

LEGAL DISCUSSION AND CONCLUSIONS

Although public sentiment is a critical aspect to be taken into account by the municipal ABC Board, the sentiments must be rooted in a perception of danger to the community's health, safety, welfare, or morals that is reasonably associated with the sale and consumption of alcoholic beverages (i.e., something real and empirically sound) at the licensee's premises. As noted above, I found no nexus between the perceived problems of noise or misbehavior and the operation of Revolution. I also found that there was insufficient evidence of substantially widespread community opposition to the transfer (expansion) sought in this matter.

In finding that Morristown has failed to demonstrate that the operation of Revolution has caused or is linked to any real conditions that threaten the health, safety, welfare, and morals of the community, I **CONCLUDE** that an unsubstantiated threat of harm cannot meet the "necessary and proper" standard set forth in N.J.S.A. 33:1-32 and thus cannot justify the special condition imposing the 11:00 p.m./11:30 p.m. time restriction on Revolution.

In finding that Morristown failed to demonstrate widespread public sentiment in opposition to the operation of Revolution, I **CONCLUDE** that it cannot meet the "necessary and proper" standard and thus cannot justify the special condition imposing the 11:00 p.m./11:30 p.m. time restriction on Revolution.

Without linking the operation of Revolution to excessive noise or other undesirable conditions and without demonstrating widespread community sentiment based against the operation of Revolution, I **CONCLUDE** that Morristown's imposition of the special condition imposing the time restriction on Revolution lacked a sufficient rational basis, and must therefore be considered unreasonable. I note that under cross-examination, Council President Armington admitted that he did not know why the 11:00 p.m./11:30 p.m. closing times were chosen. This underscores the lack of a rational basis for the time limit.

Cognizant of the fact that of the six bars operating on the same block only Revolution has a time restriction, I also **CONCLUDE** that the imposition of the time restriction, including the inexplicable selection of the closing times, demonstrates that it is arbitrary and capricious.

The imposition of the time restriction solely on Revolution also strongly suggests that the time restriction should also be considered discriminatory.

Given that the operation of Revolution posed no demonstrable danger to public health, safety, welfare or morals, and given that the operation of Revolution did not evoke widespread public sentiment against it operating until the 2:00 a.m. closing time enjoyed by similar establishments in the area, I **CONCLUDE** that Revolution met its burden of proving that Morristown's imposition of the early closing times on Revolution was an unreasonable and inappropriate exercise of its discretion.

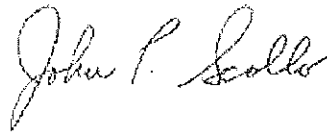
ORDER

It is **ORDERED** that Resolution Number R-143-2014 was an unreasonable and inappropriate exercise of Morristown's discretion in regulating ABC licenses and must therefore be rescinded or otherwise set aside. It is also **ORDERED** that the stay issued on October 29, 2014, by the Director of the State ABC, which has been continued up to the present time, must remain in effect until such time that Morristown rescinds the special condition imposed by Resolution R-143-2014.

I hereby **FILE** my Initial Decision with the **DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL** for consideration.

This recommended decision may be adopted, modified or rejected by the **DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL**, who by law is authorized to make a final decision in this matter. If the Director of the Division of Alcoholic Beverage Control does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGE CONTROL, 140 E. Front Street, 5th Floor, P.O. Box 087, Trenton, New Jersey 08625-0087**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



February 23, 2018

DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Witnesses

For Petitioner:

Cindy Zimmer, resident of Morristown
Nicholas Kaslov, resident of Morristown
Peter Demitz, Morristown Chief of Police
Carolyn A. Young, architect on behalf of Licensee
Kevin Harris, Municipal Clerk of Morristown
Jonathan E. Gallant, Investigator
James A. Cavanaugh, General Manager of Licensee

For Respondent:

Robert Flanagan, Fire Chief of Morristown
Michelle Dupree Harris, Morristown Councilwoman
Stefan Paul Armington, Council President
Donald N. Ginsburg, resident of Morristown
Eldon B. Priestly, resident of Morristown
Vincent Zuza, resident of Morristown
Rebecca Feldman, resident of Morristown and former councilwoman

List of Exhibits

Joint Exhibits:

J-1 Joint Stipulation of Facts

For Petitioner:

P-1 A floor plan of existing Iron Bar and Revolution
P-2 Iron Bar Menu
P-3 Revolution Menu
P-4 Copy of N.J.S.A. 33:1-1, Definition of Restaurant

- P-5 Copy of N.J.S.A. 33:1-32 (Special Conditions)
- P-6 Resolution of Morristown Planning Board approving façade modification for Iron Bar and Iron Bistro dated January 22, 2015
- P-7 Letter from New Jersey Motor Vehicle Commission
- P-8 Copy of Resolution Granting Place-to-Place Transfer of the Office of Morristown, LLC for 3 South Street, Morristown dated July 13, 2013, with no Special Conditions
- P-9 Morristown Redevelopment Agency Resolution consenting to Application of Jockey Hollow Bar and Kitchen, LLC, for an annual Concessionaire's Permit to be issued by the New Jersey Division of Alcoholic Beverage Control without Special conditions upon Jockey Hollow's payment to the Town of Morristown of \$500,000 payable \$50,000 per year for ten years dated June 26, 2013
- P-10 Article from Morristown Patch dated June 5, 2014
- P-11 Video Presentation
- P-12 Investigative Solutions LLC Report
- P-13 Jazz Night at Revolution Flyers
- P-14 Copy of Resolution adopted by Respondent, Town of Morristown, September 11, 2014, approving transfer to 5-9 South Street, with Special Conditions
- P-15 Copy of Final Decision, Happy Hour Café v. Municipal Board of ABC of the City of Newark, OSL Docket Nos. ABC 9910 and ABC 7871-00; Agency Docket Nos. 6686 and 6793
- P-16 Alcoholic Beverage Control Handbook for Municipal Issuing Authorities pp. 12, 13, and 38

For Respondent:

- R-1 Map identifying location of liquor license establishments within the Town of Morristown as of 2007
- R-2 Map identifying current location of liquor license establishments within the Town of Morristown
- R-3 Map showing blowup of the area of South and Dehart Streets to show presence of liquor license establishments
- R-4 Chart Showing South and Dehart Street liquor establishments and occupancy limits

- R-5 Bar chart showing growth of residential properties within and around the central business district
- R-6 Resolution of the Morristown Planning Board Granting Preliminary and Final Site Plan Approval with Variances for Villa Enterprises, LLC (t/a The Office Tavern and Grill) Application NO. 12-19, Block 6004, Lot 2, Morristown, NJ
- R-7 State of New Jersey, Department of Law and Public Safety, Division of Alcoholic Beverage Control Retail Liquor License Application for the Office of Morristown, LLC t/a The Office Tavern and Grill
- R-8 State of New Jersey, Department of Law and Public Safety Division of Alcoholic Beverage Control Retail Liquor License Application for the Iron Bar, LLC t/a Iron Bar and Iron Bistro
- R-9 Minutes from the Town Council of the Town of Morristown's Alcoholic Beverage Control Meeting for Iron Bar, LLC t/a Iron Bistro and Iron Bar held on June 4, 2014
- R-10 Minutes from the Town Council of the Town of Morristown's Alcoholic Beverage Control Meeting for Iron Bar, LLC t/a Iron Bistro and Iron Bar held July 16, 2014
- R-11 Minutes from the Town Council of the Town of Morristown's Alcoholic Beverage Control Meeting for Gracie Sunshine, LLC held on June 13, 2012
- R-12 Minutes from the Town Council of the Town of Morristown's Alcoholic Beverage Control Meeting for Gracie Sunshine, LLC held on July 18, 2012
- R-13 Minutes from the Town Council of the Town of Morristown's Alcoholic Beverage Control Meeting for Dehart Associates, LLC d/b/a Tashmoo held on April 2, 2013
- R-14 Minutes from the Town Council of the Town of Morristown's Alcoholic Beverage Control Meeting for Dehart Associates, LLC d/b/a Tashmoo held on April 10, 2013
- R-15 Minutes from the Town Council of the Town of Morristown's Alcoholic Beverage Control Meeting from the Iron Bar, LLC t/a Iron Bar and Gran Cantina held on October 24, 2012
- R-16 Town of Morristown Resolution R-91-2013 Approving with Special Conditions the Application of Dehart Associates, LLC (d/b/a Tashmoo) For a Place-to-Place Transfer (expansion) of Liquor License Number 1424-33-022-010 to a to-be-built building at 10 Dehart Street, Morristown, NJ

- R-17 Town of Morristown Resolution R-149-2012 Approving With Special Conditions the application of Iron Bar, LLC t/a Gran Cantina For a Place-to-Place Transfer of Liquor License Number 1424-33-029-014 For the Expansion of the Licensed Premise Located at 5-9 South Street, Morristown, NJ
- R-18 Town of Morristown Resolution R-111-12 Denying the Application of Gracie Sunshine, LLC For a Place-to-Place Transfer of Liquor License Number 1424-33-030-004 to 10 Dehart Street, Morristown, NJ
- R-19 Town of Morristown Resolution R-143-14 Approving The Application of Iron Bar, LLC t/a Iron Bar and Iron Bistro for a Place-to-Place Transfer of Liquor License Number 1424-33-029-014 for the Expansion of the Licensed Premise Located at 5-9 South Street Morristown, NJ
- R-20 Town of Morristown Resolution R-130-15 Authorizing Renewal of Plenary Retail Consumption License 1424-33-029-15 Issued to The Iron Bar, LLC T/A The Iron Bar and Iron Bistro for 2015-2016 Subject to Conditions
- R-21 Town of Morristown Resolution R-115-16 Authorizing Renewal of Plenary Retail Consumption License 1424-33-029-016 Issue to the Iron Bar, LLC T/A The Iron Bar and Iron Bistro A/K/A Revolution for 2016-2017 Subject to Conditions
- R-22 Analytical Report of Residential Development and Liquor Licensed Establishments in Downtown Morristown, by Phil Abramson, PP, Town Planner, Topoligy NJ, LLC and Christopher Kok, PP, Principal Land Use Planner, Topology NJ, LLC, along with Messrs. Abramson and Kok's CVs

EXHIBIT 3

ANSELL GRIMM & AARON, P.C.

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MORRIS COUNTY
CIVIL DIVISION

Attorneys for Plaintiffs

5-7 SOUTH STREET HOLDINGS, LLC, 9
SOUTH STREET HOLDINGS, LLC and 11
SOUTH STREET HOLDINGS, LLC,

Plaintiffs,

vs.

PARKING AUTHORITY OF THE TOWN OF
MORRISTOWN, EPSTEINS C LOFTS, LLC,
EPSTEINS B RENTALS, LLC, EPSTEINS B
40 PARK ROSEWOOD UNIT, LLC,
EPSTEINS B METROPOLITAN
ROSEWOOD UNIT, LLC and 40 PARK
CONDOMINIUM ASSOCIATION, INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
MORRIS COUNTY - LAW DIVISION

DOCKET NO. MRS-C-152-16

Civil Action

AMENDED COMPLAINT

Plaintiffs, 5-7 South Street Holdings, LLC ("5-7 South Street Holdings"), 9 South Street Holdings, LLC ("9 South Street Holdings") and 11 South Street Holdings, LLC ("11 South Street Holdings" collectively with 5-7 South Street Holdings and 9 South Street Holdings, "Plaintiffs") by way of Complaint against Defendants, Parking Authority of the Towns of Morristown ("MPA"), Epsteins C Lofts, LLC ("Epsteins C" and collectively with MPA, "Servient Defendants"), Epsteins B Rentals, LLC ("Epsteins B"), Epsteins B 40 Park Rosewood Unit, LLC ("Epsteins 40 Park"), Epsteins B Metropolitan Rosewood Unit, LLC ("Epsteins Metro") and 40 Park Condominium Association, Inc. ("40 Park Condo" together with Epsteins B, Epsteins 40 Park

and Epsteins Metro, “Complex Defendants”) (the Complex Defendants and Servient Defendants are collectively, “Defendants”).

SUMMARY OF ACTION

1. This action concerns the unlawful overburdening of the Dehart Easement as a result of the Servient Owners granting new rights in the Easement to Complex Defendants which intrude upon Plaintiffs’ pre-existing easement rights as the dominant owner.

PARTIES

2. At all times relevant hereto, 5-7 South Street Holdings was and is a New Jersey limited liability company with its principal address at 9 Ashland Terrace, Chester, New Jersey.

3. At all times relevant hereto, 9 South Street Holdings was and is a New Jersey limited liability company with its principal address at 9 Ashland Terrace, Chester, New Jersey.

4. At all times relevant hereto, 11 South Street Holdings was and is a New Jersey limited liability company with its principal address at 9 Ashland Terrace, Chester, New Jersey.

5. At all times relevant hereto, MPA was and is a body corporate and politic of the State of New Jersey with offices at 14 Maple Avenue, Summit, New Jersey.

6. At all times relevant hereto, Epsteins C was and is a New Jersey limited liability company with its principal address at 233 Canoe Brook Road, Short Hills, New Jersey.

7. At all times relevant hereto, Epsteins B Rentals was and is a New Jersey limited liability company with its principal address at 233 Canoe Brook Road, Short Hills, New Jersey.

8. At all times relevant hereto, Epsteins B 40 Park Rosewood Unit, LLC was and is a New Jersey limited liability company with its principal address at 233 Canoe Brook Road, Short Hills, New Jersey.

9. At all times relevant hereto, Epsteins B Metropolitan Rosewood Unit, LLC was and is a New Jersey limited liability company with its principal address at 233 Canoe Brook Road, Short Hills, New Jersey.

10. At all times relevant hereto, 40 Park Condominium Association, Inc. was and is a New Jersey non-profit corporation with its principal address at 40 West Park Place, Morristown, New Jersey 07960.

FACTS COMMON TO ALL COUNTS

11. On or about August 21, 2008, 5-7 South Street Holdings acquired ownership of the property located at 5-7 South Street, Morristown, New Jersey, described as Block 6004, Lot 3 on the Tax Map of the Town of Morristown, Morris County.

12. By virtue of ownership in the property located at 5-7 South Street, 5-7 South Street Holdings has a right of way easement over a sixteen (16) foot wide lane ("Dehart ROW") with an entryway to Dehart Street which runs to the corners of Block 6004, Lots 1 and 8 ("Dehart Easement") and was initially granted on or about March 31, 1884. Attached hereto is a true and correct copy of Deed Book N11-71 (1885) describing today's Lot 3, 5-7 South Street, including the Dehart Easement, as **Exhibit A**.

13. On or about February, 18, 2008, 9 South Street Holdings acquired a leasehold interest in the property located at 9 South Street, Morristown, New Jersey, described as Block 6004, Lot 4 on the Tax Map of the Town of Morristown, Morris County.

14. Pursuant to the terms of the lease, 9 South Street Holdings maintains the exclusive right to possess and use the property located at Block 6004, Lot 4, "together with all alley rights, if any, easements rights and appurtenances in connection therewith or thereunto belonging."

15. Pursuant to the terms of the lease, 9 South Street Holdings is responsible for all repairs to the property, for paying all property taxes and related taxes, for paying all utility expenses and for maintaining insurance on the premises.

16. Block 6004, Lot 4 includes an appurtenant right in the Dehart Easement. Attached hereto is a true and correct copy of Deed Book F11-503 (1884) describing today's Lot 4, 9 South Street, including the Dehart Easement, as **Exhibit B**.

17. On or about May 19, 2016, 11 South Street acquired a leasehold interest in the property located at 11 South Street, Morristown New Jersey, described as Block 6004, Lot 5 on the Tax Map of the Town of Morristown, Morris County.

18. By virtue of the leasehold interest, 11 South Street maintains an interest in the Dehart Easement.

19. Upon information and belief, Block 6004, Lot 5 includes an appurtenant right in the Dehart Easement.

20. Dehart Street is the only means of ingress and egress for the Dehart Easement.

21. The Dehart Street Easement is now only wide enough to accommodate one (1) vehicle at a time for loading and unloading purposes.

22. Defendants shortened the Dehart Easement by installing an electrical transformer in the right of way.

23. Plaintiffs operate bars and restaurant establishments on the above noted properties.

24. Plaintiffs' business operations require frequent deliveries in order to continue their operations.

25. Plaintiffs seek to renovate certain business establishments operating on the properties in question.

26. Plaintiffs have been unable to effectuate renovations to their business establishments due to their exclusion from the Dehart Easement by Defendants.

27. MPA, as the owner of Block 6004, Lot 8 and Epsteins C, as the owner of Block 6004, Lot 9, are the current servient owners of the Dehart Easement.

28. On or about June 26, 2007, Servient Defendants granted Epsteins A Condos, the previous owner of Block 6004, Lot 1 and Epsteins B Rentals the previous owner of Block 6004, Lot 16, a right of way easement over the Dehart Easement. A true and accurate copy of the June 26, 2007 Joint Declaration of Cross-Easements is annexed hereto as **Exhibit C**.

29. Large, mixed-use residential and retail complexes known as 40 West Park Place and the Metropolitan at 40 Park are located on Block 6004, Lots 1 and 16 ("The Complexes").

30. The Complexes contain numerous commercial entities on the street level.

31. The Complexes contain hundreds of residential units.

32. Upon information and belief, 40 West Park Place is a condominium complex which is owned in common by the residents of the condominium complex.

33. 40 Park Condo is the association responsible for managing the common areas of 40 West Park Place and for collectively representing the interests of the condominium owners.

34. Upon information and belief, Epsteins B owns the common areas of Block 6004, Lot 1.

35. Upon information and belief, Epsteins 40 Park owns the portions of Block 6004, Lot 1 housing commercial enterprises.

36. Upon information and belief, Epsteins Metro owns Block 6004, Lot 16.

37. Epsteins A and Epsteins B are collectively the predecessors-in-interest to the Complex Defendants.

38. The Complex Defendants are utilizing the Dehart Easement in a manner that overburdens the Dehart Easement and excludes Plaintiffs from lawful, reasonable use although their rights as dominant owners were obtained prior to the Complex Defendants.

39. The Complex Defendants regularly and frequently utilize the Dehart Easement for moving in and moving out residential tenants from The Complexes.

40. Due to the distance between the edge of the Dehart Easement and The Complexes, transit between the Dehart Easement and The Complexes is a time consuming affair.

41. The Complexes permit moving vehicles to park in the Dehart Easement for unreasonably long periods of time, frequently for multiple hours.

42. The residential "move in/move outs" frequently cause the Dehart Easement to be closed for up to 8 hours.

43. The Servient Defendants permit the Complex Defendants to allow residential move ins/move outs for up to 8 hours at a time.

44. This overburdening results in Plaintiffs regularly being excluded from use of the Dehart Easement, in violation of their rights, due to idling moving vehicles occupying the space.

45. Upon information and belief, The Complexes receive a large number of packages and other mailings for their residents and/or residential tenants on a daily basis.

46. Delivery services for The Complexes idle their vehicles in the Dehart Easement for unreasonably long periods of time on a daily basis overburdening the Dehart Easement.

47. This overburdening results in Plaintiffs regularly being excluded from use of the Dehart Easement, in violation of their rights, due to idling delivery vehicles occupying the space.

48. Commercial tenants from The Complexes utilize the Dehart Easement for receiving deliveries.

49. Delivery vehicles for commercial tenants of The Complexes leave their vehicles in the Dehart Easement for unreasonably long periods of time on a regular basis overburdening the Dehart Easement.

50. This overburdening results in Plaintiffs regularly being excluded from use of the Dehart Easement, in violation of their rights, due to idling delivery vehicles occupying the space.

51. Due to the lengthy transit times between the Dehart Easement and the Complexes, delivery vehicles frequently and regularly idle in the Dehart Easement for more than 15 minutes at a time.

52. The Servient Defendants regularly permit delivery vehicles of the Complex Defendants to idle in the Dehart Easement for more than 15 minutes at a time.

53. The Complex Defendants regularly utilize the Dehart Easement to the exclusion of Plaintiffs, infringing on Plaintiffs' pre-existing rights to the Dehart Easement.

54. The Servient Defendants regularly permit the Complex Defendants to utilize the Dehart Easement to the exclusion of Plaintiffs, infringing on Plaintiffs' pre-existing rights to the Dehart Easement.

55. Upon information and belief, Epsteins C is in the process of constructing yet another large, mixed-use complex with over 50 residential units and an unknown number of commercial units.

56. The proposed Epsteins C construction will further overburden the Dehart Easement by placing an even greater volume of use on the already severely overburdened easement.

57. An approximately twenty-three (23) foot wide right of way exists off of Market Street (the "Market Easement") located between 40 Park and the Metropolitan at 40 Park.

58. The Market Easement is closer in proximity to The Complexes than the Dehart Easement.

59. Defendants conspired to close off the Market Easement and limit its use to emergency vehicles.

60. The Market Easement could have been used by the Epsteins and The Complexes to prevent overburdening of the Dehart Easement and infringement upon Plaintiff's pre-existing easement rights and lawful use.

61. As a result of the Defendants' overburdening use of the Dehart Easement and granting permission to parties to overburden the Dehart Easement, Plaintiffs have been unable to effectuate timely and regular deliveries to their business establishments.

COUNT ONE
(Breach of Contract)

62. Plaintiffs repeat and re-allege every allegation set forth in the previous sections, as if set forth at length herein.

63. The grant of the Dehart Easement to Plaintiffs and their predecessors-in-interest by Servient Defendants and their predecessors-in-interest constitutes a written contract.

64. Servient Defendants, by allowing the Complex Defendants to overburden the Dehart Easement, have excluded Plaintiffs from utilizing the Dehart Easement.

65. The exclusion of Plaintiffs from their contractual right to fair and reasonable use of the Dehart Easement constitutes a breach of contract.

66. Plaintiffs have suffered losses and damages as a direct result of Servient Defendants' breach.

WHEREFORE, Plaintiffs demand judgment against the Servient Defendants, individually, jointly and severally:

- (a) Issuing a Temporary Restraining Order and Preliminary Injunction enjoining Servient Defendants from overburdening the Dehart Easement by requiring them to:
1. post a sign at the entrance to the Dehart Easement detailing the permitted uses of the Dehart Easement;
 2. enjoin The Complex Defendants from parking vehicles within the Dehart Easement;
 3. mandate that any and all vehicles servicing the Complex Defendants, or their tenants, by utilizing the Dehart Easement must place a placard in their window identifying the entity they are serving and providing contact information;
 4. command the Complex Defendants to acquire a \$10 day parking pass to permit meter parking in lieu of utilizing the Dehart Easement;
 5. confer with Morristown to ascertain the viability of expanding the loading zones on Market Street and Dehart Street;
 6. limit The Complex Defendants' delivery trucks, vendors and residents from utilizing the Dehart Easement for deliveries or any other purpose for more than fifteen (15) minutes at a time;
 7. promulgate rules for the Dehart Easement requiring that if Defendants seek to utilize the Dehart Easement for more than one (1) hour at any given time or if Defendants seek to temporarily close the Dehart Easement then they must give notice through the MPA to all parties with an interest in the Dehart Easement;
 8. mandate that Defendants must convey the above terms and conditions for use of the Dehart Easement to any and all of their tenants, residents and vendors;
 9. restrain the Metropolitan at Park 40 and any apartments constructed on Lot 9, owned by Epsteins C, including any and all residents, tenants and vendors, from utilizing the Dehart Easement under any circumstances; and
 10. compel the MPA to enforce the above terms and conditions for use of the Dehart Easement through ticketing and towing;
- (b) Issuing a permanent injunction against Servient Defendants requiring them to rescind their grant of rights in the Dehart Easement to Complex Defendants and restraining the Servient Defendants from granting any new persons or entities rights in the Dehart Easement which will result in an overburdening of the Dehart Easement and a change in use; or, in the alternative

- (c) Issuing a Permanent Injunction against Servient Defendants for all of the above sought Preliminary Injunctive Relief and Temporary Restraints;
- (d) For damages suffered by Plaintiffs, including punitive damages;
- (e) For interest, attorney's fees and costs of suit; and
- (f) For such other and further relief the Court deems just and proper.

COUNT TWO

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

67. Plaintiffs repeat and re-allege every allegation set forth in the previous sections, as if set forth at length herein.

68. The grant of the Dehart Easement to Plaintiffs and their predecessors-in-interest by Servient Defendants and their predecessors-in-interest constitutes a written contract.

69. Servient Defendants have a duty as servient owners of the Dehart Easement to not permit the Dehart Easement to become overburdened to the exclusion of Plaintiffs.

70. Servient Defendants have a duty to ensure that Plaintiffs have reasonable access to the Dehart Easement to permit their lawful use.

71. Servient Defendants engaged in a course of conduct which frustrated and destroyed Plaintiffs' ability to beneficially use the Dehart Easement.

72. Servient Defendants' failure to meet their obligations and duties was arbitrary, capricious, unreasonable under the circumstances, and has caused substantial harm, losses, and damage to Plaintiffs.

73. As a direct and proximate result of Servient Defendants' breach of the implied covenant of good faith and fair dealing, Plaintiffs have and continue to suffer significant damages.

WHEREFORE, Plaintiffs demand judgment:

- (a) Issuing a Temporary Restraining Order and Preliminary Injunction enjoining Servient Defendants from overburdening the Dehart Easement by requiring them to:

1. post a sign at the entrance to the Dehart Easement detailing the permitted uses of the Dehart Easement;
 2. enjoin The Complex Defendants from parking vehicles within the Dehart Easement;
 3. mandate that any and all vehicles servicing the Complex Defendants, or their tenants, by utilizing the Dehart Easement must place a placard in their window identifying the entity they are serving and providing contact information;
 4. command the Complex Defendants to acquire a \$10 day parking pass to permit meter parking in lieu of utilizing the Dehart Easement;
 5. confer with Morristown to ascertain the viability of expanding the loading zones on Market Street and Dehart Street;
 6. limit The Complex Defendants' delivery trucks, vendors and residents from utilizing the Dehart Easement for deliveries or any other purpose for more than fifteen (15) minutes at a time;
 7. promulgate rules for the Dehart Easement requiring that if Defendants seek to utilize the Dehart Easement for more than one (1) hour at any given time and if Defendants seek to temporarily close the Dehart Easement then they must give notice through the MPA to all parties with an interest in the Dehart Easement;
 8. mandate that Defendants must convey the above terms and conditions for use of the Dehart Easement to any and all of their tenants, residents and/or vendors;
 9. restrain the Metropolitan at Park 40 and any apartments constructed on Lot 9, owned by Epsteins C, including any and all residents, tenants and/or vendors, from utilizing the Dehart Easement under any circumstances; and
 10. compel the MPA to enforce the above terms and conditions for use of the Dehart Easement through ticketing and towing;
- (b) Issuing a permanent injunction against Servient Defendants requiring them to rescind their grant of rights in the Dehart Easement to the Complex Defendants and restraining the Servient Defendants from granting any new persons or entities rights in the Dehart Easement which will result in an overburdening of the Dehart Easement and a change in use; or, in the alternative
- (c) Issuing a Permanent Injunction against Servient Defendants for all of the above sought Preliminary Injunctive Relief and Temporary Restraints;
- (d) For damages suffered by Plaintiffs, including punitive damages;

- (e) For interest, attorney's fees and costs of suit; and
- (f) For such other and further relief the Court deems just and proper.

COUNT THREE
(Promissory Estoppel)

74. In or around the week of September 12, 2016, Plaintiffs and the Servient Defendants met to discuss a resolution of the dispute over the Dehart Easement (the "Meeting").

75. At the Meeting, Plaintiffs and Servient Defendants came to an agreement regarding the use of the Dehart Easement (the "Easement Agreement").

76. The Easement Agreement contained the following terms, agreed upon orally by all parties:

- (a) A sign would be posted at the entrance to the Dehart ROW detailing the permitted uses;
- (b) No one would be permitted to park within the Dehart ROW, other than for a limited time to effectuated deliveries;
- (c) Any vehicle utilizing the Dehart ROW must leave a placard in their window identifying the entity they servicing and providing contact information. It is the responsibility of each party to ensure that vehicles servicing their establishment comply with this provision;
- (d) The Complex Defendants, including their vendors and contractors, whenever possible, shall secure a \$10.00 day pass for parking rather than utilizing the Dehart ROW;
- (e) The MPA will coordinate with the Town of Morristown to determine whether the loading zones on Market Street and Dehart Street can be expanded to permit use of those zones by the retail locations within the Complex Defendants;
- (f) 40 Park will not utilize the Dehart ROW for any purpose other than residential move in and move outs (service and repair vehicles must park within the MPA garage);
- (g) 40 Park will limit move in and move outs to Tuesdays only between the hours of 9:00 a.m. and 4:00 p.m. The 40 Park concierge will act as the point person for all contacts;
- (h) Any use exceeding one hour or temporary closure of the Dehart ROW requires 48 hours advance notice through the MPA to all effected parties;
- (i) The Metropolitan at 40 Park and any the residents and tenants of any new construction located on the Epsteins C owned lot are not permitted to use the Dehart ROW under any circumstances;

- (j) Each party or owner must convey the terms of the Easement Agreement to their tenants and residents; and
- (k) The MPA will enforce the terms of the Easement Agreement through ticketing and towing.

77. Following the meeting, Plaintiffs' attorney emailed the attorneys for Servient Defendants on September 20, 2016 seeking to have the above noted and previously agreed upon terms memorialized in writing. Attached hereto is a true and correct copy of the September 20, 2016 e-mail from Plaintiffs' attorney as **Exhibit D**.

78. On September 20, 2016, the attorney for Epsteins C suggested that the attorney for the MPA memorialize the Easement Agreement. Attached hereto is a true and correct copy of the September 20, 2016 e-mail from Epsteins C's attorney as **Exhibit E**.

79. The attorney for Epsteins C did not reject, object, or otherwise seek to modify the Easement Agreement assenting to its terms.

80. Following the e-mail exchange, the MPA did not memorialize the agreed upon settlement terms.

81. When Plaintiffs' attorney expressed concern about the delay from the MPA in memorializing the agreed upon settlement terms, the attorney for Epsteins C stated in an e-mail on October 4, 2016 that "having worked with the MPA for over 12 years I can assure they keep their word." Attached hereto is a true and correct copy of the October 4, 2016 e-mail from Epsteins C's attorney as **Exhibit F**.

82. To date, the MPA has refused to memorialize the agreed upon settlement terms of the Easement Agreement.

83. To date, the Servient Defendants have refused to be bound by the agreed upon settlement terms of the Easement Agreement.

84. Plaintiffs negotiated in good faith and relied to their detriment on the Servient Defendants' representations of assent to be bound by the Easement Agreement.

85. As a direct and proximate result of Servient Defendants' representations, Plaintiffs have and continue to suffer significant damages.

WHEREFORE, Plaintiffs demand judgment:

- (a) Issuing a Temporary Restraining Order and Preliminary Injunction compelling Servient Defendants to abide by, and enforce, the terms of the Easement Agreement.
- (b) Issuing a permanent injunction against Servient Defendants compelling them to memorialize the Easement Agreement in writing and covey the terms of the Easement Agreement to all parties with an interest in the Dehart ROW; or, in the alternative
- (c) Issuing a Permanent Injunction against Servient Defendants for all of the above sought Preliminary Injunctive Relief and Temporary Restraints;
- (d) For damages suffered by Plaintiffs, including punitive damages;
- (e) For interest, attorney's fees and costs of suit; and
- (f) For such other and further relief the Court deems just and proper.

COUNT FOUR
(Indemnification)

86. Plaintiffs repeat and re-allege every allegation set forth in the previous sections, as if set forth at length herein.

87. The deed recorded on May 2, 1885 conveying an interest in the Dehart Easement to the predecessors-in-interest of 5-7 South Street Holdings contains the following language:

And Also that the said Hampton O. March & Daniel D. Craig will warrant secure and forever defend the said land and premises unto the said Elizabeth C. Farrelly heirs and assigns forever against the lawful claims and demands of all and every person or persons freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

88. The deed recorded on March 31, 1884 conveying an interest in the Dehart Easement to the predecessors-in-interest of 9 South Street Holdings contains the following language:

And Also that the said Hampton Marsh and Daniel D. Craig and their heirs or executors and administrators will Warrant secure and forever defend the said lands and premises unto the said Peter M. Kain and his heirs and assigns forever against the lawful claims and demands of all and every person and persons freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

89. Servient Defendants have a duty to “secure and forever defend” the Plaintiffs from any overburdening of the Dehart Easement.

90. Servient Defendants failed in this duty by overburdening the Dehart Easement and allowing the Complex Defendants to overburden the Dehart Easement.

91. Servient Defendants are required to indemnify Plaintiffs for all fees and costs, including attorneys’ fees, expended by Plaintiffs to defend their rights in the Dehart Easement.

92. Servient Defendants are required to indemnify Plaintiffs for all fees and costs, including attorneys’ fees, expended by Plaintiffs to defend against any action seeking to limit or rescind Plaintiffs’ rights in the Dehart Easement, including any counterclaims.

WHEREFORE, Plaintiffs demand judgment:

- (a) Issuing a Preliminary Injunction requiring Servient Defendants to specifically perform their obligations in the deed contracts to secure and forever defend Plaintiffs’ interest in the Dehart Easement;
- (b) Issuing a permanent injunction against Servient Defendants requiring them to rescind their grant of rights in the Dehart Easement to the Complex Defendants and restraining the Servient Defendants from granting any new persons or entities rights in the Dehart Easement which will result in an overburdening of the Dehart Easement and a change in use; or, in the alternative
- (c) Issuing a Permanent Injunction against Servient Defendants for the above sought Preliminary Injunctive Relief and Temporary Restraints;
- (d) For damages suffered by Plaintiffs in the form of all costs and fees, including attorneys’ fees expended in prosecution of this action and in defending any action seeking to limit or rescind the Plaintiffs’ rights in the Dehart Easement; and
- (e) For such other and further relief the Court deems just and proper.

COUNT FIVE
(Interference with Easement)

93. Plaintiffs repeat and re-allege every allegation set forth in the previous sections, as if set forth at length herein.

94. Plaintiffs' interest in the Dehart Easement is a property interest in land.

95. Servient Defendants interfered with Plaintiffs' property interest in the Dehart Easement by granting Complex Defendants an interest in the Dehart Easement.

96. Complex Defendants' use of the Dehart Easement overburdens the Dehart Easement to such a degree that Plaintiffs' are excluded from the Dehart Easement.

97. Plaintiffs are unable to reasonably use and enjoy their property right in the Dehart Easement due to the interference of Defendants.

98. As a direct and proximate result of Servient Defendants' grant of rights in the Dehart Easement to Complex Defendants, Plaintiffs have and continue to suffer significant damages.

99. As a direct and proximate result of Complex Defendants' overburdening use of the Dehart Easement, Plaintiffs have and continue to suffer significant damages.

WHEREFORE, Plaintiffs demand judgment:

- (a) Issuing a Temporary Restraining Order and Preliminary Injunction enjoining Servient Defendants from overburdening the Dehart Easement by requiring them to:
 - 1. post a sign at the entrance to the Dehart Easement detailing the permitted uses of the Dehart Easement;
 - 2. enjoin Complex Defendants from parking vehicles within the Dehart Easement;
 - 3. mandate that any and all vehicles servicing Complex Defendants, or their tenants, by utilizing the Dehart Easement must place a placard in their window identifying the entity they are serving and providing contact information;

4. command Complex Defendants to acquire a \$10 day parking pass to permit meter parking in lieu of utilizing the Dehart Easement;
 5. confer with Morristown to ascertain the viability of expanding the loading zones on Market Street and Dehart Street;
 6. limit Complex Defendants' delivery trucks, vendors and residents from utilizing the Dehart Easement for deliveries or any other purpose for more than fifteen (15) minutes at a time;
 7. promulgate rules for the Dehart Easement requiring that if Defendants seek to utilize the Dehart Easement for more than one (1) hour at any given time and if Defendants seek to temporarily close the Dehart Easement then they must give notice through the MPA to all parties with an interest in the Dehart Easement;
 8. mandate that Defendants must convey the above terms and conditions for use of the Dehart Easement to any and all of their tenants, residents and/or vendors;
 9. restrain the Metropolitan at Park 40 and any apartments constructed on Lot 9, owned by Epsteins C, including any and all residents, tenants and/or vendors, from utilizing the Dehart Easement under any circumstances; and
 10. compel the MPA to enforce the above terms and conditions for use of the Dehart Easement through ticketing and towing;
- (b) Issuing a Temporary Restraining Order and Preliminary Injunction enjoining Complex Defendants from overburdening the Dehart Easement by requiring them to:
1. refrain from parking vehicles or allowing tenants, residents and delivery services from parking vehicles in the Dehart Easement;
 2. mandate that any and all vehicles servicing them or their tenants by utilizing the Dehart Easement must place a placard in their window identifying the entity they are servicing and providing contact information;
 3. acquire a \$10 day parking pass to permit meter parking in lieu of utilizing the Dehart Easement;
 4. limit their delivery trucks, vendors and residents from utilizing the Dehart Easement for deliveries or any other purpose for more than fifteen (15) minutes a time;
 5. notify the MPA if they plan to utilize the Dehart Easement for more than one (1) hour at any given time and if Defendants seek to temporarily close the Dehart Easement.

6. convey the above terms and conditions for use of the Dehart Easement to any and all of their tenants, residents and vendors; and
 7. cause the Metropolitan at Park 40, including any and all residents, tenants and vendors, to cease utilizing the Dehart Easement under any circumstances;
- (c) Issuing a permanent injunction against Servient Defendants requiring them to rescind their grant of rights in the Dehart Easement to Complex Defendants and restraining Servient Defendants from granting any new persons or entities rights in the Dehart Easement which will result in an overburdening of the Dehart Easement and a change in use; or, in the alternative
 - (d) Issuing a permanent injunction against Servient Defendants for all of the above sought Preliminary Injunctive Relief and Temporary Restraints;
 - (e) Issuing a permanent injunction rescinding the rights of Complex Defendants to use the Dehart Easement; or, in the alternative
 - (f) Issuing a Permanent Injunction against Complex Defendants for all of the above sought Preliminary Injunctive Relief and Temporary Restraints;
 - (g) For damages suffered by Plaintiffs, including punitive damages;
 - (h) For interest, attorney's fees and costs of suit; and
 - (i) For such other and further relief the Court deems just and proper.

COUNT SIX
(Negligence)

100. Plaintiffs repeat and re-allege every allegation set forth in the previous sections, as if set forth at length herein.

101. Servient Defendants owe Plaintiffs a duty to take no action which would unreasonably infringe upon Plaintiffs' right to reasonably use and enjoy the Dehart Easement.

102. Servient Defendants breached that duty by granting rights in the Dehart Easement to Complex Defendants.

103. Complex Defendants owe Plaintiffs a duty of care to not overburden the Dehart Easement to the exclusion of their Plaintiffs.

104. Complex Defendants breached that duty by utilizing the Dehart Easement to such an extent that Plaintiffs are excluded from utilizing the Dehart Easement.

105. As a direct and proximate result of Defendants' breaches, Plaintiffs have and continue to suffer damages to their business operations.

WHEREFORE, Plaintiffs demand judgment:

- (a) Issuing a Temporary Restraining Order and Preliminary Injunction enjoining Servient Defendants from overburdening the Dehart Easement by requiring them to:
 - 1. post a sign at the entrance to the Dehart Easement detailing the permitted uses of the Dehart Easement;
 - 2. enjoin Complex Defendants from parking vehicles within the Dehart Easement;
 - 3. mandate that any and all vehicles servicing Complex Defendants, or their tenants, by utilizing the Dehart Easement must place a placard in their window identifying the entity they are serving and providing contact information;
 - 4. command Complex Defendants to acquire a \$10 day parking pass to permit meter parking in lieu of utilizing the Dehart Easement;
 - 5. confer with Morristown to ascertain the viability of expanding the loading zones on Market Street and Dehart Street;
 - 6. limit Complex Defendants' delivery trucks, vendors and residents from utilizing the Dehart Easement for deliveries or any other purpose for more than fifteen (15) minutes a time;
 - 7. promulgate rules for the Dehart Easement requiring that if Defendants seek to utilize the Dehart Easement for more than one (1) hour at any given time and if Defendants seek to temporarily close the Dehart Easement then they must give notice through the MPA to all parties with an interest in the Dehart Easement;
 - 8. mandate that Defendants must convey the above terms and conditions for use of the Dehart Easement to any and all of their tenants, residents and/or vendors;
 - 9. restrain the Metropolitan at Park 40 and any apartments constructed on Lot 9, owned by Epsteins C, including any and all residents, tenants and vendors, from utilizing the Dehart Easement under any circumstances; and

10. compel the MPA to enforce the above terms and conditions for use of the Dehart Easement through ticketing and towing;
- (b) Issuing a Temporary Restraining Order and Preliminary Injunction enjoining Complex Defendants from overburdening the Dehart Easement by requiring them to:
1. refrain from parking vehicles or allowing tenants, residents and/or delivery services from parking vehicles in the Dehart Easement;
 2. mandate that any and all vehicles servicing them or their tenants by utilizing the Dehart Easement must place a placard in their window identifying the entity they are servicing and providing contact information;
 3. acquire a \$10 day parking pass to permit meter parking in lieu of utilizing the Dehart Easement;
 4. limit their delivery trucks, vendors and residents from utilizing the Dehart Easement for deliveries or any other purpose for more than fifteen (15) minutes at a time;
 5. notify the MPA if they plan to utilize the Dehart Easement for more than one (1) hour at any given time and/or if Defendants seek to temporarily close the Dehart Easement.
 6. convey the above terms and conditions for use of the Dehart Easement to any and all of their tenants, residents and/or vendors; and
 7. cause the Metropolitan at Park 40, including any and all residents, tenants and vendors, to cease utilizing the Dehart Easement under any circumstances;
- (c) Issuing a permanent injunction against Servient Defendants requiring them to rescind their grant of rights in the Dehart Easement to Complex Defendants and restraining Servient Defendants from granting any new persons or entities rights in the Dehart Easement which will result in an overburdening of the Dehart Easement and a change in use; or, in the alternative
- (d) Issuing a permanent injunction against Servient Defendants for all of the above sought Preliminary Injunctive Relief and Temporary Restraints;
- (e) Issuing a permanent injunction rescinding the rights of the Complex Defendants to use the Dehart Easement; or, in the alternative
- (f) Issuing a Permanent Injunction against Complex Defendants for all of the above sought Preliminary Injunctive Relief and Temporary Restraints;
- (g) For damages suffered by Plaintiffs, including punitive damages;

- (h) For interest, attorney's fees and costs of suit; and
- (i) For such other and further relief the Court deems just and proper.

COUNT SEVEN
(Tortious Interference With Prospective Economic Advantage)

106. Plaintiffs repeat and re-allege every allegation set forth in the previous sections, as if set forth at length herein.

107. Servient Defendants intentionally and with recklessness and malice granted rights in the Dehart Easement to Complex Defendants with full knowledge that such actions would cause Plaintiffs' exclusion from the Dehart Easement.

108. Complex Defendants intentionally and with recklessness and malice utilized and continue to utilize the Dehart Easement in such a manner so as to exclude Plaintiffs from utilizing their interest in the Dehart Easement, with full knowledge that such use would cause Plaintiffs' exclusion.

109. Defendants' unlawful acts are without justification or excuse.

110. As a result of Defendants' conduct, Plaintiffs are unable to reasonably effectuate deliveries to their business operations.

111. As a result of Defendants' conduct, Plaintiffs are unable to effectuate renovations to their business establishments.

112. As a direct and proximate result of Defendants' conduct, Plaintiffs have and continue to suffer damage to their business operations in the form of lost sales.

WHEREFORE, Plaintiffs demand judgment:

- (a) Issuing a Temporary Restraining Order and Preliminary Injunction enjoining the Servient Defendants from overburdening the Dehart Easement by requiring them to:
 - 1. post a sign at the entrance to the Dehart Easement detailing the permitted uses of the Dehart Easement;

2. enjoin Complex Defendants from parking vehicles within the Dehart Easement;
 3. mandate that any and all vehicles servicing Complex Defendants, or their tenants, by utilizing the Dehart Easement must place a placard in their window identifying the entity they are servicing and providing contact information;
 4. command Complex Defendants to acquire a \$10 day parking pass to permit meter parking in lieu of utilizing the Dehart Easement;
 5. confer with Morristown to ascertain the viability of expanding the loading zones on Market Street and Dehart Street;
 6. limit Complex Defendants' delivery trucks, vendors and residents from utilizing the Dehart Easement for deliveries or any other purpose for more than fifteen (15) minutes at a time;
 7. promulgate rules for the Dehart Easement requiring that if Defendants seek to utilize the Dehart Easement for more than one (1) hour at any given time and if Defendants seek to temporarily close the Dehart Easement then they must give notice through the MPA to all parties with an interest in the Dehart Easement;
 8. mandate that Defendants must convey the above terms and conditions for use of the Dehart Easement to any and all of their tenants, residents and/or vendors;
 9. restrain the Metropolitan at Park 40 and any apartments constructed on Lot 9, owned by Epsteins C, including any and all residents, tenants and vendors, from utilizing the Dehart Easement under any circumstances; and
 10. compel the MPA to enforce the above terms and conditions for use of the Dehart Easement through ticketing and towing;
- (b) Issuing a Temporary Restraining Order and Preliminary Injunction enjoining Complex Defendants from overburdening the Dehart Easement by requiring them to:
1. refrain from parking vehicles or allowing tenants, residents and/or delivery services from parking vehicles in the Dehart Easement;
 2. mandate that any and all vehicles servicing them or their tenants by utilizing the Dehart Easement must place a placard in their window identifying the entity they are servicing and providing contact information;
 3. acquire a \$10 day parking pass to permit meter parking in lieu of utilizing the Dehart Easement;

4. limit their delivery trucks, vendors and residents from utilizing the Dehart Easement for deliveries or any other purpose for more than fifteen (15) minutes at a time;
 5. notify the MPA if they plan to utilize the Dehart Easement for more than one (1) hour at any given time and if Defendants seek to temporarily close the Dehart Easement.
 6. convey the above terms and conditions for use of the Dehart Easement to any and all of their tenants, residents and/or vendors; and
 7. cause the Metropolitan at Park 40, including any and all residents, tenants and vendors, to cease utilizing the Dehart Easement under any circumstances;
- (c) Issuing a permanent injunction against Servient Defendants requiring them to rescind their grant of rights in the Dehart Easement to Complex Defendants and restraining Servient Defendants from granting any new persons or entities rights in the Dehart Easement which will result in an overburdening of the Dehart Easement and a change in use; or, in the alternative
- (d) Issuing a permanent injunction against Servient Defendants for all of the above sought Preliminary Injunctive Relief and Temporary Restraints;
- (e) Issuing a permanent injunction rescinding the rights of Complex Defendants to use the Dehart Easement; or, in the alternative
- (f) Issuing a Permanent Injunction against Complex Defendants for all of the above sought Preliminary Injunctive Relief and Temporary Restraints;
- (g) For damages suffered by Plaintiffs, including punitive damages;
- (h) For interest, attorney's fees and costs of suit; and
- (i) For such other and further relief the Court deems just and proper.

COUNT EIGHT
(Civil Conspiracy)

113. Plaintiffs repeat and re-allege every allegation set forth in the previous sections, as if set forth at length herein.

114. Defendants conspired together to grant Complex Defendants an illegal preferential use of the Dehart Easement to the exclusion of Plaintiffs.

115. Defendants violated the due process rights of the Plaintiffs by abrogating Plaintiffs' interest in the Dehart Easement.

116. Defendants violated the equal protection clause of the constitution by allowing Complex Defendants the superior authority to use the Dehart Easement in violation of Plaintiffs' pre-existing property rights therein.

117. Defendants carried out their agreement to grant an illegal preferential use of the Dehart Easement to Complex Defendants by permitting Complex Defendants to utilize the Dehart Easement to the exclusion of Plaintiffs and by restricting Plaintiffs' use of the Dehart Easement.

118. Plaintiffs have been and continue to be damaged by Defendants' conspiracy to restrict and rescind Plaintiffs' rights in the Dehart Easement for the benefit of Complex Defendants.

WHEREFORE, Plaintiffs demand judgment:

- (a) Issuing a Temporary Restraining Order and Preliminary Injunction enjoining Servient Defendants from overburdening the Dehart Easement by requiring them to:
 - 1. post a sign at the entrance to the Dehart Easement detailing the permitted uses of the Dehart Easement;
 - 2. enjoin Complex Defendants from parking vehicles within the Dehart Easement;
 - 3. mandate that any and all vehicles servicing Complex Defendants, or their tenants, by utilizing the Dehart Easement must place a placard in their window identifying the entity they are serving and providing contact information;
 - 4. command Complex Defendants to acquire a \$10 day parking pass to permit meter parking in lieu of utilizing the Dehart Easement;
 - 5. confer with Morristown to ascertain the viability of expanding the loading zones on Market Street and Dehart Street;
 - 6. limit Complex Defendants' delivery trucks, vendors and residents from utilizing the Dehart Easement for deliveries or any other purpose for more than fifteen (15) minutes at a time;

7. promulgate rules for the Dehart Easement requiring that if Defendants seek to utilize the Dehart Easement for more than one (1) hour at any given time and if Defendants seek to temporarily close the Dehart Easement then they must give notice through the MPA to all parties with an interest in the Dehart Easement;
 8. mandate that Defendants must convey the above terms and conditions for use of the Dehart Easement to any and all of their tenants, residents and vendors;
 9. restrain the Metropolitan at Park 40 and any apartments constructed on Lot 9, owned by Epsteins C, including any and all residents, tenants and vendors, from utilizing the Dehart Easement under any circumstances; and
 10. compel the MPA to enforce the above terms and conditions for use of the Dehart Easement through ticketing and towing;
- (b) Issuing a Temporary Restraining Order and Preliminary Injunction enjoining Complex Defendants from overburdening the Dehart Easement by requiring them to:
1. refrain from parking vehicles or allowing tenants, residents and/or delivery services from parking vehicles in the Dehart Easement;
 2. mandate that any and all vehicles servicing them or their tenants by utilizing the Dehart Easement must place a placard in their window identifying the entity they are servicing and providing contact information;
 3. acquire a \$10 day parking pass to permit meter parking in lieu of utilizing the Dehart Easement;
 4. limit their delivery trucks, vendors and residents from utilizing the Dehart Easement for deliveries or any other purpose for more than fifteen (15) minutes a time;
 5. notify the MPA if they plan to utilize the Dehart Easement for more than one (1) hour at any given time and if Defendants seek to temporarily close the Dehart Easement.
 6. convey the above terms and conditions for use of the Dehart Easement to any and all of their tenants, residents and/or vendors; and
 7. cause the Metropolitan at Park 40, including any and all residents, tenants and vendors, to cease utilizing the Dehart Easement under any circumstances;
- (c) Issuing a permanent injunction against Servient Defendants requiring them to rescind their grant of rights in the Dehart Easement to Complex Defendants and

restraining Servient Defendants from granting any new persons or entities rights in the Dehart Easement which will result in an overburdening of the Dehart Easement and a change in use; or, in the alternative

- (d) Issuing a permanent injunction against Servient Defendants for all of the above sought Preliminary Injunctive Relief and Temporary Restraints;
- (e) Issuing a permanent injunction rescinding the rights of Complex Defendants to use the Dehart Easement; or, in the alternative
- (f) Issuing a Permanent Injunction against Complex Defendants for all of the above sought Preliminary Injunctive Relief and Temporary Restraints;
- (g) For damages suffered by Plaintiffs, including punitive damages;
- (h) For interest, attorney's fees and costs of suit; and
- (i) For such other and further relief the Court deems just and proper.

COUNT NINE

(Violation of New Jersey Civil RICO, N.J.S.A. 2C:41-1, *et seq.* ("RICO"))

119. Plaintiffs repeat and re-allege each and every allegation above, as if set forth at length herein.

120. The enterprise, within the meaning of N.J.S.A. 2C:41-1(c), is the MPA, Epsteins C, Epsteins B, Epsteins Metro, Epsteins 40 Park and 40 Park Condo, including the principals and representatives therein, acting sometimes through the MPA and others times acting in concert as a group of entities "associated in fact although not a legal entity" to accomplish their intent.

121. The MPA, Epsteins C, Epsteins B, Epsteins Metro, Epsteins 40 Park and 40 Park Condo are all "persons" within the meaning of N.J.S.A. 2C:41-2(b).

122. Defendants are all associated with the enterprise.

123. Defendants conducted or participated, both directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity in violation of N.J.S.A. 2C:41-2(c).

124. Defendants have, among other things, engaged in a pattern of racketeering, including criminal conduct that has the same or similar purposes, results, participants or victims or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents.

125. The criminal conduct includes engaging in wire fraud in violation of 18 U.S.C. § 1343.

126. Defendants received services and benefits from the pattern of racketeering activity.

127. Defendants have conspired with and amongst themselves and others to violate the provisions of N.J.S.A. 2C:41-2.

WHEREFORE, Plaintiffs demand judgment:

(a) Issuing a Temporary Restraining Order and Preliminary Injunction enjoining the Servient Defendants from overburdening the Dehart Easement by requiring them to:

1. post a sign at the entrance to the Dehart Easement detailing the permitted uses of the Dehart Easement;
2. enjoin Complex Defendants from parking vehicles within the Dehart Easement;
3. mandate that any and all vehicles servicing the Complex Defendants, or their tenants, by utilizing the Dehart Easement must place a placard in their window identifying the entity they are serving and providing contact information;
4. command Complex Defendants to acquire a \$10 day parking pass to permit meter parking in lieu of utilizing the Dehart Easement;
5. confer with Morristown to ascertain the viability of expanding the loading zones on Market Street and Dehart Street;
6. limit The Complex Defendants' delivery trucks, vendors and residents from utilizing the Dehart Easement for deliveries or any other purpose for more than fifteen (15) minutes at a time;
7. promulgate rules for the Dehart Easement requiring that if Defendants seek to utilize the Dehart Easement for more than one (1) hour at any given time and if Defendants seek to temporarily close the Dehart

Easement then they must give notice through the MPA to all parties with an interest in the Dehart Easement;

8. mandate that Defendants must convey the above terms and conditions for use of the Dehart Easement to any and all of their tenants, residents and/or vendors;
 9. restrain the Metropolitan at Park 40 and any apartments constructed on Lot 9, owned by Epsteins C, including any and all residents, tenants and vendors, from utilizing the Dehart Easement under any circumstances; and
 10. compel the MPA to enforce the above terms and conditions for use of the Dehart Easement through ticketing and towing;
- (b) Issuing a Temporary Restraining Order and Preliminary Injunction enjoining Complex Defendants from overburdening the Dehart Easement by requiring them to:
1. refrain from parking vehicles or allowing tenants, residents and/or delivery services from parking vehicles in the Dehart Easement;
 2. mandate that any and all vehicles servicing them or their tenants by utilizing the Dehart Easement must place a placard in their window identifying the entity they are servicing and providing contact information;
 3. acquire a \$10 day parking pass to permit meter parking in lieu of utilizing the Dehart Easement;
 4. limit their delivery trucks, vendors and residents from utilizing the Dehart Easement for deliveries or any other purpose for more than fifteen (15) minutes at a time;
 5. notify the MPA if they plan to utilize the Dehart Easement for more than one (1) hour at any given time and if Defendants seek to temporarily close the Dehart Easement.
 6. convey the above terms and conditions for use of the Dehart Easement to any and all of their tenants, residents and/or vendors; and
 7. cause the Metropolitan at Park 40, including any and all residents, tenants and vendors, to cease utilizing the Dehart Easement under any circumstances;
- (c) Issuing a permanent injunction against Servient Defendants requiring them to rescind their grant of rights in the Dehart Easement to Complex Defendants and restraining Servient Defendants from granting any new persons or entities rights in the Dehart Easement which will result in an overburdening of the Dehart Easement and a change in use; or, in the alternative

- (d) Issuing a permanent injunction against Servient Defendants for all of the above sought Preliminary Injunctive Relief and Temporary Restraints;
- (e) Issuing a permanent injunction rescinding the rights of Complex Defendants to use the Dehart Easement; or, in the alternative
- (f) Issuing a Permanent Injunction against Complex Defendants for all of the above sought Preliminary Injunctive Relief and Temporary Restraints;
- (g) For damages suffered by Plaintiffs, including treble and punitive damages;
- (h) For interest, attorney's fees and costs of suit; and
- (i) For such other and further relief the Court deems just and proper.

COUNT TEN
(42 U.S.C. § 1983)

128. Plaintiffs repeat and re-allege each and every allegation above, as if set forth at length herein.

129. The Fifth Amendment of the Constitution states, in relevant part: "No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

130. The Fourteenth Amendment of the Constitution states, in relevant part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United⁴ States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

131. Plaintiffs are persons within the meaning of the Fifth and Fourteenth Amendments.

132. Plaintiffs' interest in the Dehart Easement is a property right.

133. The MPA, through its own actions, has deprived Plaintiffs of a property right through the inequitable enforcement of rules purportedly meant to regulate the use of the Dehart ROW.

134. The MPA allows Complex Defendants to utilize the Dehart ROW in such a way that Plaintiffs are excluded from the Dehart ROW in violation of their Dehart Easement property rights.

135. The MPA allows Complex Defendants to utilize the Dehart ROW in a more expansive fashion than Plaintiffs are permitted to utilize the Dehart ROW.

136. The MPA permits the Complex Defendants to utilize the Dehart ROW in a manner inconsistent with its purported rules and regulations.

137. The MPA arbitrarily and capriciously refuses to enforce its rules and regulations against the violations of those rules and regulations by the Complex Defendants.

138. On or about December 15, 2016, the MPA filed an Answer with Counterclaims to the original Complaint (“Counterclaim Complaint”). Attached hereto is a true and correct copy of the MPA Answer with Counterclaims as **Exhibit G**.

139. In paragraphs 28-30 of the Counterclaim Complaint, the MPA alleges that Plaintiffs’ business interests are overburdening the Dehart Easement due to the supposed “increased” volume of the business. *See Exhibit G, ¶¶ 28-30.*

140. The MPA also violated and continues to violate principles of equal protection by alleging that Plaintiff’s restaurant establishments constituting two commercial entities are overburdening the Dehart Easement while simultaneously defending the use of Complex Defendants which are comprised of hundreds of residential units and over ten commercial establishments. *See Exhibit G, ¶¶ 28-30.*

141. In paragraph 31 of the Counterclaim Complaint, the MPA alleges that Plaintiffs’ principal, James Cavanaugh (“Cavanaugh”) routinely parks vehicles within the ROW “for hours at a time.” *See Exhibit G, ¶ 31.*

142. This allegation is demonstrably false because, for years Cavanaugh purchased and retained no less than five parking passes in the MPA garage for himself and employees of Plaintiffs' business establishments.

143. Meanwhile, the MPA regularly allows residents, tenants, vendors and agents of Complex Defendants to park within the Dehart ROW without any complaint or enforcement of the rules and regulations.

144. The MPA violated and continues to violate principles of equal protection by seeking to enforce against Plaintiffs rules and regulations barring parking within the Dehart ROW while simultaneously permitting Complex Defendants to park within the Dehart ROW in violation of the MPA's rules and regulations. *See Exhibit G*, ¶ 31.

145. In paragraph 32 of the Counterclaim Complaint, the MPA alleges that Plaintiffs occasionally permit service vehicles to remain in the Dehart ROW for longer than 15 minutes and for the service vehicles to impede others from full access to the Dehart ROW. *See Exhibit G*, ¶ 32.

146. However, the MPA regularly and continuously permits Complex Defendants to utilize the Dehart ROW for deliveries, servicing, repairs and move in/move outs for periods far in excess of 15 minutes, sometimes for eight hours at a time, without any complaint or enforcement of the rules and regulations.

147. The MPA regularly and continuously permits Complex Defendants to utilize the Dehart ROW for deliveries, servicing, repairs and move in/move outs in a manner that completely excludes others, including Plaintiffs, from using the Dehart ROW in any manner without any complaint or enforcement of the rules and regulations.

148. The MPA violated and continues to violate principles of equal protection by seeking to enforce against Plaintiffs rules and regulations preventing deliveries from occurring for more than 15 minutes within the Dehart ROW while simultaneously permitting the Complex Defendants to regularly and continuously utilize the Dehart ROW for more than 15 minutes at a time in violation of the MPA's rules and regulations. *See Exhibit G*, ¶ 32.

149. In paragraphs 33-35 of the Counterclaim Complaint, the MPA alleges that Plaintiffs house "unauthorized" dumpsters within the Dehart ROW while simultaneously alleging that the dumpsters are not kept in a sanitary condition. *See Exhibit G*, ¶ 33-35.

150. The MPA permitted other parties, including Plaintiffs' predecessor-in-interest, Woolworths, to place dumpsters within the Dehart ROW for years without complaint.

151. The MPA permits Complex Defendants to load garbage into garbage trucks via the Dehart ROW without complaint.

152. Complex Defendants frequently permit foul smelling liquid to flow into the Dehart ROW during garbage collections without any complaint or enforcement of the rules and regulations by the MPA.

153. The MPA violated and continues to violate principles of equal protection by allowing other parties to maintain garbage facilities within the Dehart ROW and to pollute the Dehart ROW while baselessly complaining of Plaintiffs' well-maintained refuse collection receptacles. *See Exhibit G*, ¶ 32.

154. On December 14, 2016, the MPA sent correspondence to Plaintiffs demanding Plaintiffs remove a construction dumpster lawfully situated within the Dehart ROW. Attached hereto is a true and correct copy of the December 14, 2016 correspondence as **Exhibit H**.

155. Plaintiffs placed the construction dumpster in a precise location within the Dehart ROW to continue to permit deliveries within the Dehart ROW and with the full consent of the Executive Director of the MPA.

156. The MPA regularly and frequently permits Complex Defendants to close the entire Dehart ROW for construction purposes, thereby excluding any deliveries, without any complaint, notice, or enforcement of rules and regulations.

157. The MPA violated and continues to violate principles of equal protection by allowing Complex Defendants to close the entire Dehart ROW for construction purposes while simultaneously threatening Plaintiffs over construction activity within the Dehart ROW which does not impeded deliveries within the Dehart ROW. *See Exhibit H.*

158. The MPA has effectively appropriated the Plaintiffs' property right in the Dehart Easement through its action and inaction.

159. The MPA has not provided to Plaintiffs any compensation for its taking of the Plaintiffs' property rights in the Dehart Easement.

160. The MPA has and continues to attempt to restrict Plaintiffs' ability to utilize its property rights in the Dehart Easement in accordance with deed contracts.

161. The MPA permitted construction of an electrical transformer in the corner of the Dehart ROW furthest from Dehart Street.

162. The electrical transformer artificially shortens the Dehart ROW and permanently excludes Plaintiffs from utilizing that portion of the Dehart Row.

163. The MPA did not afford Plaintiffs any due process prior to the deprivation of Plaintiffs property rights by artificially shortening the Dehart ROW.

164. The MPA did not compensate Plaintiffs for the taking of their property interest by artificially shortening the Dehart ROW.

165. The MPA adopted and continues to enforce policies, practices and customs that have caused the violations of Plaintiffs' Fifth and Fourteenth Amendment rights.

166. The acts of the MPA constitutes a deliberate indifference to the Constitutional rights of the Plaintiffs.

167. The MPA carried out the above actions, or consented to the actions of others, under the color of law.

168. Plaintiffs have been and continue to be damaged by the MPA's violation of Plaintiffs' Constitutional rights.

169. Pursuant to 42 U.S.C. § 1988(b), a prevailing party is entitled to fees for any suit brought to vindicate a party's Constitutional rights pursuant to 42 U.S.C. § 1983.

170. Plaintiffs are entitled to attorneys' fees and costs by virtue of the MPA's deliberate violations of the Plaintiffs' Constitutional rights pursuant to the Fourteenth Amendment.

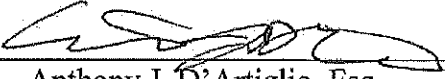
WHEREFORE, Plaintiffs demand judgment against the MPA:

- (a) Issuing a Temporary Restraining Order and Preliminary Injunction enjoining the MPA from further violating the Plaintiffs' Constitutional rights, including, compelling the MPA cease the inequitable enforcement of its own rules and regulations;
- (b) Issuing a permanent injunction against the MPA enjoining the MPA from taking any action which would violate Plaintiffs' Constitutional rights; or, in the alternative
- (c) Issuing a Permanent Injunction against the MPA for all of the above sought Preliminary Injunctive Relief and Temporary Restraints;
- (d) For damages suffered by Plaintiffs, including punitive damages;
- (e) For interest, attorney's fees and costs of suit pursuant to 42 U.S.C. § 1988(b); and

(f) For such other and further relief the Court deems just and proper.

Dated: Woodland Park, New Jersey
December 29, 2016

ANSELL GRIMM & AARON, P.C.

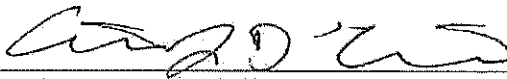
By: 
Anthony J. D'Artiglio, Esq.

Attorneys for Plaintiff

CERTIFICATION OF RULE 1:38-7(c)

Pursuant to Rule 1:38-7(c), I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

ANSELL GRIMM & AARON
Attorneys for Plaintiffs

By: 
Anthony J. D'Artiglio, Esq.

Dated: December 29, 2016

EXHIBIT A

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Rec'd & Recorded May 2^d 1885
 of Helwin J. Condit atty

Hampton O. Marsh & } This Indenture made the first
 Daniel D. Craig } day of May in the year of our
 to } Lord One Thousand Eight
 Elizabeth H. Farrelly } Hundred and Eighty three
 between Hampton O. Marsh of
 Morristown in the County of Morris & State of New Jersey
 and Daniel D. Craig of the Township of Bernards
 in the County of Somerset and State of New Jersey of
 the first part And Elizabeth H. Farrelly wife of
 Patrick Farrelly of the Town of Morristown in the
 County of Morris and State of New Jersey of the
 second part.
 Witnesseth That the said party of the first part
 for and in consideration of Fourteen Thousand
 Dollars lawful money of the United States of
 America to them in hand well and truly paid
 by the said party of the second part at &
 before the signing and delivery of these presents
 the receipt whereof is hereby acknowledged and
 the said party of the first part themselves fully
 satisfied contented and paid have given granted
 bargained sold aliened released and conveyed con-
 firmed and confirmed and by these presents do
 give grant bargain sell alien release and convey
 and confirm to the said party of the second
 part and to her heirs and assigns forever All
 that lot tract or parcel of land and premises
 hereinafter particularly described situated lying
 and being in the Town of Morristown in the
 County of Morris and State of New Jersey
 Beginning at the most easterly corner of the
 lot conveyed to Joseph York by the party of the
 first part by deed dated Nov 12th 1883 & recorded
 in the Morris County Clerk Office in Book D 11
 of Deeds page 361 the said corner being four
 feet distant from the North east corner of the

DBK N11-71

Rec 5-2-1885

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Washington 2nd Building & running (1) along the
 building line thereafter mentioned South fifty three
 degrees & forty five minutes East forty five feet
 to the southeast corner of the lot conveyed
 by the party of the first part to Peter M. Hain by
 deed dated March 31st 1884 & recorded in said Clerk
 Office in Book C. 11 of Deeds pages 343 & 344 thence (2)
 along said Hain lot South fifty three degrees & five
 minutes West one hundred & thirty six feet to the
 side of ~~the lot conveyed by the party of the first part to Peter M. Hain by deed dated March 31st 1884 & recorded in said Clerk Office in Book C. 11 of Deeds pages 343 & 344~~ ~~thence (3) along said side of said lot North forty three degrees & forty five minutes West forty five feet to the south southerly corner of said Grier lot thence (4) along said Grier line South fifty three degrees & five minutes East one hundred & thirty six feet to the place of beginning. Containing six thousand one hundred & seventy square feet together with all the right title & interest of the party of the first part in and to the land lying between said lot and the side of South Street in front thereof but this deed is made and accepted with this express understanding that no building or part thereof shall be erected or suffered or permitted to be erected thence between the building line laid down on a map of said March & Craig property filed in the Office of the Clerk of Missouri County March 15th 1884 & South Street as said by the party of the second part her heirs and assigns excepting however such appendages to buildings as are permitted to extend over said building line by a certain agreement bearing date May 17th 1884 made by and between said March & Craig & Joseph York & Peter M. Hain and the party of the first part as owners of said fronting on said building line covenant with the party of the second part her heirs and assigns that they will not nor will their heirs or assigns erect or suffer to be erected any building or part thereof except such as is~~

permitted by said agreement of May 17, 1854 between
said building line in its entire length & South River
as appurtenant to the lands hereby conveyed. ~~and~~
~~of the same length in width & for any other~~
~~the same from the river & assigns the right of~~
~~for a bridge over the same~~ ~~afforded to De Hart~~
~~the above mentioned~~ ~~for all purposes.~~

This deed is made subject to all the rights of Joseph York under a certain party wall agreement dated Nov 12th 1883 & recorded in said Public Office in Book D. 11. of Deeds. pages 367 &c. And said party of the second part hereby assumes the burden and is hence forth entitled to receive the benefit of said Agreement.

Together with all and singular the houses buildings trees
ways waters profits privileges and advantages with
the appurtenances to the same belonging or in any wise
appertaining. Also all the estate right title interest
property claim and demand whatsoever of the said
party of the first part of in and to the same and of
in and to every part and parcel thereof, to have
and to hold all and singular the above described
land and premises with the appurtenances unto the
said party of the second part her heirs and assigns
to the only proper use benefit and behoof of the
said party of the second part her heirs and assigns
forever. And the said Chaptin C. Marsh & Daniel
D. Gray do for themselves their heirs executors and
administrators covenant and grant to and with the
said party of the second part her heirs and assigns
that they the said Chaptin C. Marsh & Daniel D. Gray
are the true lawful and right owners of all and
singular the above described land and premises
and of every part and parcel thereof with the
appurtenances thereto belonging and that the
said land and premises in any part thereof at the
time of the sealing and delivery of these presents
are not encumbered by any mortgage judgment
or limitation or by any circumstance whatsoever
by which the title of the said party of the second

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part hereby made or intended to be made for the above
described land and premises can or may be changed,
changed, altered or departed in any way, notwithstanding
And Also that the said party of the first part now
have good right full power and lawful authority to
grant bargain sell and convey the said land and
premises in manner aforesaid. And Also that the
said Hampton C. Marsh & Daniel D. Craig with
Harradine and Jovair defend the said land
and premises unto the said Elizabeth L. Farley
heirs and assigns forever against the lawful claims
and demands of all and every person or persons
freely and cleanly freed and discharged of and from
all manner of encumbrances whatsoever.
In Witness Whereof the said party of the first part have
hereunto set their hands and seals the day and year
first above written.

Signed, sealed and Delivered } Hampton C. Marsh &
in the presence of } D. D. Craig &
Guy Winston

State of New Jersey for Parish of Cumberland that on this
County of Cumberland second day of May in the year
thousand and eighty five before me Guy Winston a
Notary in Charge of New Jersey personally appeared
Hampton C. Marsh & Daniel D. Craig who I am
satisfied are the grantors in the within Deed of
Conveyance above and I having first made known
to them the contents thereof they did each acknowledge
that they signed and delivered the
same as their voluntary act and deed for the
uses and purposes therein expressed.

Guy Winston M. C. C.
Rec'd & Recorded May 2^d 1885.
Melvin S. Condit
Clerk

EXHIBIT B

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sealed and delivered the same as the statutory act
and duly freely without any fear threats or compulsion of
her said husband.

For H. Neighbour M. C. C.
Read & Recorded Nov 21 1884
Gordon S. Capait. Clk

✓ Hampton O. Marsh and } This Indenture made the
✓ Daniel D. Craig } Thirty first day of March
✓ Peter M. Kain } in the year of our Lord
one thousand eight hundred
and eighty four Between

Hampton O. Marsh and } his wife of
Newtown in the County of Morris and State of
New Jersey and Daniel D. Craig of the township of
Cornwall in the County of Somerset in said State
of the first part and Peter M. Kain of Newtown
in said County of Morris and State of New Jersey
of the second part.

Witnesseth That the said parties of the first part
for and in consideration of the sum of Six thousand
one hundred and fifty dollars lawful money of the
United States of America to them in hand well
and truly paid by the said party of the second
part at and before the sealing and delivery of
these presents the receipt whereof is hereby ac-
knowledged and the said parties of the first part
therewith fully satisfied contented and paid
have given granted bargained sold aliened released
enjoyed conveyed and confirmed and by these presents
do give grant bargain sell alien release enjoy
convey and confirm unto the said party of the
second part and to his heirs and assigns forever
All that lot tract or parcel of land and prem-
ises hereinafter particularly described situate lying
and being in the Town of Newtown in the County
of Morris and State of New Jersey

* Beginning at a point distant forty five feet on a
course North forty three degrees and forty five minutes

DOK F11-503

Rec 3-31-1884

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East from the North East corner of the lot covered by the portion of the first part of Joseph Bank by deed dated January 12, 1883 and recorded in Davis County Clerk's Office in Book E. 11 of said pages 361 to 362 distant on the same course ninety four feet from the West East corner of the Building the West building and running thence (6) parallel to and keeping fully five feet distant from the easterly side of said Wells lot into fifty three degrees and five minutes that one hundred and thirty six feet to the side of a line which is extension of the first part and which is open to the West Street thence (5) along side side of said Wells lot forty three degrees and fifty five minutes East County on first thence (3) parallel with the first line thirty feet fifty three degrees and five minutes West one hundred and thirty six feet to the building. thence thence (4) along and building East North forty three degrees and fifty five minutes that County on first to the place of beginning continuing thirty eight hundred and fifty six feet to the lot situated on the River lot on a course of lands by Grant and being in Donation of the same County the office of said Clerk of Davis County. Thence with the right side and distance of the first part of the lot and keeping between the above described lot and the side of the lot situated between the first and third line of said lot and to said street that the said lot was accepted when the express understanding and intention that as building - part thereof shall be erected on surface - permitted to be erected thereon between the building line - said same on side street and street East of same by the party of the same part the line is across and the portion of the first part is across of the adjoining land commencing the party of the same part the line and again that they and then there are ranges will not erect a building to be erected any building or part thereof between side building line in the entire course and street. As Applicant to the lot hereby conveyed

the parties of the first part bargain sell and convey to said party of the second part the right of way forever hereafter over the lane to De Hart Street above mentioned for all purposes.

Together with all and singular the houses buildings sites ways routes profits privileges and advantages with the appurtenances to the same belonging or in anywise appertaining. Also all the estate right title interest property claim and demand whatsoever of the said parties of the first part of in and to the same and of in and to every part and parcel thereof. To have and to hold all and singular the above described tract or lot of Land and Premises with the appurtenances unto the said party of the second part his heirs and assigns to the only proper use benefit and behoof of the said party of the second part his heirs and assigns forever. And the said Hampton O. Marsh and Daniel D. Craig do for themselves their heirs executors and administrators covenant and grant to and with the said party of the second part his heirs and assigns that they the said Hampton O. Marsh and Daniel D. Craig the true lawful and right owners of all and singular the above described Land and Premises and of every part and parcel thereof with the appurtenances thereto belonging and are now lawfully seized and possessed of the same as a good perfect and absolute estate of inheritance in fee simple and that the said Land and Premises or any part thereof at the time of the sealing and delivery of these presents are not encumbered by any Mortgage Judgment Power Limitation or by any incumbrance whatsoever by which the title of the said party of the second part hereby or intended to be made for the above described Land and Premises can or may be changed changed altered or defeated in any way whatsoever. And Also that the said parties of the first part now have good right full power and lawful authority to grant bargain sell and convey the said Land and Premises in manner aforesaid. And Also that the said Hampton Marsh and Daniel D. Craig and their heirs or

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centors and administrators will. I warrant secure and forever defend the said Lands and Premises unto the said Peter M. Kain and his heirs and assigns forever against the lawful claims and demands of all and every person and persons freely and clearly freed and discharged of and from all manner of incumbrances whatsoever.

In Witness Whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed Sealed and Delivered.

in the presence of
Edmund D. Halsey

Hampton C. Marsh. (S)

Mary D. Marsh (S)

D. D. Craig (S)

State of New Jersey
County of Essex

Be it Remembered That on the thirty first day of March A.D. eighteen hundred and eighty four before me Edmund D. Halsey a Justice in Chancery of New Jersey personally appeared Hampton C. Marsh and Mary D. his wife and Daniel D. Craig who I am satisfied are the parties mentioned in the foregoing deed to whom I first made known the contents thereof and they acknowledged and they signed sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed. And the said Mary D. Marsh being by me privately examined separate and apart from her said husband did further acknowledge that she signed sealed and delivered the same freely as her voluntary act and deed without any force threats or compulsion of or from her said husband.

Edmund D. Halsey

Master in

Read & Remored March 31st 1884

William S. Condit

Clerk

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Washington Hall building & running (1) along the
 building line hereafter mentioned South fifty three
 degrees & forty five minutes East forty five feet
 to the south westerly corner of the lot conveyed
 by the party of the first part to Peter M. Hain by
 deed dated March 31st 1884 & recorded in said Clerk's
 Office in Book C. 11 of Deeds pages 883 & c thence (2)
 along said Hain lot South fifty three degrees & five
 minutes West one hundred & thirty six feet to the
 side of a lane which is sixteen feet wide at this
 point & which is open to the East Street thence (3)
 along said side of said lane North forty three
 degrees & forty five minutes West forty five feet
 to the north southerly corner of said York lot
 thence (4) along said York line South fifty three
 degrees & forty five minutes East one hundred & thirty
 six feet to the place of beginning. Containing six
 thousand one hundred & seventy square feet.
 Together with all the right title & interest of the
 party of the first part in and to the land lying
 between said lot and the side of South Street in
 front thereof but this deed is made and accepted
 with this express understanding that no building
 or part thereof shall be erected or suffered or per-
 mitted to be erected between the building
 line laid down on a map of said Marsh & Craig
 property filed in the Office of the Clerk of
 Harris County March 15th 1884 & South Street if or
 said by the party of the second part her heirs
 and assigns excepting however such appendages
 to buildings as are permitted to extend over
 said building line by a certain agreement bearing
 date May 17th 1884 made by and between said
 Marsh & Craig & Joseph York & Peter M. Hain
 And the party of the first part as owners of
 land fronting on said building line covenant
 with the party of the second part her heirs
 and assigns that they will not nor will their
 heirs or assigns erect or suffer to be erected
 any building or part thereof except such as is

that feeling made a radical in the matter for the other
described land and premises on a very large
changed either or either in any way, but no
And also that the said party of the first part had
has good right full power and lawful authority to
grant bargain sell and convey the said land and
premises in manner aforesaid And also that the
said Thompson, O. Smith & Smith D. Strong will
grant assign and convey the said land
and premises unto the said Elizabeth E. Cary
and assign her heirs forever against the lawful claim
and demands of all and every person in persons
living and coming good and discharged of and from
all manner of encumbrances whatsoever
the said party of the first part the
heirs of their heirs and assigns the day and year
first above written Thompson, O. Smith & Smith D.
deposed before me at Detroit O. March 23
my the first of } D. D. Strong
my hand in
Dated at New Jersey for Clark Chandler & Smith in the
County of Monroe March 23rd of the year of our Lord 1883
Witness our Right Honorable Justices of the Peace
Thompson O. Smith & Smith D. Strong who appeared
before me in County of New Jersey lawfully appeared
and testified as the grantors in the within Book of
Conveyances made and bearing first made him
to them the contents of which they did read as
knowledge that they agreed with a distinct full
and true understanding of and due to the
uses and purposes therein expressed All to be
Rec'd & Received Money of 1883
Wm. W. D. Bond
Not

EXHIBIT C

17-6560-A
Record & Return to
TRANS-COUNTY TITLE AGENCY, L.L.C.
P.O. Box 676
New Brunswick, NJ 08903

JOINT DECLARATION OF CROSS-EASEMENTS

MADE BY

**EPSTEINS A CONDOS, L.L.C.,
EPSTEINS B RENTALS, L.L.C.,
EPSTEINS C LOFTS, L.L.C.,
MORRISTOWN EPSTEINS, L.L.C.**

AND

PARKING AUTHORITY OF THE TOWN OF MORRISTOWN

DATED: June 20, 2007

Record and Return to:

**Robert S. Goldsmith, Esquire
Greenbaum, Rowe, Smith & Davis LLP
99 Wood Avenue South
Iselin, NJ 08830**

JOINT DECLARATION OF CROSS-EASEMENTS

THIS JOINT DECLARATION OF CROSS-EASEMENTS (the "Joint Declaration") is made as of the 26 day of JUNE, 2007 by **Epsteins A Condos, L.L.C.** ("Epsteins A Condos"), **Epsteins B Rentals, L.L.C.** ("Epsteins B Rentals"), **Epsteins C Lofts, L.L.C.** ("Epsteins C Lofts"), each a New Jersey limited liability company, and each with offices at c/o Roseland Property Company, 233 Canoe Brook Road, Short Hills, New Jersey 07078; the **Parking Authority of the Town of Morristown**, a body corporate and politic of the State of New Jersey ("MPA"), with offices at 10 Pine Street, Morristown, New Jersey 07960 (Epsteins A Condos, Epsteins B Rentals, Epsteins C Lofts and MPA are collectively referred to herein as the "Declarants"); and **Morristown Epsteins, L.L.C.**, a New Jersey limited liability company with offices at c/o Roseland Property Company, 233 Canoe Brook Road, Short Hills, New Jersey 07078 ("Morristown Epsteins").

RECITALS

WHEREAS:

1. MPA is a public entity organized for the expressed public purposes of providing public parking, preventing traffic congestion, and promoting the free flow of traffic which undertakes to promote such public purposes through providing parking at favorable rates on an hourly, daily, weekly and monthly basis.

2. MPA is the owner of certain lots (the "MPA Project Site") shown on that certain final subdivision plat prepared by Richard F. Smith, Jr., Professional Land Surveyor, and recorded in

the office of the Morris County Clerk as filed Map Number _____ (the "Final Plat") and anticipated to be shown and designated on the Tax Map of the Town of Morristown, as follows:

A. Block 6004, Lot 8, as described in Exhibit A attached hereto ("Lot 8"), on which MPA will construct a multi-level parking garage with approximately 790 parking spaces (the "Parking Garage"); and

B. Block 6004, Lot 12, as described in Exhibit B attached hereto ("Lot 12"), on which MPA will construct an office building (the "MPA Office Building");

3. Wholly owned affiliates of Morristown Epsteins are the owners of certain lots (the "Epsteins Project Site") shown on the Filed Plat, and anticipated to be shown and designated on the Tax Map of the Town of Morristown, as follows:

A. Epsteins A Condos is the owner of Block 6004, Lot 1, as described in Exhibit C attached hereto ("Lot 1"), on which a multi-use building with retail space and residential condominium units ("Building A") will be constructed;

B. Epsteins C Lofts is the owner of Block 6004, Lot 9, as described in Exhibit D attached hereto ("Lot 9"), on which a multi-use building with retail space and residential condominium units ("Building C") will be constructed; and

C. Epsteins B Rentals is the owner of Block 6004, Lot 16, as described in Exhibit E attached hereto ("Lot 16"), on which a multi-use building with retail space and rental apartment units ("Building B") will be constructed;

4. The Declarants are desirous of creating certain easements for the benefit of the MPA Project Site and the Epsteins Project Site and all subsequent owners thereof and their respective

successors and assigns, as required by a certain Redevelopment and Parking Project Agreement by and among MPA, Epsteins A Condos, Epsteins B Rentals, Epsteins C Lofts, and Morristown Epsteins dated on or about the date hereof (the "Project Agreement").

NOW THEREFORE, in recognition of the foregoing recitals and the consideration of the benefit that will occur from the recordation of this Joint Declaration, the Declarants do hereby declare that the MPA Project Site and the Epsteins Project Site are and shall be owned, held, sold, transferred, and conveyed subject to the following easements, covenants and restrictions:

ARTICLE I – INCORPORATION OF RECITALS

1. The recitals set forth above are hereby incorporated by reference as if set forth in full in the body of this Joint Declaration.

ARTICLE II – DEFINITIONS

1. As used in this Joint Declaration, the following terms shall have the meanings set forth below, unless the context clearly requires otherwise:

A. "Emergency" shall mean an immediate danger of death or injury to a person or substantial damage to property.

B. "Owner" shall mean the owner in fee simple, its successors and/or assigns, of any of the Lots, and the plural of which shall refer to the other Owners and their successors and/or assigns. As of the date of this Joint Declaration, the Owners are as follows:

Lot

Owner

Block 6004, Lot 8	MPA
Block 6004, Lot 12	MPA
Block 6004, Lot 1	Epsteins A Condos
Block 6004, Lot 9	Epsteins C Lofts
Block 6004, Lot 16	Epsteins B Rentals

C. "Rehabilitation Area" shall mean the MPA Project Site and the Epsteins Project Site, collectively.

D. "Site Plan" shall mean the approved site plan drawings for the Epsteins Project Site and the MPA Project Site.

ARTICLE III – EASEMENTS

1. Lot 1: Pedestrian Access From W. Park Place To Lot 8 (Building A Passageway)

A. Grant: Epsteins A Condos, as fee owner of Lot 1, hereby creates and grants to, and for the benefit of, the Owner of Lot 8, a non-exclusive right, privilege and easement for pedestrian access in and over Lot 1 and through Building A, between West Park Place and Lot 8, located in and over any sidewalks, improved courtyard or walkways between Lot 8 and the entrance to Building A and then through Building A, as more particularly described in Subparagraph C below, generally at the location marked "BUILDING A PASSAGEWAY EASEMENT" on the easement plan (the "Easement Plan") attached hereto as Exhibit F (the "Building A Passageway Easement").

B. Passageway Operations: Pedestrian access over the Building A Passageway Easement shall be provided seven (7) days per week for a period of not less than 10

consecutive hours per day (which hours shall be between the hours of 8 a.m. and 10 p.m.).

C. Right to Relocate: The Declarants agree that the Owner of Lot 1, at its own cost and expense, and upon reasonable notice to the Owner of Lot 8, shall have the right to designate the location of, and/or from time to time relocate the Building A Passageway Easement on Lot 1, provided that the easement location continues to provide attractive, functional and reasonable grade level, barrier-free pedestrian access directly between Lot 8 and West Park Place. The Building A Passageway Easement, and any relocated Building A Passageway Easement shall be through a portion of Building A consisting of either retail space open to the public or space (such as a hallway) that is reasonably designed to accommodate pedestrian access during the times required by Subsection B hereof. Pedestrian access between Lot 8 and West Park Place through Building A shall be sufficient to satisfy the requirement for the Building A Passageway Easement during such times as the first floor of Building A is occupied by a single-user retail tenant, if grade level entrances to Building A are provided from Lot 8 and West Park Place and pedestrian access through the sales areas within Building A between such entrances is not prohibited or otherwise impeded during the times required by Subsection B hereof. Pedestrian access through the retail or common areas within Building A when such building is leased to multiple retail tenants shall be sufficient if the pedestrian access through the building is reasonably equivalent to the access that would have been sufficient under the preceding sentence had the building been leased to a single user retail tenant.

D. Initial Construction: Epsteins A Condos and Morristown Epsteins shall construct the Building A Passageway Easement in accordance with the Site Plan, at its cost and expense, except as otherwise may be provided in the Project Agreement.

E. Covenant to Maintain & Repair: The Owner of Lot 1, at its own sole cost and expense, shall keep and maintain the Building A Passageway Easement in good condition and repair, and shall be solely responsible for operation, maintenance, repair, and replacement of the Building A Passageway Easement, including, but not limited to, keeping the Building A Passageway Easement reasonably free from trash and debris, and snow and ice clearing. The Owner of Lot 8 shall have no obligations with respect to insurance, maintenance, repair or replacement of the Building A Passageway Easement, except to the extent of any damage caused by the Owner of Lot 8.

2. Lots 1 and 16: Access From Market Street To Lots 1, 8 And 16 (Courtyard)

A. Grant: Epsteins A Condos, as fee owner of Lot 1, and Epsteins B Rentals, as fee owner of Lot 16, hereby create and grant to, and for the benefit of, the Owners of Lots 1, 8 and 16 a mutual and non-exclusive right, privilege and easement for pedestrian access in and over a Courtyard area now or hereafter located on Lots 1 and 16, between Market Street and Lots 1, 8 and 16, as shown at the location cross-hatched and marked "COURTYARD EASEMENT" on the Easement Plan (the "Courtyard Easement"). The Courtyard Easement is more particularly described in Exhibit G.

B. Initial Construction: Morristown Epsteins, Epsteins A Condos and Epsteins B Rentals shall construct the Courtyard Easement and the appurtenances thereto in

accordance with the Site Plan, except as otherwise may be provided in the Project Agreement.

C. Covenant to Maintain & Repair: The Owners of Lots 1 and 16, at their own sole cost and expense, shall keep and maintain the portion of the Courtyard Easement located on Lot 1 and Lot 16, respectively, in good condition and repair, and shall be solely responsible for operation, maintenance, repair, and replacement of the Courtyard Easement, including, but not limited to, keeping the Courtyard Easement reasonably free from trash and debris, and snow and ice clearing. The Owner of Lot 8 shall have no obligations with respect to insurance, maintenance, repair or replacement of the Courtyard Easement, except to the extent of any damage caused by the Owner of Lot 8.

3. Lots 8 and 9: Vehicular and Pedestrian Access From Dehart Street To Lots 1 And 16 (Right Of Way)

A. Grant: Epsteins C Lofts, as fee owner of Lot 9, and MPA, as fee owner of Lot 8, hereby create and grant to, and for the benefit of, the Owners of Lots 1 and 16, a mutual and non-exclusive right, privilege and easement for pedestrian and vehicular access in and over a right of way between Dehart Street and Lot 1 and the Courtyard Easement, now or hereafter located in and over Lots 8 and 9 at the location cross-hatched and marked "RIGHT OF WAY EASEMENT" on the Easement Plan (the "Right of Way Easement"). The Right of Way Easement is more particularly described in Exhibit H.

B. Initial Construction: MPA shall construct the Right of Way Easement and the appurtenances thereto in accordance with the Site Plan at its cost and expense, except as otherwise may be provided in the Project Agreement. MPA warrants to the Owners of Lots 1 and 16 that the construction of the Right of Way Easement will be free from defects in labor and materials for a period which is the greater of (i) the construction warranty which runs for the benefit of the MPA from its construction contractor, or (ii) one (1) year from the substantial completion of construction.

C. Covenant to Maintain & Repair: Morristown Epsteins and the Owners of Lots 1 and 16, at their own sole cost and expense, shall each keep and maintain the Right of Way Easement in good condition and repair, and shall be solely responsible, jointly and severally, for operation, maintenance, repair, and replacement of the Right of Way Easement, including, but not limited to, keeping the Right of Way Easement reasonably free from trash and debris, and snow and ice clearing. The Owner of Lot 8 shall have no obligations with respect to maintenance, repair or replacement of the Right of Way Easement, except to the extent of any damage caused by the Owner of Lot 8. Nothing herein shall impose any obligation on the Owners of Lots 1 and 16 to, or for the benefit of, any adjoining property owner (other than the Owners of Lots 1, 8 and 16) with existing rights to use the presently existing 16 foot right-of-way located within a portion of the Right of Way Easement, nor in any way limit any obligation that such adjoining property owners may have to contribute to the cost of improvement or maintenance of the 16 foot right-of-way, if any.

4. Lot 8: Underground Utility Easement.

A. Grant: MPA, as fee owner of Lot 8, hereby creates and grants to, and for the benefit of, the Owners of Lots 1 and 16, a mutual and non-exclusive right, privilege and easement for construction, use, maintenance, repair and replacement of underground utility lines as shown on the Site Plan in and under a portion of the Right of Way Easement ("Underground Utility Easement"). The Underground Utility Easement is more particularly described in Exhibit K.

B. Initial Construction: MPA shall perform the initial construction of the Underground Utility Easement, including the underground utility lines, in accordance with the Site Plan, at its cost and expense, except as otherwise may be provided in the Project Agreement. MPA warrants to the Owners of Lots 1 and 16 that the construction of the Underground Utility Easement will be free from defects in labor and materials for a period which is the greater of (i) the construction warranty which runs for the benefit of the MPA from its construction contractor, or (ii) one (1) year from the substantial completion of construction.

C. Covenant to Maintain & Repair: The Owners of Lots 1 and 16, at their own sole cost and expense, shall keep and maintain the underground utilities in the Underground Utility Easement in good condition and repair, and shall be solely responsible, jointly and severally, for operation, maintenance, repair, and replacement of the underground utilities in the Underground Utility Easement. In performing any maintenance, repair, replacement or other activities with respect to the Underground Utility Easement, the Owners of Lots 1 and 16 shall make all reasonable efforts to minimize any interference with the Right of Way Easement, and after any such

activities shall promptly restore the Right of Way Easement to the condition prior to such activities. The Owner of Lot 8 shall have no obligations with respect to insurance, maintenance, repair or replacement of the Underground Utility Easement, except to the extent of any damage caused by the Owner of Lot 8

5. Lots 8 and 12: Vehicular Access To Lots 8 And 16 (Maple Avenue Driveway)

Grant: MPA, as fee owner of Lots 8 and 12, hereby creates and grants to, and for the benefit of, the Owners of Lots 8 and 16, a mutual and non-exclusive right, privilege and easement for vehicular access in and over a driveway now or hereafter located in and over the northwest corner of Lot 8 and the southwest corner of Lot 16 generally at the location cross-hatched and marked "MAPLE AVENUE DRIVEWAY EASEMENT" on the Easement Plan (the "Maple Avenue Driveway Easement"). The Maple Avenue Driveway Easement is more particularly described in Exhibit I.

D. Initial Construction: MPA shall construct, the Maple Avenue Driveway Easement and the appurtenances thereto in accordance with the Site Plan, at its cost and expense, except as otherwise may be provided in the Project Agreement.

E. Covenant to Maintain & Repair: The Owner of Lot 8, at its own sole cost and expense, shall keep and maintain the Maple Avenue Driveway Easement in good condition and repair, and shall be solely responsible for operation, maintenance, repair, and replacement of the Maple Avenue Driveway Easement, including, but not limited to, keeping the Maple Avenue Driveway Easement reasonably free from trash and debris, and snow and ice clearing. The Owners of Lots 12 and 16 shall have no obligations with respect to insurance, maintenance, repair or replacement of the

Maple Avenue Driveway Easement, except to the extent of any damage caused by such Owner.

6. Lot 8: Access From Lot 16 (Parking Garage Stair Tower)

A. Grant:

- (1) MPA, as fee owner of Lot 8 hereby, creates and grants to, and for the benefit of, the Owner of Lot 16, a non-exclusive right, privilege and easement in and over the stair tower that provides access to the Courtyard now or hereafter located in the northeast corner of the Parking Garage ("Stair Tower") for pedestrian egress from Building B (the "Stair Tower Access Easement")
- (2) The Owner of Lot 16 hereby agrees, at its cost and expense, to install at its sole cost and expense such doors, signs, alarms, monitoring equipment, an access system and/or any other devices, and to take such steps, as may be reasonably required to permit access to or from the Stair Tower only by individuals who have access to the Building B access system.

B. Initial Construction:

- (1) MPA shall construct the Stair Tower and the appurtenances thereto that are located in the Parking Garage or in and over Lot 8 in accordance with the Site Plan, at its cost and expense, except as may otherwise be provided by the Project Agreement.

(2) Morristown Epsteins and Epsteins B Rentals shall construct, at its cost and expense, the doors and any other devices or equipment appurtenant thereto that are located in Building B or in and over Lot 16.

C. Covenant to Maintain & Repair:

(1) The Owner of Lot 8, at its own cost and expense, shall keep and maintain the Stair Tower Access Easement in good condition and repair in accordance with MPA's customary practices and procedures for public garage operations, and shall be solely responsible for operation, maintenance, repair and replacement of said portion of the Stair Tower Access Easement. The Owner of Lot 16 shall have no obligations with respect to insurance, maintenance, repair or replacement of the Stair Tower Access Easement, except to the extent of any damage caused by the Owner of Lot 16.

(2) The Owner of Lot 16, at its own cost and expense, shall keep and maintain the doors, alarms and any other equipment or objects appurtenant to the Stair Tower Access Easement in good condition and repair, and shall be solely responsible for operation, maintenance, repair and replacement of said doors, alarms and other equipment and objects. The Owner of Lot 8 shall have no obligations with respect to insurance, maintenance, repair or replacement of said doors, alarms and other equipment and objects, except to the extent of any damage caused by the Owner of Lot 8.

D. Release from Liability: MPA makes no representation or warranty with respect to the lawfulness or adequacy of the Stair Tower Access Easement as a means of egress,

emergency or otherwise, from Lot 16. The Owner of Lot 16, its successors and assigns agree to indemnify and hold harmless MPA from and against any cost, expense, liability, claim, cause of action, damages, lawsuits, and all other obligations of any kind or nature arising after the date hereof and any judgments, fines, interest, penalties, amounts paid in settlement and reasonable attorneys' fees and all other costs and expenses paid or incurred in connection therewith, directly or indirectly, arising out of, related to or in any way connected with the use, installation, maintenance, repair or replacement of the Stair Tower Access Easement and/or the appurtenances thereto by the Owner of Lot 16 or its tenants and their invitees, except that MPA shall be responsible for any liability, claims, damages, costs and expenses resulting from MPA's own negligence or misconduct.

7. Lot 8: Access To Lot 9 (Walkway From Building C To Parking Garage)

A. Grant: MPA, as fee owner of Lot 8, hereby creates and grants to, and for the benefit of, the Owner of Lot 9 a non-exclusive right, privilege and easement for pedestrian access to the Parking Garage over a five foot wide walkway ("Walkway") from the property line of Lot 9 (the "Building C Walkway Easement"), and to construct, maintain, repair and replace the Walkway and appurtenances thereto. The Walkway will be constructed within the approximately 50 foot wide area shown on the Easement Plan as reasonably agreed upon by the MPA and the Owner of Lot 9.

B. Initial Construction:

(1) MPA shall construct the Parking Garage and an entry door to the Parking Garage to allow pedestrians to enter the Parking Garage from the Walkway,

including such structural elements of the Parking Garage as are reasonably required to accommodate the Building C Walkway Easement as shown on the Site Plan, at its cost and expense, except as may otherwise be provided by the Project Agreement.

(2) Morristown Epsteins and Espteins C Lofts shall construct and install, at its cost and expense, the Walkway and the appurtenances thereto, including but not limited to, connections between the walkway and the Parking Garage, doors, signage and any other structures or equipment comprising and/or required to operate the Building C Walkway Easement.

C. Covenant to Maintain & Repair: The Owner of Lot 9, at its own cost and expense, shall keep and maintain the Building C Walkway Easement including, but not limited to, the Walkway, doors, signage and any other structures or equipment, in good condition and repair, and shall be solely responsible for operation, maintenance, repair and replacement of such appurtenances. The Owner of Lot 8 shall have no obligations with respect to insurance, maintenance, repair or replacement of said appurtenances to the Building C Walkway Easement, except to the extent of any damage caused by the Owner of Lot 8.

8. Lot 8: Vehicular Access To Lots 1 And 16 (Underground Parking Access)

A. Grant: MPA, as fee owner of Lot 8 and as holder of the easement rights under the Garage Entrance Easement hereby, creates and grants to, and for the benefit of, the Owners of Lots 1 and 16 a mutual and non-exclusive right, privilege and easement for vehicular access in and over the drive aisles of the entrance level and underground

level of the Parking Garage, including but not limited to the Garage Entrance Easement as described below, to an underground parking area located in and under Building B on Lot 16 (the "Underground Parking Access Easement").

B. Initial Construction: MPA shall construct the Underground Parking Access Easement, at its cost and expense, except as may otherwise be provided by the Project Agreement.

C. Right to Relocate: The Declarants agree that the Owner of Lot 8, at its own cost and expense, and upon reasonable notice to the Owners of Lots 1 and 16, shall have the right to designate the location of, and/or from time to time relocate the Underground Parking Access Easement on Lot 8, provided that the easement location continues to provide lawful, functional and reasonable vehicular access from DeHart Street to the underground parking area located in and under Building B on Lot 16.

D. Covenant to Maintain & Repair: The Owner of Lot 8, at its own cost and expense, shall keep and maintain the Underground Parking Access Easement in good condition and repair, and shall be solely responsible for operation, maintenance, repair and replacement of the Underground Parking Access Easement, in accordance with MPA's customary maintenance and operation procedures for public garages. The Owners of Lots 1 and 16 shall have no obligations with respect to insurance, maintenance, repair or replacement of the Underground Parking Access Easement, except to the extent of any damage caused by such Owner.

E. MPA Regulation: The use of the Underground Parking Access Easement will be subject to the policies, rules and regulations of the operator of the Parking Garage as

in effect from time to time and the terms and conditions of a certain parking agreement between MPA and Epsteins A Condos, as Owner of Lot 1, of even date herewith and referred to in the Project Agreement as the Building A Parking Agreement. Notwithstanding the foregoing, the Underground Parking Access Easement shall not terminate upon the termination of the Building A Parking Agreement. If the Building A Parking Agreement terminates, then the use of the Underground Parking Access Easement shall nevertheless continue and shall be in accordance with and subject to all of same terms, conditions policies, rules and regulations set forth in the Building A Parking Agreement (notwithstanding any termination of that agreement), including but not limited to payment of the Building A Parking Garage Access Fee (as defined in the Building A Parking Agreement), subject to such modifications thereto as may be mutually agreed upon by the Owners of Lots 1, 8 and 16.

9. Lots 8 and 16: Underground Footings to Lot 16 (Shared Footings)

A. Grant: MPA, as fee owner of Lot 8 and Epsteins B Rentals, as fee owner of Lot 16, hereby, create and grant to, and for the benefit of, the Owners of Lot 16 and Lot 8, a mutual and non-exclusive right, privilege and easement to construct, maintain, repair, operate, use and replace any encroachment of the shared underground footings (the "Shared Footings") of the Parking Garage and Building B in their "as built" position on Lots 8 and 16 (the "Shared Footings Easement").

B. Initial Construction: MPA shall initially construct the Shared Footings in accordance with the Site Plan, at its cost and expense, except as may be otherwise provided by the Project Agreement.

C. Covenant to Maintain & Repair: The Owner of Lot 8 shall be responsible for sixty (60%) percent of the maintenance, repair, and replacement of the Shared Footings, as and if required. The Owner of Lot 16 shall be responsible for forty (40%) percent of the maintenance, repair, and replacement of the Shared Footings, as and if required. Either Owner, upon reasonable advance notice to the other Owner, may incur any necessary maintenance, repair and replacement costs for the Shared Footings, and the other Owner shall be responsible for paying its share of the costs within thirty (30) days of receipt of a bill. The Owner of Lot 16 shall otherwise have no obligations with respect to insurance, maintenance, repair or replacement of the Shared Footings Easement, except to the extent of any damage caused by the Owner of Lot 16.

10. Lot 9: Access Easement From Dehart Street To Lots 1, 8, And 16 (Garage Entrance)

A. Grant: Epsteins C Lofts, as fee owner of Lot 9, hereby creates and grants to, and for the benefit of, the Owner of Lot 8, and subject to the provisions of Paragraph 10(D) below, to the Owners of Lots 1 and 16, an exclusive right, privilege and easement to construct, maintain, operate, repair, maintain, use and replace an entrance/exit to the Parking Garage for pedestrian and vehicular access between the Parking Garage and DeHart Street at the location cross-hatched and marked

"GARAGE ENTRANCE EASEMENT" on the Easement Plan (the "Garage Entrance Easement"). The Garage Entrance Easement is more particularly described in Exhibit J.

B. Initial Construction: MPA shall construct the Garage Entrance Easement, at its cost and expense, except as may otherwise be provided in the Project Agreement.

C. Covenant to Maintain & Repair: The Owner of Lot 8, at its sole cost and expense, shall keep and maintain the Garage Entrance Easement in good condition and repair, and shall be solely responsible in accordance with MPA's customary maintenance and operation procedures for public parking garages, for operation, maintenance, repair, and replacement of Garage Entrance Easement, including, but not limited to, keeping the Garage Entrance Easement reasonably free from trash and debris, and snow and ice clearing. The Owner of Lot 9 shall have no obligations with respect to insurance, maintenance, repair or replacement of the Garage Entrance Easement, except to the extent of any damage caused by the Owner of Lot 9.

D. MPA Regulation: The use of the Garage Entrance Easement by the Owners of Lots 1 and 16 will be subject to the policies, rules and regulations of the operator of the Parking Garage as in effect from time to time and the terms and conditions of the Building A Parking Agreement. Notwithstanding the foregoing, the right of the Owners of Lots 1 and 16 to the use of the Garage Entrance Easement shall not terminate upon the termination of the Building A Parking Agreement. If the Building A Parking Agreement terminates, then the use of the Underground Parking Access Easement by the Owners of Lots 1 and 16 shall nevertheless continue and shall be in

accordance with and subject to all of same terms, conditions policies, rules and regulations set forth in the Building A Parking Agreement (notwithstanding any termination of that agreement), including but not limited to payment of the Building A Parking Garage Access Fee (as defined in the Building A Parking Agreement), subject to such modifications thereto as may be mutually agreed upon by the Owners of Lots 1, 8 and 16.

11. Lot 16: Underground Parking Easement To Lot 1 (Underground Garage Easement)

A. Grant: Epsteins B Rentals, as fee owner of Lot 16, hereby creates and grants to, and for the benefit of, the Owner of Lot 1 an exclusive right, privilege and easement to construct, maintain, repair, replace and use an underground parking area to be built under Building B generally at the location cross-hatched and marked "UNDERGROUND GARAGE EASEMENT" on the Easement Plan (the "Underground Garage Easement").

B. Initial Construction: Morristown Epsteins and Epsteins B Rentals shall, at their cost and expense, initially construct the Underground Garage Easement and the appurtenances thereto.

C. Covenant to Maintain & Repair: The Owner of Lot 1, at its sole cost and expense, shall keep and maintain the Underground Garage Easement in good condition and repair, and shall be solely responsible for operation, maintenance, repair, and replacement of the Underground Garage Easement, including, but not limited to, any doors, signs, alarms, monitoring equipment (such as a swipe card access system) and

any other equipment or objects appurtenant thereto and keeping the Underground Garage Easement reasonably free from trash and debris. The Owner of Lot 16 shall have no obligations with respect to insurance, maintenance, repair or replacement of the Underground Garage Easement, except to the extent of any damage caused by the Owner of Lot 16.

12. Shared Utilities Easement

A. Grant: The Rehabilitation Area shall be subject to a blanket, perpetual and non-exclusive easement in, upon, over, across and through the streets, sidewalks, driveways, courtyards, and other areas not improved by a building or parking garage for the purpose of the installation, maintenance, repair, service and replacement of all underground sewer, water, power and telephone pipes, lines, mains, conduits, waters, poles, transformers, meters, master television antennas, cable television systems and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility systems serving the Rehabilitation Area in a manner that does not materially interfere with the operation of any of Declarants' property therein, which easement shall be for the benefit of the Declarants and any governmental agency, utility company or other entity which require same for the purpose of furnishing one or more of the foregoing services.

B. Initial Construction: Except as otherwise provided by the Project Agreement, MPA shall be responsible to construct, at its cost and expense, those utilities serving the MPA Project Site; and Morristown Epsteins, Epsteins A Condos, Epsteins B

Rentals and Epsteins C Lofts shall be responsible to construct, at their cost and expense, those utilities serving the Epsteins Project Site.

C. Covenant to Maintain & Repair: The Owner of each Lot shall maintain, repair, and replace, at its cost and expense, all sewer, water, power and telephone pipes, lines, mains, conduits, waters, poles, transformers, meters, master television antennas, cable television systems and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility systems serving such Lot, and shall keep such sewer, water, power and telephone pipes, lines, mains, conduits, waters, poles, transformers, meters, master television antennas, cable television systems and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility systems in good condition and repair.

ARTICLE IV – MISCELLANEOUS

1. Additional Provisions Regarding Construction, Maintenance and Repair Activities:

A. The Declarants covenant and agree that all initial construction of the easements and related improvements (the "Initial Construction") required to be performed under this Joint Declaration shall be conducted by the responsible party in accordance with the terms and conditions of the Project Agreement. The Initial Construction and all subsequent repair, construction, maintenance and replacement work performed pursuant to this Joint Declaration (sometimes hereinafter referred to collectively with the Initial Construction as the "Work") shall be scheduled and performed in such a manner so as to not unreasonably interfere with the operations and businesses of all buildings, improvements, tenants and other occupants of any portion of the

Rehabilitation Area, and the Owners shall reasonably cooperate in achieving such objective. Prior to undertaking any Work, other than routine maintenance and repair activities in any easement area, the Owner undertaking such Work shall provide reasonable advance notice to the Owner that owns the Lot on which the easement is located and to the Owners entitled to the use of the affected easement. Any area disturbed by any Work shall promptly upon completion of the Work be restored to substantially the same condition existing prior to the Work.

B. The Declarants covenant and agree that all Work performed by any party pursuant to this Joint Declaration shall be performed in accordance with and all applicable legal requirements, and in a good and workmanlike manner. The initial construction of any improvements pursuant to this Joint Declaration shall also be performed substantially in accordance with the Site Plan.

C. No Owner shall permit any construction lien or notice of unpaid balance other encumbrance arising from its exercise or use of any easement or right granted in this Joint Declaration to accrue against or attach to (i) any Lot owned by any other Declarant, or any portion thereof, or (ii) the easements granted to any other Declarant under this Joint Declaration, and nothing herein shall authorize the creation, or authorization of any such lien.

D. At any time when any Owner is performing any Work in any easement located on any Lot other than such Owner's Lot, such Owner shall maintain, or shall cause its contractor maintain commercial liability insurance in commercially reasonable amounts, but in no event less than \$5,000,000 combined single limit, and workers

compensation insurance in accordance with applicable law. The Owner of any Lot on which the Work will occur shall be named as an additional insured on such liability insurance policy and a certificate of insurance and other evidence of such coverage reasonably requested shall be provided to such Owner prior to the commencement of the Work.

E. At any time when any Owner is performing any Work in any easement located on any Lot other than such Owner's Lot, such Owner shall defend, indemnify and hold harmless the Owner on whose Lot the Work is being performed, its employees, agents, contractors (collectively, the "Indemnified Parties") from and against any damage, judgments, liability, claims, loss, cost or expense, including, but not limited to, reasonable attorneys' fees, related to property damage or personal injury arising out of or related to the Work, except that nothing herein shall require indemnification of any Indemnified Party to the extent that such property damage or personal injury is the result of the sole negligence or willful misconduct of the Indemnified Party. The indemnity obligations of the parties in this Section shall survive the termination of (i) this Joint Declaration and (ii) any easement granted herein.

F. In the event any easement is damaged or destroyed by fire or other casualty, the Owner(s) responsible for repair and replacement of that easement will, at such Owner(s) cost and expense, promptly cause the easement to be restored within a reasonable time, subject to Force Majeure. As used in this Joint Declaration, "Force Majeure" shall mean strike, other labor trouble, governmental controls in connection with a national or other public emergency, or shortages of fuel, supplies or labor, or

unusually extreme weather conditions or any other cause, whether similar or dissimilar to the above, beyond the obligated party's reasonable control but in no event shall lack of or delay in funding be deemed beyond the reasonable control of the obligated party).

2. Remedies:

A. In the event of any dispute between the parties under this Joint Declaration, the parties agree to submit such dispute to mediation. The Parties agree to designate as mediator (the "Mediator") a retired Superior Court Judge, to be designated within ten (10) days of a dispute, provided that if the parties have not agreed within such time period, then either party may apply to the Assignment Judge of the Superior Court in Morris County for appointment of a retired Superior Court Judge to serve as mediator under this Agreement. The parties agree to engage in good faith in the mediation effort to seek resolution of the disagreement. The good faith obligation shall require, as a condition precedent to commencement of any court proceeding in any state or federal court other than one seeking emergent relief, participation of up to six (6) hours at a mediation session conducted by the Mediator at a time and place fixed by the Mediator, all to occur within thirty (30) days after appointment of the Mediator. The parties further agree that the mediation procedure is voluntary and non binding (beyond good faith obligation described in the previous sentence). Following good faith participation, either party may at any time terminate the mediation proceeding with or without cause. The Mediator shall also have the right to terminate the mediation if the Mediator shall determine that the efforts to reach a settlement are

likely to be futile. The parties agree to share the burden of the Mediator's compensation equally and each agrees to pay its share pursuant to the Mediator's invoice to be rendered at completion or termination of the mediation process. To the extent not expressly modified by provisions of this article, the American Arbitration Association Mediation Rules are incorporated herein and as a part of this Section shall govern the parties and the Mediator in the conduct of the mediation proceeding. Except in cases of where emergent injunctive relief is required, the resort by a party to any state or federal court for relief pertaining to this Joint Declaration before completion of good faith participation in the mediation process called for herein shall constitute an immediate and material breach of this Joint Declaration by such party.

B. Enforcement of the terms, covenants and provisions set forth in this Joint Declaration shall be by any proceeding at law or in equity against any person violating or attempting to violate any such term, covenant or provision, either to restrain violation or to recover damages, and failure by the Declarants or their respective successors and assigns to enforce any such term, covenant or provision herein contained shall in no event be deemed a waiver of the right to do so thereafter.

C. In no event shall MPA, Morristown Epsteins, Epsteins A Condos, Epsteins B Rentals, Epsteins C Lofts or any Owner be liable for consequential, indirect, exemplary, special, treble or punitive damages under this Agreement.

D. If Morristown Epsteins, Epsteins A Condos, Epsteins B Rentals, Epsteins C Lofts or MPA (the "Defaulting Party"), at any time fails to pay or perform any of its obligations under this Joint Declaration and (i) such failure continues after ten (10)

days written notice to the Defaulting Party from the party alleging that the Defaulting Party has failed to perform any of such obligations ("Complaining Party"); or (ii) if such failure by its nature cannot reasonably be cured in ten (10) days and the Defaulting Party does not commence curing such default within said ten (10) day period and thereafter diligently and continuously proceed to cure such default in a reasonable time; then, the Complaining Party shall have the right, but not the obligation, to cure the default and be reimbursed by the Defaulting Party for the reasonable cost(s) thereof within ten (10) days after receipt of a statement therefor together with any other documentation substantiating the cost(s) incurred by the Complaining Party. Thereafter, interest shall accrue upon any unpaid amounts until paid at the legal rate of interest in effect for judgments obtained in the Superior Court of New Jersey, from time to time, plus 4% per annum (the "Default Rate"). The Complaining Party shall be entitled to enforce such obligation by proceeding in accordance with Sections 2(A) and (B) of this Article IV; provided, however, that under no circumstances shall the Complaining Party have any right to encumber the Defaulting Party's real property or otherwise lien the Defaulting Party's real property (other than the lien resulting from a final judgment, the priority of which shall be based on the date of entry of such judgment and shall not be based on the date of this Joint Declaration or the date on which this Joint Declaration was recorded in the Office of the Clerk of Morris County). Notwithstanding the foregoing, in the event of an emergency, no prior written notice shall be required (but the Complaining Party shall reasonably attempt to give the Defaulting Party oral notice) and the

Complaining Party shall provide such opportunity to cure, if any, as the Complaining Party deems reasonable under the circumstances.

3. Binding Effect: The agreements, conditions, obligations, easements and rights set forth in this Joint Declaration shall run with and be binding upon Lot 1, Lot 8, Lot 9, Lot 12 and Lot 16, the Declarants and their respective successors, assigns, mortgagees, subsequent owners and others who now or in the future have an interest in any of said Lots, and shall inure to the benefit of and be enforceable by the Declarants and their respective successors and assigns, including but not limited to, the condominium association for Epsteins A Condos and the condominium association for Epsteins C Lofts (collectively, the "Condominium Associations").

4. Severability: The illegality or invalidity of any one or more of the terms, covenants or provisions of this Joint Declaration shall not affect any other term, covenant or provision all of which shall remain in full force and effect.

5. Encumbrances: All easements granted herein are subject to easements, covenants and restrictions of record, or arising by operation of law, that exist on the date of this Agreement. Each party reserves the right to grant or enter into such further easements, covenants and restrictions as it may deem appropriate, provided that no such future covenant, easement or restrictions shall materially interfere with the use and enjoyment of the easements created herein.

6. Termination: The easements created by this Joint Declaration shall be perpetual. Notwithstanding the foregoing, any particular easement herein may be terminated by way of an instrument signed by all of the Owners of the Lots that are burdened and/or benefited by such easement and recorded in the office of the Clerk of Morris County; provided, however, that any

termination of an easement benefiting Lot 8 shall also require the consent of The Board of Education of the Morris School District.

7. Amendment: Any easement herein may be modified or amended by way of an instrument signed by all of the Owners of the Lots that are burdened and/or benefited by such easement and recorded in the office of the Clerk of Morris County; provided, however, that any modification or amendment of an easement benefiting Lot 8 shall also require the consent of The Board of Education of the Morris School District.

8. References: All references in this Joint Declaration to MPA, Morristown Epsteins, Epsteins A Condos, Epsteins B Rentals, Epsteins C Lofts, Owner or any other person or entity shall be deemed to include such party and its legal representatives, heirs, successors and assigns, including, without limitation, the Condominium Associations.

9. Mortgagee Notice: The mortgagee under any mortgage encumbering any Lot in the Rehabilitation Area shall be entitled to receive notice of any default by a Declarant, provided that such Declarant or its mortgagee shall have delivered notice in accordance with Section 10 of this Article IV to the other party (or parties hereto) setting forth the name and address of the mortgagee. Giving of any notice of default or the failure to deliver a copy of same to any mortgagee shall in no event create any liability on the part of the Declarant so declaring a default. In the event that any notice shall be given of the default of a Declarant, and such Declarant has failed to cure or commence to cure such default as provided in this Joint Declaration, then in that event any such mortgagee of the Lot of the defaulting Declarant shall be entitled to receive an additional notice given in the manner provided in Section 10 hereof, that the defaulting Declarant has failed to cure such default.

10. Notices: All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given for all purposes when received or upon refusal to accept delivery by the United States mail, by registered or certified mail, return receipt requested, postage prepaid, or by an express courier service guaranteeing overnight delivery, delivery prepaid, in either case addressed to the Owner at the address for such person or entity as shown on the most recently issued tax bill for the subject Lot.

11. Counterparts: This Joint Declaration may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

12. Minimization of Interference: The exercise of every right herein granted shall be carried out and used by each Declarant and Owner in a manner so as to minimize any interference with the use and enjoyment, construction activities, operations and businesses of the other Declarant and Owners, and their respective tenants, other occupants and invitees.

13. Cooperation and Further Assurances: Each Declarant agrees, upon receipt of written request of the other, to execute such amendments to this Joint Declaration and such other documents as shall be necessary, in the reasonable judgment of any Declarant, to carry out the purposes and intent of this Joint Declaration, provided that such amendments and other documents do not materially increase the obligations or liabilities of a party hereto, or relieve either party of a material obligation.

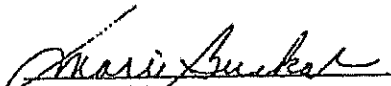
14. Headings: The Headings used in this Joint Declaration are for convenience of reference only and are not a part of this Joint Declaration and do not in any way control, define, limit, or add to the terms, covenants, conditions and provisions hereof.

IN WITNESS WHEREOF, the undersigned have caused this Joint Declaration of Cross-Easements to be duly executed as of the day and year first above written.

WITNESS:

MORRISTOWN EPSTEINS, L.L.C.

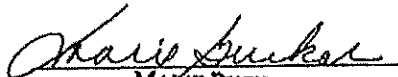
By: ROSEWOOD MORRISTOWN, L.L.C.,
Managing Member

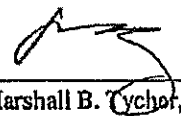

MARIE BUCKALEW

By: 
Marshall B. Tycher, Manager

WITNESS:

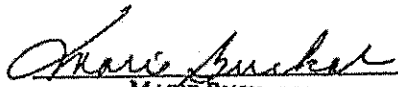
EPSTEINS A CONDOS, L.L.C.


MARIE BUCKALEW

By: 
Marshall B. Tycher, Manager

WITNESS:

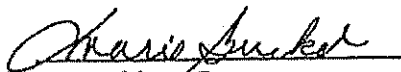
EPSTEINS B RENTALS, L.L.C.


MARIE BUCKALEW

By: 
Marshall B. Tycher, Manager

WITNESS:

EPSTEINS C LOFTS, L.L.C.


MARIE BUCKALEW

By: 
Marshall B. Tycher, Manager

WITNESS:

PARKING AUTHORITY OF THE TOWN OF
MORRISTOWN


Kenneth T. Bills
MPA/Epstein's Joint Declaration of Cross-Easements

By: 
George Fiore, Executive Director

STATE OF NEW JERSEY)

SS:

COUNTY OF ESSEX)

On this, the 25 day of June, 2007, before me, the subscriber, personally appeared Marshall B. Tycher, who I am satisfied is the person who executed the foregoing instrument as the Manager of Rosewood Morristown, L.L.C., itself the Managing Member of Morristown Epsteins, L.L.C., the entity named in the foregoing instrument, and who acknowledged that he, in such capacity, being authorized to do so, executed the foregoing instrument as such entity's voluntary act and deed for the purposes therein contained by signing on behalf of said Morristown Epsteins, L.L.C..

IN WITNESS WHEREOF, I hereunto set my hand.


MARIE BUCKALEW
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 5, 2011

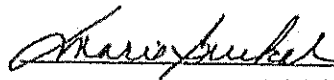
STATE OF NEW JERSEY)

SS:

COUNTY OF ESSEX)

On this, the 25 day of June, 2007, before me, the subscriber, personally appeared Marshall B. Tycher, who I am satisfied is the person who executed the foregoing instrument as the Manager of Epsteins A Condos, L.L.C., the entity named in the foregoing instrument, and who acknowledged that he, in such capacity, being authorized to do so, executed the foregoing instrument as such entity's voluntary act and deed for the purposes therein contained by signing on behalf of said Epsteins A Condos, L.L.C..

IN WITNESS WHEREOF, I hereunto set my hand.


MARIE BUCKALEW
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 5, 2011

MPA/Epstein's Joint Declaration of Cross-Easement

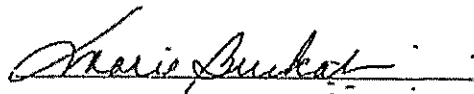
STATE OF NEW JERSEY)

SS:

COUNTY OF ESSEX)

On this, the 25 day of June, 2007, before me, the subscriber, personally appeared Marshall B. Tycher, who I am satisfied is the person who executed the foregoing instrument as the Manager of Epsteins B Rentals, L.L.C., the entity named in the foregoing instrument, and who acknowledged that he, in such capacity, being authorized to do so, executed the foregoing instrument as such entity's voluntary act and deed for the purposes therein contained by signing on behalf of said Epsteins B Rentals, L.L.C..

IN WITNESS WHEREOF, I hereunto set my hand.


MARIE BUCKALEW
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 5, 2011

STATE OF NEW JERSEY)

SS:

COUNTY OF ESSEX)

On this, the 25 day of June, 2007, before me, the subscriber, personally appeared Marshall B. Tycher, who I am satisfied is the person who executed the foregoing instrument as the Manager of Epsteins C Lofts, L.L.C., the entity named in the foregoing instrument, and who acknowledged that he, in such capacity, being authorized to do so, executed the foregoing instrument as such entity's voluntary act and deed for the purposes therein contained by signing on behalf of said Epsteins C Lofts, L.L.C..

IN WITNESS WHEREOF, I hereunto set my hand.


MARIE BUCKALEW
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 5, 2011

MPA/Epstein's Joint Declaration of Cross-Basement

STATE OF NEW JERSEY)

SS:

COUNTY OF MORRIS)

On this, the 26 day of June, 2007, before me, the subscriber, personally appeared George Fiore, who I am satisfied is the person who executed the foregoing instrument as the Executive Director of the Parking Authority of the Town of Morristown, the entity named in the foregoing instrument, and who acknowledged that he, in such capacity, being authorized to do so, executed the foregoing instrument as such entity's voluntary act and deed for the purposes therein contained by signing on behalf of said Parking Authority of the Town of Morristown.

IN WITNESS WHEREOF, I hereunto set my hand.

Kenneth T. Bills
Kenneth T. Bills
Attorney at Law of
New Jersey

MPA/Epstein's Joint Declaration of Cross-Easement

EXHIBITS

Exhibit A	Legal Description of Block 6004, Lot 8
Exhibit B	Legal Description of Block 6004, Lot 12
Exhibit C	Legal Description of Block 6004, Lot 1
Exhibit D	Legal Description of Block 6004, Lot 9
Exhibit E	Legal Description of Block 6004, Lot 16
Exhibit F	Easement Plan
Exhibit G	Legal Description of Courtyard Easement
Exhibit H	Legal Description of Right of Way Easement
Exhibit I	Legal Description of Maple Avenue Driveway Easement
Exhibit J	Legal Description of Garage Entrance Easement
Exhibit K	Legal Description of Underground Utility Easement