

DECLARATION OF CONDOMINIUM  
OF  
THE ENCLAVE CONDOMINIUM

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DECLARATION

THE ENCLAVE CONDOMINIUM

THIS DECLARATION is made on this \_\_\_\_\_ day of \_\_\_\_\_, 1995, by NEFA CORPORATION (hereinafter referred to as "Declarant").

ARTICLE I

SUBMISSION

Section 1.1 Declarant; Name; County; Property:

NEFA Corporation (hereinafter referred to as the "Declarant"), owner in fee simple of the real estate described in Exhibit "A" attached hereto located in the Township of Upper Dublin, County of Montgomery and Commonwealth of Pennsylvania, hereby submits the Real Estate together with the buildings and improvements thereon erected or to be erected and the easements, rights and appurtenances thereunto belonging (the "Property") to the provisions of the Pennsylvania Uniform Condominium Act, 68 Pa. C.S. § 3101, et seq. (as the same may be amended from time to time, "Act"), and hereby creates with respect to the Property a condominium, to be known as "The Enclave" (the "Condominium").

Section 1.2 Easements and Licenses:

Section 1.3 Defined Terms:

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

1.3.1 The following terms used or defined in general terms in the Act shall have the specific meaning herein as follows:

A. "Assessments" means a Unit's individual share of the anticipated common expenses for each fiscal year as reflected in the budget adopted by the Executive Board for such year.

B. "Association" means the Unit Owners' Association of the Condominium, which shall be a not-for-profit corporation which shall be known as "ENCLAVE CONDOMINIUM ASSOCIATION."

- C. "By-Laws" means the document having that name and providing for the governance of the Association, pursuant to Section 3306 of the Act, as such document may be amended from time to time.
- D. "Buildings" means any buildings included in the Property.
- E. "Common Elements" means all portions of the Property other than the Units. Unless the context otherwise requires, the term "Common Elements" includes the Limited Common Elements.
- F. "Condominium Documents" includes the Declaration, Plats and Plans, By-Laws and Rules and Regulations.
- G. "Declarant" means NEFA Corporation, its successors and assigns.
- H. "Declaration" means this document, as the same may be amended from time to time.
- I. "Executive Board" means the Executive Board of the Association which shall also mean the Board of Directors of the Association.
- J. "Finished Surface" means the full thickness of all wallboard, ceiling board, plaster, finished flooring and the full thickness excluding the surface facing a Common Element of doors and frames, windows and frames, sashes and sills, all on a boundary of a Unit.
- K. "Limited Common Elements" shall mean a portion of the Common Elements allocated by this Declaration for the exclusive use of one or more but fewer than all of the Units, as described in Section 3202 (4) of the Act, including specifically sidewalks, driveways, patios or decks, privacy fences and the front, side and rear yard areas extending fifteen (15) feet from the building (where available within the Property).
- L. "Party Wall" means a wall located at the perimeter of a Unit, which is a common wall shared with an adjacent Unit.
- M. "Percentage Interest" means the Unit Owner's undivided ownership interest in the Common Elements, a share of all votes of Unit Owners and share of common expense liability appurtenant to such Unit.
- N. "Permitted Mortgage" means a mortgage to (i) the Declarant; (ii) the seller of a Unit; (iii) a bank, trust company, savings bank, savings and loan association,

mortgage service company, insurance company, credit union, pension fund, real estate investment trust or like institutional investor or lender; and (iv) any other mortgagee approved by the Executive Board. A holder of a Permitted Mortgage is referred to herein as a "Permitted Mortgagee".

- O. "Plans" means the Plats and Plans attached hereto as Exhibit "A" and made a part hereof, as the same may be amended from time to time.
- P. "Property" means the Property described in Section 1.1 above.
- Q. "Rules and Regulations" means such rules and regulations as are promulgated by the Executive Board from time to time, with respect to various details of the use of all or any portion of the Premises, either supplementing or elaborating upon the provisions in the Declaration or the By-Laws.
- R. "Special Assessment" means a Unit's individual share of any assessment made by the Executive Board in addition to the Assessment.
- S. "Unit" means a Unit as described herein and in the Plans.
- T. "Unit Owner" means the person or persons whose estate or interest, individually or collectively, aggregate fee simple ownership of a Unit and a percentage interest in the Common Elements appurtenant thereto. In case of joint ownership of a Unit, the term "Unit Owner" shall refer to all such joint owners collectively, and the obligations of a Unit Owner hereunder or under the Act shall, with respect to such Unit, be joint and several among such joint owners. The Declarant shall be deemed a Unit Owner so long as it is the legal title holder of any Unit.

## ARTICLE II

### ALLOCATION OF PERCENTAGE INTERESTS, VOTES AND COMMON EXPENSE LIABILITIES; UNIT IDENTIFICATION AND BOUNDARIES; MAINTENANCE RESPONSIBILITIES

Section 2.1 Plats and Plans; Units; Percentage Interests: The Condominium consists of 135 Units, which is more particularly described in the Legal Description of the Property in Exhibit "B" attached hereto and made a part hereof, such Units to be constructed in accordance with the Plan of Condominium as part of The Enclave at Belle Aire prepared for NEFA Corporation by Stout,

Tacconelli & Associates, Inc. dated December 18, 1995 and last revised \_\_\_\_\_ recorded in the Office of the Recorder of Deeds in Montgomery County in Plan Book L003, Page 173. The Units are identified as Units 1 through 89, 105 through 109 and 141 through 181 on the aforesaid Plan. Common Element interests and common expense liability shall be based upon the percentage relationship each Unit bears to the aggregate number of existing Units. The basis for this formulation is that each Unit derives equal benefit from the Common Elements. Each Unit shall be entitled to one vote in the Association. Each Unit shall be allocated a percentage of undivided interests in the Common Elements and a percentage of common expense liability as set forth in Exhibit "C" attached hereto and made a part hereto.

Section 2.2 Each Unit shall consist of space within the following boundaries:

2.2.1 a. Upper and Lower Horizontal Boundaries:

(i) Upper boundary: The horizontal plane of the exterior surface of the roof of the building comprising Units;

(ii) Lower boundary: The surface of the land and all soil and elements below the surface of the land directly beneath the building comprising the Unit.

b. Vertical Boundaries: The vertical boundaries of the Unit shall be the vertical planes, extended to the intersection with each other, and with the upper and lower boundaries, of the exterior surface of exterior walls, which do not separate the Unit from any other Unit, and of the center of the party walls which separate the Unit from any other Unit.

2.2.2 Each Unit includes chutes, ducts, wires, conduits, water, sewer or drainage pipes, heating or air conditioning apparatus, or other fixtures serving only that Unit, even if such item is located partially outside the Unit boundaries described in Section 2.1.1 above. Any item which serves more than one Unit, and any bearing column, even if located partially within the Unit boundaries described above, is part of the Common Elements.

2.2.3 Each Unit shall also have the benefit of the use of all of the Limited Common Elements which are either described in Section 3.2 below or shown on the Condominium Plan as being allocated to such Unit.

### ARTICLE III

#### DESCRIPTION OF COMMON ELEMENTS

Section 3.1 The Common Elements shall mean and include the following:

3.1.1 All roads, sidewalks, parking areas, walkways, paths, grass areas, landscaping, lighting and all other apparatus and installation existing for common use.

3.1.2 Installations of and services for all central services and utilities servicing the Property as defined in the Declaration which are located outside of any Unit, together with installations existing for common use, including all pipes, wires, conduits, ducts and utility lines used in connection therewith, except as and to the extent that the same are located within or serve only a single Unit.

Section 3.2 The Limited Common Elements shall mean and include the following:

3.2.1 Wood decks or patios attached to the Units, if any, as well as driveways and walkways servicing one or more but less than all Units. A Unit Owner may construct a deck with a total square footage not to exceed 300 square feet; any deck shall be constructed of pressure treated wood with clear stain and balusters in a vertical position. Lights may not be installed on decks.

3.2.2 Any other portions of the Common Elements, particularly portions of the front and rear yards, specifically designated on the Condominium Plan pursuant to Section 1.3.1 K. of the Declaration as well as defined in Section 2.1.2.

### ARTICLE IV

Section 4.1 Utility Easements: The Units and Common Elements shall be, and are hereby, made subject to easements in favor of the Declarant, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property. The easements created in this section shall include, without limitation, rights of the Declarant, or the providing utility or service company, or governmental agency or authority to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise), electric wires, conduits and equipment and ducts and vents over, under, through, along and on Units and Common Elements. Notwithstanding the foregoing



provisions of this section, unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Unit by the Declarant, or so as not to materially interfere with the use or occupancy of the Unit by its occupants.

**Section 4.2 Easements Relating to Dwellings:** Each dwelling shall be, and it hereby is, made subject to the following rights, easements, and covenants in favor of each adjoining dwelling and the Association:

A. An easement for lateral and surface supports, in, through, over, under and alongside each adjoining dwelling;

B. An easement in favor of the Units benefitted thereby for the encroachment of and for the installation, repair, maintenance and/or replacement of overhead lighting fixtures, electrical receptacles, medicine cabinets, exhaust fans, ventilation ducts, registers, grills and similar fixtures which are located in the portion of the ceiling, wall or floor adjacent to a Unit which serve only one Unit, but which encroach into any part of any Common Elements or and limited Common Elements provided, however, that the installation, repair, maintenance, use, removal and/or replacement of such fixtures, receptacles and the like do not unreasonably interfere with the common use of any part of the Common Elements or impair or structurally weaken the Unit.

C. An easement in favor of the Association and its agents, employees and independent contractors for access to the Units and the Limited Common Elements for inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in or accessible from such Units or the Limited Common Elements or both; and correction of emergency conditions in one or more Units, the Limited Common Elements or both, or casualties to the Common Elements, the Limited Common Elements and/or the Units.

D. The obligation of each Unit Owner to maintain all portions of his Unit in such condition as to insure structural support, sanitary hygienic condition, habitability, soundness and weather tightness of the adjoining Unit, and to maintain or repair his Unit, whether after damage by fire or otherwise, so as not to materially impair the value of any other Unit.

**Section 4.3 Declarant Easement to Correct Drainage:** Declarant reserves an easement on, over and under those portions of the Common Elements not located within a building for the purpose of maintaining and correcting drainage of surface water for both The Enclave and the Belle-Aire Condominium in order to maintain reasonable standards of health, safety and appearance. The easement created by this section expressly includes the right to

cut any trees, bushes or shrubbery, to grade the soil, or to take any other action reasonably necessary to achieve this result, following which the Declarant can restore the affected property as closely to its original condition as practicable.

Section 4.4 Declarant's Easement for Integrating Development with Belle-Aire Condominium: Declarant reserves an easement on, over and under those portions of the Common Elements for all purposes relating to the construction, development and completion of infrastructure, including, but not limited to, water lines, sewer lines, street lighting, detention basins and other work necessary for the completion of the overall development of The Enclave as well as the Belle-Aire Condominium.

A buffer planting easement behind units 144 through 148 inclusive and beside unit 168 to permit Belle-Aire Condominium to install and maintain buffer plantings.

Section 4.5 Taxes: The Declarant and each Unit Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Unit. If any taxes or assessments may, in the opinion of the Association, be a lien on more than one (1) Unit not under common ownership, or any part thereof, they may be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxes and assessments assessed by the taxing authority against such Owner's Unit and interest in the Common Area.

Section 4.6 Binding Effect: All easements and rights described and mentioned herein are easements appurtenant, running with the land, the Units and the Common Elements and shall be in full force and effect for the life of this Declaration, as amended, and at all times shall inure to the benefit of and be binding upon the Declarant, its successors and assigns, the Executive Board and any Unit Owner, purchaser, mortgagee, lessee or other person having an interest in the land or any Units, Common Elements or portions thereof.

## ARTICLE V

### USE RESTRICTIONS

Section 5.1 Use and Occupancy of Units and Common Elements: The occupancy and use of the Units, Common Elements, and Limited Common Elements, shall be subject to the following restrictions:

5.1.1 No use or practice shall be permitted in any Unit, or on any other place in the Property which is the source of undue annoyance to the other occupants of the Property or interferes with the peaceful possession and proper use of the Property by such

other occupants or will materially increase the rate of insurance on the Property beyond that to be anticipated from the proper and accepted conduct of otherwise permitted uses hereunder.

(a) No part of the Property shall be used for other than housing and the related common purposes for which the Property was designed.

(b) No industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted on any part of the Property. No "For Sale," advertising or other display signs shall be maintained or permitted on any part of the Property except a small, non-illuminated name sign. The right is reserved by the Declarant or its agent or agents, to place "For Sale" signs on any unsold or unoccupied Units, and on any part of the Common Elements.

(c) No inoperable or other vehicle on which current registration plates and inspection stickers are not displayed shall be stored on the Property.

(d) No Unit Owner shall park, store or keep on the Property any large commercial type vehicle (dump truck, cement mixer truck, oil or gas truck, delivery truck and any other vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board) or any recreational vehicle (camper unit, motor home, truck, trailer, boat, mobile home or other similar vehicle) anywhere on the Property. No Unit Owner shall conduct major repairs or restorations of any motor vehicle upon any portion of the Property. No Unit Owner shall park any vehicle on the Property in such manner so as to obstruct access to any garage.

(e) No Unit Owner shall overload the electric wiring in his Unit, or operate any machines, appliances, accessories or equipment in such manner as to cause an unreasonable disturbance to others.

(f) No exterior radio antenna, television antenna, satellite dishes or other antenna of any type and no window air conditioners shall be installed on the Buildings or within the Limited Common Elements.

(g) Unit Owners shall abide by additional use restrictions as provided in the By-Laws.

(h) This Section 5.1.1 shall not be construed to prevent or prohibit a Unit Owner from maintaining the Unit Owner's personal professional library, keeping the Unit Owner's personal business or professional records or accounts, handling the Unit Owner's personal business or professional telephone calls, or conferring

with business or professional associates, clients or customers, in the Unit Owner's Unit.

(i) Each Unit Owner shall be required to maintain the interior as well as the exterior of his Unit in good repair, including the roof. The Unit Owner shall be responsible for the maintenance and replacement of any Limited Common Elements such as wood decks, wood patios, driveways and walkways including snow removal thereon. The grass area within the Common Elements shall be maintained by Association and such maintenance shall be treated as a Common Expense. In the Limited Common Elements, the grass area will be maintained by the Association as a Common Expense with the exception of any bushes or shrubbery that may be planted by a Unit Owner.

(j) No outbuilding, shack, shed, above ground swimming pool, hot tub or other structure of any kind shall be placed by a Unit Owner on any portion of a Unit, Limited Common Element or Common Elements. Any storm windows or storm doors shall match the exterior trim on the Unit. Any alteration of the exterior of a Unit shall be subject to the review of the Architectural Control Committee as set forth in Article VIII of the By-Laws.

5.1.2 Rules and Regulations, not in conflict with the provisions of this Declaration, concerning the use and enjoyment of the Property, may be promulgated from time to time by the Executive Board, subject to the right of the Association to change such Rules and Regulations. Copies of the then current Rules and Regulations and any amendments thereto shall be furnished to all Unit Owners by the Executive Board promptly after the adoption of such Rules and Regulations or any amendments thereof.

5.1.3 Each Unit Owner shall have the right to use the Common Elements in common with all other Unit Owners, as may be required for purposes of access, ingress to, egress from, use, occupancy and enjoyment of the Unit owned by such Unit Owner, and for such other purposes incidental to the use of the Units. Such right to use the Common Elements shall extend to each Unit Owner and to his agents, servants, tenants, family members, customers, invitees and licensees.

5.2 Sale of Units: There shall be no restriction on the sale, conveyance or other transfer of title to any Unit, but any sale, conveyance or other transfer shall be subject to the Act, this Declaration, the By-Laws, and the Rules and Regulations of the Association. Without limiting the generality of the foregoing, the sale of a Unit shall not be subject to any right of first refusal in favor of the Association or any other Unit Owner. In order to maintain proper Association records, at least thirty days' prior to any transfer, a transferring Unit Owner shall notify the Executive

Board in writing of the name and address of the proposed transferee and the projected date of settlement.

(a) The Declarant reserves the right to locate offices and models in the Common Element portion of the Condominium in connection with the management, sale or rental of Units as specified in Exhibit "D" attached hereto and made a part hereof.

5.3 Leasing of Units: Except as expressly provided in this Section, there shall be no restrictions on the leasing of Units. No transient tenants may be accommodated in any Unit, and no Lease shall be for less than a whole Unit, nor for an initial term of less than one (1) year. Each Lease shall be in writing and shall provide the terms of the Lease shall be subject in all respects to the provision of the Act, this Declaration, the By-Laws and the Rules and Regulations of the Association, and that any failure by the Lessee to comply with the terms of such documents shall by an event of default under the Lease. The Association shall be a third party beneficiary of such covenants in any Lease and shall have the right to enforce them. A Unit Owner shall not engage in the leasing of his Unit except after having his lessee execute a lease which contains the following provisions:

"Lessee hereby agrees to be bound by all terms and conditions contained in the Declaration of Condominium, By-Laws and Rules and Regulations of the Association as the same shall apply to the Unit leased hereunder, and agrees to assume all duties and responsibilities and be jointly and severally liable with the Unit Owner for all of the liabilities and for the performance of all of the obligations applicable to the Unit Owners under the Act, the Condominium documents or otherwise during the term of the Lease. Lessee further agrees that he shall not sublet or assign this Lease except with the approval and consent of the Lessor."

## ARTICLE VI

### BUDGETS; COMMON EXPENSES; ASSESSMENTS AND ENFORCEMENT

Section 6.1 Formation of Association: The Association shall be a not-for-profit corporation whose members shall be the Unit Owners from time to time. The initial By-Laws of the Association may be adopted by the Executive Board but shall be approved by the Unit Owners (this approval may be exercised solely by the Declarant prior to the conveyance of the first Unit to a Unit Owner other than the Declarant).

Section 6.2 Professional Management: The Association shall be managed by a professional management company. To that end, the Declarant shall initially enter into a contract with the

professional management firm for a term not to exceed two years. Said contract shall provide for termination by either party for cause, without payment of a termination fee and upon a maximum of ninety (90) days advanced written notice.

Section 6.3 Monthly Payments: All Common Expense assessments made in order to meet the requirements of the Association's annual budget shall be deemed to be adopted and assessed on a monthly basis (rather than on an annual basis payable in monthly installments) and shall be due and payable in advance on the first day of each month. The Common Expense liability of each Unit shall be assessed in accordance with each Unit's Percentage Interest.

(a) The Common Expense budget of the Association shall provide for the overall maintenance of the Common Elements as defined in Section 3.1 above and as applied throughout the entire Condominium, including but not limited to, road maintenance, snow plowing, grass cutting, trash removal and all other services benefitting the Condominium.

Section 6.4 Subordination of Certain Charges: Any fees, charges, late charges, fines and interest which may be levied by the Executive Board pursuant to Section 3302(a) of the Act, shall be subordinate to the lien of a Permitted Mortgage on a Unit.

Section 6.5 Surplus: The budget of the Association shall segregate capital expenses from general common expenses. Any amounts accumulated from assessments for general common expenses and income from the operation of the Common Elements to which such general common expenses pertain in excess of the amount required for actual general common expenses may be reserved for future capital expenses at the discretion of the Executive Board. Any amounts accumulated in excess of the amounts required for actual general common expenses and reserves for future capital expenses may, at the discretion of the Executive Board, be credited to each Unit Owner in accordance with Percentage Interest, said credits to be applied to the next monthly assessment of general common expenses due from Unit Owners under the current fiscal year's budget and thereafter until exhausted. The Executive Board shall determine the application of such excess funds.

Section 6.6 Capital Expense: The Association shall establish an adequate capital expense fund for major repair and replacement of those Common Elements which are anticipated to require replacement, repair or major repair on a periodic basis. The capital expense fund shall be funded by monthly payments as a part of Common Expenses.

Section 6.7 Special Assessments: If the annual budget proves inadequate for any reason, including nonpayment of any Unit Owner's assessments, or any nonrecurring Common Expense or any Common Expense not set forth in the annual budget as adopted, the

Executive Board may at any time levy a further assessment, which shall be assessed to the Unit Owners in accordance to each Unit Owner's percentage interest in the Common Elements. Such further assessment shall be payable in such monthly installments as the Executive Board may determine. The Executive Board shall serve notice of further assessment on all Unit Owners by a statement in writing giving the amount and reasons therefore, and such further assessment shall become effective and shall be payable at such time or times as determined by the Executive Board.

Section 6.8 Failure to Fix New Assessments: If the Executive Board shall fail to fix new assessments for Common Expenses for the subsequent fiscal year before the expiration of any fiscal year, the Unit Owners shall continue to pay the same sums they were paying for such assessments during the fiscal year just ended and such sum shall be deemed to be the new assessments for the succeeding fiscal year. If the Executive Board shall change the assessment at a later date, such new assessment shall be treated as if it were a Special Assessment under Section 6.7 hereof.

Section 6.9 No Exemption by Waiver: No Unit Owner may exempt himself from liability with respect to the Common Expenses by waiver of the enjoyment of the right to use any of the Common Elements or by the abandonment of his Unit or otherwise.

Section 6.10 Personal Liability of Unit Owners: In the event of any violation of the provisions of the Act, this Declaration, the By-Laws or the Rules and Regulations of the Association by any Unit Owner (either by his own conduct or by the conduct of any other occupant of his Unit), the Association, or its successors or assigns, or the Executive Board, or any Unit Owner directly affected by such violation, shall have each and all of the rights and remedies which may be provided for in the Act, this Declaration, the By-Laws or said Rules and Regulations, or which may be available at law or in equity, and may prosecute an action or any other proceedings against such defaulting Unit Owner and/or others for enforcement of any lien, the appointment of a receiver for the Unit of such Unit Owner, for damages, for injunction or specific performance, or for any other relief. All expenses of the Executive Board in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of fifteen (15%) percent per annum until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed a part of his respective share of the Common Expenses, and the Association shall have a lien for all of the same, as well as for nonpayment of his respective share of the Common Expenses, upon the Unit and the Percentage Interest in the Common Elements of such defaulting Unit Owner and upon all his additions and improvements thereto and upon all of his personal property in his Unit or located elsewhere on the Property. In the event of any such default by any Unit Owner,

the Executive Board shall have the authority to correct such default and do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against the Unit owned by such defaulting Unit Owner. Any and all rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise.

Section 6.11 Acceleration: If a Unit Owner is in default of a monthly payment of the aforesaid charges or assessments for thirty (30) days, the Executive Board may, in addition to all other remedies in the Act or Declaration contained, accelerate all other monthly payment of charges and assessments due for the following twelve (12) months.

Section 6.12 Unpaid Assessments Upon Execution Sale Against a Unit: Any unpaid assessments which cannot be promptly collected from the former Unit Owner may be reassessed by the Executive Board as a Common Expense to be collected from all of the Unit Owners, including (by way of illustration and not limitation) the purchaser who acquired title at the sheriff's sale, his successors and assigns and any holder of a Permitted Mortgage who comes into possession of a Unit by deed in lieu of foreclosure or assignment in lieu of foreclosure.

Section 6.13 Liability of Purchaser of Unit for Unpaid Assessments: Notwithstanding the provisions of Section 6.10 hereof, (but subject to the provisions of Section 3407(c) of the Act), upon the voluntary sale, conveyance or any other voluntary transfer of a Unit or any interest therein, the grantee thereof shall be jointly and severally liable with the grantor thereof for all unpaid assessments for Common Expenses which are a charge against the Unit as of the date of consummation of the sale, conveyance or transfer, but such joint and several liability shall be without prejudice to such grantee's right to recover from such grantor the amount of any such unpaid assessments which such grantee may have paid, and until any such assessments are paid, they shall continue to be a lien against the Unit which may be enforced in the manner set forth in Section 3315 of the Act.

Section 6.14 Subordination of Certain Charges: Any fees, charges, late charges, fines and interest that may be levied by the Association pursuant to Sections 3302(a)(10), (11) and (12) of the Act shall be subordinate to any first lien of a Permitted Mortgage.

Section 6.15 Utility Charges: All utilities provided to the Premises shall be separately metered and will be billed directly to Unit Owners and will be each Unit Owner's sole obligation to pay. Unit Owners shall be responsible for service charges covering any costs of billing incurred by the Association.

Section 6.16 Confessions of Judgment: IN ORDER TO EXPEDITE THE EXECUTIVE BOARD'S COLLECTION OF ANY DELINQUENT ASSESSMENT, EACH



UNIT OWNER (BY THE ACCEPTANCE OF THE DEED TO HIS UNIT) SHALL BE DEEMED TO HAVE APPOINTED ANY ONE OR MORE EXECUTIVE BOARD MEMBER AS THE ATTORNEY-IN-FACT FOR SUCH UNIT OWNER TO CONFESS JUDGMENT AGAINST SUCH UNIT OWNER IN ANY COURT OF COMPETENT JURISDICTION IN PENNSYLVANIA, FOR ANY SUCH UNPAID ASSESSMENTS AND ADDITIONAL INTEREST, COURT COSTS AND ATTORNEY'S FEES AS SET FORTH IN SECTION 6.10 ABOVE, WHICH APPOINTMENT (BEING FOR SECURITY) SHALL BE IRREVOCABLE; AND FOR SO DOING A COPY OF THIS ARTICLE VI AND SAID DEED, BOTH VERIFIED BY AFFIDAVIT, SHALL BE A SUFFICIENT WARRANT. THE AUTHORITY GRANTED HEREIN TO CONFESS JUDGMENT SHALL NOT BE EXHAUSTED BY ANY EXERCISE THEREOF BUT SHALL CONTINUE FROM TIME TO TIME AND AT ALL TIMES UNTIL THE DECLARATION SHALL BE TERMINATED.

## ARTICLE VII

### INSURANCE

Section 7.1 Casualty Insurance to be Carried by the Unit Owners: Each Unit Owner is obligated to obtain and maintain property damage insurance on the Unit on an "all risk" basis and in an amount equal to the full replacement cost of the Unit. The Association and Unit Owners will be insured against liability arising from ownership or use of the Common Elements and Limited Common Elements. This coverage will not insure Unit Owners against liability arising from an accident or injury occurring within a Unit or liability arising from the act or negligence of the Unit Owner.

Section 7.2 Liability Insurance to be Carried by Association: Commencing not later than the time of the first conveyance of a Unit to a person other than the Declarant, the Association shall maintain, to the extent determined by the Association but in no event less than \$1,000,000 per occurrence, comprehensive general liability insurance coverage on all Common Elements of the Property covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements.

Section 7.3 Additional Endorsements: The policy of insurance obtained by the Association shall contain, if possible, a form of special condominium endorsement which normally provides that (1) any insurance trust agreement will be recognized; (2) the right of subrogation against Unit Owners will be waived; (3) the insurance will not be prejudiced by any acts or omissions of individual Unit Owners that are not under the control of the Association; and (4) that the policy will be primary, even if a Unit Owner has other insurance that covers the same loss.

Section 7.4 Named Beneficiary: The insurance policy obtained shall show the named insured as being the Association of Unit Owners of The Enclave Condominium for the use and benefit of the individual owners. The "loss payable" clause shall show the

Association as the trustee for each Unit Owner and the holders of a mortgage on any Unit. The policy of insurance shall contain the standard mortgage clause and, where possible, shall require the insured to notify in writing the Association and each mortgage holder named in the mortgage clause at least thirty (30) days before it cancels or substantially changes its coverage.

Section 7.5 Other Insurance: Generally, the Association shall maintain such other insurance as the Executive Board may, in the exercise of reasonable business judgment, determine to be necessary.

Section 7.6 Damage to Common Elements: If the act or omission of a Unit Owner, or member of his family, a household pet, guest, occupant, or visitor of such Unit Owner, shall cause damage to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements.

Section 7.7 Claim for Damages: If the Executive Board fails within thirty (30) days of an insured loss to initiate a claim for damages recoverable under the property insurance policy obtained pursuant to the Act, any Unit Owner or the holder of any Permitted Mortgage may maintain such a claim on behalf of the Board.

Section 7.8 Fidelity Bonds: The Association shall maintain blanket fidelity bonds for anyone who either handles or is responsible for funds held by or administered by the Unit Owners Association, whether or not said individual has received compensation for their services. The Association bond shall name the Association as the obligee and the premium shall be paid as a common expense by the Association. Any management agent that handles funds for the Association shall be covered by its own fidelity bond which shall provide the same coverage as required of the Association. The fidelity bonds obtained shall cover the maximum funds that will be in custody of the Association or its management agent at any time while the bond is enforced. In addition, the fidelity bond coverage shall at least equal the sum of three (3) months assessment on all Units in the Condominium, plus the Association's reserve funds. Said fidelity bond shall include a provision requiring thirty (30) days written notice to the Association and to each holder of a mortgage on an individual Unit in the Condominium before the bond can be canceled or substantially modified for any reason.

Section 7.9 Waiver and Release: Subject to the provisions of this Article VII, each Owner, the Association and the Executive Board hereby waives and releases any and all claims which he or it may have against any other Unit Owner, the Association, the Executive Board and members thereof, and the Declarant and its respective employees and agents, for damage to the Common Elements, the Units

or to any personal property located in the Units or Common Elements, caused by fire or other casualty or any act or omission of any such party to the extent that such damage is covered by fire or other form of hazard insurance. Such release or waiver shall be valid only if such release or waiver does not affect the right of the insured under the applicable insurance policy to recover thereunder.

## ARTICLE VIII

### EXECUTIVE BOARD OF THE ASSOCIATION

Section 8.1 Powers of the Executive Board: The Executive Board shall consist of three (3) members who shall be elected at the annual meetings of the Association members as provided in the By-Laws. The first Executive Board shall be appointed by the Declarant until their successors are elected pursuant to the provisions of Section 3301 of the Act. In addition to the powers set forth in the Act, the Executive Board shall have the following additional powers:

(a) To appoint committees of the Board (which need consist of only one (1) Board Member) and to delegate to such committees the Executive Board's authority to carry out certain duties of the Board, subject to the approval and control of the Board.

(b) To engage the services of any persons (including, but not limited to, accountants and attorneys) deemed necessary by the Executive Board at such compensation as is deemed reasonable by the Executive Board, in the operation, repair, maintenance and management of the Property, or in connection with any duty, responsibility or right of the Executive Board and to remove, at any time, any such personnel.

(c) To pay any amount necessary to discharge any mechanics' lien or other encumbrance levied against the Property or any part thereof which may in the opinion of the Executive Board constitute a lien against the Property or against the Common Elements, rather than merely against the interest therein of particular Unit Owners. Where one or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Executive Board by reason of said lien or liens shall be specially assessed to said Unit Owners.

(d) The Executive Board may elect to have certain powers exercised by or delegated to a master association as defined by Section 3222 of the Act.

Section 8.2 Abating and Enjoining Violations by Unit Owners: The violation of any Rules and Regulations adopted by the Executive Board, the breach of any provision contained in the By-Laws or the breach of any provision of this Declaration or the Condominium Act by any Unit Owner or any tenant of such Unit Owner, shall give the Executive Board the right, in addition to any other rights to which it may be entitled, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

## ARTICLE IX

### LIMITATION OF LIABILITY

Section 9.1 Limited Liability of the Executive Board: The Executive Board, and its members in their capacity as members, officers and employees:

- A. Shall not be liable for the failure of any service to be obtained by the Executive Board and paid for by the Association, or for injury or damage to persons or property caused by the elements or by another Unit Owner or person on the Property, or resulting from electricity, gas, water, rain, dust or sand which may leak or flow from the outside or from any part of the building, or from any of its pipes, drain conduits, appliances, or equipment, or from any other place unless in each such instance such injury or damage has been caused by the willful misconduct or gross negligence of the Association or the Executive Board;
- B. Shall not be liable to the Unit Owners as a result of the performance of the Executive Board members' duties for any mistake of judgment, negligence or otherwise, except for the Executive Board members' own willful misconduct or gross negligence;
- C. Shall have no personal liability in contract to a Unit Owner or any other person or entity under any agreement, check, contract, deed, lease, mortgage, instrument or transaction entered into by them on behalf of the Executive Board or the Association in the performance of the Executive Board members' duties;
- D. Shall not be liable to a Unit Owner, or such Unit Owner's tenants, employees, agents, customers or guests, for loss or damage caused by theft of or damage to personal property left by such Unit Owner or his tenants, employees, agents, customers or guests in a Unit, or in or on the Common Elements, except for the Executive Board members' own willful misconduct or gross negligence.

- E. Shall have no personal liability in tort to a Unit Owner or any other person or entity, direct or imputed, by virtue of acts performed by or for them, except for the Executive Board members' own willful misconduct or gross negligence in the performance of their duties; and
- F. Shall have no personal liability arising out of the use, misuse or condition of the building, or which might in any other way be assessed against or imputed to the Executive Board members as a result of or by virtue of their performance of their duties, except for the Executive Board members' own willful misconduct or gross negligence.
- G. Shall not be liable for the acts or omissions of the Master Association or its agents with respect to those powers delegated to the Master Association.

Section 9.2 Indemnification: Each member of the Executive Board, in his capacity as an Executive Board member, officer or both, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding in which he may become involved by reason of his being or having been a member and/or officer of the Executive Board, or any settlement of any such proceeding, whether or not he is an Executive Board member, officer or both at the time such expenses are incurred, except in such cases wherein such Executive Board member and/or officer is adjudged guilty of willful misconduct or gross negligence in the performance of his duties; provided that, in the event of a settlement, this indemnification shall apply only if and when the Executive Board (with the affected member abstaining if he is then an Executive Board Member) approves such settlement and reimbursement as being in the best interests of the Association; and provided further that, indemnification hereunder with respect to any criminal action or proceeding is permitted only if such Executive Board member and/or officer had no reasonable cause to believe his conduct was unlawful. The indemnification by the Unit Owners set forth in this Section 9.2 shall be paid by the Association on behalf of the Unit Owners and shall constitute a Common Expense and shall be assessed and collectible as such. Such right of indemnification shall not be deemed exclusive of any other rights to which such Executive Board member and/or officer may be entitled as a matter of law or agreement or by vote of the Unit Owners or otherwise.

Section 9.3 Defense of Claims: Complaints brought against the Association, the Executive Board or the officers, employees or agents thereof in their respective capacities as such, or the Condominium as a whole, shall be directed to the Executive Board of the Association, which shall promptly give written notice thereof to the Unit Owners and the holders of any mortgages on Units and

such complaints shall be defended by the Association. The Unit Owners and the holders of mortgages on Units shall have no right to participate in such defense other than through the Association.

Section 9.4 Insurance: The Executive Board shall obtain directors' and officers' liability insurance to satisfy the indemnification obligation of the Association and all Unit Owners set forth in Section 9.2 above, if and to the extent available.

## ARTICLE X

### MORTGAGES; RIGHTS OF PERMITTED MORTGAGEES

Section 10.1 Permitted Mortgages: A Unit Owner other than the Declarant or the Executive Board may not voluntarily encumber or subject his or its Unit to any lien, other than the lien of a Permitted Mortgage. Whether or not they expressly so state, all such Permitted Mortgages and the obligations secured thereby shall be deemed to provide, generally, that the Permitted Mortgage, and the rights and obligations of the parties thereto, shall be subject to the terms and conditions of the Act and this Declaration and shall be deemed to provide specifically, but without limitation, that the Permitted Mortgagee shall have no right (a) to participate in the adjustment of losses with insurers or in the decision as to whether or not or how to repair or restore damage to or destruction of the Property, or (b) to accelerate the mortgage debt or to have any other remedies by virtue of waste or alleged waste or other conditions occurring anywhere on the Property other than within the affected Unit, and the obligation secured shall be prepayable, without penalty, upon the happening of any termination of the Condominium or determination not to restore or replace the affected Unit. No Unit Owner shall deliver any Permitted Mortgage, or any obligation to be secured thereby, unless it has first notified the Executive Board of the name and address of the proposed Permitted Mortgagee and of the amount of the debt proposed to be so secured. When such a Permitted Mortgage is delivered to the Permitted Mortgagee, the Unit Owner shall simultaneously provide executed or conformed copies to the Executive Board. Upon receipt of such copy of a Permitted Mortgage, the Secretary of the Executive Board shall instruct the insurer of the Property to add the name of the Permitted Mortgagee to the mortgagee loss payable provision of the hazard insurance policy covering the Property and to provide such Permitted Mortgagee with a Certificate of Insurance showing that the Permitted Mortgagee's name has been so added. The lien of any purported mortgage which does not comply with all the requirements of this Article X shall not attach to or affect the Property or any part thereof or interest therein and shall be of no force and effect as and to the extent that it purports to relate thereto. The Secretary shall maintain a register of such Permitted Mortgages, showing the names and addresses of the Permitted Mortgagees and the amount secured thereby.

Section 10.2 Reports and Notices: Upon the specific written request of a Permitted Mortgagee or its servicer to the Executive Board, the Permitted Mortgagee shall be entitled to receive some or all of the following as designated in the request:

- A. Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Executive Board to the Owner of the Unit covered by the mortgage;
- B. Notice of the decision of the Unit Owners to make any material amendment to this Declaration;
- C. Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Property;
- D. Notice of any default by the owner of the Unit which is subject to the mortgage, where such default is not cured by the Unit Owner within Thirty (30) days after the giving of notice by the Association to the Unit Owner of the existence of the default;

The request of a mortgagee or its servicer shall specify which of the above items it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Executive Board. The Executive Board need not inquire into the validity of any request made by a mortgagee hereunder, but may request reimbursement for reasonable expenses in producing any documents requested.

Failure to comply with the requirements set forth above shall in no way invalidate otherwise proper actions of the Association and the Executive Board.

## ARTICLE XI

### UNITS SUBJECT TO CONDOMINIUM DOCUMENTS; EMINENT DOMAIN

Section 11.1 Applicability of Condominium Documents: Each present and future owner, occupant and Mortgagee of a Unit, shall be subject to and shall comply with the provisions of the Act, this Declaration, the Plan, the By-Laws and the Rules and Regulations and with the covenants, conditions and restrictions as set forth in this Declaration, the Plan, the By-Laws, the Rules and Regulations and the deed to such Unit; provided that nothing contained herein shall impose upon any lessee or Permitted Mortgagee of a Unit any obligation which the Act or one or more of such documents, or both, make applicable only to Unit Owners (including, without limitation, the obligation to pay assessments for Common Expenses). The acceptance of a deed or mortgage to any Unit, or the entering into

occupancy of any Unit shall constitute an agreement that the provisions of the Act, this Declaration, the Plan, the By-Laws, the Rules and Regulations and the covenants, conditions and restrictions set forth in the deed to such Unit are accepted and ratified by such grantee or Mortgagee. All of such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance or mortgage thereof.

Section 11.2 Eminent Domain: Whenever all or part of the Common Elements shall be taken, injured or destroyed by eminent domain, each Unit Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, but in any proceedings for the determination of damages, such damages shall be determined for such taking, injury or destruction as a whole and not for each Unit Owner's interest therein. The Association shall represent the Unit Owners in the condemnation proceedings or negotiations, settlements and agreements with the condemning authority for the acquisition of the Common Elements, or part thereof, by the condemning authority. In the event of a taking or acquisition of part or all of the Common Elements by a condemning authority, the award or proceeds of settlement shall be payable to the Association to be held in trust for Unit Owners and their first mortgage holders as their interest may appear.

## ARTICLE XII

### AMENDMENT OF DECLARATION

Section 12.1 Amendment Generally: Except as limited by Section 3219 of the Act, this Declaration may be amended by the vote of sixty-seven percent (67%) of all Unit Owners in the Association. The Condominium may be terminated only by the vote of sixty-seven percent (67%) of all Unit Owners. This Declaration supersedes the prior Declaration by the Declarant and the amendments thereto.

Section 12.2 Amendment by Declarant: Until such time as seventy-five (75%) percent of the Units within the Condominium have been conveyed by the Declarant, the Declarant reserves the right to amend the Declaration plat or plan without consent of the Executive Board or the Association. No such amendment by Declarant shall have any effect upon the rights of any Unit Owner holding ownership by deed, or other means of conveyance at the time of amendment by the Declarant.

Section 12.3 Rights of Secured Lenders: Subject to the limitations imposed by Section 3221 of the Act and except as set forth below, no amendment of this Declaration may be made without the prior written approval of holders of first mortgages on Units to which at least Fifty-one percent (51%) of the votes of the Units



subject to a mortgage appertain, if and to the extent that such approval is required by the Act or if and to the extent that such amendment would have the effect of (1) terminating or abandoning the Condominium (except for termination or abandonment as a result of a taking of all the Units by eminent domain); (2) abandoning, encumbering, selling or transferring the Common Elements; (3) partitioning or subdividing any Unit or the Common Elements; or (4) changing the Percentage Interests of any Unit Owners. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed to be a transfer within the meaning of this Section.

Section 12.4 Rights of Declarant: No change, modification or amendment which affects the rights, privileges or obligations of the Declarant shall be effective without prior written consent of the Declarant.

Section 12.5 Other Amendments: If any amendment is necessary in the judgment of the Executive Board to cure any ambiguity or to correct or supplement any provision of this Declaration or the Plats and Plans which is defective or inconsistent with any other provision hereof or thereof or with the Act, or to change, correct or supplement anything appearing or failing to appear in the Plats and Plans which is incorrect, defective or similarly inconsistent, or if such amendment is necessary to conform to the then current requirement of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with respect to condominium projects, the Executive Board may, at any time and from time to time, effect such amendment without the approval of the Unit Owners, or Permitted Mortgagees, upon receipt by the Executive Board of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this sentence, together with a like opinion from an independent registered architect or licensed professional engineer in the case of any such amendment to the Plats and Plans. Each such amendment shall be effective upon the recording of an appropriate instrument setting forth the amendment and its due adoption, execution and acknowledgments by one or more officers of the Executive Board.

### ARTICLE XIII

#### DECLARANT'S RIGHTS

Section 13.1 Control: (a) Until the sixtieth (60th) day after the conveyance of twenty-five (25%) percent of the Units to a Unit Owner other than Declarant, Declarant shall have the right to appoint and remove any and all officers and members of the Executive Board. Declarant may not unilaterally remove any members of the Executive Board elected by Unit Owners other than Declarant.

13.1.1 Not later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Units to Unit Owners other than the Declarant, one (1) appointed member of the Executive Board shall resign and one member of the Executive Board shall be elected by the Unit Owners other than the Declarant, as provided in Article V of the By-Laws.

13.1.2 Not later than sixty (60) days after a conveyance of fifty percent (50%) of the Units to Unit Owners other than the Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Executive Board shall be elected by Unit Owners other than the Declarant.

13.1.3 Not later than the earlier of five (5) years after the date of the first conveyance of a Unit to a person other than the Declarant or one hundred eighty (180) days after seventy-five percent (75%) of the Units have been conveyed to Unit Owners other than the Declarant, all members of the Executive Board shall resign, and the Unit Owners shall elect a new three-member Executive Board.

#### ARTICLE XIV

##### MASTER ASSOCIATION

Section 14.1. Reservation of Right: Any of the powers of the Association may be exercised by or may be delegated by the Executive Board to a Master Association, in which event all provisions of the Act applicable to the Association shall apply to the Master Association insofar as its actions affect the Condominium. It has been determined that for ease of maintenance as well as cost of maintenance, that a master association will be responsible for the maintenance of infra-structure items and for snow removal on all streets. Infra-structure items include the streets (excluding parking areas), storm water detention basins and other storm water storage facilities, water lines and facilities, sanitary sewer facilities, street lighting, traffic safety facilities and management, utility conduits, pedestrian walkways, overhead, above ground and under ground electric, gas, telephone, television, cable and other utility service distribution, pipes, poles, lines, conduits, storm drainage pipes, swales, basins, ponds, associated facilities and systems now or hereafter erected or constructed in, on, under or over either condominium.

The Declaration creating the Master Association, a copy of which is attached hereto as Exhibit "E" and made a part hereof (the "Master Declaration") provides that each individual association (The Enclave and Belle-Aire) will collect assessments from its members and in turn pay its proportionate share to the Master Association. If for any reason either Condominium Association does not pay its share of expenses, then the Master Association shall

have authority to assess the individual members of the defaulting Association.

The Master Declaration may be amended or cancelled by the Association without the consent or joinder of any Unit owner or purchaser.

14.1.1 Liability of Executive Board members and officers:  
The members of the Executive Board have no liability for the acts or omissions of the Master Association with respect to those powers delegated to the Master Association.

#### ARTICLE XV

##### INTERPRETATION

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

#### ARTICLE XVI

##### SEVERABILITY

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

#### ARTICLE XVII

##### EFFECTIVE DATE

This Declaration shall become effective when it and the Plans have been recorded.

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

NEFA CORPORATION

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

Attest: \_\_\_\_\_

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF *Montgomery* : <sup>SS</sup>

On the *5<sup>th</sup>* day of *January*, A.D., 19*96*, before me, the subscriber, a Notary Public, personally appeared *Robert J. Slone*,

who acknowledges himself/herself to be the *President* of NEFA CORPORATION, and that he/she, as such officer, being authorized to do so, executed the foregoing instrument by signing the name of NEFA CORPORATION by himself/herself as and for the act and deed of said NEFA CORPORATION for the uses and purposes therein contained and that he/she desires the same might be recorded as such.

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

*Robin A. Witherspoon*  
\_\_\_\_\_  
Notary Public

