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Instrument DECLARATION

Date : 10/20/1995

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BOX 317 RSS

UNGER	
GEORGE	D
KISSIN	
MORRIS	B
KEANE	
MARY	KATHLEEN
CAMPAGNA	
BARBARA	J

MORTGAGE TAX

COUNTY	\$	242.50
	\$	.00
COE	\$	5.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
Total:	\$	247.50

Serial #		
City/Town	\$	.00
S.M.A.	\$	.00
Trans. Auth.	\$	.00
Total	\$	.00

STATE OF NEW YORK  
Erie County Clerk's Office

TRANSFER TAX

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ENDORSEMENT, REQUIRED BY SECTION 316-A(5) OF  
THE REAL PROPERTY LAW OF THE STATE OF NEW YORK  
DO NOT DETACH

Transfer Tax	\$	.00
Amount	\$	.00
Transfer Tax #		

DAVID J SWARTS  
County Clerk



D108927664

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**RESTATED  
DECLARATION**

Hickory Hill Estates Condominium  
Town of Amherst, Erie County, New York  
Pursuant to Article 9-B of the Real Property Law of  
the State of New York.

DECLARANTS: *George D. Unger, MORRIS B. KISSIN,  
Mary Kathleen Keane and Barbara J Campagna*

DATE: *October 17, 1995*

Prepared by:

**PHILLIPS, LYTLE, HITCHCOCK, BLAINE & HUBER**  
Ronald S. Shubert, Esq.  
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Buffalo, New York 14203  
(716) 847-8400

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**RESTATED DECLARATION  
HICKORY HILL ESTATES CONDOMINIUM**

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**RESTATED  
DECLARATION  
HICKORY HILL ESTATES CONDOMINIUM**

For the Premises Described on Schedule A attached hereto located in the Town of Amherst, County of Erie, New York, pursuant to Article 9-B of the Real Property Law of the State of New York, and pursuant to Resolution adopted, the owners ("Owners") of Units in the Hickory Hill Estates Condominium, created by Declaration ("Declaration") of Condominium recorded in the Erie County Clerk's Office in Liber 8203 of Deeds at page 1, as amended by amendments recorded in the Erie County Clerk's Office in Liber 8302 of Deeds at page 70, Liber 8629 of Deeds at pages 48 and Liber 9166 of Deeds at page 488, do hereby amend and restate the Declaration and By-Laws of the Condominium, as follows:

**ARTICLE I**

**SUBMISSION OF PROPERTY**

Section 1.01. Submission. The Owners hereby submit the lands described on Schedule A attached hereto and made a part hereof, together with all improvements thereon erected (hereinafter called the "Property") to the provisions of Article 9-B of the Real Property Law of the State of New York (the "Condominium Act").

**ARTICLE II**

**DEFINITIONS**

Section 2.01. Definitions.

"Board of Managers" shall mean and refer to that body of individuals elected or appointed pursuant to the By-Laws of the Condominium to administer the operation and maintenance of the Condominium Property.

"Building" shall mean and refer to the exterior walls and roof of a number of Units, all of which are constructed under a continuous roof, which shall form a portion of the Property.

"By-Laws" shall mean and refer to the framework and procedures pursuant to which the Condominium will be operated. The By-Laws are attached to this Declaration as Schedule E.

"Condominium" shall mean and refer to Hickory Hill Estates Condominium.

"Consent of Eligible Mortgage Holders" shall mean and refer to actual written consent received from the Eligible Mortgage Holder or the failure of the Eligible Mortgage Holder to object in writing to the giving of such consent within 30 days after receipt of the request for such consent.

"Declaration" shall mean and refer to this Declaration of Condominium which, by being recorded in the Recording Office, subjects the Property to the provisions of Article 9-B of the Real Property Law of the State of New York.

"Eligible Mortgage Holder" shall mean and refer to the holder of a first mortgage on a Unit who has requested the Board of Managers to notify it on any proposed action or any proposed modification, alteration, amendment or addition to the legal documents of the Condominium which requires the consent of mortgagees or Eligible Mortgage Holders.

"Institutional Mortgagee" shall mean and refer to a bank, savings and loan association, life insurance company, pension trust, trust company, the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac") or any lender approved by Fannie Mae or Freddie Mac which holds a first mortgage on a Unit.

"Owner" shall mean and refer to the record owner of a Unit in the Condominium.

"Property" or "Condominium Property" shall mean and refer to the land and all improvements thereon (including the "Units", and the common elements), owned in fee simple absolute, and all easements, rights and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith, all of which are intended to be submitted to the provisions of said Article 9-B of the Real Property Law of the State of New York.

"Recording Office" shall mean and refer to the Erie County Clerk's Office.

"Rules and Regulations" shall mean and refer to those guidelines relating to the use of the Property attached to the By-Laws of the Condominium as the same may be amended from time to time by the Board of Managers.

"Unit" shall mean and refer to a living unit (including garages for townhouses), which is designated in this Declaration for separate occupancy and use as a dwelling, except that the garage portion of the unit may be used to park a motor vehicle.

## ARTICLE III

### BUILDINGS

Section 3.01. Buildings. The "Buildings" as hereinafter referred to are multi-family structures containing 176 one-family Units, 112 of which are one-story garden apartment units and 64 of which are two-story (with full basement and garage) townhouse units. The garden apartment units are located in 14 buildings, each of which contains eight (8) Units. The townhouse units are located in eight buildings, five (5) of which contain eight (8) Units, two (2) of which contain 10 Units, and one (1) of which contains four (4) Units.

Schedule B attached hereto, and made a part hereof, contains a description of the Buildings including the materials of which each Building is constructed. The property on which the Buildings are located is more particularly described in Schedule A attached.

## ARTICLE IV

### UNITS

Section 4.01. Number and Address of Units. There are 176 Units of which 112 are one-story garden apartments and 64 of which are two-story townhouse units. The Units are designated by their number address on Hickory Hill Road and Homer Lane, private streets.

Section 4.02. Designations, Locations and Plans of Units. Annexed hereto, and made a part hereof as Schedule C is a list of all Units in the Buildings, their Unit designations, approximate areas, number of rooms, percentage of interest in the "common elements" as herein defined, and common elements to which each Unit has immediate access (all, except the percentage interest in the common elements, as shown on the floor plans of the Buildings, certified by Robert L. Scholz, and filed in the Recording Office under Map Cover No. 2375) simultaneously with this Declaration. Filed with the floor plans is a site plan or survey showing the designation and location of the Units.

Section 4.03. Dimensions of Units. Each garden apartment unit consists of the area enclosed horizontally by the unexposed faces of the drywall at the exterior walls of the building and the unexposed faces of the drywall of the Unit side abutting partywall or walls dividing the Units from other Units and/or corridors. Vertically each Unit consists of the space between the lower face of the concrete forming the floor (for first-floor units) or the lower face of the subfloor (for second floor Units) and the upper face of the drywall forming the ceiling of such Units. First floor garden apartment units shall also include the concrete which forms the patio adjacent to such Units. Second floor garden apartment units shall include the flooring surface of the balconies which are adjacent to such Units and the railing which is attached to such balconies. Each townhouse unit consists of: (i) the first and second floor area enclosed horizontally by the unexposed faces of the drywall at the exterior

walls enclosing the townhouse portion of such Unit and the unexposed faces of the drywall abutting partywall or walls dividing the Units from other Units and the basement area enclosed horizontally between the interior surface of all walls and the interior surface of all opposite walls. Vertically each Unit consists of the space between the lower face of the concrete, forming the basement floor to the upper face of the drywall forming the second story ceiling of the townhouse portion of such Unit; (ii) the concrete forming the patio and walkway between the townhouse portion and the garage portion of such Unit; (iii) the area enclosed horizontally by the interior surface of the exterior walls enclosing the garage portion of such Unit and the interior surface of the partywall dividing garage units, and the area enclosed vertically from the lower surface of the concrete forming the floor of the garage portion of such Unit to the underside of the roof of the garage portion of such Unit, and (iv) an exclusive easement of use and enjoyment of that portion of the Common Element between the patio, walkway and townhouse portion of such Unit and the garage portion of such Unit.

Included as part of all Units are all windows and doors, including garage doors of Townhouse Units. The Description of the Units set forth herein pertains to the location of the walls, floor and ceilings of the Units as they are finally set forth in the building plans which are filed simultaneously with the Declaration.

Section 4.04. Ownership of Units. Each Unit is owned by one or more parties (hereinafter referred to as the "Unit Owners") with each Unit Owner having fee ownership of the Unit and the appurtenant undivided interest in the "common elements" (see Article V of this Declaration) of the Condominium, all as set forth in Schedule C of this Declaration.

Section 4.05. Use of Units. Each Unit shall:

- (1) be used for dwelling purposes only, except that the garage portion of the townhouse unit may be used for the parking of automobiles and other motor vehicles, and for the storage of personal property and household items. Such storage or other use shall not be such as to preclude the parking of an automobile unless the Owner does not own or otherwise control an automobile on the Condominium Property.
- (2) be resided in by not more persons (including children) than two times the number of bedrooms in the Unit, except that this shall not apply to persons who have a child after they have taken occupancy; and
- (3) if resided in by three or more persons (including children) such persons shall be members of the same family (or if the Unit Owner or lessee is a partnership, a corporation or a trust, members of the family of a partner, director, shareholder, or employee of the corporation or of the beneficiary of the trust, as the case may be). "Same family" shall be defined as persons related to one another as husband, wife, mother, father, sister, brother,

stepsister, stepbrother, daughter, son, stepdaughter, stepson, together with their children. This restriction requiring three or more residents to be members of the same family may be waived by written consent obtained from the Board of Managers prior to occupancy.

The above restrictions shall not be construed to prohibit any occupant of any Unit from entertaining guests of any age including guests who temporarily reside in the Unit for periods of up to two months.

Section 4.06. No Partition of Units. No Unit (including the interest in the common elements appurtenant thereto) shall be subject to partition by the Unit Owner; provided, however, that the foregoing shall not be construed as prohibiting any division or combination of Units as provided in Section 7.01 of this Declaration or any structural alterations or changes in the number of rooms in a Unit upon approval of the Board of Managers as provided for in Article VII of this Declaration.

## ARTICLE V

### COMMON ELEMENTS

Section 5.01. Definition of Common Elements. The common elements of the Condominium will consist of all of the land and improvement of the Condominium Property other than the Units, including, but without limitation, the exterior and party walls, foundations and roofs of Buildings, including the land under the improvements, all utility or other pipes and material located outside of the Units and not owned by public utility companies, walkways, grass areas, driveways, roadways; also garages, carports and storage rooms attached to the Buildings containing garden apartment units, breezeways, and balconies, (excluding flooring and railings) except as such may be defined as part of a Unit and such amenities as to the gatehouse, gazebo, clubhouse, swimming pool, Japanese bridges, and fountains.

Section 5.02. Interest in Common Elements. Each Unit Owner shall have such percentage interest in the common elements as is set forth on Schedule C attached hereto and shall bear such percentage of the common expenses of the Condominium.

The percentage of interest of each Unit in the common elements has been determined in accordance with Section 339-i-1(i) of the New York Condominium Act, in the approximate proportion that the fair value of the Unit at the date of the Declaration bears to the then aggregate fair value of all of the Units. (See Schedule C attached hereto.)

The interest in the common elements as expressed herein shall have a permanent character and shall not be altered without the consent of all Unit Owners affected, as well as their mortgagees, expressed in a duly recorded amendment hereto.

The undivided interest in the common elements shall not be separated from the Unit to which it appertains and shall be deemed conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of an individual interest in the common elements will be void unless the Unit to which that interest is appurtenant is also transferred.

Section 5.03. Eminent Domain. Notwithstanding Section 5.02 above, if a Unit or Units, or the common elements, or any portion thereof is taken by eminent domain, the following shall apply:

- (a) Notification to Eligible Mortgage Holders. The Board of Managers shall give written notice to all Unit Owners and all holders, insurers and guarantors of mortgages in Units whose names appear on the books and records of the Condominium of any notification received by the Board of Managers advising it of a pending or threatened condemnation of any portion of the Condominium Property.
- (b) Action to Contest Condemnation. The Board of Managers shall have the exclusive right to contest any condemnation or eminent domain proceeding which is directed at taking any portion of the common elements or which touches upon, concerns or affects the use of the common elements. No Unit Owner or tenant of a Unit shall impair or prejudice the action of the Board of Managers in contesting such condemnation. Such restriction or prohibition shall not preclude a Unit Owner or tenant of a Unit from contesting the taking in such condemnation or eminent domain proceeding of the Unit owned or rented by such Unit Owner or tenant. In any action contesting a taking by condemnation or eminent domain proceeding, the Board of Managers shall request the court to set forth the allocation of the condemnation award among the Unit Owners affected, taking into account the respective percentage interest in the common elements, the effect of the taking on each Unit affected thereby and any other relevant factors.
- (c) Partition Action in Lieu of Continuation of Condominium After Partial Taking by Condemnation. If any condemnation or eminent domain proceeding results in a partial taking of the Property, then the Property or so much thereof as shall remain shall be subject to an action for partition as provided for by

Section 399-t of the Real Property Law, as said Section may be amended from time to time, in which event the net proceeds of sale, together with the net proceeds of the award from the condemnation or eminent domain shall be considered one fund and 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 such Owner's share all liens on such Owner's Unit.

- (d) Distribution of Condemnation Awards for Taking of Common Elements. Except as provided in (c) above and except for any award obtained by a Unit Owner for the Unit as further provided in (b) above, in the event that all or part of the common elements are taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to an insurance trustee (bank, trust company, law firm or attorney) selected by the Board of Managers if the award is more than \$100,000.00 and to the Board of Managers if the award is \$100,000.00 or less. (This \$100,000.00 limit shall automatically increase each calendar year by 5% over the limit of the previous year.) The Board of Managers or the insurance trustee, as the case may be, shall arrange for the repair, restoration or replacement of such common elements to the extent reasonably possible, and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments.

If there shall be a surplus of such proceeds or if the Board of Managers or insurance trustee cannot reasonably repair, restore or replace the common elements taken, the proceeds shall be distributed among the Unit Owners and the percentage interests in the common elements of the Condominium reallocated among the remaining Units (i) as the court shall have directed, or (ii) as provided in (e) below, (i.e., if there was no direction by the court), taking into account the respective percentage interests in the common elements of the Units affected thereby, the effect of the taking on each Unit affected thereby after the completion of any repair, restoration or replacement by the Board of Managers or insurance trustee and any other relevant factors. Any court direction as to such distribution shall be final. Any Unit Owner or tenant who wishes to contest a determination by the Board of Managers may do so by submitting the matter to the American Arbitration Association for a determination of a fair and proper distribution, or reallocation of percentage interests in the common elements, as the case may be, which shall be binding on the Board of Managers, and on all Unit Owners and tenants. The cost of such arbitration shall be borne solely by the Unit Owner or tenant submitting the matter for arbitration.

After any determination for reallocation of percentage interests in the common elements, the Unit Owners shall promptly prepare, execute and record an

amendment to the Condominium Declaration reflecting such reallocation, which said Amendment need only be executed by Unit Owners affected and by a majority of the Board of Managers.

- (e) Partial or Total Taking of Units. Subject to the direction of any court as described in (d) above, if an entire Unit is so taken, or if part of a Unit is taken such that the remaining portion may not be practically or lawfully used for any purpose permitted by this Declaration, that Unit's entire interest in the common elements shall be automatically reallocated to the remaining Units in proportion to the respective common element interests of those Units before the taking. If part of a Unit is so taken, such that the remaining portion may be practically and lawfully used for a purpose permitted by this Declaration, that Unit's interest in the common elements shall be reduced in proportion to the reduction and size of the Unit in a manner consistent with the manner in which common element interests were originally determined under Section 5.02 above; the portion of the interest in the common elements so divested shall be automatically reallocated to that Unit and to the remaining Units in proportion to the respective common element interests of those Units before the taking, with the partially-taken Unit participating in the reallocation on the basis of its reduced interest in the common elements.
- (f) Condemnation Provisions Subject to Existing Law. All provisions of this Section 5.03 are subject to interpretation in accordance with the law in effect at the time of any condemnation or eminent domain proceeding. Should all or any portion of the provisions of this Section 5.03 be deemed illegal at such time, the distribution of proceeds, rights with respect to partition and allocation of percentage interests in the common elements after a partial taking, shall be as a court of law shall determine.

Section 5.04. Common Elements to Remain Undivided. The common elements shall remain undivided and no Unit Owner shall bring any action for partition or division unless otherwise provided by law and unless consented to by all holders of first mortgages on the Units.

Section 5.05. Abandonment, Encumbrance, Conveyance or Transfer of Common Elements. The common elements shall not be abandoned, encumbered, conveyed, or transferred without the consent of all the Unit Owners, who shall vote upon written ballot which shall be sent to every Unit Owner not less than 30 days nor more than 50 days in advance of the date or initial date of the canvass for voting on the proposed abandonment, encumbrance, conveyance or transfer. Any such abandonment, encumbrance, conveyance or transfer shall require the Consent of Eligible Mortgage Holders of 51% or more of the Units subject to mortgages held by Eligible Mortgage Holders.

Notwithstanding the foregoing, the Condominium Board of Managers shall have the power to grant easements, rights of way or licenses for utilities or other similar services (e.g., cable television) across the common elements, with or without consideration.

Section 5.06. Restricted or Limited Common Elements. Subject to the right of the Board of Managers to enter upon any restricted area for maintenance, repair or improvement of a Unit or common element and subject to the rules of the Board of Managers (see Article VI of this Declaration) the following portions of the common elements are restricted in use as specified below:

- (a) The land which is located directly beneath each Unit or portion of a Unit is restricted in use to the Owner of the Unit located above it.
- (b) The halls, stairs and stairwells in each building containing garden apartment units are restricted to the owners of the Units in that Building.
- (c) In each building containing garden apartment units, the attached parking garages, carports and storage rooms are restricted in use to the owner of the apartment Unit to whom they are assigned. One parking space and one storage room is assigned to each Unit.
- (d) In the townhouse buildings, the area between the residential portion of the Unit and garage portion of the Unit, is restricted in use to the owner of the Unit.
- (e) The ground area, or roof area of garages, or carports, on which is located or at any time in the future is located, any air conditioning condenser or heat pump, is restricted or limited in use to the Owner(s) of the Unit which is serviced by such air conditioning condenser or heat pump.

## ARTICLE VI

### THE CONDOMINIUM PROPERTY - USE, OPERATION, PRESERVATION, MAINTENANCE AND REPAIR

6.01. Repairs and Maintenance Which Are the Responsibility of the Board of Managers. Unless (i) otherwise provided for in this Declaration or the By-Laws of the Hickory Hill Estates Condominium, or (ii) performed by any governmental entity or independent authority, all maintenance, repairs and replacement to the common elements of the Property shall be made by the Board of Managers. This includes but is not limited to common hallways, landscaped areas, (except landscaping located between the residential portion and garage portion of a townhouse unit), driveways, exterior walls, roofs, balconies (except for flooring and railings, except that Board of Managers will paint railings

on balconies), walks and perimeter fences, all exterior lighting including light bulbs, (excluding patio lighting on Townhouse Units), as well as all maintenance, repairs and replacements to any pipes, wires, conduits and utility lines as are located in the common elements, (except those pipes, wires and conduits that service heating and air conditioning systems and sump pumps). However, maintenance, repairs and replacements of utility lines, pipes, wires and conduits, wherever they are located, that service more than one (1) unit will be the responsibility of the Board of Managers. The cost of all such maintenance, repairs and replacements shall be a common expense unless occasioned by a negligent or willful act or omission as provided in Section 6.02 below. The Board of Managers shall maintain security systems installed in the individual apartment building common elements; however, pursuant to Section 5.01 of the By-Laws, the cost of said maintenance shall be the responsibility of the Owners in the apartment building served.

**6.02. Repairs and Maintenance Which Are the Responsibility of the Unit Owners.**

All maintenance (including painting and decorating of the Units), repairs, and replacements to the Units including windows (including all glass breakage), doors (except painting of the exterior surface of windows and doors which open from a Unit and balcony railings, which painting is the responsibility of the Board of Managers), and maintenance and repairs of storage areas (including doors and locks) restricted in use to designated Unit Owners, balcony floors and railings or patios, and awnings and supports which abut and service a Unit. Maintenance and repairs to pipes, wires, conduits, which service only one Unit and are located in the Unit, shall be made by the respective Unit Owners at their own expense. Maintenance and repairs to heating, air conditioning systems and sump pumps, no matter where they are located, shall be made by the respective Unit Owners at their own expense.

Townhouse garage doors (except painting), tracks, and openers shall be maintained by the Unit Owner who uses said garage. Apartment Unit Owners are responsible for maintaining their own garage door openers.

The Owner(s) of any Unit having a working fireplace shall be responsible, at such Owner's sole cost and expense, to have such fireplace serviced and cleaned by a contractor approved by the Board of Managers/Managing Agent.

All Townhouse Unit Owners are responsible for maintaining fences adjacent to their patios in accordance with schedule on file in management's office.

Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above but which is occasioned by a negligent or willful act or omission of a Unit Owner, (including any family member, or tenant, or employee of such Unit Owner, or any guest or invitee of such Unit Owner, member of such Unit Owner's family or tenant of such Unit Owner) shall be made at the cost and expense of such Unit Owner. If such maintenance, repair or replacement is the responsibility of the Board of Managers, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Unit and such cost shall be added to that Unit Owner's common charges and, as part of those common charges, shall constitute a lien on the Unit to secure the payment thereof.

In the event that a Unit Owner fails to make any maintenance or repair, which maintenance or repair is necessary to protect any of the common elements or any other Unit, the Board of Managers shall have the right to make such maintenance or repair (after the failure of the Unit Owner to do so, weather permitting, after reasonable notice, except that, in the event of an emergency situation, e.g., to prevent immediate damage to the Unit, other Units or the common elements, no notice), and to charge the Unit Owner for the cost of all such repairs and/or maintenance. In the event that the Board of Managers charges a Unit Owner for repairs or maintenance to such Unit Owner's Unit or for repairs to any common element and which the Unit Owner is obligated to maintain pursuant to these By-Laws or the Declaration or Rules and Regulations, and the Unit Owner fails to make prompt payment, the Board of Managers shall be entitled to bring suit thereon, and, in such event, the Unit Owners shall be liable for the reasonable attorneys' fees and costs of such suit or proceeding together with interest on all sums due.

6.03. Quality of Maintenance and Repairs. All repairs, painting and maintenance, whether made by the Unit Owner or by the Board of Managers to the doors, windows (including window grids), or the exterior surface of any Building, including roofs, or to any generally visible portion of the common elements shall be carried out in such manner so as to conform to the materials, style and color of the materials as they existed prior to such repair, painting or maintenance and shall be compatible with the architectural design of the Building(s), unless the Board of Managers authorizes a variance of such standard.

6.04. Right of Access. The Board of Managers and/or the managing agent and/or any other person authorized by the Board of Managers, the manager or the managing agent, shall have a right of access to the Units and common elements, for the purpose of correcting any condition originating in a Unit and threatening another Unit or a common element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other common elements in a Unit or elsewhere in the Building, or to correct any condition which violates the provisions of any mortgage covering another Unit, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Unit Owner, except that, in case of an emergency, e.g., to prevent immediate damage to the Unit, other Units or the common elements, such right of entry may be immediate, without notice and without regard to whether the Unit Owner is present at the time or not.

6.05. Restrictions on Use of Units and Common Elements. In order to provide for congenial occupancy of the Property and for the protection of the values of the Units, the use of the Property shall be in accordance with the following:

- (a) Occupancy shall be limited to residential purposes only and subject to such limitations as to number of occupants, etc. as set forth in the Declaration;

- (b) The common elements shall be used only for the furnishing of the services and facilities for which they are reasonably suited and capable and which are incident to the use and occupancy of the Units.
- (c) No nuisances shall be allowed on the Property nor shall any use or practice be allowed which is a source of annoyance to its residents or occupants or which interfere with the peaceful possession or proper use of the Property by its residents or occupants.
- (d) No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Violations of laws, ordinances, rules, regulations or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be complied with by and at the sole expense of the Unit Owners or the Board of Managers, whichever shall have the obligation to maintain or repair such portion of the Property.
- (e) No portion of a Unit (other than the entire Unit) may be rented, and no transient tenants, *i.e.*, tenants occupying the premises under an initial lease term of less than six (6) months, may be accommodated therein.
- (f) Garages may only be used for parking of automobiles or other motor vehicles, and for the storage of personal property and household items in the storage closet area only (in the apartment buildings).
- (g) Carports may only be used for parking of automobiles and also trucks owned or used by Hickory Hill Estates Condominium.

6.06. No Obstruction of Common Elements and Facilities. A Unit Owner shall not obstruct the common elements. The common elements and facilities shall be used only for those purposes for which they are reasonably suited and capable.

6.07. Rules of Conduct. Rules and regulations concerning the use of the Units and the common elements may be promulgated and amended by the Board of Managers. Copies of such rules and regulations shall be furnished by the Board of Managers to each Unit Owner prior to the time when the same shall become effective. Initial rules and regulations, which shall be effective until amended by the Board of Managers, are annexed to the By-Laws of the Condominium.

6.08. Abatement and Enjoinment of Violations. The violation of any rule or regulation adopted by the Board of Managers, or the breach of any provision of this Declaration or of the By-Laws of the Condominium, shall give the Board of Managers (and each aggrieved Unit Owner with respect to any violation or breach by any other Unit Owner or by the Board of Managers) the right, in addition to any other rights set forth in this Declaration or in the By-Laws of the Condominium: (a) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity and at the expense of the defaulting

party, the continuance of any such breach; or (b) give the Board of Managers the right to establish a penalty in accordance with Section 6.10 below. Prior to exercising such right, the Board of Managers or Unit Owner or Owners, as the case may be, shall, if reasonably possible, notify the Owner and mortgagee (if known) of the Unit or Units involved and provide a reasonable amount of time for the cure of such violation or breach. In any case of flagrant or repeated violation by a Unit Owner (or one for whom such Unit Owner is responsible), such Owner may be required by the Board of Managers to give sufficient surety for future compliance.

All rights, remedies and privileges granted to the Board of Managers and to aggrieved Unit Owners herein shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising such right or rights from exercising such other and additional rights, remedies or privileges as may be granted by this Declaration, or by the By-Laws or the Rules and Regulations of the Condominium at law or in equity.

6.09. Obligation and Lien for Cost of Enforcement. If an action or other means of enforcement are brought to extinguish a violation of any rule or regulation adopted by the Board of Managers or to enforce the provisions of this Declaration or of the By-Laws of the Condominium, the cost of such action or enforcement, including legal fees, shall become a binding personal obligation of the violator. If such violator is (1) the Unit Owner, or (2) any family member, tenant or guest or invitee of such Unit Owner, or (3) a family member, guest or invitee of a tenant of such Unit Owner, or (4) a guest or invitee of (i) any member of such Unit Owner's family or (ii) any family member of the tenant of such Unit Owner; such cost shall also be a lien upon the Unit or Units of such Unit Owner.

6.10. Penalties and Fines. In addition or as an alternative to an action at law or suit in equity, the Board of Managers may, with respect to any violation of this Declaration or of the By-Laws or of any Rules and Regulations of the Condominium or of any committee of the Condominium, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary and non-monetary penalties, the amount and severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against a Unit Owner or occupant shall be deemed an assessment against the Unit of such Owner and, as such, shall be a charge and continuing lien upon such Unit, shall constitute a personal obligation of the Unit Owner, and shall be collectible in the same manner as common charges and special assessments under this Declaration or under the By-Laws of the Condominium.

6.11. Owner Responsible for Tenants. Any lease of a Unit shall be for an initial term of not less than six (6) months and shall include an addendum in such format as supplied and approved from time to time by the Board of Managers. Such addendum shall provide for full compliance by the tenant with this Declaration and with the By-Laws and Rules and Regulations of the Condominium.

## ARTICLE VII

### ALTERATION OF UNITS OR COMMON ELEMENTS

Section 7.01. Increases and Decreases in Size and Number of Units. Any Unit Owner or Owners shall have the right to divide or combine Units owned by such Unit Owner or Owners, so long as (i) the common interest appurtenant to such Units after such division or combination shall equal in total the common interest applicable to the Unit or Units divided or combined prior to such division or combination; (ii) the written consent of the Board of Managers is obtained pursuant to Sections 7.04 through 7.08 of this Declaration; (iii) such proposed division or combination is in all respects lawful under the terms and provisions of the Real Property Law of the State of New York in effect at the time of the division or combination; (iv) such division or combination is in compliance with all governmental laws, codes, ordinances and regulations, and (v) the written consent of any mortgage of the divided or combined Unit is obtained. Among the factors to be considered by the Board of Managers in determining whether or not to consent to such division or combination are adequacy of the size, shape and location of all Units after such division or combination, the structural soundness of the Building during and after the performance of the necessary improvements, and any other factors which may affect the appearance or value of the Building, or which are set forth in Section 7.04 hereof. The costs of any such division or combination shall be the sole responsibility of the Owner or Owners of the Units being divided or combined. Any such division or combination shall become effective upon the recording in the Recording Office of an amendment to this Declaration (which amendment shall include, as appropriate, any necessary changes to the text of this Declaration and to any plot plan or site plan attached hereto or filed with this Declaration), executed by the Board of Managers and by the Owners and mortgagees of the Unit or Units so divided or combined, together with the filing of floor plans of the Unit or Units as divided or combined with the certification by tax authorities of tax lot numbers conforming to the new Unit or Units.

Section 7.02. Structural Alterations to Units Require Approval of Board of Managers. No structural alterations shall be made to a Unit which would impair the structural soundness of any Unit or Building or which would cause an adverse material effect on the exterior appearance or value of the Building in which the Unit is located without the written approval of the Board of Managers, obtained as provided in Sections 7.04 through 7.08 of this Declaration.

Section 7.03. Alteration and Improvement of Common Elements.

a. By Board of Managers. The Board of Managers shall have the right, at its option, to make or cause to be made such alterations and improvements (not repair or maintenance) to the common elements as, in its opinion, may be beneficial or necessary or which are requested in writing by a Unit Owner(s) and the holders of the first mortgages thereon, subject however to the requirement that, if the alteration or improvement shall cost

more than 25% of the then current estimated annual budget of the Condominium (including reserves), such alteration or improvement (not repair or maintenance) shall be approved by 67% in number and in common interest of the Unit Owners, voting at a meeting duly called pursuant to the By-Laws. Such expenses shall constitute common expenses. Alterations or improvements costing less than 25% of the Condominium's then current estimated annual budget may be made by the Board of Managers and the cost thereof shall constitute a part of the common expenses. Before undertaking such work, the Board of Managers may require the consent in writing of such Unit Owners and the Consent of Eligible Mortgage Holders whose rights, in the sole opinion of the Board, may be prejudiced by such alteration or improvement. In all cases of alteration or improvement, the Board of Managers shall comply fully with all governmental codes, laws, ordinances and regulations, including the terms and provisions of the Real Property Law of the State of New York in effect at the time of the proposed alteration or improvement.

b. By Unit Owners. When the alteration or improvement to the common elements is pursuant to a combination or division of Units requested by the Owner or Owners of such Units, it shall be governed by Section 7.01 of this Declaration.

Section 7.04. Submission of Plans to Board of Managers; Approval. Any addition, alteration or improvement to the Units or common elements proposed by a Unit Owner pursuant to Sections 7.01 through 7.03 above shall require that a plan or plans therefor, in such form as the Board of Managers may require, be submitted to, reviewed and approved by the Board of Managers. The Board of Managers may charge and collect a reasonable fee for the examination of plans submitted for approval, including any fees which may be charged by architects, engineers or attorneys retained by the Board of Managers in connection with the review of such plans.

The Board of Managers may adopt simplified review procedures for any such additions, alterations or improvements which it shall deem minor or for which the submission of plans is not necessary.

The Board of Managers may disapprove such plans for any of the following reasons:

- (a) failure of such plans to comply with any protective covenants, conditions and restrictions contained in the Declaration, By-Laws, Rules or Regulations;
- (b) failure to include information in such plans as requested;
- (c) objection to the exterior design, appearance or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture;
- (d) incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;

- (e) failure of proposed improvements to comply with any zoning, building, health, or other governmental laws, codes, ordinances, rules and regulations, including the Real Property Law of the State of New York;
- (f) any other matter which in the judgment and sole discretion of the Board of Managers would render the proposed improvements, use or uses inharmonious or incompatible with the general plan of improvement of the Condominium, including any possible adverse impact on the use and enjoyment of the Property by any other Unit Owner(s).

Upon approval or qualified approval by the Board of any plans submitted pursuant to this Section, the Board of Managers shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualifications or conditions, if any), and, if requested by the applicant, shall provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to the common elements or to any Unit shall be final as to such alterations, modifications or improvements and such approval may not be revoked or rescinded thereafter provided (i) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in the Declaration, By-Laws or Rules and Regulations, and (ii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, health or other code or ordinance, including the Real Property Law of the State of New York. Approval of any such plans shall not be deemed a waiver of the right of the Board of Managers to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use by other Unit Owner(s).

Section 7.05. Written Notice of Disapproval. In any case where the Board of Managers disapproves any plans submitted hereunder, the Board of Managers shall so notify the applicant in writing, together with a statement of the grounds upon which such action was based. In any such case, the Board of Managers shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 7.06. Failure of Board of Managers to Act. If any applicant has not received notice from the Board of Managers, approving or disapproving any plans within 40 days after submission thereof, said applicant may notify the Board in writing of that fact. Such notice shall be sent by certified mail, return receipt requested. The plans shall be deemed approved by the Board 15 days after the date of the receipt of such second notice, if no decision is rendered by the Board of Managers within said 15-day period.

Section 7.07. Board of Managers' Right to Promulgate Rules and Regulations. The Board of Managers may from time to time promulgate rules and regulations governing the

form and content of plans to be submitted for approval or with respect to the approval or disapproval of certain types of alterations, modifications, or improvements to the common elements or Units; provided, however, that no such rule or regulation shall be deemed to bind the Board of Managers to approve or disapprove any plans submitted for approval, or to waive the exercise of the Board's discretion as to such plans; and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration, By-Laws, or any applicable governmental law, code, ordinance, rule or regulation.

Section 7.08. Applications for Permits; Indemnification and Insurance. Any application to any governmental authority to make an installation, addition, alteration or improvement to the common elements or any Unit shall be executed by the Board of Managers only; provided, however, that applications for any such installation, addition, alteration or improvement proposed by a Unit Owner pursuant to Sections 7.01 through 7.03 above shall be at the sole cost and expense of such Unit Owner; and provided further that this Article VII shall in no case be construed to result in the Board of Managers incurring any liability whatsoever to any Unit Owner, contractor, subcontractor, supplier of material, architect or engineer on account of such installation, addition, alteration or improvement proposed by a Unit Owner, or to any person having any claim for injury to person or property arising therefrom, and such Unit Owner agrees to indemnify and forever hold the Board harmless for any liability or expenses incurred by the Board in connection therewith, including reasonable attorney's fees.

In connection with any installation or work done by a Unit Owner, the Board of Managers may require that the Unit Owner obtain such insurance coverages and/or completion bonds, and in such amounts, as the Board of Managers deems proper. In the event that the Board of Managers deems it is necessary to expend funds either to complete work previously commenced by a Unit Owner or to otherwise protect the appearance, value or structural integrity of the Condominium, such amounts shall become a binding personal obligation of the Unit Owner involved and a lien against the Unit.

Section 7.09. Liability of Board of Managers. No action taken by the Board of Managers or any member, subcommittee, employee or agent thereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Building or other portion of the Property. Neither the Condominium, nor the Board of Managers, nor any member, subcommittee, employee or agent thereof shall be liable to anyone submitting plans to them for approval nor to any Unit Owner, or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. Every person or other entity submitting plans to the Board of Managers agrees, by submission of such plans, that no action or suit will be brought against the Condominium or the Board of Managers (or any member, subcommittee, employee or agent thereof) in connection with such submission.

## ARTICLE VIII

### EASEMENTS

Section 8.01. Unit Owner's Access to Unit. Each Unit Owner shall have a right of ingress and egress over the common element areas to such Owner's Unit subject to the reasonable Rules and Regulations which the Board of Managers of the Condominium may impose from time to time.

Section 8.02. Utilities, Pipes and Conduits. Each Unit Owner shall have such easement of access to other Units and to the common elements, and each Unit shall be subject to such easements, as is reasonably necessary for such Unit Owner to maintain, repair and replace, as necessary, such Owner's Unit including, if any, pipes, wires and conduits running from the meters or equipment servicing such Unit to the Unit. Each Unit Owner shall also have an easement in common with the Owners of all other Units to use, in accordance with present use and present available facilities, all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other Units and serving the Unit or Units of such Unit Owner. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use in accordance with present use and present available facilities, the pipes, wires, ducts, cables, wires, conduits, public utility lines and other common elements serving such other Units and located in such Unit.

Section 8.03. Access of Board of Managers. The Board of Managers, its agents, contractors and employees, shall have an easement and right of access to each Unit and to the common elements for the purpose of (i) making inspections; (ii) removing violations of the Declaration or By-Laws or Rules and Regulations of the Condominium therefrom; (iii) correcting any condition originating in a Unit and threatening another Unit or a common element; (iv) performing installations, alterations or repairs to the mechanical or electrical services or other common elements in a Unit or elsewhere; (v) correcting any condition which violates the provisions of any mortgage covering another Unit; (vi) making any maintenance or repair which, pursuant to the Condominium's By-Laws or Rules and Regulations, an Owner is required to make and which such Owner has failed to make after 10 days' written notice; (vii) complying with any laws, orders, rules or regulations of any governmental body having jurisdiction thereof; or (viii) maintaining, repairing, or replacing the common elements or any pipe, wire, duct, cable (e.g., coaxial cable for cable television) conduit or utility line located in any Unit or the common elements and servicing two (2) or more Units. The cost of such maintenance, repairs, improvements or replacements shall be a common expense, except as provided in Section 6.02 of this Declaration. The Board of Managers shall have a right of access to all common elements (irrespective of the restricted nature of such common elements) to remove violations and for inspection, maintenance, repair or improvement. The rights of access shall be exercised (unless in an emergency) at reasonable hours and upon reasonable notice to the Unit Owner involved. In the case of any emergency, the right of access shall be immediate, regardless of the presence of the Owner of the Unit involved.

Section 8.04. Easement for Encroachments. If any portion of a Unit or the common elements (whether restricted in use to an individual Unit Owner or not) encroaches or shall hereinafter encroach upon another Unit or the common elements as a result of: (i) the original construction or settling or shifting of the Buildings, or (ii) any repair or restoration by the Board of Managers of a Building, any Unit or the common elements, or (iii) any construction after a partial or total destruction as a result of a fire or other casualty or as a result of condemnation or eminent domain proceedings, a valid easement for the encroachment and the maintenance of the same shall and does exist. Such easements as provided in this Section shall exist so long as the Building in which any such encroachment exists shall stand.

Section 8.05. Easements of Necessity. Each Unit shall have and each Unit shall be subject to all easements of necessity in favor of such Unit or in favor of other Units and the common elements.

## ARTICLE IX

### VOTING RIGHTS

Section 9.01. Voting Rights. For all voting purposes except for amendment or termination of this Declaration as provided in Article XIII below, at any meeting of the Unit Owners, the Owners of Units shall have one (1) vote for each Unit owned.

## ARTICLE X

### COMMON CHARGES - ALLOCATION, LIEN AND LIABILITY

Section 10.01. Allocation and Commencement of Common Charges. Except as otherwise permitted in this Article or the By-Laws, common expenses shall be charged by the Board of Managers to the Unit Owners according to their respective percentage interests in the common elements. The common profits of the Property, after offsetting the common expenses relating to the common elements and making due allowance for the retention of funds to cover future common expenses, shall be distributed among the Unit Owners in the same manner.

Section 10.02. Common Charges - Personal Obligation of Unit Owner and Lien on Unit. The common charges shall be paid when due. All sums assessed as common charges by the Board of Managers of the Condominium, but unpaid, together with any accelerated installments, late charges as may be established by the Condominium By-Laws, interest thereon at such rate as may be fixed by the Board of Managers from time to time, such rate not to exceed the maximum rate of interest then permitted by law, and attorneys' fees and other costs and expenses incurred in efforts to collect such past due assessments, shall be the

personal obligation of the Unit Owner and, to the extent permitted by law, shall constitute a lien upon the Unit prior to all other liens except: (i) tax or assessment liens on the Unit by the taxing subdivision of any governmental authority, including but not limited to State, County, Town and School District taxing agencies and (ii) all sums unpaid on any first mortgage of record encumbering the Unit and which is held by an Institutional Mortgagee as defined in Section 2.01 of this Declaration.

A purchaser of a Unit shall be liable for the payment of unpaid common charges assessed against such Unit prior to such purchaser's acquisition, except that a mortgagee or other purchaser who acquires title at a foreclosure sale, or an Institutional Mortgagee who acquires title to a Unit by a deed in lieu of foreclosure, shall not be liable for, and such Unit shall not be subject to, a lien for the payment of common charges against such Unit, and which became due prior to such acquisition of title. In such event, the unpaid balance of common charges shall be charged to all other Unit Owners as a common expense.

Except as provided above, in the case of any conveyance of a Unit either by voluntary instrument, operation of law or judicial proceeding in accordance with this Declaration or the By-Laws of the Condominium, the grantee of the Unit shall be jointly and severally liable with the former Unit Owner for any unpaid common charges against the Unit assessed and due up to the time of the grant or conveyance without prejudice to the grantee's right to recover from the former Unit Owner the amounts paid by the grantee therefor. "Grantee" as used herein shall not include either an Institutional Mortgagee or a purchaser of a Unit at a foreclosure sale of a mortgage held by an Institutional Mortgagee. No Unit Owner shall be liable for the payment of any common charges accruing subsequent to a sale, transfer or other conveyance by such Owner of the Unit made in accordance with applicable laws or the provisions of this Declaration and the By-Laws of the Condominium.

No Unit Owner may be exempt from liability for payment of common charges assessed against such Owner's Unit by waiver of the use or enjoyment of any of the common elements or by the abandonment of the Unit. Dissatisfaction with the quantity or quality of maintenance furnished to the Property shall not be grounds for the withholding or failure to pay any common charge or special assessment.

## ARTICLE XI

### BOARD OF MANAGERS

Section 11.01. Board of Managers. The affairs of the Condominium shall be governed and controlled pursuant to the Condominium By-Laws (attached hereto as Schedule E and made a part hereof) by a Board of Managers who shall be elected and serve and shall have the duties and powers as provided in the By-Laws.

Section 11.02. Administration. The administration of the Condominium Property, including the Buildings and land (the "Property") described herein shall be in accordance with the provisions of this Declaration and with the provisions of the By-Laws of the Condominium.

Section 11.03. Power of Attorney to Board of Managers. Each Unit Owner shall grant to the persons who shall from time to time constitute the Board of Managers, an irrevocable power of attorney, coupled with an interest, to acquire title to or lease any Unit whose Owner desires to surrender, sell or lease the same, or which may be the subject of a foreclosure or other judicial sale, or any other Unit, in the name of the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners, and to convey, sell, lease, mortgage, vote the votes appurtenant thereto or otherwise deal with any such Unit so acquired or to sublease any Unit so leased by the Board of Managers.

Section 11.04. Acquisition of Units by Board of Managers. In the event (a) any Unit Owner shall surrender such Owner's Unit, together with (i) the undivided interest in the common elements appurtenant thereto; (ii) the interest of such Unit Owner in any other Units acquired by the Board of Managers or its designee on behalf of all Unit Owners or the proceeds of the sale, or lease thereof, if any; and (iii) the interest of such Unit Owner in any other assets of the Condominium (hereafter collectively called the "Appurtenant Interests") pursuant to the provisions of Section 339-x of the Real Property Law of the State of New York, or (b) the Board of Managers shall purchase at a foreclosure or other judicial sale, or in any other manner acquire, a Unit together with the Appurtenant Interests, title to any such Unit, together with the Appurtenant Interests shall be held by the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners, in proportion to their respective common interests. The lease covering any Unit leased by the Board of Managers, or its designees, on behalf of all Unit Owners, shall be held by the Board, or its designee, on behalf of all Unit Owners in proportion to their respective common interests.

Section 11.05. Right to Grant Permits, Licenses and Easements. Notwithstanding anything to the contrary which may be contained in this Declaration, the Board of Managers shall have the right to grant permits, licenses and easements over the common element areas for utilities, roads, and other purposes necessary for the proper operation of the Property.

## ARTICLE XII

### OBLIGATIONS, RESPONSIBILITIES COVENANTS, AND RESTRICTIONS

Section 12.01. All Owners, Tenants and Occupants Subject to Condominium Documents Which Run With the Land. All present or future Unit Owners, tenants, occupants, or any other person that might use the Units or the facilities of the Property in any manner, are subject to the provisions of this Declaration, the By-Laws and Rules and

Regulations of the Condominium as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease, or the entering into of occupancy of any Unit shall signify that the provisions of this Declaration and the By-Laws and Rules and Regulations of the Condominium are accepted and ratified by such Owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Units, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof.

Section 12.02. Units to be Properly Maintained. Unit Owners shall maintain their Units in good repair and overall appearance.

Section 12.03 Mortgages on Units. Any Unit Owner who mortgages such Owner's Unit shall promptly provide the Board of Managers with the name and address of the mortgagee.

Section 12.04 Notice to Mortgagees. The Board of Managers shall give such written notice to the holders of mortgages encumbering Units as is required by various provisions of this Declaration or of the Condominium By-Laws to those mortgagees which have notified the Board of Managers of their name and address or which have caused the mortgagor/Unit Owner to give such notice.

Section 12.05. No Nuisances. No nuisances shall be allowed upon the Property nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the Property by its residents.

Section 12.06. No Immoral or Unlawful Use. No immoral, improper, offensive or unlawful use shall be made of the Property nor any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

Section 12.07. Obligation to Maintain Utility Services. Regardless of whether the Unit is occupied, the owner thereof shall be obligated to maintain sufficient utility service to prevent damage to other Units or to the common elements. If such service is not maintained by the Owner, the Board of Managers shall have the right to immediately arrange for such service, upon such notice to the Owner as is practical under the circumstances and without notice in emergency situations. If such service must be arranged by the Board of Managers, any costs incurred shall be collectible in the same manner as common charges and shall constitute a lien on the Unit involved and a personal obligation of the Unit Owner(s).

Section 12.08. Rules and Regulations. Rules and regulations promulgated by the Board of Managers concerning the use of the Property shall be observed by the Unit Owners, provided, however, that copies of such rules and regulations are furnished to each Unit Owner prior to the time the said rules and regulations become effective.

## ARTICLE XIII

### AMENDMENT AND TERMINATION

Section 13.01 Amendment. Except as otherwise provided in this Declaration, this Declaration may be modified, altered, amended or added to at any duly called meeting of Unit Owners provided that:

- a. Notice of the meeting containing a full statement of the proposed modification, alteration, amendment or addition has been sent to all Unit Owners and to all Eligible Mortgage Holders at least 30 days and not more than 50 days prior to the date set for said meeting; and
- b. 67% or more in number and in common interest of all Unit Owners approve the change; and
- c. The Board of Managers does not, prior to the date established for voting on the proposed change, receive written notification of opposition to the change from Eligible Mortgage Holders of 51% or more of the number of Units subject to mortgages held by Eligible Mortgage Holders; and
- d. An instrument evidencing the change is duly recorded in the Recording Office. Such instrument need not contain the written consent of the required number of Unit Owners, but shall contain a certification by the Board of Managers of the Condominium that the consents required by this Section for such change have been received and filed with the Board of Managers.

Section 13.02. Termination. The Condominium shall not be terminated or abandoned except as provided for by law. In addition to any requirement by law, termination shall require the consent of at least 67% of all Unit Owners in number and in common interest and the consent of Eligible Mortgage Holders of at least 67% in number and in common interest of all Units subject to mortgages held by Eligible Mortgage Holders.

Section 13.03 Amendment by Board of Managers to Correct Errors. Notwithstanding Section 13.01 above, the Board of Managers may make amendments to this Declaration and By-Laws to correct omissions or errors, which amendments shall not adversely modify substantial rights of any Unit Owner or Eligible Mortgage Holder without the written permission of such Unit Owner or Eligible Mortgage Holder.

## ARTICLE XIV

### GENERAL

Section 14.01. Service of Process. Service of process on the Unit Owners in any action with relation to the common elements shall be made upon: Board of Managers of Hickory Hill Estates Condominium, 5 Homer Lane, Williamsville, New York 14221.

Section 14.02. Notices. All notices hereunder shall be in writing and sent, unless otherwise specifically provided in this Declaration, by mail by depositing same in a post office or letter box in a postpaid sealed wrapper, addressed, if to go to the Board of Managers, at the office of the Board of Managers, and if to go to a Unit Owner or Unit Mortgagee, to the address of such Unit Owner or mortgagee at such address as appears on the books of the Condominium. Notwithstanding the above, all notices to Eligible Mortgage Holders shall be sent by certified or registered mail, return receipt requested, and if such notice includes a request for consent, shall include the statement that the failure to object to the requested consent within 30 days shall be deemed a consent. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received. Whenever any notice is required to be given under the provisions of this Declaration, or of the By-Laws of the Condominium, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

Section 14.03. Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

Section 14.04. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 14.05. Captions. The captions herein are inserted only as a matter of convenience and reference, and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof.

Section 14.06. Gender. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender whenever the context so requires.

IN WITNESS WHEREOF, the Owners have caused this Declaration to be executed as indicated on Schedule D to this Declaration.

HICKORY HILL-1

## SCHEDULE A

### DESCRIPTION OF CONDOMINIUM PROPERTY

ALL THAT TRACT OR PARCEL OF LAND in the Town of Amherst, County of Erie and State of New York

Being part of Lot 49, Township 12, Range 7 of the Holland Land Company's Survey, being more particularly bounded and described as follows:

COMMENCING at a point in the south line of Lot 49 at the intersection of the west line of lands described in a deed recorded in the Erie County Clerk's Office in Liber 6090 of Deeds at Page 8;

running thence (1) north along the said west line of Liber 6090 of Deeds at Page 8, 822.00 feet to the true point of beginning;

running thence (2) westerly and parallel with the south line of Lot 49, 558.13 feet to a point located on the southeasterly highway of boundary of Oakbrook Drive, as it appears on Map Cover 2348;

running thence (3) northeasterly at an interior angle of  $73^{\circ} 43' 36''$  along said southeasterly highway boundary of Oakbrook Drive, 208.52 feet to a point located on the northerly highway boundary of Oakbrook Drive;

running thence (4) west, at an interior angle of  $286^{\circ} 28' 52''$  along said northerly highway boundary of Oakbrook Drive, 256.38 feet to a point;

running thence (5) northwesterly at an interior angle of  $100^{\circ} 41' 51''$ , 101.50 feet to a point;

running thence (6) north at an interior angle of  $169^{\circ} 12' 41''$ , and parallel with the west line of Liber 7092 of Deeds at Page 117, 668.94 feet to a point;

running thence (7) southeasterly at an interior angle of  $74^{\circ} 38' 00''$ , 750.23 feet to a point;

running thence (8) north at an interior angle of  $285^{\circ} 27' 28''$ , 134.88 feet to the southwesterly highway boundary of Oakbrook Drive;

running thence (9) southeasterly at an interior angle of  $74^{\circ} 32' 32''$  along said southwesterly highway boundary of Oakbrook Drive, 51.88 feet to the west line of Liber 6090 of Deeds at Page 8;

running thence (10) south at an interior angle of  $105^{\circ} 27' 28''$  along said west line of Liber 6090 of Deeds at Page 8, 891.68 feet to the true point or place of beginning.

## SCHEDULE B

### DESCRIPTION OF THE BUILDINGS

Walls of all buildings are stud wood construction with exterior brick veneer, aluminum siding or stucco finish or combinations thereof as dictated by exterior architectural designs of the buildings. The roofs are of plywood sheathing covered by felt and asphalt shingles. All walls between Units or public corridors are either concrete block firewalls or insulated double stud walls, except that first floor two-bedroom garden apartment units have a single stud wall at the rear entrance to the garage or carport and all second-floor garden apartment units have a single stud wall dividing their respective foyer from the end of the public corridor. Interior walls and ceilings are drywall. Exterior walls and ceilings beneath roofs shall have fiberglass insulation with a vapor seal. The flooring surfaces are vinyl or ceramic tile or carpet and pad or hardwood in the kitchen and ceramic tile, vinyl or carpet with pad in bathrooms. Living rooms, dining rooms, halls, bedrooms and closets of bedrooms have carpet and pad or hardwood, except that front entry areas with adjoining closets have vinyl, ceramic tile or carpet with pad. Utility rooms have vinyl. Included in each kitchen is a free-standing electric or gas range, or counter top range burners with separate built-in electric or gas oven; ducted hood, or built-in microwave oven with ducted ventilating top; and sink, automatic dishwasher, garbage disposal, refrigerator, kitchen cabinets and counter tops. The first floor lavatory of Townhouse Units includes a sink and water closet with an exhaust fan ducted to the outside. Full bathrooms in all garden apartment units and townhouses include a five-foot recessed tub or shower, water closet, lavatory, prefinished vanity cabinet, and an exhaust fan ducted to the outside. Tubs are provided with shower head and shower curtain bars or sliding doors. Showers are provided with a shower head and folding vinyl, or sliding, shower door. Each Unit has a gas furnace or an electric heat pump, and electric air-conditioning unit, a 30 gallon or 40 gallon hot water heater (gas or electric). All Townhouse Units are provided with fiberglass stationary tub. All garden apartment units contain drain and water connections for washer. All second floor garden apartment units also contain drain pan, with floor drain, in which washer is placed and into which are emptied the overflow hose from hot water tank, hose from humidifier and pipe from air conditioner.

## SCHEDULE C

### HICKORY HILL ESTATES CONDOMINIUM RESTATED DECLARATION ADDRESS, UNIT DESIGNATION, PERCENTAGE INTERESTS IN THE COMMON ELEMENTS, APPROXIMATE SQUARE FOOT AREA, ROOMS, ACCESS TO COMMON ELEMENTS\*

<u>Address and Unit Designation</u>	<u>Percentage Interest in Common Elements</u>	<u>Approximate Square Foot Area</u>	<u>No. of Rooms/Baths</u>
1 Hickory Hill Rd. - Apt. A	0.5604%	1490	6/2
1 Hickory Hill Rd. - Apt. B	0.5604%	1490	6/2
1 Hickory Hill Rd. - Apt. C	0.4970%	1140	5/2
1 Hickory Hill Rd. - Apt. D	0.4871%	1140	5/2
1 Hickory Hill Rd. - Apt. E	0.5748%	1540	6/2
1 Hickory Hill Rd. - Apt. F	0.5748%	1540	6/2
1 Hickory Hill Rd. - Apt. G	0.5316%	1250	5/2
1 Hickory Hill Rd. - Apt. H	0.5316%	1250	5/2
2 Hickory Hill Rd. - Apt. A	0.5028%	1140	5/2
2 Hickory Hill Rd. - Apt. B	0.4970%	1140	5/2
2 Hickory Hill Rd. - Apt. C	0.5028%	1140	5/2
2 Hickory Hill Rd. - Apt. D	0.5028%	1140	5/2
2 Hickory Hill Rd. - Apt. E	0.5102%	1210	5/2
2 Hickory Hill Rd. - Apt. F	0.5316%	1250	5/2
2 Hickory Hill Rd. - Apt. G	0.5201%	1260	5/2
2 Hickory Hill Rd. - Apt. H	0.5201%	1260	5/2
3 Homer Lane - Apt. A	0.5604%	1490	6/2
3 Homer Lane - Apt. B	0.5604%	1490	6/2
3 Homer Lane - Apt. C	0.5028%	1140	5/2
3 Homer Lane - Apt. D	0.5028%	1140	5/2
3 Homer Lane - Apt. E	0.5748%	1540	6/2
3 Homer Lane - Apt. F	0.5748%	1540	6/2
3 Homer Lane - Apt. G	0.5316%	1250	5/2
3 Homer Lane - Apt. H	0.5102%	1260	5/2

\* All garden apartment units have access to the common hallways, and townhouse units have access to the exterior lawn areas and driveways.

## SCHEDULE C

### HICKORY HILL ESTATES CONDOMINIUM RESTATED DECLARATION ADDRESS, UNIT DESIGNATION, PERCENTAGE INTERESTS IN THE COMMON ELEMENTS, APPROXIMATE SQUARE FOOT AREA, ROOMS, ACCESS TO COMMON ELEMENTS\*

<u>Address and Unit Designation</u>	<u>Percentage Interest in Common Elements</u>	<u>Approximate Square Foot Area</u>	<u>No. of Rooms/Baths</u>
7 Homer Lane - Apt. A	0.5069%	1140	5/2
7 Homer Lane - Apt. B	0.5028%	1140	5/2
7 Homer Lane - Apt. C	0.5604%	1490	6/2
7 Homer Lane - Apt. D	0.5604%	1490	6/2
7 Homer Lane - Apt. E	0.5300%	1260	5/2
7 Homer Lane - Apt. F	0.5316%	1250	5/2
7 Homer Lane - Apt. G	0.5748%	1540	6/2
7 Homer Lane - Apt. H	0.5748%	1540	6/2
13 Hickory Hill Rd. - Apt. A	0.5069%	1140	5/2
13 Hickory Hill Rd. - Apt. B	0.5028%	1140	5/2
13 Hickory Hill Rd. - Apt. C	0.5604%	1490	6/2
13 Hickory Hill Rd. - Apt. D	0.5604%	1490	6/2
13 Hickory Hill Rd. - Apt. E	0.5316%	1250	5/2
13 Hickory Hill Rd. - Apt. F	0.5316%	1250	5/2
13 Hickory Hill Rd. - Apt. G	0.5748%	1540	6/2
13 Hickory Hill Rd. - Apt. H	0.5748%	1540	6/2
15 Hickory Hill Rd. - Apt. A	0.5735%	1310	6/2
15 Hickory Hill Rd. - Apt. B	0.5801%	1310	6/2
15 Hickory Hill Rd. - Apt. C	0.5801%	1310	6/2
15 Hickory Hill Rd. - Apt. D	0.5735%	1310	6/2
15 Hickory Hill Rd. - Apt. E	0.5867%	1370	6/2
15 Hickory Hill Rd. - Apt. F	0.5933%	1370	6/2
15 Hickory Hill Rd. - Apt. G	0.5999%	1450	6/2
15 Hickory Hill Rd. - Apt. H	0.5933%	1450	6/2

\* All garden apartment units have access to the common hallways, and townhouse units have access to the exterior lawn areas and driveways.

**SCHEDULE C**

**HICKORY HILL ESTATES CONDOMINIUM RESTATED DECLARATION  
ADDRESS, UNIT DESIGNATION, PERCENTAGE  
INTERESTS IN THE COMMON ELEMENTS, APPROXIMATE  
SQUARE FOOT AREA, ROOMS, ACCESS TO COMMON ELEMENTS\***

<u>Address and Unit Designation</u>	<u>Percentage Interest in Common Elements</u>	<u>Approximate Square Foot Area</u>	<u>No. of Rooms/Baths</u>
27 Hickory Hill Rd. - Apt. A	0.5069%	1140	5/2
27 Hickory Hill Rd. - Apt. B	0.5168%	1140	5/2
27 Hickory Hill Rd. - Apt. C	0.5168%	1140	5/2
27 Hickory Hill Rd. - Apt. D	0.5069%	1140	5/2
27 Hickory Hill Rd. - Apt. E	0.5201%	1210	5/2
27 Hickory Hill Rd. - Apt. F	0.5300%	1210	5/2
27 Hickory Hill Rd. - Apt. G	0.5316%	1250	5/2
27 Hickory Hill Rd. - Apt. H	0.5300%	1260	5/2
39 Hickory Hill Rd. - Apt. A	0.5069%	1140	5/2
39 Hickory Hill Rd. - Apt. B	0.5168%	1140	5/2
39 Hickory Hill Rd. - Apt. C	0.5028%	1140	5/2
39 Hickory Hill Rd. - Apt. D	0.5069%	1140	5/2
39 Hickory Hill Rd. - Apt. E	0.5201%	1210	5/2
39 Hickory Hill Rd. - Apt. F	0.5300%	1210	5/2
39 Hickory Hill Rd. - Apt. G	0.5316%	1250	5/2
39 Hickory Hill Rd. - Apt. H	0.5300%	1260	5/2
71 Homer Lane - Apt. A	0.5735%	1310	6/2
71 Homer Lane - Apt. B	0.5735%	1310	6/2
71 Homer Lane - Apt. C	0.5735%	1310	6/2
71 Homer Lane - Apt. D	0.5735%	1310	6/2
71 Homer Lane - Apt. E	0.5867%	1370	6/2
71 Homer Lane - Apt. F	0.5867%	1370	6/2
71 Homer Lane - Apt. G	0.5933%	1450	6/2
71 Homer Lane - Apt. H	0.5933%	1450	6/2

\* All garden apartment units have access to the common hallways, and townhouse units have access to the exterior lawn areas and driveways.

## SCHEDULE C

### HICKORY HILL ESTATES CONDOMINIUM RESTATED DECLARATION ADDRESS, UNIT DESIGNATION, PERCENTAGE INTERESTS IN THE COMMON ELEMENTS, APPROXIMATE SQUARE FOOT AREA, ROOMS, ACCESS TO COMMON ELEMENTS\*

<u>Address and Unit Designation</u>	<u>Percentage Interest in Common Elements</u>	<u>Approximate Square Foot Area</u>	<u>No. of Rooms/Baths</u>
93 Homer Lane - Apt. A	0.5735%	1310	6/2
93 Homer Lane - Apt. B	0.5735%	1310	6/2
93 Homer Lane - Apt. C	0.5735%	1310	6/2
93 Homer Lane - Apt. D	0.5735%	1310	6/2
93 Homer Lane - Apt. E	0.5867%	1370	6/2
93 Homer Lane - Apt. F	0.5867%	1370	6/2
93 Homer Lane - Apt. G	0.5933%	1450	6/2
93 Homer Lane - Apt. H	0.5933%	1450	6/2
105 Homer Lane - Apt. A	0.5735%	1310	6/2
105 Homer Lane - Apt. B	0.5735%	1310	6/2
105 Homer Lane - Apt. C	0.5735%	1310	6/2
105 Homer Lane - Apt. D	0.5735%	1310	6/2
105 Homer Lane - Apt. E	0.5867%	1370	6/2
105 Homer Lane - Apt. F	0.5867%	1370	6/2
105 Homer Lane - Apt. G	0.5933%	1450	6/2
105 Homer Lane - Apt. H	0.5933%	1450	6/2
106 Hickory Hill Rd. - Apt. A	0.4970%	1140	5/2
106 Hickory Hill Rd. - Apt. B	0.5028%	1140	5/2
106 Hickory Hill Rd. - Apt. C	0.4871%	1140	5/2
106 Hickory Hill Rd. - Apt. D	0.4871%	1140	5/2
106 Hickory Hill Rd. - Apt. E	0.5102%	1210	5/2
106 Hickory Hill Rd. - Apt. F	0.5102%	1210	5/2
106 Hickory Hill Rd. - Apt. G	0.5102%	1260	5/2
106 Hickory Hill Rd. - Apt. H	0.5102%	1260	5/2

\* All garden apartment units have access to the common hallways, and townhouse units have access to the exterior lawn areas and driveways.

## SCHEDULE C

### HICKORY HILL ESTATES CONDOMINIUM RESTATED DECLARATION ADDRESS, UNIT DESIGNATION, PERCENTAGE INTERESTS IN THE COMMON ELEMENTS, APPROXIMATE SQUARE FOOT AREA, ROOMS, ACCESS TO COMMON ELEMENTS\*

<u>Address and Unit Designation</u>	<u>Percentage Interest in Common Elements</u>	<u>Approximate Square Foot Area</u>	<u>No. of Rooms/Baths</u>
107 Hickory Hill Rd. - Apt. A	0.5028%	1140	5/2
107 Hickory Hill Rd. - Apt. B	0.5028%	1140	5/2
107 Hickory Hill Rd. - Apt. C	0.5604%	1490	6/2
107 Hickory Hill Rd. - Apt. D	0.5604%	1490	6/2
107 Hickory Hill Rd. - Apt. E	0.5102%	1260	5/2
107 Hickory Hill Rd. - Apt. F	0.5316%	1250	5/2
107 Hickory Hill Rd. - Apt. G	0.5748%	1540	6/2
107 Hickory Hill Rd. - Apt. H	0.5748%	1540	6/2
108 Hickory Hill Rd. - Apt. A	0.5604%	1490	6/2
108 Hickory Hill Rd. - Apt. B	0.5604%	1490	6/2
108 Hickory Hill Rd. - Apt. C	0.4970%	1140	5/2
108 Hickory Hill Rd. - Apt. D	0.4970%	1140	5/2
108 Hickory Hill Rd. - Apt. E	0.5748%	1540	6/2
108 Hickory Hill Rd. - Apt. F	0.5748%	1540	6/2
108 Hickory Hill Rd. - Apt. G	0.5201%	1260	5/2
108 Hickory Hill Rd. - Apt. H	0.5201%	1260	5/2
4 Hickory Hill Rd.	0.6467%	1570	6/2.5
6 Hickory Hill Rd.	0.5748%	1326	5/2.5
8 Hickory Hill Rd.	0.5748%	1326	5/2.5
10 Hickory Hill Rd.	0.6467%	1570	6/2.5
18 Hickory Hill Rd.	0.6467%	1570	6/2.5
20 Hickory Hill Rd.	0.5748%	1326	5/2.5
22 Hickory Hill Rd.	0.5748%	1326	5/2.5
24 Hickory Hill Rd.	0.5748%	1326	5/2.5
26 Hickory Hill Rd.	0.5748%	1326	5/2.5
28 Hickory Hill Rd.	0.5748%	1326	5/2.5

\* All garden apartment units have access to the common hallways, and townhouse units have access to the exterior lawn areas and driveways.

## SCHEDULE C

### HICKORY HILL ESTATES CONDOMINIUM RESTATED DECLARATION ADDRESS, UNIT DESIGNATION, PERCENTAGE INTERESTS IN THE COMMON ELEMENTS, APPROXIMATE SQUARE FOOT AREA, ROOMS, ACCESS TO COMMON ELEMENTS\*

<u>Address and Unit Designation</u>	<u>Percentage Interest in Common Elements</u>	<u>Approximate Square Foot Area</u>	<u>No. of Rooms/Baths</u>
30 Hickory Hill Rd.	0.5748%	1326	5/2.5
32 Hickory Hill Rd.	0.6467%	1570	6/2.5
34 Hickory Hill Rd.	0.6467%	1570	6/2.5
36 Hickory Hill Rd.	0.5748%	1326	5/2.5
38 Hickory Hill Rd.	0.5748%	1326	5/2.5
40 Hickory Hill Rd.	0.5748%	1326	5/2.5
42 Hickory Hill Rd.	0.5748%	1326	5/2.5
44 Hickory Hill Rd.	0.5748%	1326	5/2.5
46 Hickory Hill Rd.	0.5794%	1326	5/2.5
48 Hickory Hill Rd.	0.6467%	1570	6/2.5
50 Hickory Hill Rd.	0.6467%	1570	6/2.5
52 Hickory Hill Rd.	0.5748%	1326	5/2.5
54 Hickory Hill Rd.	0.5748%	1326	5/2.5
56 Hickory Hill Rd.	0.5748%	1326	5/2.5
58 Hickory Hill Rd.	0.5748%	1326	5/2.5
60 Hickory Hill Rd.	0.5748%	1326	5/2.5
62 Hickory Hill Rd.	0.5748%	1326	5/2.5
64 Hickory Hill Rd.	0.6467%	1570	6/2.5
66 Hickory Hill Rd.	0.6467%	1570	6/2.5
68 Hickory Hill Rd.	0.5748%	1326	5/2.5
70 Hickory Hill Rd.	0.5748%	1326	5/2.5
72 Hickory Hill Rd.	0.5748%	1326	5/2.5
74 Hickory Hill Rd.	0.5794%	1326	5/2.5
76 Hickory Hill Rd.	0.5794%	1326	5/2.5
78 Hickory Hill Rd.	0.5794%	1326	5/2.5
80 Hickory Hill Rd.	0.5748%	1326	5/2.5
82 Hickory Hill Rd.	0.5748%	1326	5/2.5
84 Hickory Hill Rd.	0.6467%	1570	6/2.5
86 Hickory Hill Rd.	0.6467%	1570	6/2.5

\* All garden apartment units have access to the common hallways, and townhouse units have access to the exterior lawn areas and driveways.

**SCHEDULE C**

**HICKORY HILL ESTATES CONDOMINIUM RESTATED DECLARATION  
ADDRESS, UNIT DESIGNATION, PERCENTAGE  
INTERESTS IN THE COMMON ELEMENTS, APPROXIMATE  
SQUARE FOOT AREA, ROOMS, ACCESS TO COMMON ELEMENTS\***

<u>Address and Unit Designation</u>	<u>Percentage Interest in Common Elements</u>	<u>Approximate Square Foot Area</u>	<u>No. of Rooms/Baths</u>
88 Hickory Hill Rd.	0.5748%	1326	5/2.5
90 Hickory Hill Rd.	0.5748%	1326	5/2.5
92 Hickory Hill Rd.	0.5748%	1326	5/2.5
94 Hickory Hill Rd.	0.5748%	1326	5/2.5
96 Hickory Hill Rd.	0.5748%	1326	5/2.5
98 Hickory Hill Rd.	0.5748%	1326	5/2.5
100 Hickory Hill Rd.	0.5748%	1326	5/2.5
102 Hickory Hill Rd.	0.5748%	1326	5/2.5
104 Hickory Hill Rd.	0.6467%	1570	6/2.5
120 Hickory Hill Rd.	0.6585%	1570	6/2.5
122 Hickory Hill Rd.	0.6585%	1570	6/2.5
124 Hickory Hill Rd.	0.6585%	1570	6/2.5
126 Hickory Hill Rd.	0.6585%	1570	6/2.5
128 Hickory Hill Rd.	0.6585%	1570	6/2.5
130 Hickory Hill Rd.	0.6585%	1570	6/2.5
132 Hickory Hill Rd.	0.6585%	1570	6/2.5
134 Hickory Hill Rd.	0.6585%	1570	6/2.5
136 Hickory Hill Rd.	0.6585%	1570	6/2.5
138 Hickory Hill Rd.	0.6585%	1570	6/2.5
140 Hickory Hill Rd.	0.6585%	1570	6/2.5
142 Hickory Hill Rd.	0.6585%	1570	6/2.5
144 Hickory Hill Rd.	0.6585%	1570	6/2.5
146 Hickory Hill Rd.	0.6585%	1570	6/2.5
148 Hickory Hill Rd.	0.6585%	1570	6/2.5
150 Hickory Hill Rd.	0.6585%	1570	6/2.5

\* All garden apartment units have access to the common hallways, and townhouse units have access to the exterior lawn areas and driveways.

CONSENT TO RESTATED DECLARATION

SCHEDULE D

The Condominium Board of Managers certifies that 119 or more Unit Owners have approved a Resolution amending the Declaration and By Laws pursuant to the requirements of Article XI of the Declaration (as amended) and by an affirmative vote in favor of said Resolution.

The members of the Board of Managers <sup>(Majority)</sup> have executed this amendment the day and year appearing opposite their signatures.

Members of Board of Managers

George D. Ungar  
President

Oct. 17, 1995  
Date

Morris B. Kassin  
Treasurer

10/17/95  
Date

Mary Kathleen Keane  
Vice President

10/17/95  
Date

Judith Campagna  
Secretary

10/18/95  
Date

STATE OF NEW YORK )  
 )  
COUNTY OF ERIE )

SS.:

On the 17<sup>th</sup> day of October, 1995, before me personally came George D. Weger, to me known, who, being by me duly sworn, did depose and say that (s)he is a member of the Hickory Hill Estates Condominium Board of Managers and a person described in the above instrument, and (s)he acknowledged to me that (s)he executed the above instrument.

Barbara J. Campagna  
Notary Public

BARBARA J. CAMPAGNA  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 8/31/96

STATE OF NEW YORK )  
 )  
COUNTY OF ERIE )

SS.:

On the 17<sup>th</sup> day of October, 1995, before me personally came Morris B. KISSIN, to me known, who, being by me duly sworn, did depose and say that (s)he is a member of the Hickory Hill Estates Condominium Board of Managers and a person described in the above instrument, and (s)he acknowledged to me that (s)he executed the above instrument.

Barbara J. Campagna  
Notary Public

BARBARA J. CAMPAGNA  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 8/31/96

STATE OF NEW YORK )  
 )  
COUNTY OF ERIE )

SS.:

On the 17<sup>th</sup> day of October, 1995, before me personally came Mary Kathleen Keane, to me known, who, being by me duly sworn, did depose and say that (s)he is a member of the Hickory Hill Estates Condominium Board of Managers and a person described in the above instrument, and (s)he acknowledged to me that (s)he executed the above instrument.

Barbara J. Campagna  
Notary Public

BARBARA J. CAMPAGNA  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 8/31/96

STATE OF NEW YORK )  
 )  
COUNTY OF ERIE )

SS.:

On the 18 day of OCTOBER, 1995, before me personally came BARBARA J CAMPAGNA, to me known, who, being by me duly sworn, did depose and say that (s)he is a member of the Hickory Hill Estates Condominium Board of Managers and a person described in the above instrument, and (s)he acknowledged to me that (s)he executed the above instrument.

*Denise Gray*  
Notary Public

DENISE GRAY  
Notary Public in and for the State of New York  
Qualified to perform notary duties  
My Comm. Expires 9-13-96

~~STATE OF NEW YORK )  
 )  
COUNTY OF ERIE )~~

~~SS.:~~

~~On the \_\_\_ day of \_\_\_\_\_, 1995, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that (s)he is a member of the Hickory Hill Estates Condominium Board of Managers and a person described in the above instrument, and (s)he acknowledged to me that (s)he executed the above instrument.~~

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

~~STATE OF NEW YORK )  
 )  
COUNTY OF ERIE )~~

~~SS.:~~

~~On the \_\_\_ day of \_\_\_\_\_, 1995, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that (s)he is a member of the Hickory Hill Estates Condominium Board of Managers and a person described in the above instrument, and (s)he acknowledged to me that (s)he executed the above instrument.~~

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



AMENDMENT TO THE DECLARATION AND BYLAWS  
(SCHEDULE E TO THE DECLARATION)  
HICKORY HILL ESTATES CONDOMINIUM.

WHEREAS, a certain Declaration of Condominium for Hickory Hill Estates Condominium dated October 17, 1995, was recorded on October 20, 1995 in the Erie County Clerk's Office in Liber 10892 of Deeds at page 7664; and

WHEREAS, the Bylaws of the Condominium were attached to the Declaration as Schedule E, and pursuant to Article XIII, Section 13.01 of the Declaration, 67% in number and in common interest of all the Unit Owners agree to amend the Bylaws as hereinafter set forth; and

NOW, THEREFORE, it is hereby declared that the Bylaws, Article VII, Section 7.01 is amended as follows:

The paragraph entitled "Deductible Amounts" is amended as follows, new language is bolded, deleted language is struck:

Deductible Amounts. In the event of damage or destruction of any Unit or common elements as a result of fire or other casualty covered by insurance obtained by or through the Board of Managers, the deductible amount of any insurance proceeds shall apply to each occurrence, not to each item of damage, and shall be funded as follows:

1. If the damage is from a cause which emanates from the common elements, **the Unit Owners shall be responsible for the first \$5,000.00 of any loss which relates to the Unit Owners' Unit and the** Condominium shall be responsible for the remaining deductible amount (if any), except that, if the cause of such damage is the result of gross negligence or the wantonly malicious act of any Owner (or of a member of such Owner's family or of a tenant of such Owner or of a guest or invitee of such Owner or of a member of such Owner's family) the Owner shall be responsible for such deductible amount;
2. If the property is damaged from a cause which emanates from or within a Unit (other than from a utility line or conduit which passes through the Unit and which services two (2) or more Units) including from any utility line, conduit, balcony or patio which services only such Unit, whether located within or without the Unit, the Owner or Owners of such Unit shall be responsible for the deductible amount.

The Condominium may pay the deductible portion for which a Unit Owner is responsible, and the amount so paid, together with interest and costs of collection (including attorneys' fees) shall be a charge and continuing lien

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ERIE COUNTY  
CLERK'S OFFICE

upon the Unit involved, shall constitute a personal obligation of the Unit Owner, and shall be collectible in the same manner as common charges and assessments under the Declaration and these By-Laws.

~~Unit Owners' Insurance. Unit Owners shall not be prohibited from carrying other insurance for their own benefit provided that all such policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Board of Managers shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner.~~

Each Unit Owner, at such Owner's expense, is required, and shall obtain insurance under an HO-6 policy or equivalent form for such Owners benefit to cover the following items which are the insurance responsibility of each Owner pursuant to the Condominium Declaration.

Fire & Casualty. The Unit Owner is responsible to insure the first \$5,000.00 in dwelling property and/or real property of their respective Unit, including, but not limited to, wall to wall carpeting, lighting fixtures, bathroom fixtures, kitchen appliances, wall coverings (including paint) and all other machinery servicing the Unit. The Unit Owner is also responsible for the full replacement value of any improvements or betterments made by present or prior Unit Owners and occupants.

The policy shall have the following provisions, endorsements and coverage, (1) non specified perils coverage commonly referred to "all risk" coverage on the dwelling coverage purchased under the HO-6 policy, (2) coverage for such Owners' personal liability within such Owners Unit, (3) loss assessment coverage, provided however that (i) such policies contain waivers of subrogation, if available, and (ii) the liability of the carriers issuing insurance procured by the Board of Managers shall not be affected or diminished by reason of an such additional insurance carried by the Owner.

Any deductible, on any insurance policy purchased by a Unit Owner shall be the sole responsibility of that Unit Owner, except that the Condominium will reimburse the first \$250.00 of said deductible.

Failure to purchase insurance does not negate the Unit Owners' responsibility for the first \$5,000.00 in dwelling property damage.

The Board may at its option amend the amount of the property that each Owner is responsible for, upon written notification to each Owner.

Pursuant to Section 13.01(d) of the Declaration, the undersigned members of the Board of Managers certify as follows:

1. This Amendment has been adopted in full compliance with Article IX of the By-Laws, in that it was adopted at a duly called meeting of Unit Owners

2. A notice of said meeting containing a full statement of the proposed Amendment was sent out to all Unit Owners and mortgagees as listed on the books and records of the Condominium, on December 2, 2002, said date of mailing being at least 30 days prior to the special meeting, as required by Section 9.01 of the By-Laws.

3. The special meeting and canvass of votes was held on January 21, 2003. More than 67% in number and in common interest of all Unit Owners approved this Amendment by voting in person or by proxy, and these consents have been received and filed with the Board of Managers.

4. The Board of Managers did not, prior to that date established for voting on the proposed Amendment, receive written notification of opposition to the Amendment from Eligible Mortgage Holders of more than 51% of the number of Units.

IN WITNESS WHEREOF, the undersigned, being all a majority of the members of the Hickory Hill Estates Condominium Board of Managers, cause this Amendment to be signed this 21 day of JANUARY, 2003 and direct that this Amendment be recorded in the Erie County Clerk's Office as an amendment to the Declaration and By-Laws of the Condominium.

HICKORY HILL ESTATES CONDOMINIUM

By: [Signature]

By: [Signature]

By: [Signature]

By: [Signature]

By: [Signature]



ERIE COUNTY CLERK'S OFFICE  
County Clerk's Recording Page

Return To:

BOX 317

Index DEED LIBER  
Book 11031 Page 7148  
No. Pages 0010  
Instrument AMEND/SUPPLEMNT  
Date : 3/07/2003  
Time : 10:22:54  
Control # 200303070520

HICKORY HILL ESTATES  
CONDOMINIUM

Employee ID CLS

COUNTY	\$	35.50
COE STATE	\$	4.75
COE COUNTY	\$	1.00
COE ST GEN	\$	14.25
	\$	.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
Total:	\$	55.50

STATE OF NEW YORK  
ERIE COUNTY CLERK'S OFFICE

WARNING - THIS SHEET CONSTITUTES THE CLERK'S  
ENDORSEMENT, REQUIRED BY SECTIONS 319&316-a  
(5) OF THE REAL PROPERTY LAW OF THE STATE OF  
NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

David J. Swarts  
County Clerk



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AMENDMENT TO THE DECLARATION AND BYLAWS  
(SCHEDULE E TO THE DECLARATION)  
HICKORY HILL ESTATES CONDOMINIUM

WHEREAS, a certain Declaration of Condominium for Hickory Hill Estates Condominium dated October 17, 1995, was recorded on October 20, 1995 in the Erie County Clerk's Office in Liber 10892 of Deeds at page 7664; and

WHEREAS, the Bylaws of the Condominium were attached to the Declaration as Schedule E, and pursuant to Article XIII, Section 13.01 of the Declaration, 67% in number and in common interest of all the Unit Owners agree to amend the Bylaws as hereinafter set forth; and

NOW, THEREFORE, it is hereby declared that the Bylaws, Article VII, Section 7.01 is amended as follows:

The paragraph entitled "Deductible Amounts" is amended as follows, new language is bolded, deleted language is struck:

Deductible Amounts. In the event of damage or destruction of any Unit or common elements as a result of fire or other casualty covered by insurance obtained by or through the Board of Managers, the deductible amount of any insurance proceeds shall apply to each occurrence, not to each item of damage, and shall be funded as follows:

1. If the damage is from a cause which emanates from the common elements, **the Unit Owners shall be responsible for the first \$5,000.00 of any loss which relates to the Unit Owners' Unit and the** Condominium shall be responsible for the **remaining** deductible amount **(if any)**, except that, if the cause of such damage is the result of gross negligence or the wantonly malicious act of any Owner (or of a member of such Owner's family or of a tenant of such Owner or of a guest or invitee of such Owner or of a member of such Owner's family) the Owner shall be responsible for such deductible amount;
2. If the property is damaged from a cause which emanates from or within a Unit (other than from a utility line or conduit which passes through the Unit and which services two (2) or more Units) including from any utility line, conduit, balcony or patio which services only such Unit, whether located within or without the Unit, the Owner or Owners of such Unit shall be responsible for the deductible amount.

The Condominium may pay the deductible portion for which a Unit Owner is responsible, and the amount so paid, together with interest and costs of collection (including attorneys' fees) shall be a charge and continuing lien

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upon the Unit involved, shall constitute a personal obligation of the Unit Owner, and shall be collectible in the same manner as common charges and assessments under the Declaration and these By-Laws.

Unit Owners' Insurance. ~~Unit Owners shall not be prohibited from carrying other insurance for their own benefit provided that all such policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Board of Managers shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner.~~

Each Unit Owner, at such Owner's expense, is required, and shall obtain insurance under an HO-6 policy or equivalent form for such Owners benefit to cover the following items which are the insurance responsibility of each Owner pursuant to the Condominium Declaration.

**Fire & Casualty.** The Unit Owner is responsible to insure the first \$5,000.00 in dwelling property and/or real property of their respective Unit, including, but not limited to, wall to wall carpeting, lighting fixtures, bathroom fixtures, kitchen appliances, wall coverings (including paint) and all other machinery servicing the Unit. The Unit Owner is also responsible for the full replacement value of any improvements or betterments made by present or prior Unit Owners and occupants.

The policy shall have the following provisions, endorsements and coverage, (1) non specified perils coverage commonly referred to "all risk" coverage on the dwelling coverage purchased under the HO-6 policy, (2) coverage for such Owners' personal liability within such Owners Unit, (3) loss assessment coverage, provided however that (i) such policies contain waivers of subrogation, if available, and (ii) the liability of the carriers issuing insurance procured by the Board of Managers shall not be affected or diminished by reason of an such additional insurance carried by the Owner.

Any deductible, on any insurance policy purchased by a Unit Owner shall be the sole responsibility of that Unit Owner, except that the Condominium will reimburse the first \$250.00 of said deductible.

Failure to purchase insurance does not negate the Unit Owners' responsibility for the first \$5,000.00 in dwelling property damage.

**The Board may at its option amend the amount of the property that each Owner is responsible for, upon written notification to each Owner.**

Pursuant to Section 13.01(d) of the Declaration, the undersigned members of the Board of Managers certify as follows:

1. This Amendment has been adopted in full compliance with Article IX of the By-Laws, in that it was adopted at a duly called meeting of Unit Owners.

2. A notice of said meeting containing a full statement of the proposed Amendment was sent out to all Unit Owners and mortgagees as listed on the books and records of the Condominium, on December 2, 2002, said date of mailing being at least 30 days prior to the special meeting, as required by Section 9.01 of the By-Laws.

3. The special meeting and canvass of votes was held on January 21, 2003. More than 67% in number and in common interest of all Unit Owners approved this Amendment by voting in person or by proxy, and these consents have been received and filed with the Board of Managers.

4. The Board of Managers did not, prior to that date established for voting on the proposed Amendment, receive written notification of opposition to the Amendment from Eligible Mortgage Holders of more than 51% of the number of Units.

IN WITNESS WHEREOF, the undersigned, being all a majority of the members of the Hickory Hill Estates Condominium Board of Managers, cause this Amendment to be signed this 21 day of JANUARY, 2003 and direct that this Amendment be recorded in the Erie County Clerk's Office as an amendment to the Declaration and By-Laws of the Condominium.

HICKORY HILL ESTATES CONDOMINIUM

By: [Signature]

By: [Signature]

By: [Signature]

By: [Signature]

By: [Signature]

STATE OF NEW YORK )  
 )SS.:  
COUNTY OF ERIE )

On the 21 day of January in the year 2003, before me, the undersigned, a notary public in and for said state, personally appeared Anthony Leone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ERIE COUNTY  
MY COMMISSION EXPIRES 7/20/06

Rebecca A. Andruschat

Notary Public

Rebecca A. Andruschat  
Notary Public, State of New York  
No. 4999441  
Qualified in Erie County  
Commission Expires July 20, 2006

STATE OF NEW YORK )  
 )SS.:  
COUNTY OF ERIE )

On the 21 day of January in the year 2003, before me, the undersigned, a notary public in and for said state, personally appeared Ray Korzeilus, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ERIE COUNTY  
MY COMMISSION EXPIRES 7/20/06

Rebecca A. Andruschat

Notary Public  
Notary Public, State of New York

No. 4999441  
Qualified in Erie County  
Commission Expires July 20, 2006

STATE OF NEW YORK )  
 )SS.:  
COUNTY OF ERIE )

On the 21 day of January in the year 2003, before me, the undersigned, a notary public in and for said state, personally appeared Alice Augustine, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ERIE COUNTY  
MY COMMISSION EXPIRES 7/20/06

Rebecca A. Andruschat

Notary Public

Rebecca A. Andruschat  
Notary Public, State of New York  
No. 4999441  
Qualified in Erie County  
Commission Expires July 20, 2006

STATE OF NEW YORK )  
 )SS.:  
COUNTY OF ERIE )

On the 21 day of January in the year 2002, before me, the undersigned, a notary public in and for said state, personally appeared NORMAN BORKOWSKI, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ERIE COUNTY  
MY COMMISSION EXPIRES 7/20/06

Rebecca A. Andruschat

Notary Public

Rebecca A. Andruschat  
Notary Public, State of New York  
No. 4999441  
Qualified in Erie County  
Commission Expires July 20, 2006

STATE OF NEW YORK )  
 )SS.:  
COUNTY OF ERIE )

On the 21 day of January in the year 2002, before me, the undersigned, a notary public in and for said state, personally appeared PETER CAMBLINO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ERIE COUNTY  
MY COMMISSION EXPIRES 7/20/06

Rebecca A. Andruschat

Notary Public

Rebecca A. Andruschat  
Notary Public, State of New York  
No. 4999441  
Qualified in Erie County  
Commission Expires July 20, 2006

## "YES" VOTES FOR INSURANCE AMENDMENT

1. Adams - 93H Homer Lane
2. Alexander - 126 H.H.
3. Arrigo - 13D H.H.
4. Arsem - 1G H.H.
5. Augustine - 3C Homer Lane
6. Bachre - 98 H.H.
7. Baumgartner - 46 H.H.
8. Bertell - 84 H.H.
9. Boehler - 74 H.H.
10. Borkowski - 1A H.H.
11. Bowling - 66 H.H.
12. Broder - 39B H.H.
13. Buch/Rivo - 71C Homer Lane
14. Burgio - 40 H.H.
15. Buscaglia - 106B H.H.
16. Campagna - 148 H.H.
17. Cieslinski - 105H H.H.
18. Cione - 107G H.H.
19. Cole - 82 H.H.
20. Collins - 93E Homer Lane
21. Connors - 71B Homer Lane
22. Coughlin - 39A H.H.
23. Criden - 27H H.H.
24. DeCillis - 3F Homer Lane.
25. De Rosa - 18 H.H.
26. Devonshire - 42 H.H.
27. Donovan - 88 H.H.
28. Ellis - 76 H.H.
29. Falk - 106 H.H.
30. Flanagan - 136 H.H.
31. Flynn - 52 H.H.
32. Friedman - 128 H.H.
33. Gall - 106A H.H.
34. Gambino - 15F H.H.
35. Garofaro - 144 H.H.
36. Giambra - 102 H.H.
37. Glair - 71B Homer Lane
38. Grady - 3H Homer Lane
39. Grieco - 105D H.H.
40. Gruenfeld - 80 H.H.
41. Guastaferra - 3B Homer Lane
42. Haley - 34 H.H.

43. Henneman -- 93C Homer Lane
44. Hosenfeld -- 107H H.H.
45. Huber -- 1F H.H.
46. Huston -- 100 H.H.
47. Inzinna -- 2F H.H.
48. Ipolito -- 107B H.H.
49. Jaynes -- 92 H.H.
50. Jesella -- 48 H.H.
51. Kaminski -- 1D H.H.
52. Katz -- 71G Homer
53. Keane -- 22 H.H.
54. Keller -- 7F Homer
55. Kirsch -- 39C H.H.
56. Korzclius -- 54 H.H.
57. Kutzman -- 1C H.H.
58. Layer -- 105C Homer Lane
59. Leff -- 106C H.H.
60. Lippes -- 93G Homer Lane
61. Lipsitz -- 108G H.H.
62. Lipson -- 15H H.H.
63. Lukow -- 7H Homer Lane
64. Lydon -- 106F H.H.
65. MacArthur -- 8 H.H.
66. Mahon -- 15B H.H.
67. Mann -- 7G Homer Lane
68. Manning -- 15E H.H.
69. Martin -- 108B H.H.
70. McMahon -- 132 H.H.
71. McQuestion -- 86 H.H.
72. Meyers -- 71F Homer Lane
73. Moran -- 107C H.H.
74. Morrison -- 6 H.H.
75. Nicosia -- 3G Homer Lane
76. Nowak -- 2E H.H.
77. Nuchereno -- 27C H.H.
78. Oleszak -- 93F Homer Lane
79. Organek -- 93A Homer Lane
80. O'Sullivan -- 2H H.H.
81. Palumbo -- 15A H.H.
82. Pechenik -- 2G H.H.
83. Pedersen -- 39G H.H.
84. Perotto -- 72 H.H.
85. Platzer -- 106G H.H.
86. Pleskow -- 39H H.H.
87. Prestel -- 64 H.H.
88. Quale -- 106D H.H.

89. Quale – 108D H.H.
90. Ramage – 32 H.H.
91. Revo – 107F H.H.
92. Robertson – 60 H.H.
93. Sacks – 124 H.H.
94. Safir – 93B Homer Lane
95. Salomon – 107D H.H.
96. Samuels – 27A H.H.
97. Sausen – 44 H.H.
98. Schaeffer – 3A Homer Lane
99. Schneider – 20 H.H.
100. Schutz – 39F H.H.
101. Shade – 2B H.H.
102. Shea – 2C H.H.
103. Sheard – 122 H.H.
104. Sierk – 13F H.H.
105. Siminski – 107E H.H.
106. Starr – 108A H.H.
107. Stern – 13G H.H.
108. Sweeney – 13B H.H.
109. Takats – 71A Homer Lane
110. Thill – 142 H.H.
111. Traina – 146 H.H.
112. Tubin – 71F H.H.
113. Wagner – 68 H.H.
114. Weissman – 71H Homer Lane
115. Wilson - 10 H.H.
116. Winstel – 71D Homer Lane
117. Wydro – 107A H.H.
118. Wynd – 15D H.H.
119. Yagle – 50 H.H.
120. Yosim – 3E Homer Lane

Box 317 (RSS)

AMENDMENT TO DECLARATION  
AND BY-LAWS (SCHEDULE "E"  
TO DECLARATION)

HICKORY HILL ESTATES  
CONDOMINIUM

Dated: January 21, 2003

Ronald S. Shubert, Esq.  
Phillips, Lytle, Hitchcock,  
Blaine & Huber LLP  
3400 HSBC Center  
Buffalo, New York 14203

1226351



County Clerk's Recording Page

Return to:

PHILLIPS LYTLE - ATT LINDA  
MORGAN  
3400 HSBC CENTER  
BUFFALO, NY 14203

**Book Type: D Book: 11250 Page: 9535**

Page Count: 6  
Doc Type: AMEND/SUPPLEMNT  
Rec Date: 08/06/2013  
Rec Time: 02:59:17 PM  
Control #: 2013180620  
UserID: Donna  
Trans #: 13124941  
Document Sequence Number

Party 1:  
STROBEL GERALD

Party 2:  
HICKORY HILL ESTATES CONDOMINIUM

**Consideration Amount:**

**Recording Fees:**

RECORDING	\$50.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75
MARKOFF FEE	\$0.50

BASIC MT	\$0.00
SONYMA MT	\$0.00
ADDL MT/NFTA	\$0.00
SP MT/M-RAIL	\$0.00
NY STATE TT	\$0.00
ROAD FUND TT	\$0.00

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**Total: \$70.50**

STATE OF NEW YORK  
ERIE COUNTY CLERK'S OFFICE

WARNING – THIS SHEET CONSTITUTES THE CLERK’S ENDORSEMENT REQUIRED BY SECTION 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

Christopher L. Jacobs  
County Clerk

AMENDMENT TO THE RESTATED DECLARATION  
AND BY-LAWS (EXHIBIT E TO DECLARATION)  
HICKORY HILL ESTATES CONDOMINIUM

WHEREAS, a certain Restated Declaration of Condominium for the Hickory Hill Estates Condominium was recorded on October 20, 1995, in the Erie County Clerk's Office in Liber 10892 of Deeds at Page 7664; and

WHEREAS, the By-Laws of the Condominium were attached to the Declaration as Exhibit E; and

WHEREAS, pursuant to Article IX of such By-Laws, 67% in number and in common interest of all Unit Owners agree to amend the By-Laws as hereinafter set forth at a meeting called for such purpose, which meeting was held on the 19th day of September, 2006; and

NOW THEREFORE, it is hereby declared that the By-Laws, Article VIII, Section 8.01 is amended as follows:

8.01. Selling and Leasing Units. No Unit Owner shall convey, mortgage, pledge, sell or lease such Owner's Unit unless and until all unpaid common charges assessed against such Unit shall have been paid to the Board of Managers. However, such unpaid common charges can be paid, at the time of closing, out of the proceeds of the sale of a Unit or by the grantee. Further, a Unit Owner may convey such Owner's Unit and the common interest appurtenant thereto to the Board of Managers on behalf of all Unit Owners free of any cost to the Board or the Unit Owners and upon such conveyance such Unit Owner shall not be liable for any common charges thereafter accruing against such Unit. A sale or lease of any Unit in violation of this Section shall be voidable at the election of the Board of Managers.

Any lease or rental of a Unit shall be for a minimum of ~~six (6) months~~ **one (1) year** and said lease form shall contain an addendum as supplied by and approved from time to time by the Board of Managers of the Condominium, and shall provide for full compliance by the tenants with the Declaration, By-Laws and Rules and Regulations of the Condominium, which the Unit Owner shall supply to the tenant(s). **Said executed lease must be filed with the Board of Managers prior to occupancy by the tenants.** The Owner shall be responsible for violations by such Owner's tenant. Should a tenant be in violation thereof at any time, the Board of Managers of the Condominium may send the Owner of the Unit which said tenant

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occupies written notice of such violation by certified mail ~~or registered mail~~, return receipt requested. If the violation is not cured or eviction proceedings commenced against the tenant within fourteen (14) days after the Owner has received notice of such violation, or if the eviction proceedings are not reasonably diligently pursued thereafter, the Board of Managers may pursue any remedies which it may have under the Declaration or these By-Laws.

The imposition of any additional restrictions on the right of a Unit Owner to sell or otherwise transfer, lease or rent such Owner's Unit shall require the consent of the Owners of 67% or more of the Units, in number and in common interest, and the Consent of Eligible Mortgage Holders of 51% or more of the Units then subject to mortgages held by Eligible Mortgage Holders.

**Only 13 Units may be occupied by non-Owners.**

**No Unit Owner may own more than two (2) Units, and must reside in one of the two (2) Units.**

~~The above provisions of this Section shall not apply to the acquisition or sale of a Unit by a mortgagee who shall acquire title to such Unit by foreclosure or by deed in lieu of foreclosure. Such provisions shall, however, apply to any purchaser from such mortgagee.~~

Note: Added language has been bolded.

The undersigned members of the Board of Managers certify as follows:

1. This Amendment has been adopted in full compliance with the aforementioned Article IX of the By-Laws, in that it was adopted at a duly called meeting of Unit Owners.
2. A notice of said meeting containing a full statement of the proposed Amendment was sent out to all Unit Owners as listed on the books and records of the Condominium, on August 18, 2006, said date of mailing being at least 30 days prior to the special meeting, as required by Section 2.07 of the By-Laws.
3. The special meeting and canvass of votes was held on September 19, 2006. Sixty Seven% in number and in common interest of all Unit Owners approved this Amendment by voting in person or by proxy, and these consents have been received and filed with the Board of Managers.
4. The Board of Managers did not, prior to that date established for voting on the proposed Amendment, receive written notification of opposition to the Amendment from Eligible Mortgage Holders of more than 51% of the number of Units.

4. The Board of Managers did not, prior to that date established for voting on the proposed Amendment, receive written notification of opposition to the Amendment from Eligible Mortgage Holders of more than 51% of the number of Units.

IN WITNESS WHEREOF, the undersigned, being X all a majority of the members of the Hickory Hill Estates Condominium Board of Managers, cause this Amendment to be signed this 6<sup>th</sup> day of August, 2013, and direct that this Amendment be recorded in the Erie County Clerk's Office as an amendment to the Declaration and By-Laws of the Condominium.

HICKORY HILL ESTATES CONDOMINIUM

By: [Signature]  
Gerardo Strosel

By: [Signature]  
Sandra L. Staley

By: [Signature]  
ROGER H. SIERK

By: [Signature]  
RAYMOND A. MILHOLLAND

By: [Signature]  
PHILIP T. GAROFALO

By: [Signature]  
PETER D. GAMBINO

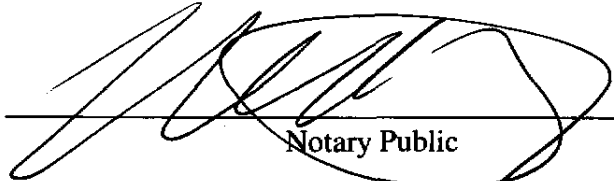
By: [Signature]  
John Phillips

STATE OF NEW YORK )

)SS.:

COUNTY OF ERIE )

On the 6<sup>th</sup> day of August in the year 2013, before me, the undersigned, personally appeared Gerald Strabel, Sandra L. Staley, Roger H. Sierk, Raymond A. Mulholland, Philip T. Gero Sarno, Peter D. Gambino, John Phillips personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individual acted, executed the instrument.

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

**RONALD S. SHUBERT**  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires September 30, 2013?

Box 317 (RSS)

AMENDMENT TO DECLARATION  
AND BY-LAWS

HICKORY HILL ESTATES  
CONDOMINIUM

Dated: August 6, 2013

Ronald S. Shubert, Esq.  
Attorney for Hickory Hill  
Estates Condominium  
Phillips Lytle LLP  
3400 HSBC Center  
Buffalo, New York 14203

1574607

ERIE COUNTY CLERK'S OFFICE



County Clerk's Recording Page

Return to:  
BOX 374

Party 1:  
HICKORY HILL ESTATES CONDOMINIUM

Party 2:

**Book Type: D Book: 11256 Page: 3962**  
Page Count: 5  
Doc Type: AMEND/SUPPLEMNT  
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**Recording Fees:**

RECORDING	\$45.00
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MARKOFF FEE	\$0.50

**Consideration Amount:**

BASIC MT	\$0.00
SONYMA MT	\$0.00
ADDL MT/NFTA	\$0.00
SP MT/M-RAIL	\$0.00
NY STATE TT	\$0.00
ROAD FUND TT	\$0.00

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**Total: \$65.50**

STATE OF NEW YORK  
ERIE COUNTY CLERK'S OFFICE

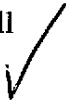
WARNING - THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT REQUIRED BY SECTION 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

Christopher L. Jacobs  
County Clerk

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374

AMENDMENT TO THE RESTATED DECLARATION  
AND BY-LAWS (EXHIBIT E TO DECLARATION)  
HICKORY HILL ESTATES CONDOMINIUM

WHEREAS, a certain Restated Declaration of Condominium for the Hickory Hill Estates Condominium was recorded on October 20, 1995, in the Erie County Clerk's Office in Liber 10892 of Deeds at Page 7664; and



WHEREAS, the By-Laws of the Condominium were attached to the Declaration as Exhibit E; and

WHEREAS, pursuant to Article IX of such By-Laws, 67% in number and in common interest of all Unit Owners agree to amend the By-Laws as hereinafter set forth at a meeting called for such purpose, which meeting was held on the 7<sup>th</sup> day of November, 2013; and

NOW THEREFORE, it is hereby declared that the By-Laws, Article VIII, Section 8.01 is amended as follows:

8.01. Selling and Leasing Units. No Unit Owner shall convey, mortgage, pledge, sell or lease such Owner's Unit unless and until all unpaid common charges assessed against such Unit shall have been paid to the Board of Managers. However, such unpaid common charges can be paid, at the time of closing, out of the proceeds of the sale of a Unit or by the grantee. Further, a Unit Owner may convey such Owner's Unit and the common interest appurtenant thereto to the Board of Managers on behalf of all Unit Owners free of any cost to the Board or the Unit Owners and upon such conveyance such Unit Owner shall not be liable for any common charges thereafter accruing against such Unit. A sale or lease of any Unit in violation of this Section shall be voidable at the election of the Board of Managers.

Any lease or rental of a Unit shall be for a minimum of one (1) year and said lease form shall contain an addendum as supplied by and approved from time to time by the Board of Managers of the Condominium, and shall provide for full compliance by the tenants with the Declaration, By-Laws and Rules and Regulations of the Condominium, which the Unit Owner shall supply to the tenant(s). Said executed lease must be filed with the Board of Managers prior to occupancy by the tenants. The Owner shall be responsible for violations by such Owner's

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tenant. Should a tenant be in violation thereof at any time, the Board of Managers of the Condominium may send the Owner of the Unit which said tenant occupies written notice of such violation by certified mail, return receipt, requested. If the violation is not cured or eviction proceedings commenced against the tenant within fourteen (14) days after the Owner has received notice of such violation, or if the eviction proceedings are not reasonably diligently pursued thereafter, the Board of Managers may pursue any remedies which it may have under the Declaration or these By-Laws.

The imposition of any additional restrictions on the right of a Unit Owner to sell or otherwise transfer, lease or rent such Owner's Unit shall require the consent of the Owners of 67% or more of the Units, in number and in common interest, and the Consent of Eligible Mortgage Holders of 51% or more of the Units then subject to mortgages held by Eligible Mortgage Holders.

**Effective upon recording of this amendment, no Units may be leased, except by current Unit Owners who purchased the Unit prior to the recording of this Amendment. Upon transfers of title to the Unit, the prohibition against leasing of the Unit as provided in this Section shall immediately become effective.**

Only 13 Units may be occupied by non-Owners.

~~No Unit Owner may own more than two (2) Units, and must reside in one of the two (2) Units.~~

Note: Added language has been bolded.

The undersigned members of the Board of Managers certify as follows:

1. This Amendment has been adopted in full compliance with the aforementioned Article IX of the By-Laws, in that it was adopted at a duly called meeting of Unit Owners.
2. A notice of said meeting containing a full statement of the proposed Amendment was sent out to all Unit Owners and Eligible Mortgage Holders as listed on the books and records of the Condominium, on OCT 3, 2013, said date of mailing being at least 30 but not more than 50 days prior to the special meeting, as required by Section 2.07 of the By-Laws.
3. The special meeting and canvass of votes was held on NOVEMBER 7, 2013. Sixty Seven percent (67%) in number and in common interest of all Unit Owners

approved this Amendment by voting in person or by proxy, and these consents have been received and filed with the Board of Managers.

4. The Board of Managers did not, prior to that date established for voting on the proposed Amendment, receive written notification of opposition to the Amendment from Eligible Mortgage Holders of more than 51% of the number of Units.

IN WITNESS WHEREOF, the undersigned, being all a majority of the members of the Hickory Hill Estates Condominium Board of Managers, cause this Amendment to be signed this 7<sup>th</sup> day of November, 2013, and direct that this Amendment be recorded in the Erie County Clerk's Office as an amendment to the Declaration and By-Laws of the Condominium.

HICKORY HILL ESTATES CONDOMINIUM

By: Peter D. Gambino TREASURER  
~~President~~

By: Joseph A. Mulhally SECRETARY

By: Roger W. Sierk

By: [Signature]

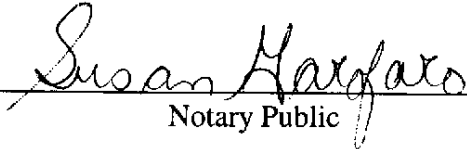
By: John Phillips

By: Thelp (L) Lopez PRESIDENT

By: [Signature] V. PRESIDENT

STATE OF NEW YORK )  
 )SS.:  
COUNTY OF ERIE )

On the 7<sup>th</sup> day of November in the year 2013, before me, the undersigned, personally appeared PETER D. GAMBINO, RAYMOND A. MILHOLLAND, ROGER H. SIERK, ARMAN AFSHANI, JOHN PHILLIPS, PHILIP T. GAROFARO, GERALD STROBEL personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individual acted, executed the instrument.

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

SUSAN GAROFARO  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ERIE COUNTY  
My Commission Expires Oct. 31, 2014

ERIE COUNTY CLERK'S OFFICE



County Clerk's Recording Page

Return to:  
BOX 374

Party 1:  
HICKORY HILL ESTATES CONDOMINIUM

Party 2:

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Rec Time: 03:01:26 PM  
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Recording Fees:

RECORDING	\$50.00
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COE STATE \$14.25 GEN	\$14.25
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MARKOFF FEE	\$0.50

Consideration Amount:

BASIC MT	\$0.00
SONYMA MT	\$0.00
ADDL MT/NFTA	\$0.00
SP MT/M-RAIL	\$0.00
NY STATE TT	\$0.00
ROAD FUND TT	\$0.00

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**Total: \$70.50**

STATE OF NEW YORK  
ERIE COUNTY CLERK'S OFFICE

WARNING – THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT REQUIRED BY SECTION 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

Peggy A. Lagree  
Acting County Clerk

AMENDMENT TO THE RESTATED DECLARATION  
AND BY-LAWS (EXHIBIT E TO DECLARATION)  
HICKORY HILL ESTATES CONDOMINIUM

WHEREAS, a certain Restated Declaration of Condominium for the Hickory Hill Estates Condominium was recorded on October 20, 1995, in the Erie County Clerk's Office in Liber 10892 of Deeds at Page 7664; and

WHEREAS, pursuant to Article XIII of the Declaration, 67% in number and in common interest of all Unit Owners agree to amend the Declaration as hereinafter set forth at a meeting called for such purpose, which meeting was held on the 17th day of January, 2017; and

NOW THEREFORE, it is hereby declared that the Declaration, Article V, Section 5.06 is amended as follows:

5.06. Unit Services and Utilities Funded Through Common Charges. Electricity for the common elements and trash removal for the Units shall be common expense, **as well as telecommunication services including cable television for the Units**, except that the Board of Managers may, at its option, in accordance with Section 5.01 above, allocate and apportion expenses among Unit Owners based on the special or exclusive availability of use of such services by one or more Unit Owners, and may, in its discretion, reimburse townhouse Unit Owners for the cost of electricity for outdoor lighting. **Telecommunications services, including cable television, shall be charged equally to each Unit Owner and not according to the percentage interest in the common elements as required by By-Laws Section 5.01.**

Note: Added language has been bolded.

The undersigned members of the Board of Managers certify as follows:

1. This Amendment has been adopted in full compliance with the aforementioned Article IX of the By-Laws, in that it was adopted at a duly called meeting of Unit Owners.
2. A notice of said meeting containing a full statement of the proposed Amendment was sent out to all Unit Owners as listed on the books and records of the Condominium, on December 15, 2016, said date of mailing being at least 30 days prior to the special meeting, as required by Section 2.07 of the By-Laws.
3. The special meeting and canvass of votes was held on January 17, 2017. Sixty Seven percent (67%) in number and in common interest of all Unit Owners approved this Amendment by voting in person or by proxy, and these consents have been received and filed with the Board of Managers.

4. The Board of Managers did not, prior to that date established for voting on the proposed Amendment, receive written notification of opposition to the Amendment from Eligible Mortgage Holders of more than 51% of the number of Units.

IN WITNESS WHEREOF, the undersigned, being X all a majority of the members of the Hickory Hill Estates Condominium Board of Managers, cause this Amendment to be signed this 2 day of February, 2018, and direct that this Amendment be recorded in the Erie County Clerk's Office as an amendment to the Declaration and By-Laws of the Condominium.

HICKORY HILL ESTATES CONDOMINIUM

By: [Signature] President

By: Amelia M. Carlin Board member

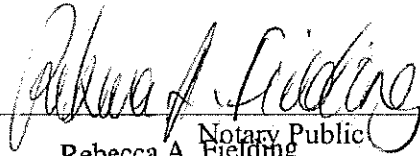
By: [Signature] Board Member

By: David Nosenchuck Board member

By: Joan Dadante Secretary

STATE OF NEW YORK )  
 )SS.:  
COUNTY OF ERIE )

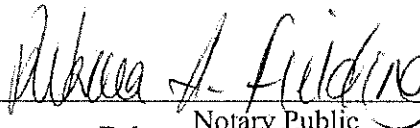
On the 2 day of February in the year 2017, before me, the undersigned, personally appeared Gerald Stobel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public  
Rebecca A. Fielding  
Notary Public, State of New York  
No. 4999441  
Qualified in Erie County  
Commission Expires July 20, 2018

STATE OF NEW YORK )  
 )SS.:  
COUNTY OF ERIE )

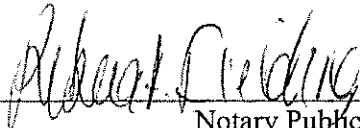
On the 2 day of February in the year 2017, before me, the undersigned, personally appeared Amelia Eastin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public  
Rebecca A. Fielding  
Notary Public, State of New York  
No. 4999441  
Qualified in Erie County  
Commission Expires July 20, 2018

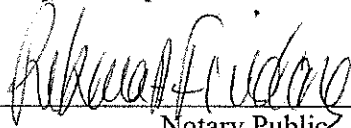
STATE OF NEW YORK )  
 )SS.:  
COUNTY OF ERIE )

On the 2 day of February in the year 2017, before me, the undersigned, personally appeared Raymond Korzelius, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
Rebecca A. Fielding  
Notary Public, State of New York  
No. 4999441  
Qualified in Erie County  
Commission Expires July 20, 2018

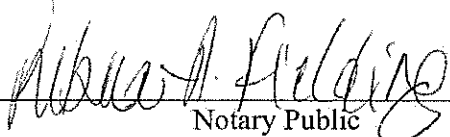
STATE OF NEW YORK )  
 )SS.:  
COUNTY OF ERIE )

On the 2 day of February in the year 2017, before me, the undersigned, personally appeared Daniel W. Kowalski, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
Rebecca A. Fielding  
Notary Public, State of New York  
No. 4999441  
Qualified in Erie County  
Commission Expires July 20, 2018

STATE OF NEW YORK )  
 )SS.:  
COUNTY OF ERIE )

On the 2 day of February in the year 2017, before me, the undersigned, personally appeared Joan D'Amico, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
Rebecca A. Fielding  
Notary Public, State of New York  
No. 4999441  
Qualified in Erie County  
Commission Expires July 20, 2018

Box 374 (RSS)

AMENDMENT TO DECLARATION  
AND BY-LAWS

HICKORY HILL ESTATES CONDOMINIUM

Dated: February 2, 2017

Ronald S. Shubert, Esq.  
Attorney for Hickory Hill  
Estates Condominium  
Phillips Lytle LLP  
One Canalside  
125 Main Street  
Buffalo, New York 14203

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