

DECLARATION
MADE PURSUANT TO THE CONDOMINIUM ACT 1970
FOR YORK CONDOMINIUM CORPORATION NO. 75

THIS DECLARATION made this 16th day of May, 1972 by

ROSE PARK ST. JAMES INVESTMENTS LIMITED,
ROSE PARK BLEEKER INVESTMENTS LIMITED,
ROSE PARK PARLIAMENT INVESTMENTS LIMITED,
ROSE PART WELLESLEY INVESTMENTS LIMITED, and
ROSE PARK HOWARD INVESTMENTS LIMITED,

All companies incorporated under the laws of the Province of Ontario, hereinafter collectively called the “Declarant”.

WHEREAS the Declarant is the owner in fee simple of the lands and premises in the City of Toronto, in the Municipality of Metropolitan Toronto, more particularly described in accordance with Section 4 of The Condominium Act in the Description filed herewith, and also in Schedule “A” hereto, and containing dwelling units;

AND WHEREAS the Declarant intends that the said lands be governed by The Condominium Act, Revised Statutes of Ontario, 1970, Chapter 77 and amendments thereto, herein after referred to as the “Act”;

NOW THEREFORE the Declarant hereby declares as follows:

ARTICLE I
DEFINITIONS

The terms used herein shall have ascribed to them the definitions

contained in the Act.

ARTICLE II
STATEMENT OF INTENTION

The Declarant, as the owner in fee simple of the lands and premises more particularly described in Schedule “A” attached hereto, intends that the same be governed by the Act.

ARTICLE III
CONSENT OF ENCUMBRANCERS

The consent of all persons having registered encumbrances against the lands or interest appurtenant to the land described in the Description, and in Schedule “A” hereto, is contained in Schedule “B” attached hereto.

ARTICLE IV
BOUNDARIES OF UNITS

Each unit shall comprise the area within the heavy lines shown on Sheets 1, 2, 3 and 3A of the Description with respect to the unit number indicated thereon. The monuments controlling the extent of units are the walls, floors and ceilings as more particularly described and shown in the Description.

ARTICLE V
PROPORTIONS OF COMMON INTEREST

Each owner shall own an undivided interest in the percentages set forth opposite each unit number in the column in Schedule “C” attached hereto under the heading “Proportion of Common Interest (Expressed in Percentages)” in the common elements, as

a tenant in common with all the other owners. The total of the proportions of the common interest shall be one hundred per cent (100%).

ARTICLE VI CONTRIBUTION TO THE COMMON EXPENSES

Until the end of the second calendar month following the end of the calendar month during which the Declarant has sold up to 60% of the units of the Corporation in number and the transfers of such units have been registered, the Declarant shall pay all common expenses of the Corporation and the Board shall assess the estimated common expenses of the Corporation applicable to the units sold by the Declarant and shall levy against each new owner of each unit sold by the Declarant such portion of the said estimated common expenses arising after each new owner takes title as the Board, in its sole and unfettered discretion, which shall be reasonably exercised, considers proper and, upon receiving the contribution of the new owners to the estimated common expenses for the period during which the Declarant is obligated to pay all common expenses, the Corporation shall pay to the Declarant such common expense contribution as they are received from time to time.

Commencing with the end of the second calendar month following the end of the calendar month during which the Declarant has sold units sufficient to bring the total units sold up to 60% of the units of the Corporation in number, and thereafter each owner shall contribute to the common expenses in the proportions shown opposite each unit number in the column in Schedule "C" attached hereto under the heading "Contributions to Common Expenses (Expressed in Percentages)". The contribution to common expenses shall be paid to the Corporation, or upon

direction from the Corporation, shall be paid either to

- (a) the mortgagees of each unit, or
- a. (b) the Manager appointed by the Corporation from time to time.

PROVIDED, however, that in the event the Management Contract provides that the value of the units owned by the Declarant is not to be included in the formula used for the purpose of computing the management fee, then the common expenses levied against the units not included in such calculation shall be reduced by an amount equal to the reduction of the management fee achieved by excluding the value of such units from the said calculation.

ARTICLE VII ADDRESS FOR SERVICE

The Corporation's address for service shall be:
Management Office, 40 Homewood Avenue, Toronto 284,
Ontario.

ARTICLE VIII EXCLUSIVE USE OF PARTS OF COMMON ELEMENTS

1. 1. The owner of each unit shall have the exclusive use, subject to the provisions of this Declaration, the by-laws of the Corporation, and the rules and regulations passed pursuant thereto, of any balcony or enclosed patio attached to the unit or to which such unit has sole access.
2. 2. No owner shall, without the written consent of the Board, have access to those parts of the common elements used from time to time as locker rooms, a dwelling for any building superintendent, utilities areas, building maintenance storage

areas, manager's offices, or any other part of the common elements used for the care of maintenance of the property.

3. 3. No person shall bring, drive or park a vehicle of any type on any part of the common elements without the authorization of the Corporation or its managing agent.

ARTICLE IX USE AND OCCUPANCY OF UNITS

1. 1. Each unit, except Unit 1 on Level A shall be occupied and used only as a residence for a single family and for no other purpose, and Unit 1 on Level A shall be used for the purpose of parking motor vehicles. One hundred and twenty-three (123) of the parking spaces in Unit 1 on Level A shall be kept available for parking for persons visiting the building in a manner consistent with all applicable provisions of The City of Toronto Zoning By-law Number 20623 unless The City of Toronto, or any other authority authorized to change the provisions of the said by-law in this regard, permits a reduction in the number of parking spaces for visitors required for the building. The balance of the parking spaces in Unit 1 on Level A shall be made available to the owners and other occupants of the other units having passenger and motor vehicles which they wish to park in the said Unit 1 on a rental or other basis satisfactory to the owner, or owners, of the said Unit 1. Subject to compliance with any applicable municipal restrictions any balance of the parking spaces, not required for visitor parking or by owners or occupants of the units, may be rented or otherwise made available to other persons wishing to make use of the said parking spaces.
2. 2. No unit shall be occupied by anyone whose occupancy shall give rise to the cancellation or the threatened cancellation of

any policy of insurance referred to in Article XVII of this Declaration.

3. 3. No owner shall do, or permit anything to be done, in his unit or bring or keep anything therein which will in any way increase the risk of fire or the rate of fire insurance on any building, or on property kept therein, or obstruct or interfere with the rights of other owners, or in any way injure or annoy them, or conflict with the laws relating to fire or with the regulations of the Fire Department or with any insurance policy carried by the Corporation or any owner, or conflict with any of the rules and ordinances of the Board of Health or with any Statute or municipal by-law.
4. 4. Nothing herein contained shall prevent and no by-law or house rule shall be made to prevent the Declarant from completing the buildings and all improvements to the property, remedying defects, maintaining units as models for display and sale purposes, and otherwise marketing units and maintaining marketing and/or construction offices, displays and signs, provided that they are not in conflict with any applicable by-laws of the Municipality in which the property is situate.

ARTICLE X RIGHTS OF ENTRY

1. 1. The Corporation or any insurer of the property or any part thereof, their respective agents, or any other person authorized by the Board shall be entitled to enter any unit or any part of a common element of which any owner has the exclusive use at all reasonable times and upon giving reasonable notice, for the purpose of making inspections, adjusting losses, making repairs, correcting any condition

which violates the provisions of any insurance policy, remedying any condition which would result in damage to the property, or carrying out any duty imposed upon the Corporation. In case of an emergency, agents of the Corporations may enter any unit at any time and without notice, for the purpose of repairing the unit, common elements, or part of the common element of which any owner has exclusive use, or for the purpose of correcting any condition which might result in damage or loss to the property. The Corporation or anyone authorized by it may determine whether an emergency exists. If any owner shall not be personally present to grant entry to his unit, the Corporation or its agents may enter upon such unit without rendering them liable to any claim or cause of action for damages by reason thereof, provided that they exercise reasonable care. The rights and authority hereby reserved to the Corporation, its agents or any insurer or its agents, do not impose any responsibility or liability whatever for the care or supervision of any unit except as specifically provided herein.

2. 2. The Corporation shall retain a key to all locks to each unit. No owner shall change any lock or place any additional locks on the doors to any unit or in the unit or to the garage or to any part of the common elements of which such owner has the exclusive use without immediately providing a key to the Corporation for each new or changed lock.

ARTICLE XI BY-LAWS

The Corporation may, by a vote of members who own 66–2/3% of the common elements, make by-laws:

- a. (a) governing the management of the property;

- b. (b) governing the use of units or any of them for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and other units;
- c. (c) governing the use of the common elements;
- d. (d) regulating the maintenance of the units and common elements;
- e. (e) governing the use and management of the assets of the Corporation;
- f. (f) respecting the Board;
- g. (g) specifying the duties of the Corporation;
- h. (h) regulating the assessment and collection of contributions toward the common expenses;
- i. (i) respecting the conduct generally of the affairs of the Corporation.

ARTICLE XII
DIRECTORS

The affairs of the Corporation shall be managed by a Board of Directors.

ARTICLE XIII
COMMON EXPENSES

Definition: Common expenses, without limiting the definition ascribed thereto by the Act, shall include the following:

- a. (a) remuneration payable by the Corporation to any employees deemed necessary for the proper operation and maintenance of the property;
- b. (b) payment of any remuneration payable pursuant to any management contract which may be entered into between the

- Corporation and a manager;
- c. (c) the cost of furnishings and equipment for use in and about the common elements including the repair, maintenance or replacement thereof;
 - d. (d) the cost of legal, accounting and auditing services;
 - e. (e) the cost of appraisals made pursuant to Article XVII, Paragraph 2, of this Declaration;
 - f. (f) the fees and disbursements of the Insurance Trustee;
 - g. (g) the cost of maintaining fidelity bonds as provided in the by-laws;
 - h. (h) the cost of borrowing money for the purpose of carrying out the objects and duties of the Corporation if authorized pursuant to the provisions of Article XIV below;
 - i. (i) the cost of providing electrical energy to each unit sufficient to operate the usual apartment appliances including a refrigerator, the usual electric stove, electric lights, television, radio and/or record player, etc.; notwithstanding the foregoing, the Corporation shall not be obligated, without provision for the unit owner to pay for the additional electric energy used, to provide electrical energy to operate in any unit a washer, dryer, dishwasher, air conditioner or any other appliance not presently commonly in use in apartments in Metropolitan Toronto;
 - j. (j) the cost of providing heat, water, hot water and insurance premiums;
 - k. (k) the deficits (if any) incurred by the Corporation;
 - l. (l) such other amounts as may be authorized by the Board from time to time in accordance with the by-laws of the Corporation.

ARTICLE XIV
BORROWING

The Corporation may, if authorized by resolution passed by a vote of a majority of its members at a meeting duly called for such purpose, borrow money for the purpose of carrying out the objects and duties of the Corporation.

ARTICLE XV
MAINTENANCE AND REPAIRS

1. 1. Repairs by the owners: All maintenance of and repairs to any unit shall be made by the owner of such unit, and each owner shall be responsible for all damage to any and all other units and to the common elements that his failure so to do may engender, save and except such damage to the common elements and other units as may be covered by insurance covering the common elements and units. The Corporation shall make any repairs that an owner is obliged to make and which are not made within a reasonable time. Should such repairs by the Corporation be made necessary as a result of the failure of an owner to make such repairs , such owner shall be deemed to have consented to having such repairs made by the Corporation and such owner shall be obliged to reimburse the Corporation for the cost of such repairs.
2. 2. Repairs by the Corporation: All repairs to the common elements except as hereinafter provided shall be made by the Corporation.
3. 3. Maintenance of Common Elements: the common elements shall be maintained by the Corporation, save and except for the outer surface of any window or door abutting or leading out of any unit on to a balcony or patio, the inner surface of any window, or inner surface of doors leading out of any units, which excluded portions of common elements shall be

- maintained by each owner having the exclusive use thereof.
4. 4. Additions, Alterations or Improvements by Owners: No owner shall make any structural change in or to his unit or any change to an installation upon the common elements, maintain, decorate, alter or repair any part of the common elements (except for any inner surface or any window, or inner surface of doors leading out of any unit of which such owner has the exclusive use) without the prior written consent thereto of the Board. Any such change shall, if approved by the Board, be made in accordance with the provisions of all relevant municipal and other governmental by-laws, rules, regulations or ordinances, and in accordance with the conditions, if any, of such approval by the Board.

ARTICLE XVI DAMAGE TO THE BUILDINGS

Where the Board has determined whether there has been substantial damage to 25% of the buildings, notice of such determination shall, within ten (10) days thereof, be given by registered mail to the owners and mortgagees entered in the register kept for such purpose in accordance with the provisions of By-law No. 1 of the Corporation. Such notice may be combined with the notice to the owners of a meeting of members called for the purpose of voting for repair or termination of the Corporation.

ARTICLE XVII INSURANCE

- I. 1. The Corporations shall be required to obtain and maintain, to the extent obtainable from the insurance industry, the following

insurance:

- A. (a) Insurance against damage by fire with extended coverage and such other perils as the Board may from time to time deem advisable, insuring:
 - B. (i) the property excluding the units, and
 - C. (ii) personal property owned by the Corporation, but not including furnishings, furniture or other personal property supplied or installed by the owners,
 - D. in an amount equal to the full replacement cost of such real and personal property, without deduction for depreciation, which policy may be subject to a loss deductible clause;
- E. (b) insurance against damage by fire with extended coverage and such other perils as the Board may from time to time deem advisable, insuring the units in an amount equal to the full replacement cost of such units without deduction for depreciation. For the purposes of this Article XVII, the units shall be deemed to include all improvements made by the Declarant to the units in accordance with its architectural plans, notwithstanding that some of such improvements may be made after registration of this Declaration and shall be deemed not to include any other improvements; and
- F. (c) public liability and property damage insurance insuring the liability of the Corporation with limits to be determined by the Board, from time to time, but in no event for less than One Million Dollars (\$1,000,000.00).

- II. 2. All policies of physical damage insurance placed as herein provided shall insure the interests of the Corporation and the owners from time to time as their respective interests may appear. Such policies shall also include the following:
 - (a) waivers of subrogation against the Corporation, its manager, the owners, officers, servants and employees of the Corporation, its manager and the owners and members of the

households of the owners, except for arson and fraud committed by the person or persons against whom the subrogated claim is to be made;

- A. (b) an endorsement providing that such policies may not be cancelled or substantially modified without at least sixty (60) days prior written notice to all parties whose interests appear thereon and to the Insurance Trustee;
- B. (c) an endorsement providing that the conduct of, or any act or omission by, any owner shall not void such policies;
- C. (d) a waiver of the insurer's option to repair, rebuild, or replace in the event that after damage the government of the property by the Act is terminated; and
- D. (e) a provision that the same shall be primary insurance in respect of any other insurance carried by an owner;
- E. Such policy or policies of insurance shall provide that loss shall be payable to the Insurance Trustee where such loss exceeds an amount equal to Ten Thousand Dollars (\$10,000.00), otherwise loss shall be payable to the Corporation. Prior to obtaining any policy of insurance or any renewal thereof, the Board shall obtain an appraisal from an independent qualified appraiser of the full replacement cost of the property, for the purpose of determining the amount of insurance to be effected pursuant to this Article XVII, and the cost of such appraisal shall be a common expense. The Board shall have the exclusive right on behalf of the Corporation and as agent of the owners to adjust and settle all claims in respect of any insurance purchased by the Corporation on behalf of the Corporation and the owners, and to give release.
- F.
 - I. 3. The Board, on behalf of the Corporation, shall enter into an agreement with an Insurance Trustee, which shall be a Trust Company registered under The Loan and Trust Corporations Act and having a capital surplus and undivided profits of at least

Ten Million Dollars (\$10,000,000.00), or shall be a Chartered Bank, which agreement shall provide, in addition to such other provisions as may be deemed desirable by the Board, for the following:

- (a) the receipt by the Insurance Trustee of all proceeds of insurance payable to the Insurance Trustee as required by Article XVII, paragraph 2, of this Declaration;
- A. (b) the holding of such proceeds in trust for those entitled thereto;
- B. (c) the disbursement of such proceeds to those entitled thereto;
and
- C. (d) in the event that:
 - (i) the Corporation is obliged to repair any unit in accordance with the provisions of Section 16(6) or Section 17(2) of the Act, the Insurance trustee holding all insurance proceeds for the Corporation and paying the same to the Corporation, or as may be directed by the Corporation, in order to satisfy its obligation to make such repairs;
 - (ii) there is no obligation by the Corporation to repair any unit in accordance with the provisions of Section 17(2) of the Act, and there is termination in accordance with the provisions of Section 18 of the Act, or otherwise, the Insurance Trustee holding all insurance proceeds for the owners, mortgagees or others entitled thereto in the proportion of their respective common interests and upon registration of a notice of termination by the Corporation paying such proceeds to the owners, mortgagees or others entitled thereto in such proportions; and
 - (iii) the Board in accordance with the provisions of Section 17(1) of the Act determines that there has not been substantial damage to 25% of the buildings, the Insurance Trustee holding all the insurance proceeds and paying them to the Corporation, mortgagees and owners as their respective interests may appear.

Notwithstanding anything to the contrary herein contained, any proceeds payable by the Insurance Trustee to the owners in accordance with the provisions of subclause (11) of clause (d) of this paragraph 3 of Article XVII hereof shall be subject to payment in favour of any mortgagees to whom such loss shall be payable under such policy or policies of insurance, and in satisfaction of any liens registered by the Corporation against any units owned by any such owners.

In the event that the Board is unable to enter into such agreement with such Trust Company or Chartered Bank by reason of the Trust Company or Chartered Bank's refusal to act, the Board may enter into such agreement with such other corporation authorized to act as a Trustee as in its discretion the Board may deem advisable.

The Corporation shall pay the fees and disbursements of any Insurance Trustee and any such fees and disbursements shall constitute a common expense.

4. The Corporation shall provide certified copies of the insurance policies obtained pursuant to this Article XVII and endorsements obtained in connection therewith to the mortgagees of the units, and certificates of such policies to the owners, and shall furnish to the owners and mortgagees of the units renewal certificates or replacement policies or certificates thereof not later than ten (10) days before the expiry date of such insurance policies.

ARTICLE XVIII INDEMNIFICATION

I. 1. Each owner shall indemnify the Corporation against any loss, cost, damage or injury caused to the common elements because of the act or omission of such owner or the residents of his unit or by any guest of such owner or resident, except for any loss,

cost, damage or injury insured against by the Corporation, save and except for wilful damage.

- II. 2. The Corporation shall indemnify and save harmless the owner of each unit from any losses, damages, or liabilities whatsoever which the owner may suffer or incur with respect to any damage done to the unit as the result of the negligence or wilful act of the agents, servants, or independent contractors of the Corporation or for any damage to the unit substantially resulting from the repair or maintenance by the Corporation of the common elements, provided that notwithstanding anything hereinbefore contained the owner agrees to look solely to the funds received from the insurer of the public liability and property damage insurance in the event of such loss.

ARTICLE XIX
UNITS SUBJECT TO DECLARATION,
BY-LAWS AND RULES AND REGULATIONS

- I. 1. All present and future owners, tenants and residents of units shall be subject to and shall comply with the provisions of the Declaration, the by-laws and the rules and regulations. The acceptance of a deed or transfer or the entering into a lease or the entering into occupancy of any unit shall constitute an agreement that the provisions of the Declaration, the by-laws and the rules and regulations as they may be amended from time to time are accepted and ratified by such owner, tenant or resident, 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 unit as though such provisions were recited and stipulated in full in each and every such deed or transfer or lease.
- II. 2. For the purposes of this section, if an owner desires to lease his

premises, then he shall furnish to the Corporation an undertaking signed by the Lessee that the Lessee and other residents of the unit will comply with the provisions of the Act, the Declaration, the by-laws and the rules relating to the use of the unit and common elements. The owner making a lease shall not be relieved thereby from any of his obligations which shall be joint and several with his Lessee.

ARTICLE XX EXPROPRIATION

I. 1. Total Expropriations: In the event of expropriation of the whole of the property, the compensation to be paid for the whole of the property shall be negotiated and finalized by the Corporation, subject to the ratification of such compensation by the owners of 75% of the common interests at a special meeting called for that purpose, whether or not proceedings are necessary, and the compensation, less expenses involved, if any, in obtaining the said compensation shall be distributed among the unit owners in proportion to their interest in the common elements.

Notwithstanding the award for the expropriation of the whole project, the rights of each unit owner shall be separate to negotiate and finalize their personal compensation for the improvements made to the unit after registration of the Declaration and description, cost of moving, and other similar items personal to each unit owner.

I. 2. Part of Common Elements only Taken: If no units are affected by the expropriation and the expropriation includes part of the common elements, the compensation shall be negotiated and finalized by the Corporation, whether or not proceedings are necessary, and the compensation shall be distributed among

the owners in proportion to their interest in the common elements.

- II. 3. Partial Expropriation including Units: In the event of a partial expropriation which includes some units, each owner whose unit is expropriated shall deal with the expropriating authority with regard to compensation relating to his unit and interest in the common elements. The compensation for the damage suffered by the remaining owners shall be negotiated and finalized by the Corporation, subject to the ratification of such compensation by the owners of 75% of the common interests at a special meeting called for that purpose, whether or not proceedings are necessary, and the compensation shall be distributed proportionately among the remaining owners.

The cost of restoring the balance of the project so that it may be used shall be determined by the Corporation, and the Corporation shall negotiate with the expropriating authority with regard to compensation for this expenditure and shall, unless the government of the property by the Act is terminated within thirty (30) days of the receipt of such compensation, reconstruct, using the funds received for such reconstruction. Any moneys received by the Corporation for any reconstruction made necessary by the expropriation shall be held by the Corporation in trust for the purpose of such reconstruction.

ARTICLE XXI

RECONSTITUTION OF SCHEME AFTER RECONSTRUCTION

- I. 1. In the event of reconstruction as provided in Paragraph 3 of Article XX hereof, all the owners and other persons having an interest in or encumbrance against any part of the property agree to do everything necessary and sign such documents and

so forth on all occasions as may be necessary to reconstitute the scheme of the Condominium Project as follows:

- A. (a) Payments for shares of assets of the Corporation: Any owner whose unit has been wholly taken or rendered completely unusable shall have no further interest in the common elements or the project itself, but shall be entitled only to receive the value of his share of the assets of the Corporation determined by his percentage interest in the common elements. The assets are to be valued at book value, and in this respect any assets shall be deemed to have the book value of costs less the maximum allowable depreciation that would be allowed on such asset under the Income Tax Act (Canada) then in force.
- B. (b) Determination of value of remaining portion: The value of the portion of any unit partially expropriated or rendered partially unusable by the expropriation and/or reconstruction, together with the interest in the common elements of such partial unit, shall be determined, and if it cannot be determined, shall be arbitrated. The owners of the portions so taken shall receive the appropriate portion of the payment provided by paragraph (a) of this clause.
- C. (c) Reduction of interest in common elements: The percentage of contribution towards common expenses and percentage of ownership in the common elements of all units or portions of units that are taken by the expropriating authorities shall thereafter be dissolved.
- D. (d) Remaining interest: The remaining interest in the common elements or percentages of obligation toward expenses shall be determined by calculating the percentage or percentages of the total percentage left in the project after its reconstruction, and shall be increased accordingly.

ARTICLE XXII

INVALIDITY

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

ARTICLE XXIII 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.

ARTICLE XXIV GENDER

The use of the masculine gender in this Declaration shall be deemed to refer to the feminine or neuter and the use of the singular shall be deemed to refer to the plural and vice versa whenever the context so requires.

ARTICLE XXV HEADINGS

The headings in the body of this Declaration form no part of the Declaration but shall be deemed to be inserted for convenience of reference only.

DATED at Toronto this 16th day of May, 1972

IN WITNESS WHEREOF the parties hereto have hereunto
affixed their respective seals under the hand of their proper
officers duly authorized in that behalf:

[Original document signed by the Presidents and Secretaries of]

ROSE PARK ST. JAMES INVESTMENTS LIMITED

ROSE PARK BLEEKER INVESTMENTS LIMITED

ROSE PARK PARLIAMENT INVESTMENTS LIMITED

ROSE PART WELLESLEY INVESTMENTS LIMITED

ROSE PARK HOWARD INVESTMENTS LIMITED

