") as set forth in the Declaration Plan and further having been adopted by no less than 66 2/3 percent of the unit ownership.

WHEREAS the majority of Council approved the following amendment

WHEREAS by written ballot, the amendment was supported by at least 66 2/3 percent of the Unit Owners

THEREFORE, the following amendment is hereby made to the Declaration Plan of the Broomall Condominium Apartments

Section 17B(4) is deleted in its entirety and the following provision is inserted in lieu thereof:

(4) (a) No Unit shall be rented without written approval of the Association. All unit owners desiring to rent their unit must obtain the prior written consent of the Council before entering into any lease agreement. All leases shall be for the single-family use in compliance with all other requirements of the Code of Regulations. It is understood that the Broomall Condominium Apartments community has an interest in maintaining the eligibility of its members for Conventional, FHA and VA financing and that such eligibility is based in part on the percentage of units leased within the community. If as of the date of recording of this amendment, a member's unit is already leased; no such prior Council approval shall be required for the valid continuation of the leasing of this unit. Notwithstanding the foregoing, unit owners who currently lease their unit must still obtain the approval of Council prior to selling the unit to a person other than an owner occupant. The Council will review the proposal in light of the number of units currently being leased. The Council shall by resolution have the authority to fix a specific limit on the number of units that can be leased at any one time based on current Conventional, FHA and VA eligibility criteria. The Council will also consider proposals to lease a unit due to hardship such as illness of the owner, job relocation, or the inability to sell the unit. All hardship leasing approvals shall be for a period not to exceed one year. Owners who lease their units must provide a copy of the lease to the Association and said lease must contain a clause requiring the leasee to comply with the Condominium Instruments and Rules.

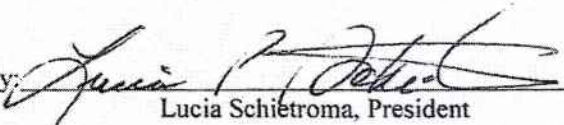
(b) No portion of any unit (other than the entire unit) shall be leased for any period.

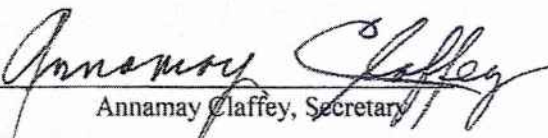
(c) No Owner or Entity may own in the aggregate any equitable or legal interest in any units whose combined proportional interest exceeds 9.99% of the total interest of the Association

All other provisions of the Declaration Plan shall remain in full force and effect.

IN WITNESS WHEREOF, the Broomall Condominium Apartments Council, by the authority vested in it pursuant to the Declaration Plan, hereby sets its hand seal and below.


THE COUNCIL OF THE BROOMALL  
CONDOMINIUM APARTMENTS

By:   
Lucia Schietroma, President

Attest:   
Annamay Claffey, Secretary

CERTIFICATION

I, Marilyn L. Harwick, Treasurer of the Council of the Broomall Condominium Apartments, do hereby certify that the foregoing Amendment was duly enacted in accordance with the provisions of the Declaration and the Code of Regulations of Broomall Condominium Apartments.

  
Marilyn L. Harwick