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DECLARATION

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BERKS  
COUNTY ROD

ELLIE ANTOINE ROD

Berks County Parcel No. 5320-03-33-7908

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DECLARATION  
OF  
"HEATHERBROOK"  
(a planned community)

THIS DECLARATION is made as of March 16, 2007, by HEATHERBROOK LAND, L.P., a Pennsylvania limited partnership (the "Declarant"), as grantor, to and in favor of HEATHERBROOK HOMEOWNERS' ASSOCIATION, INC., a Pennsylvania non-profit corporation (the "Association"), as grantee.

BACKGROUND

Declarant is the owner in fee simple of the land described on Exhibit "A" attached hereto and made a part hereof, situate in Caernarvon Township, Berks County, Pennsylvania (the "Land") consisting of Phase 3A of the Valley Ponds project, and which Declarant intends to develop as a residential community known as Village of Heatherbrook, containing 46 townhouse lot units in nine multi-unit Buildings (designated as A1, A2, A3, B1, B2, B3, B4, C1 AND C3 on the Plans), as shown on the Plats (hereinafter defined). Declarant is recording this Declaration to create a planned community with respect to the Land and the Units and other improvements to be constructed thereon pursuant to the Pennsylvania Uniform Planned Community Act, 68 Pa.C.S. 5101, et seq. (the "Act"), subject to all the terms and conditions hereof.

WITNESSETH:

NOW, THEREFORE, the Declarant hereby declares and covenants for itself and its successors and assigns that the Land and all buildings and improvements now or hereafter constructed thereon is and shall be held, transferred, sold, conveyed, used and occupied under and subject to the covenants, restrictions, easements and conditions in this Declaration, all of which shall run with the Land and the improvements now or hereafter constructed thereon, as follows:

## ARTICLE I - DEFINITIONS

1.01 Act Definitions. Capitalized terms used herein that are defined in the Act shall have the meanings ascribed to them in the Act; and any terms used herein that are defined in the Act and also defined herein shall have the general meanings ascribed to them in the Act and the specific meanings ascribed to them in this Declaration.

1.02 Defined Terms. In addition to the terms defined in the Act and elsewhere in this Declaration, the following terms, when used herein, shall have the meanings ascribed to them in this Section 1.02:

(a) "Assessments" - amounts levied or assessed by the Association against the Units and Unit Owners from time to time, pursuant to this Declaration and the Act, for the purpose of paying or providing for the payment of, or establishing reserves for the future payment of, Common Expenses.

(b) "Association" - HEATHERBROOK HOMEOWNERS' ASSOCIATION, INC., which will be organized as a Pennsylvania non-profit corporation before the first Unit is conveyed by the Declarant to a Unit Owner other than a successor Declarant.

(c) "Board" or "Executive Board" - the group of individuals elected from time to time to serve as and on the Executive Board of the Association pursuant to this Declaration, the By-laws and the Act.

(d) "By-laws" - the By-Laws of the Association as amended from time to time. The By-laws shall bind the Association and all Unit Owners whether or not they are recorded.

(e) "Common Area" - those parts of the Land that are outside the title lines of the Units, but not including the interior streets shown on the Plans.

(f) "Common Elements" - means Controlled Facilities and/or Common Facilities, as the context or circumstances require.

(g) "Common Expense Liability" - the liability appurtenant to each Unit to pay a share of Common Expenses and Assessments therefore imposed pursuant to this Declaration and allocated to such Unit hereunder

(h) "Common Expenses" - General Common Expenses or Limited Common Expenses, as the context requires.

(i) "Common Facilities" - means any facilities or property that may be conveyed to or acquired by the Association from time to time for the common use or benefit of some or all of the Unit Owners; but excluding any part of the Land, utility installations and other improvements that are (i) dedicated or to be offered for dedication to the Township, or other governmental entities or utility companies or (ii) to be conveyed to the Master Association. The Common Facilities of the Community are intended to consist only of the interior street, to be known as Heather Way, the common parking spaces, street lighting, street trees not located within the title line of any Unit, as well as any entrance signs, structures or other improvements that the Declarant may (in its sole discretion) construct and designate as Common Facilities



(j) "Community" - the planned community created hereby known as "Heatherbrook, a Planned Community," consisting of all the Units, improvements and the Common Elements.

(k) "Community Documents" - means, as applicable, this Declaration, the By-Laws and the Regulations, as amended from time to time.

(l) "Controlled Facilities" - any land or improvements that are part of or that serve the Community, which are not owned by the Association, but which are maintained, improved, repaired, replaced, regulated, managed, insured or controlled by the Association.

(m) "Convertible Real Estate" - that part of the Land identified as "Convertible Real Estate" on the Plats, within which the Declarant reserves the right to create additional Units, Limited Common Elements, or any combination thereof, pursuant to Article IX hereof and the Act.

(n) "Declarant" - the Declarant originally named herein, and any successor Declarant.

(o) "Declarant Control Period" - the period of time beginning on the date of the first transfer of a Unit to a Unit Owner (other than a Declarant) and ending on the earliest of (i) seven (7) years after the date thereof, (ii) sixty (60) days after the conveyance of seventy-five percent (75%) of the Units to Unit Owners (other than a Declarant), or (iii) two (2) years after the Declarant has ceased to offer Units for sale in the ordinary course of business.

(p) "Declaration" - this Declaration, as amended from time to time, together with the Plans, as the same may be amended from time to time. The Plans are an integral part of this Declaration.

(q) "Development Plans" - the final, approved subdivision and land development plans relating to the development of the Community, entitled "Final Plan of Valley Ponds Phase 3" prepared by Weiser Engineering Consultants, dated February 1, 2001, last revised February 28, 2005 and recorded in the Office of the Recorder of Deeds in Berks County, Pennsylvania, in Plan Book 303, page 240, as the same may be amended from time to time.

(r) "Director" - an individual member of the Board.

(s) "Eligible Mortgage" - a first mortgage encumbering a Unit held by the Declarant, the seller of a Unit, or a Bank, Savings and Loan Association, Savings Bank or other federally or state chartered financial institution, or any guarantor or insurer of a first mortgage lien against a Unit that is a federally or state chartered financial institution or federal or state governmental agency or corporation (including, but not limited to, the Veterans Administration, the United States Department of Housing and Urban Development, the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation, or their successors).

(t) "Eligible Mortgagee" - the holder of an Eligible Mortgage which has given written notice to the Association, by certified mail, return receipt requested, of its name and address and the address and description of the Unit on which it holds, insures or guarantees an Eligible Mortgage. If an Eligible Mortgage is assigned by an Eligible Mortgagee to another person, the Association shall not be bound to recognize the assignee as an Eligible Mortgagee unless and



until the Association shall have received written notice of such assignment and written notice of the name and address of the assignee.

(u) "General Common Expenses" - includes the actual and estimated expenses incurred or to be incurred by the Association from time to time for the general benefit of the Association and all Unit Owners, including but not limited to (i) general overhead and administrative expenses of the Association, (ii) federal, state or local taxes or other impositions or charges that may be levied or assessed against the Association or its property or income, (iii) premiums for insurance and bonds carried by the Association (other than insurance covering only the Units), (iv) the costs of maintaining, managing, insuring and repairing the Common Elements and making any necessary replacements thereto or thereof, unless such costs are included in Limited Common Expenses or Limited Direct Charges, (v) amounts set aside as operating and capital reserves for any of the foregoing (except reserves for future Limited Common Expenses), (vi) expenses of prosecuting or defending any litigation or other proceedings by, against or affecting the Association which the Association may bring or defend pursuant to this Declaration, including (without limitation) the expenses of enforcing or attempting to enforce the Community Documents, (vii) the fees or other compensation payable to any manager that may be engaged by the Association to assist the Association in managing, operating or administering the Association or the Common Elements except the Common Expenses, (viii) the regular common expense assessments levied on the Units by the Master Association, and (ix) all other expenses and liabilities incurred or that may be incurred by the Association in carrying out or performing its rights, duties and functions that are not budgeted or charged as Limited Common Expenses or Limited Direct Charges.

(v) "Home" - an attached townhome-style dwelling constructed on and being a part of a Unit.

(w) "Land" - the real estate described on Exhibit "A" attached hereto, together with all easements, rights and privileges appurtenant to or otherwise benefiting said Land, and subject to the easements, restrictions and other matters of record described on Exhibit "B" attached hereto as well as the easements, covenants and restrictions set forth herein or created pursuant hereto.

(x) "Limited Common Element" - a part of the Common Elements allocated pursuant to this Declaration or the Act for the exclusive use of one or more (but fewer than all) of the Units.

(y) "Limited Common Expenses" - expenses of insuring, maintaining, repairing and/or replacing the Limited Common Elements, which shall be allocated to and shall be assessed against the Units benefiting therefrom as provided in this Declaration.

(z) "Limited Controlled Facility" - a Controlled Facility that is part of a Unit, or that is allocated by or pursuant to this Declaration or the Act for the exclusive use of one or more (but fewer than all) of the Units.

(aa) "Limited Direct Charge" - an Assessment against one or more Unit Owners for Limited Common Expenses incurred in performing certain services or providing certain benefits for the benefit of the Units that are not included in the annual budget of Limited Common Expenses and that the Board elects to assess against the Units that have received or are to receive such services or benefits, either before or after such services have been rendered.



(bb) "Master Association" – the association of and among all of the unit or lot owners in the Valley Ponds project, of which the Community is a part, known as Valley Ponds Community Association (formerly known as Brittany Estates Community Association), or any successor thereto.

(cc) "Master Declaration" – that certain Master Declaration of Covenants, Easements and Restrictions for Brittany Estates, dated September 27, 1989, recorded by Brittany Estates, a Limited Partnership, as Declarant, and recorded in Berks County at Book 2096, beginning at page 61, as the same has been and may in the future be amended.

(dd) "Party Wall" – any interior wall or wall system located at the perimeter of a Unit that is a common wall or wall system separating adjacent Units. Party Walls are Limited Common Elements allocated solely to the Units that are served or supported thereby.

(ee) "Person" - any individual, corporation, partnership, trust, limited liability company or any other legal entity

(ff) "Plans" - the plats and plans depicting the Community attached hereto as Exhibit "C" and made a part hereof, as the same may be amended from time to time, entitled "Plats and Plans Heatherbrook, a Planned Community" prepared by Weiser Engineering Consultants and recorded or intended to be recorded contemporaneously herewith. Any reference to the Plans shall also be deemed to refer to the applicable provisions, conditions and requirements of the Development Plans, as amended from time to time.

(gg) "Property" - means the Land and all improvements now or hereafter constructed thereon

(hh) "Regulations" - the rules and regulations promulgated by the Association from time to time governing and regulating the Unit Owners' use and enjoyment of the Common Elements and other matters pursuant to this Declaration and the Act.

(ii) "Special Assessment" – an Assessment, that is levied against (i) all or fewer than all of the Units for the purpose of defraying unforeseen Common Expenses or Limited Common Expenses, as the case may be, or (ii) one or more, but fewer than all, Units on account of damages or other costs incurred by the Association as a result of the wrongful act or omission of that Unit Owner or a violation of the Community Documents, (iii) all or fewer than all Units for any other purpose authorized by this Declaration or the Act.

(jj) "Special Declarant Rights" - has the meaning given to such term in the Act and includes the rights reserved for the benefit of the Declarant hereunder to (i) complete the improvements shown on the Plans, (ii) maintain offices, signs and models, (iii) change the boundary lines between Units owned by the Declarant, and between Units owned by the Declarant and the Common Area (subject in each case to the approval of the Township) (iv) appoint and remove Directors during the Declarant Control Period, (v) to create Units, Limited Common Elements, or both, within the Convertible Real Estate, and (vi) any other rights reserved herein by the Declarant constituting "Special Declarant Rights" under the Act.

(kk) "Storm Water Management Facilities" - means any stormwater drainage facilities, including retention or detention basins, subsurface seepage or infiltration beds,



berms, swales, pipes, spillways, culverts, endwalls, inlets, outlets, level spreaders and related facilities and components now or hereafter constructed on the Property and on adjacent parcels.

(ll) "Supplemental Declaration" - a supplement or amendment to this Declaration recorded pursuant to Article VIII by the Declarant for the purpose of exercising any of the Declarant's rights to create Units, Common Elements or both within any of the Convertible Real Estate

(mm) "Unit" - any of the lots designated on the Plans as numbers 1 through 46 inclusive, on which Declarant intends to build Homes. Reference to a Unit includes the town-home dwelling constructed thereon.

(nn) "Unit Owner" - the owner(s) of the fee simple title to any Unit (including the Declarant as to any Units owned by the Declarant), other than a Person holding title only as security for an obligation. All obligations imposed on a "Unit Owner" hereunder (including, without limitation, the obligation to pay Assessments) are the joint and several obligations of all Persons who are the "Unit Owners" of a Unit regardless of the manner in which they hold such title.

**ARTICLE II - SUBMISSION OF PROPERTY TO ACT;  
UNIT BOUNDARIES; APPLICABILITY OF DECLARATION;  
CONSTRUCTION AND INTERPRETATION**

2.01 Applicability of Declaration. Declarant hereby creates a Planned Community with respect to the Property and submits the Property to the Act, pursuant to this Declaration. All present and future Unit Owners, and their respective tenants, subtenants, family members, guests, agents, servants, employees and any other persons occupying or using any Unit, or the Common Elements shall comply with and be bound by the Community Documents.

2.02 Construction. If there is any conflict or inconsistency between this Declaration and the other Community Documents, this Declaration shall control except to the extent contrary to the Act or other applicable law.

2.03 Easements, Etc. The Property is, and the Units are and will be conveyed (to the extent they are actually affected thereby) subject to (a) those recorded easements and other matters of record set forth on Exhibit "B" attached hereto and made a part hereof, (b) those other easements, notes, conditions and restrictions as are set forth herein and on the Plans, and (c) such other easements as the Declarant may hereafter create in favor of utility companies or others in connection with the development of the Community.

2.04 Number and Type of Units; Unit Ownership; Unit Boundaries. There are a total of up to forty-six (46) Units in the Community, including those that may be created within the Convertible Real Estate. The Units initially subject to this Declaration consist of Units A through F, inclusive, in Building A1, and Units A through F, inclusive, in Building A2, as shown on the Plans. The Units shall be conveyed to and owned by the Unit Owners in fee simple absolute. The title lines and boundaries of each Unit are (or before conveyance will be) set forth on the Plans. Each Unit consists of all land and air space located within the aforesaid title lines consistent with fee simple ownership thereof, together with the improvements now or hereafter constructed thereon or therein. The location and dimensions of the Units as initially shown on the Plans are approximate



only. Before conveyance of a Unit, the Declarant shall obtain an as-built survey of such Unit and shall supplement and amend this Declaration and the Plan to reflect the actual location and dimensions thereof. Each Unit shall have the identifying Unit number as shown on the Plan.

Any heat pump, air conditioning unit, or any other equipment serving only one Unit shall be deemed part of that Unit even though located partly or entirely outside the boundaries of that Unit. Any water or sewer lateral and any telephone, electric, cable television or other facility serving only one Unit shall be part of that Unit notwithstanding that such facility is located partly or entirely outside the boundaries of that Unit. Any deck, patio, porch, awning, roof projection, eve, stoop or other part of or attachment to a Home that serves only one Unit and is attached to the Home on that Unit shall constitute part of that Unit even if it extends or projects beyond the horizontal boundaries of the Unit of which it is a part.

### ARTICLE III - ASSOCIATION; MEMBERSHIP; VOTING

3.01 The Association; Powers. The Association shall be an association of and among all Unit Owners and shall have all duties, rights, privileges, functions and responsibilities set forth in the Act and this Declaration, including, without limitation, the following:

(a) Subject to any limitations set forth herein on the Association's responsibilities therefore, to maintain, repair and replace, as necessary from time to time, the Common Elements;

(b) To purchase any insurance or fidelity bonds required or permitted to be obtained for or on behalf of the Association hereunder;

(c) To adopt (and amend) operating and capital budgets of the Association;

(d) To compute, levy, assess and collect Assessments, and impose and collect late charges and interest for delinquencies in the payment thereof;

(e) To enter into contracts with third parties as necessary or appropriate from time to time in connection with the performance of the Association's rights, duties and obligations hereunder, and to pay for goods and services furnished to the Association pursuant to such contracts,

(f) To adopt, amend and repeal reasonable Regulations as the Board may deem necessary or desirable from time to time;

(g) To enforce the Community Documents and impose reasonable fines for violations thereof;

(h) To engage and compensate lawyers, accountants, management companies, and other advisors in connection with any matters affecting the business or affairs of the Association;

(i) To indemnify present and former Directors, officers and other agents of the Association, and to advance (or reimburse them for) costs incurred in connection with or as a result of any liability, suit or proceeding which they or any of them may incur, or to which they may be subject, as a result of serving on behalf of the Association, to the extent required or permitted by applicable law, the By-laws or any separate contract between the Association and such Persons;

(j) To prosecute or defend claims, suits and causes of action by, against or affecting the Association and to litigate, arbitrate, settle, compromise and/or release any such claims or suits, but to ensure that expenses and liabilities are not incurred for less than all Unit Owners, the Association will not be able to represent, assist or fund a Unit Owners complaint against the Declarant for any matters, including construction of the improvements on their Unit.

(k) To dedicate or transfer all or any part of the Common Elements (other than Limited Common Elements) to any municipal, county, state, federal or other public agency, authority or utility, for such purposes and subject to such conditions as may be agreed upon by the Unit Owners, provided that no such dedication or transfer shall become effective unless the same has been authorized by the vote or consent of Members entitled to cast at least sixty-seven percent (67%) of the votes which all Members of the Association are entitled to cast, and provided further that notwithstanding any shorter notice period permitted by the By-laws, written notice of such proposed action (specifying in reasonable detail the property to be transferred, the proposed transferee and the purposes of such transfer) shall be mailed to each Unit Owner not less than thirty (30) days in advance of the scheduled meeting at which such action is to be considered

(l) To do all other things necessary or expedient in order to carry out all the powers, rights, privileges, duties and functions of the Association and exercise all powers incidental thereto.

3.02 Membership. Every Unit Owner is required to be, and automatically is, a Member of the Association. Membership in the Association is appurtenant to, and cannot be severed from, ownership of a Unit. Membership in the Association transfers automatically upon conveyance of title to a Unit and cannot be assigned or transferred by any other means. No Unit Owner can or will be relieved of the obligation to pay Assessments or to satisfy any other obligations arising hereunder by any waiver or purported waiver of any benefits of membership in the Association, or by any purported abandonment of a Unit.

3.03 Voting Rights of Unit Owners There shall be one (1) vote allocated and appurtenant to each Unit, including each Unit that may be created within the Convertible Real Estate. The vote appurtenant to a Unit may be cast by any one of the Unit Owners thereof at a meeting of Members, but if there is a conflict among such Unit Owners present as to how such vote shall be cast on any matter, such vote shall not be counted, except as may otherwise be provided in the Bylaws or the Act.

#### 3.04 Election of Board.

(a) Subject to the other provisions of the Community Documents, the Board shall have the full and exclusive power and authority to act on behalf of the Association. The initial Board shall consist of at least three (3) Directors, and the Board may consist of such greater number as may be provided in the By-laws.



(b) Subject to Section 3.04(c) hereof, during the Declarant Control Period, all members of the Board shall be appointed and may be removed and replaced by the Declarant from time to time, with or without an actual meeting, without the necessity of obtaining resignations from Directors replaced or removed, and without prior notice to the other Unit Owners.

(c) At such times and in such manner as required by the Act, Directors appointed by the Declarant shall be replaced with Directors appointed by the Unit Owners (other than the Declarant). The Declarant reserves the right, in its discretion, to surrender voluntarily the right to appoint and remove Directors before the Declarant Control Period ends, or to accelerate the time for appointment of Directors by the other Unit Owners; and may, as a condition thereof, require that specified actions of the Association or the Board be approved by the Declarant before they become effective. Such actions shall be specified in an instrument executed and recorded by the Declarant. The Declarant may conditionally surrender the right to appoint and remove members of the Board, reserving the right to exercise such rights at a later time upon giving thirty (30) days prior written notice to the Association.

(d) On or before the end of the Declarant Control Period, all Directors who have been appointed by the Declarant shall resign and shall be replaced with Directors elected by the Unit Owners (including the Declarant who shall have the right to cast any votes appurtenant to Units still owned by the Declarant in such election).

**3.05 Election of Officers.** Officers of the Association shall consist of such executive and subordinate officers as may be specified (or provided for) in the By-laws. Officers of the Association shall be appointed by the Board in the manner specified in the By-Laws, provided that the Declarant reserves the right to appoint and remove all officers of the Association during the Declarant Control Period to the fullest extent permitted by the Act.

**3.06 Voting by Ballot or Proxy.** To the extent provided in the By-laws and to the fullest extent permitted by the Act, the Unit Owners may vote on any matter on which Unit Owners are entitled to vote under the Community Documents (including, but not limited to, election of Directors and amending the Community Documents), by proxy, by partial or unanimous written consent, or by ballot, in lieu of casting votes at a formal meeting of Unit Owners.

#### ARTICLE IV -COMMON ELEMENTS; LIMITED COMMON ELEMENTS; MAINTENANCE AND REPAIR

##### **4.01 Common Elements Generally.**

(a) **Management and Maintenance of Common Elements.** Subject to the limitations on the Association's liability and responsibility hereunder, the Association shall manage and maintain the Common Facilities and shall make any necessary repairs thereto or replacements thereof. The Association, acting by and through the Board, shall have the exclusive right and authority to manage and regulate the use of the Common Facilities. The Association, and its agents, representatives, contractors and subcontractors shall have an easement across any Unit on which a Common Element is located for the purposes of inspecting, repairing, replacing or maintaining that Common Element.



(b) Use and Enjoyment of Common Elements. Subject to Regulations promulgated by the Association from time to time, the Common Elements (other than the Limited Common Elements, if any) shall be for the exclusive use and benefit of the Unit Owners. The Board has the power to make reasonable Regulations regulating the use of the Common Elements by Unit Owners, their family members and guests.

(c) Common Facilities. The Common Facilities include, without limitation, the following, whether now existing or hereafter constructed (i) the interior undedicated streets, street lighting (if any), and parking areas for the general use and benefit of the Unit Owners, (ii) areas of the Real Estate outside the title lines of the Units and not dedicated (or to be dedicated) to the public or to the Master Association, (iii) the Stormwater Management Facilities, (iv) sanitary sewer and water mains serving the Community (but not sewer and water laterals serving individual Units) except to the extent the same are dedicated to or owned by the applicable sewer or water utility, and (v) such other improvements or facilities that the Declarant may, in its sole discretion, construct and convey (or lease) to the Association and designate as Common Facilities.

(d) Parking Spaces. Automobile parking spaces or stalls situated on or along the undedicated streets within the Property shall be Common Facilities available for the common use and enjoyment of the Unit Owners (and their family, guests and visitors), on a first-come-first-served basis; provided that the Board may adopt Regulations that (i) restrict the use of some or all parking spaces for specific purposes, (ii) allocate specific parking spaces for the exclusive use of one or more Units, and/or (iii) restrict or limit the use thereof during specified periods of time or for maximum periods of time. During the Declarant Control Period, the Declarant shall have the right to designate parking spaces as solely for the use of the Declarant, its agents, personnel, contractors and subcontractors, in connection with the construction, sale, management and marketing of Units, Homes and other improvements within the Property.

(e) Recreational Facilities. The Master Association provides certain amenities for the benefit of the unit owners in the Valley Ponds community, including a community swimming pool and tot lot. Such facilities are provided, maintained, regulated and managed solely by or on behalf of the Master Association, and neither the Association nor the Declarant has any responsibility for such facilities.

(f) Water and Sewer Mains and Lines. Any water or sewer mains or lines that serve more than a single Unit, and that are not dedicated to the Township or applicable municipal authority, shall constitute Common Facilities, and the Association will be responsible for their maintenance, repair and replacement, as necessary.

**4.02 Limited Common Elements.** The Limited Common Elements that the Declarant reserves the right (but not the obligation) to construct or provide, and the allocation thereof, are as follows:

(a) The walkways, driveways, foundation plantings and landscaping, and patios, exterior lighting (including post lights that serve only a single Unit), and other improvements or betterments that serve a Unit but that are outside the title lines of that Unit, are Limited Common Facilities allocated solely to the Unit they are intended to benefit and serve. In the event of any dispute with respect to the allocation of such Limited Common Facilities, the determination of the Declarant and the Board (after the Declarant Control Period expires) shall be controlling. The Controlled Facilities include all exterior surfaces of a Home and other exterior improvements on a



Unit including the roof and exterior siding of such Home as well as all lawns, shrubs, trees, patios, porches, decks and personal property outside a Home but within the title lines of a Unit, but only for purposes of the provisions of this Declaration and the Regulations that govern or regulate additions to, changes in or replacement or repair of such improvements. The Association shall have the authority to promulgate reasonable Regulations concerning the Controlled Facilities and the maintenance, repair or alteration thereof. Each Unit Owner is responsible for all maintenance, repair or replacement of the Controlled Facilities located on or comprising a part of his Unit or Home.

(b) Upon construction thereof, Limited Common Elements shall automatically be allocated as Limited Common Elements for the exclusive use and benefit of the Units they are designed and constructed to serve, consistent with the provisions above, without any further action or document required on the part of the Association or Declarant. The Association shall have the authority to promulgate reasonable Regulations concerning the Limited Common Elements and the maintenance, repair or alteration thereof.

#### 4.03 Services and Responsibilities.

(a) Generally. Except as otherwise expressly provided in this Declaration, each Unit Owner is solely and exclusively responsible for the maintenance, repair, replacement and insurance of his or her own Unit including any part of such Unit that may constitute Limited Controlled Facilities, and any other improvements serving that Unit that constitute Limited Common Elements allocated only to such Unit. Unless expressly provided in this Declaration, the Association is not responsible for the maintenance, repair, replacement, or insurance of any Unit, the improvements thereon, or the Limited Common Elements allocated and appurtenant thereto, and the fact that certain parts of a Unit or improvements thereon may be characterized by the Act or this Declaration as Limited Common Elements (by virtue of being Limited Controlled Facilities or otherwise) shall not imply any obligation on the part of the Association beyond those obligations expressly provided herein. The Board shall have the right to expand or contract services that the Association provides for the benefit of the Units and the Limited Common Elements appurtenant thereto from time to time. Further, the Board shall have the right to determine the scope, frequency and schedule on the basis of which any services in the nature of maintenance or repairs are performed. Expenses incurred by the Association for maintenance, repair, replacement or other services that are provided to the Units or the improvements thereon or the Limited Common Elements appurtenant thereto shall be charged to Units owned by Unit Owners (other than a Declarant) either as part of a regular, budgeted Limited Common Expense Assessment, or as Limited Direct Charges, as the Board determines in its discretion.

(b) Sewer and Water Laterals. All sewer and water laterals serving a single Unit are the property of the Unit Owner and are part of the Unit (even though they are outside the title lines of the Units and cross Common Elements), and each Unit Owner is responsible for maintenance, repair and replacement thereof, provided that the Association shall have the right to oversee the process of and approve contractors engaged in connection with any maintenance, repairs and replacements.

#### (c) Services to Units



(i) Snow Removal. The Association shall be responsible for removal of snow (but not ice) from the interior streets and common parking areas within the Community. The Association may, if determined by the Board, remove snow (but not ice) from the driveways serving the individual Units and/or walkways serving individual Units. Such determination shall be subject to the approval of the Declarant as long as the Declarant owns any Unit. Unless the Association elects to remove snow from individual driveways or walkways, the Unit Owners shall be responsible for removal of snow from the driveways and walkways serving their respective Units, even though all or a part thereof may be outside the title lines of their Units. The Association may in its discretion treat walkways and driveways for ice by spreading treatments, but is under no obligation to do so, and the Association's undertaking to do so in one or more instances shall not create any obligation of the Association to do so in the future. Unit Owners shall use only ice/snow melting or preventative treatments that are approved by the Board, and shall be liable to the Association for any damage to vegetation or other damages that arise from use of unapproved treatments.

(ii) Lawn and Landscaping Maintenance. The Association shall provide periodic lawn mowing and other maintenance services with respect to the lawn areas surrounding Units, including any lawn located within the title lines of the Units, and shall maintain all landscaping installed by the Declarant or the Association, the costs of which shall be assessed as part of the Common Expenses. If permitted by Regulations or if otherwise approved by the Board, Unit Owners may install landscaping within areas immediately surrounding their Unit, subject to such limitations and restrictions as the Board prescribes by Regulations. Unless permitted by such Regulations approved by the Board, Unit Owners shall not install any additional plantings or landscaping around their Units. Any landscaping installed by a Unit Owner shall be subject to the approval of the Board or its designated representatives. Unless otherwise approved by the Board, the maintenance, care and replacement of any shrubs or other landscaping installed by a Unit Owner shall be the responsibility of that Unit Owner.

(iii) Discretionary Services. If the Board so determines, with the approval of the Declarant as long as the Declarant owns any Unit, the Association may undertake to provide certain routine maintenance services to and for the benefit of the Homes, which may include, without limitation, cleaning exterior siding, cleaning gutters, repainting front entrance and garage doors, sealing or repaving driveways, and the like. The costs of such services, if provided, shall either be included in Common Expenses or be charged and assessed to the Units receiving such services as Limited Direct Charges, as the Board may elect in its sole discretion. Except for such services as the Board may elect to provide, the Unit Owners of the Units shall be responsible at their expense for maintenance, repair and replacement of all exterior components of the Units and Homes including without limitation the exterior doors, windows, patios, decks, and awnings, as well as the driveways, walkways and other Limited Common Elements serving their respective Units exclusively, in accordance with Regulations adopted by the Board from time to time, and subject to the restrictions contained herein and therein.

(iv) Board Discretion. The Board shall determine the scope of work to be performed with respect to each service the Association performs, as well as the schedule for performing the applicable service. The intervals between services for some Units may be greater than others, depending on the characteristics of the particular Unit(s).

(v) Unit Owner Responsibility. Notwithstanding anything in this Declaration to the contrary, in no event shall the Association or the Board have any obligation to



make any repair or replacement to any Unit, any improvements on a Unit, or Limited Common Elements serving the Unit if the need for such repair or replacement was caused by or attributable to (A) abuse or neglect by the owners or occupants of the Unit, or (B) any defect or deficiency in materials or workmanship in the original construction thereof.

(vi) Units Owned by Declarant. The Declarant reserves the right to decline services that would otherwise be provided by the Association to Units owned by the Declarant, and to provide such services for and with respect to its own Units. Any such services, with respect to Units owned by the Declarant, shall be performed by the Declarant at its expense.

**(vii) DISCLAIMER OF LIABILITY. NEITHER THE ASSOCIATION, THE BOARD, NOR ANY OFFICER OR AGENT THEREOF, SHALL HAVE ANY LIABILITY FOR DAMAGES, COSTS OR EXPENSES TO ANY UNIT OWNER, THE TENANTS OR OTHER OCCUPANTS OF ANY UNIT, OR THEIR RESPECTIVE GUESTS OR INVITEES, FOR OR ARISING OUT OF ANY FAILURE TO PERFORM, DELAY IN PERFORMING OR DEFECTIVE PERFORMANCE OF ANY MAINTENANCE OR OTHER SERVICES, OR FOR ANY CONSEQUENTIAL DAMAGES ARISING THEREFROM.**

#### 4.04 Declarant's Right to Construct Common Elements.

(a) Declarant reserves the right to construct all Common Elements and other improvements, existing or proposed, as shown on the Plans, including (without limitation) the Storm Water Management Facilities, common utility systems, roads, landscaping and the like. Except for improvements identified on the Plans as "must be built", and except for improvements required to be installed as a condition of subdivision and land development approval of the Development Plans by the Township or other governmental authorities, the Declarant has no obligation to construct or convey any Common Elements to the Association.

(b) The Association shall assume the obligation for maintenance, management, repair and insurance of each Common Element once it has been completed, subject to the limitations on the Association's responsibilities with respect to Limited Common Elements. A Common Element shall be deemed complete when it has been completed according to the Plans and, if applicable, Township ordinances. Where a Common Element was required as a condition of final subdivision and land development approval, such Common Element shall be deemed to have been completed once it has been approved as being complete in accordance with the applicable Development Plans and specifications relating thereto by the Township or applicable agent thereof (e.g., the Township Engineer). Declarant may convey each Common Facility separately from other Common Facilities, existing or proposed, and the Association shall accept such conveyance thereof without condition upon completion thereof. The Declarant may, in its discretion, lease (for no consideration) any Common Facility to the Association prior to actual conveyance hereof. All Common Elements which the Declarant reserves the right to construct or is required to construct shall be completed by the Declarant at or before the time such Common Element is necessary for the use and occupancy of the Units, but no later than the date of conveyance (or lease) of the last Unit owned by the Declarant (or, if earlier, upon the termination of the Special Declarant Rights reserved by the Declarant). The Common Area may be conveyed to the Association at any time, subject only to the obligation of the Declarant to complete the Storm Water Management Facilities and other improvements required to be constructed therein. Conveyance of the Common Area before completion of the Storm Water Management Facilities or other improvements therein shall not be construed as conveyance of an incomplete Common Facility, and the Declarant shall



continue to be responsible for the completion of such improvements and for all costs of maintenance and repair of such incomplete improvements pending completion thereof.

(c) The Association shall assume the obligation for maintenance, management, repair and insurance of each Common Element once it has been completed and shall be obligated to include in its budget (and, if necessary, amend the then-current budget and increase the then-current Assessments) to pay the costs of maintaining, repairing and insuring the same, subject in all cases to the limitations on the Association's responsibilities with respect to Limited Common Elements, the Board's right to modify such responsibilities from time to time, and the right reserved by the Board to charge certain expenses with respect to Limited Common Elements serving the Units as Limited Direct Charges rather than budgeted Limited Common Expenses. Until a Common Element has been completed (and, in the case of a Common Facility, until it has been conveyed or leased to the Association) such Common Element shall be owned by the Declarant and all real estate taxes and other expenses associated therewith shall be borne by the Declarant.

(d) The Declarant shall have the right to convey a Common Facility to the Association before the completion thereof if a third party guarantee, bond, escrow or letter of credit or other reasonable financial security is provided by the Declarant for the benefit of the Association complying with the applicable provisions of the Act.

(e) The Declarant guarantees the completion of the Common Elements shown on the Plans and designated as "must be built" and those improvements shown on the Development Plans that are or were required as a condition of approval thereof by the Township. The obligation of the Declarant to complete and convey improvements required to be constructed shall be binding on the Declarant and any successor in interest of the Declarant therein, whether or not such successor in interest succeeds to any Special Declarant Rights. The Declarant is not providing any security for the direct benefit of the Association to secure the completion of any Common Elements. The Declarant has entered into or will enter into agreements with the Township pursuant to which the Declarant shall be obligated to complete certain improvements within the Community and will post financial security with the Township to secure the completion thereof pursuant to the Pennsylvania Municipalities Planning Code. The amount of such financial security and the procedure for its delivery and release shall be as determined by the Township according to procedures set forth in the Pennsylvania Municipalities Planning Code.

#### 4.05 Dedication and Easements.

(a) The interior roads to be constructed within the Community are not intended to be offered for dedication to the Township and are to be owned and maintained by the Association as Common Facilities for the benefit of all of the Units. Notwithstanding the preceding, Declarant reserves the right to dedicate and offer for dedication, and to cause the Association to dedicate or offer for dedication, such roads to the Township in the event that the Township is willing to accept dedication thereof and responsibility therefore. Certain other improvements may be dedicated to the Township, or other public body, authority or utility company. If, however, the applicable municipal body or utility company fails or refuses for any reason to accept dedication or ownership of an improvement or facility upon completion, the Declarant reserves the right to



convey or cause such facilities and improvements to be conveyed to the Association and to designate such facilities as "Common Elements" in which event the Association shall accept conveyance thereof to it and shall assume the responsibility for maintenance, repair, replacement, insurance and management thereof according to the terms of this Declaration. Such designation may be by deed, or by means of an amendment to this Declaration and/or the Plans, as the Declarant shall elect. If that occurs, the Association will need to amend its budget to take into account the additional Common Expenses that will be incurred in connection with such additional Common Elements, and will need to increase the Assessments against the Units accordingly.

(b) If requested or required by the Township or the Declarant, the Association (and the Unit Owner(s) of any Unit(s) affected thereby) shall dedicate or join with the Declarant in dedicating to the Township or applicable municipal authorities or utilities, an easement over and across such portion of such Unit or Common Element on which any Storm Water Management Facilities, drainage easements, water lines, sewer lines or other facilities serving the Community or any part thereof are located. However, such dedication shall not be necessary for the utilization of such easements, and any drainage, storm water management, storm sewer, sanitary sewer and/or other easements shown on the Plan shall be and are hereby reserved for the benefit of the Declarant, the Township and the applicable service provider, as applicable, without any further documents or instruments being required

(c) All drainage, utility, sanitary sewer, water, and storm sewer easements shown on the Plans shall be for the benefit of the Declarant, the Association and the Township, and their respective agents, contractors and subcontractors, to facilitate construction, inspection, maintenance, repair and replacement of the facilities intended to be constructed within such easements.

#### 4.06 Warranty as to Common Elements

(a) The Declarant will warrant the Common Elements constructed by it against Structural Defects for two (2) years after completion thereof as required by the Act. To the fullest extent permitted by law, the Declarant disclaims any warranty except with respect to Structural Defects in Common Elements actually constructed by or for the Declarant.

(b) **THE WARRANTY HEREIN AND IN THE ACT IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTY GIVEN HEREIN WITH RESPECT TO THE COMMON ELEMENTS IS THE SOLE AND EXCLUSIVE WARRANTY WITH RESPECT THERETO. DECLARANT'S WARRANTY WITH RESPECT TO THE COMMON ELEMENTS SHALL APPLY SOLELY TO IMPROVEMENTS, STRUCTURES OR COMPONENTS THEREOF CONSTRUCTED BY THE DECLARANT AND SHALL NOT APPLY TO ANY PART OF THE COMMON ELEMENTS CONSTRUCTED BY OR UNDER THE DIRECTION OF THE ASSOCIATION.**

**TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE LIABILITY OF THE DECLARANT FOR ANY BREACH OF WARRANTY SHALL BE STRICTLY LIMITED TO THE REASONABLE COST OF REPAIR OR REPLACEMENT OF THE DEFECTIVE COMMON ELEMENT, AND IN NO EVENT SHALL THE DECLARANT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES.**

#### 4.07 Conveyance and Encumbrance by the Association.



(a) Except as hereinafter expressly provided, the Association shall not convey, mortgage, pledge or encumber the Common Facilities owned by it without the approval of (i) Members entitled to cast at least eighty percent (80%) of the votes that all Members are entitled to cast, (ii) the Declarant, if such conveyance or proposed conveyance occurs during the Declarant Control Period, and (iii) the required approval of Eligible Mortgagees, to the extent required pursuant to Article X hereof.

(b) The Association shall have the right without the consent or approval of Eligible Mortgagees, but with the consent of Members and the Declarant as required above, to convey and dedicate the interior streets, sidewalks and related curbing, common parking areas, street lighting, as well as stormwater management systems and sanitary sewer and water systems, to (i) the Township, in the case of roads, sidewalks and related improvements, and (ii) the applicable utility company, municipal authority or the Township (as applicable), in the case of sanitary sewer, public water or utility facilities. Further, the Association has the right to convey the Common Area to the Master Association, if required by the Master Declaration.

4.08 Disposition of Common Facilities Upon Termination. If the Community is terminated as provided for in the Act, all Common Facilities necessary for the common use, enjoyment and benefit of the Units including, without limitation, interior streets, sidewalks, street lighting, curbing, stormwater management facilities and common utility facilities (to the extent not otherwise dedicated or conveyed to a public or private utility company) shall be conveyed solely to a governmental or quasi-governmental entity charged with the responsibility of the maintenance and repair thereof for the benefit of the Units, or a private non-profit organization established for the purpose of maintaining and managing similar facilities, and in either such case such conveyance shall be subject to the approval of the Township and the required vote of Eligible Mortgagees as hereinafter provided.

#### ARTICLE V - COVENANT FOR ASSESSMENTS; LIENS; COLLECTION

##### 5.01 Assessments; Allocation of Common Expense Liability.

(a) Each Unit Owner must pay all Assessments levied against such Unit Owner or his Unit. The Common Expense Liability and Percentage Interest appurtenant and allocated to each Unit shall be the percentage equivalent of a fraction, the numerator of which is 1 and the denominator of which is the total number of Units then created within the Community. The initial number of Units subject to this Declaration is 12, and the initial Common Expense Liability assigned to each is 8.3333%. If and when additional Units are created within the Convertible Real Estate, the Common Expense Liability of all Units shall be adjusted so that each Unit's Common Expense Liability is the percentage equivalent of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units then included in the Community.

(b) Assessments levied against a Unit are also the joint and several personal obligation of the Unit Owners thereof at the time the Assessment (or any installment thereof) falls due.

(c) The Unit Owner's obligation to pay Assessments is not subject to deduction or set-off, and is not otherwise diminished, discharged, suspended or abated, because



of: (i) any claim that any Unit Owner(s) may have against the Association or the Declarant; (ii) the failure or alleged failure of the Association to provide services required hereunder; (iii) the fact that there is no dwelling on such Unit, or that the Unit has been demolished, destroyed, removed or is unoccupied or uninhabitable for any reason; (iv) the default of any other Unit Owners(s) in the payment of Assessments; or (v) any other circumstance.

**5.02 Damages.** Each Unit Owner shall reimburse and indemnify the Association upon demand for any losses, expenses, costs or damages incurred by the Association as a result of any damage to Common Elements or Limited Common Elements caused by the act, omission or negligence of such Unit Owner or his tenants, agents, guests, family members, licensees, contractors or subcontractors, or any other damages, losses, costs or expenses that the Association incurs as a result of the act or omission of a Unit Owner, including any violation of any applicable law or ordinance. Such damages may be assessed and collected as a Special Assessment against such Unit Owner.

**5.03 Time for Payment.** The due date for payment of Assessments or installments thereof shall be determined by the Board, but shall not be more frequent than monthly. Unless otherwise determined by the Board, the Assessment for each fiscal year shall be due and payable in substantially equal monthly installments on the first day of each calendar month.

**5.04 Non-Payment; Late Charges; Lien.**

(a) Any Assessment (or installment thereof) that is not paid within fifteen (15) days after the due date thereof shall be considered delinquent and shall be subject to a late charge of five percent (5%) of the overdue sum. Interest on any Assessment (or installment thereof) that is not paid within thirty (30) days after the due date thereof shall accrue beginning on the thirty-first (31st) day after the due date at the rate of twelve (12%) percent per annum (or such other rate, not to exceed the highest rate permitted by law, as the Board may from time to time determine). Interest at that rate shall continue to accrue after any judgment is entered in favor of the Association and until full payment of the delinquent amount is actually received by the Association. Any costs of collection, including reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect any delinquent Assessment (whether or not suit is commenced) may be assessed and collected in the same manner as any other Assessments hereunder against the delinquent Unit Owner, and such amount shall be secured by the Association's lien for Assessments.

(b) If a Unit Owner is delinquent in the payment of any Assessment (or installment thereof) for more than forty-five (45) days after the due date thereof, the Association shall have the right to accelerate all future installments of such Assessments with respect to the delinquent Unit Owner (if Assessments are payable in installments), and to suspend such Unit Owner's privilege to pay future Assessments in installments for such reasonable period of time as the Board may determine. Notice of acceleration shall be given to the delinquent Unit Owner and shall become effective unless the delinquent Unit Owner pays to the Association, within ten (10) days after the date of mailing such notice, all delinquent Assessments or installments thereof, all interest thereon, and all late charges, and costs of collection incurred by the Association in connection with such delinquency.

(c) The Association shall have a lien on each Unit for all Assessments levied against a Unit or the Unit Owner thereof, to the maximum extent provided in and with the maximum protection afforded by, the Act. Such lien shall have the



priority and may be enforced in the manner provided for in the Act, and by any other remedies available at law or in equity. The recording of this Declaration constitutes notice and perfection of the Association's lien. The Association shall have the right to collect from a Unit Owner, and the lien of the Association shall secure, all amounts paid or expended by the Association to collect unpaid Assessments (including reasonable attorneys fees) and/or to protect or preserve the Unit or the priority of the Association's claim or lien including, without limitation, amounts paid or incurred by the Association to pay or discharge real estate taxes or other liens senior in priority to the Association's lien. Notwithstanding the preceding, the Association's lien for Assessments against any Unit shall be subordinate to the lien of an Eligible Mortgage encumbering such Unit that was recorded before the delinquent Assessment or installment thereof was due.

5.05 Other Remedies. Assessments and other amounts payable by any Unit Owner may also be recovered by a lawsuit brought by the Association against the Unit Owner and any other person personally obligated to pay the same, and the Association shall have all other rights and remedies available at law or in equity.

5.06 Collection Upon Sale of a Unit.

(a) If a Unit is transferred in connection with the foreclosure or execution sale of a Unit, any unpaid Assessments of which the Sheriff has notice shall be paid out of the proceeds of such sale after payment of other claims required by law to be paid first, but before any distribution of proceeds to the Unit Owner.

(b) Upon the voluntary sale or conveyance of a Unit or any other transfer (including transfers by operation of law), except as provided in subparagraph (a) above, and subject to Section 5407 of the Act (relating to resale certificates), the transferor and the transferee shall be jointly and severally liable for all Assessments or installments thereof that have been assessed or levied against such Unit and which are unpaid as of the date of conveyance, except as otherwise provided in the Act.

5.07 Initial Contributions by First Time Buyers; Re-sales.

(a) Each Unit Owner who purchases a Unit directly from the Declarant shall pay, at the time of conveyance, a one time capital contribution to the Association in the amount of Two Hundred Dollars (\$200.00) for each Unit, which is in addition to, and not in lieu of, the regular Assessments payable with respect to the year in which such conveyance takes place. Such amounts collected may be used to pay Common Expenses, to set up reserves or for such other purposes as the Board may determine.

(b) Any person purchasing a Unit from a Unit Owner other than a Declarant shall pay to the Association at the time of such purchase a one-time capital improvement contribution in the amount of Two Hundred Dollars (\$200.00), which contribution shall be in addition to the then current Common Expense Assessment allocable to such Unit, and which shall be used to set up or augment capital reserves or applied to payment of capital expenditures of the Association, as the Board shall determine in its discretion, subject to any limitations imposed by the Act. The Board shall have the authority to increase such contribution due on re-sales from time to time, by resolution of the Board, subject to limitations imposed by the Act.



5.08 Discretion of Board of Directors. In connection with the collection or attempted collection of delinquent Assessments, the Board shall have the power, in its discretion, to waive, settle and/or compromise the obligation of a Unit Owner to pay delinquent Assessments, interest, late charges, and/or costs of collection, if the Board determines that it is in the best interests of the Association to do so based upon such factors as the Board deems relevant, including, without limitation, the anticipated costs and likelihood of collecting the full amount due.

5.09 Basis and Computation of Regular Assessments.

(a) Approximately sixty (60) days before the beginning of each fiscal year of the Association, the Board shall adopt a budget for such fiscal year setting forth estimated Common Expenses and the Assessments therefore. The total Assessment for Common Expenses for that fiscal year shall be computed based on and shall be in an amount sufficient to pay the estimated Common Expenses set forth in such budget (in excess of any surplus from a prior year or years that has not been set aside as reserves by the Board). In determining Assessments for any year, the Board shall have the right to include in the Budget for such year a reasonable allowance for delinquent or un-collectible Assessments, as well as such allocations to reserves as the Board deems appropriate. The Association shall adopt a balanced budget in each fiscal year and shall levy Assessments sufficient to pay all budgeted expenses. The budget of the Association may be modified from time to time by the Board to reflect any material change in the Common Expenses incurred or expected to be incurred by the Association for such fiscal year, and the Board shall have the power to increase or decrease Assessments based on such changes in the budget. Such increase or decrease will be effective not earlier than thirty (30) days after the date of the notice thereof has been given to the Unit Owners.

(b) The Board shall promptly cause notice of the Assessment and a copy of the budget to be mailed to each Unit Owner. Such budget shall become effective as of the first day of the fiscal year to which such budget relates, without the necessity of obtaining the approval of the Members, subject to the right of Members to reject any budget or capital expenditure to the extent provided in the Act. If the Board fails to adopt or delays adopting a Budget or a new Assessment for a fiscal year, the Unit Owners shall continue to pay Assessments and installments thereof based upon the Budget and Assessment in effect for the preceding year. Once an Assessment has been made by the Board, it shall automatically continue in force for the fiscal year for which it was initially adopted, and during each subsequent fiscal year, until a new budget and a new Assessment is adopted by the Board.

5.10 Special Assessments. The Board shall have the power to levy Special Assessments for such purpose or purposes as the Board from time to time deems necessary or appropriate, including, but not limited to, paying the costs of unanticipated maintenance, repairs or replacements of the Common Elements. Special Assessments benefiting all Unit Owners shall be levied equally on all Units, and shall be due and payable in a lump sum or in such installments as the Board shall determine.

5.11 Limited Direct Charges. Any Limited Common Expenses that the Board elects to defray by means of Limited Direct Charges rather than regular, budgeted Limited Common Expense Assessments, shall be levied and assessed at such time as the Board shall determine, either before or after performance of the service for which such expense was or will be incurred. Limited Direct Charges shall be levied only against the Unit(s) that have received or will receive the service for which the cost will be incurred. The Board may levy Limited Direct Charges



in a lump sum, or in installments, as the Board shall determine on not less than 30 days' notice to the applicable Unit Owner(s).

5.12 Commencement of Assessments. Assessments shall commence at such time as the Board determines and from and after the date the first Common Expense Assessment is made, all Units shall be subject to Assessments for Common Expenses thereafter. Until the first Common Expense Assessment is levied, the Declarant shall pay all of the Common Expenses of the Community.

## ARTICLE VI – INSURANCE

6.01 Property Casualty Insurance – Common Facilities. Beginning no later than the first conveyance of a Unit to a Unit Owner other than a Declarant, the Association shall maintain, to the extent reasonably available, "all risk" property and casualty insurance insuring the Common Elements (other than Limited Common Elements) against all common risks of direct physical loss, covering the interests of the Association, the Board and the Unit Owners, as their interest may appear; provided that such insurance shall only be obtained if reasonably available for the type of Common Elements owned, managed or maintained by the Association. The total amount of insurance (after application of any deductibles) shall be not less than eighty percent (80%) of the actual value of the insured property (exclusive of land, excavations, foundations and other items normally excluded from such casualty policies).

6.02 Property Casualty Insurance – Homes. Each Unit Owner shall maintain and carry "all risk" property and casualty insurance insuring the his Unit and Home (and the contents thereof) against all common risks of direct physical loss. Such insurance shall be on a replacement-cost basis and shall contain, if available at reasonable cost, inflation protection endorsements and such other endorsements as the Association may require. Unit Owners' insurance shall also satisfy such other requirements as the Board may prescribe by Regulations, and evidence that the Unit Owner has complied with the insurance requirements of this Declaration and the Regulations shall be provided to the Board upon request in the form of a certificate of insurance or such other evidence as the Board may reasonably require. The Board may, however, elect to carry blanket casualty insurance on the Homes, in accordance with such fire, extended coverage and other casualty insurance policies customarily carried with respect to "PUD", "condominium" or similar communities, with policies complying with the Act and with the insurance requirements of Fannie Mae, Freddie Mac, the Veterans Administration, the United States Department of Housing and Urban Development or similar organizations that regulate or insure residential mortgages. The cost thereof shall be a Common Expense. Such election by the Board shall be subject to the approval of Unit Owners owning at least fifty-one percent (51%) of the Units at the time the Board makes such election, and shall be subject to the approval of the Declarant (in its sole discretion) if the Declarant then owns any Units. If the Association elects to obtain such blanket casualty insurance, then the Unit Owners shall nevertheless be responsible for carrying casualty and liability insurance with respect to (i) all personal property and contents located in such Unit, (ii) any parts of the Units and Homes that are not covered by such insurance which may include, but not be limited to, improvements or betterments to the Homes constructed by the Unit Owners and not provided as part of the original construction thereof. At the option of the Association, such insurance may cover improvements or betterments constructed by the Unit Owners, but only to the extent permitted by the Association's policy and only to the extent that the



Association has been provided with at least thirty (30) days prior written notice of such betterments and improvements.

6.03 Association Liability Insurance. The Association shall obtain and maintain, to the extent reasonably available, comprehensive general public liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$500,000.00 for bodily injury or death arising from a single occurrence.

6.04 Other Insurance. The Association may carry any other insurance including, but not limited to, Directors and officers liability insurance, fidelity bonds, and the like, as the Board may determine from time to time.

6.05 Policy Terms. Property, casualty and liability insurance carried by the Association shall contain any policy terms required by the Act. Each Unit Owner shall be an insured person under the Association's liability insurance with respect to liability arising out of his membership in the Association. Each policy shall provide that the insurer waives its right of subrogation under the policy against any Unit Owner or member of the Unit Owner's household, and shall provide that no act or omission by a Unit Owner (unless acting within the scope of his authority on behalf of the Association) will void the policy or be a condition of recovery under the policy.

6.06 Failure to Obtain Insurance If the insurance described herein is not maintained, the Association shall promptly cause notice of that fact to be given to all Unit Owners.

6.07 Insurance Obligations of Unit Owners. Except as provided above, each Unit Owner is responsible for carrying hazard, fire, flood and liability insurance with respect to his Unit, and the contents thereof and any personal property thereon, and against losses, damages or injuries occurring on his Unit, at the Unit Owner's expense, and such other insurance as is required herein.

6.08 Adjustment of Losses. Any losses covered by any property insurance policy maintained by the Association shall be adjusted solely by and with the approval of the Association and proceeds thereof shall be payable to the Association and not to any mortgagee or Unit Owner. The Association shall hold such proceeds in trust for the benefit of the Association, the Unit Owners and lien holders, as their interests may appear. Subject to Section 6.09 below, such proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements and no Unit Owners or lien holders shall be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Common Elements have been completely repaired or restored and the Board elects to pay such surplus, or the Community is terminated.

6.09 Use of Proceeds.

(a) Any part of the Common Elements for which the Association maintains property insurance which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the Community is terminated in the manner provided under the Act, (ii) repair or replacement would be illegal under any state or local health or safety statute, law, regulation or ordinance, or (iii) eighty percent (80%) of the Unit Owners (including every Unit Owner to whose Unit any Limited Common Element which will not be rebuilt is allocated), vote not to rebuild. The cost of the repair or replacement in excess of available insurance proceeds and reserves shall be a Common Expense.



(b) Any part of a Unit for which insurance is maintained by the Association and which is damaged or destroyed shall either be repaired or replaced promptly except in the case of the events described in subsection (a)(i), (ii) or (iii) above and any cost of repair or replacement in excess of available insurance proceeds shall be borne by the Unit Owner.

In the event of damage to a Home, the Unit Owner shall be obligated to rebuild the Home, and any cost of repair or replacement in excess of available insurance proceeds shall be borne by the Unit Owner. All repairs and restoration shall be performed according to plans and specifications, and using contractors, approved by the Board.

(c) Any part of a Unit for which insurance is maintained by the Unit Owner, and which is damaged or destroyed, shall be repaired and replaced by the Unit Owner promptly, and any cost of repair or replacement in excess of available insurance proceeds shall be borne by the Unit Owner. The Unit Owner shall be obligated to rebuild the home according to plans and specifications, and using contractors, approved by the Board.

(d) If the entire Community is not repaired or replaced, the insurance proceeds shall be distributed and disbursed pursuant to the requirements of the Act.

6.10 Other Insurance Requirements. The Association shall maintain, to the extent reasonably available, any insurance coverage that may be required under applicable law or under applicable guidelines and regulations promulgated by the Department of Housing and Urban Development, the Veterans' Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and/or their successors or assigns. The Board shall have the right to increase insurance coverage and obtain additional insurance coverage not specifically required hereunder as the Board may from time to time determine, in its discretion, and the premiums for such additional or different insurance coverage shall be General Common Expenses. Policies of insurance shall be deposited with and shall be maintained by the Board.

6.11 Powers of Board. The Board shall have full and exclusive power and authority to negotiate, adjust and compromise all claims for insurance coverage, and to execute and deliver releases therefore upon payment of the agreed settlement for such claims.

## ARTICLE VII - BUILDING AND USE RESTRICTIONS

7.01 Subdivision or Partition. Once a Unit has been conveyed by Declarant to a Unit Owner, such Unit may not be further subdivided or partitioned, directly or indirectly; provided that the foregoing shall not be deemed to prevent minor lot line changes between Units which are approved by the Township and which are for the purpose of correcting or eliminating encroachments. The Declarant may, in its sole discretion relocate boundaries between Units owned by the Declarant, and between the Declarant's Units and the Common Area, provided that the approval of the Township has been obtained. In no event shall any relocation or change of boundary lines result in an increase in the number of Units.

7.02 Residential Use. The Units shall be used only for residential purposes; provided that home occupations are allowed if they (i) are permitted by applicable laws and ordinances, (ii) are incidental and/or accessory to the primary and principal residential use of the Unit, (iii) do not unreasonably interfere with the use and enjoyment of other Units as determined by the Board, and (iv) comply with any Regulations adopted by the Board. No such home occupation



shall entail parking for employees or visitors, or delivery by trucks or other commercial vehicles other than ordinary parcel delivery vehicles (e.g., UPS trucks).

7.03 Above-Ground Utilities. No Unit Owner or occupant shall erect or maintain an antenna or satellite reception device greater than one meter in diameter on any Unit, except as may be protected by law. To the extent permitted by law, the location and placement of permitted devices shall be subject to review and approval under this Article VII. Such devices shall be placed, to the extent feasible, at locations which will minimize the visual impact thereof on other Units, and shall be reasonably screened.

7.04 Animals. No Unit shall be used for stabling, housing, raising, breeding, boarding or keeping animals of any nature for personal or commercial purposes, except for a reasonable number of personal domestic household pets, such as dogs and cats, and small animals and birds customarily kept as pets and ordinarily kept in cages. The Board may adopt reasonable Regulations limiting the number of household pets that may be kept on any Unit. No Unit Owner, occupant, tenant or sub-tenant of any Unit shall permit or allow any pets to run loose on or about any other Unit or on the Common Area. Each Owner, tenant or other occupant of a Unit shall be responsible for immediately collecting, removing and properly disposing of any and all animal waste left by his or her pets on or about the streets, sidewalks, walkways or driveways, Common Area and Common Area. All pets shall be kept inside the Dwelling, except when being walked or exercised outside, on a leash and in the company of the owner or his or her designee.

7.05 Outdoor Storage; Vehicles Outdoor storage of appliances, lumber, wood or building materials or other materials or objects shall not be permitted except during the construction of a Unit or other permitted improvement. No commercial vehicle, camper, travel trailer or mobile home, recreational vehicle, all terrain vehicle, boat, boat trailer, or other trailer, nor any unlicensed motor vehicle shall be kept or stored outside on any Unit or on or along the streets within the Community except for reasonable periods of time, less than twenty-four (24) hours in length when the same is being packed and unpacked for use. Outdoor storage or parking of tractors, equipment or commercial vehicles on or about a Unit is prohibited, except for motor vehicles used by occupants of a Unit in the course of his or her business which are passenger vehicles, sport/utility style vehicles, pickup trucks and/or vans, subject to such Regulations as the Board may adopt.

7.06 Storage of Debris, Etc. No storage, depositing, dumping, burial, burning or abandonment of any solid waste, debris, trash or refuse of any nature shall be permitted, except for trash or refuse placed outdoors (not more than twenty-four (24) hours in advance) for trash collection purposes. Such trash or refuse shall be kept in enclosed containers or approved recycling bins or containers. Trash receptacles shall be removed and placed indoors promptly after the contents thereof have been collected

7.07 Changes to Improvements. Except as otherwise provided herein, no new improvement and no exterior Alteration shall be constructed on a Home or Unit unless the plans, specifications and elevations therefore have been approved pursuant to the procedures set forth in this Article VII. If any Unit is partially or entirely destroyed by fire, storm or other casualty and is partially or completely reconstructed following such damage or destruction, it shall be constructed or reconstructed utilizing the same exterior materials and colors as were used in the original construction, unless otherwise approved. Any new Unit to be constructed to replace a Unit that has been damaged, destroyed or razed shall be substantially the same architectural style, size and



design as the Unit it is replacing unless otherwise approved by the Board. Garages shall not be converted to living space.

**7.08 Appearance; Nuisances; Maintenance** The Units shall be maintained in a neat and attractive condition. No offensive activity shall be carried on upon any portion of the Property, nor shall anything be done thereon tending to interfere with the quiet enjoyment of other Units. Each Single Family Unit Owner shall be responsible for maintaining the lawn, shrubbery, landscaping and trees on his Unit in a neat condition and shall also conduct all necessary maintenance, repairs and replacements to the exterior of his Unit.

**7.09 Use of Common Elements.** The Common Elements (other than the Limited Common Elements) shall be for the common use and enjoyment of the Unit Owners. However, neither the Unit Owners nor their family, guests or others shall have the right to use the Common Elements (other than Limited Common Elements allocated to their Units) except as permitted by this Declaration and by Regulations adopted by the Board from time to time. No Person (other than as authorized by the Association) shall place, construct, erect, deposit or store any structure, improvement, refuse, rubbish, or other property of any kind on any Common Elements. No construction, improvement, modification, maintenance, alteration or similar activities with respect to the Common Elements shall be undertaken except by or under the direction of the Declarant or the Association.

**7.10 Signs; Mail Boxes.** No signs shall be placed on the exterior of a Unit, except (i) reasonable "for sale" or "for rent" signs after the Declarant Control Period ends, which sign shall be located only in the interior of the Unit, and (ii) one (1) small sign affixed to the exterior of a Unit (complying with such Regulations as the Association may adopt) stating the house number and/or street address. Unit Owners shall utilize the cluster mailboxes provided by the Declarant as part of the Common Facilities.

**7.11 Outside Ornaments and Decorations.** No Unit Owner shall place or maintain on or about his or her Unit or affix to the exterior of any improvement any lawn ornaments or other decorations (including, but not limited to, likenesses of animals or birds, "lawn balls", bird baths, statues or fountains) unless such proposed ornament or decoration is approved pursuant to this Article VII. The preceding shall not be deemed to prohibit (i) temporary placement and use of reasonable seasonal and holiday decorations, ornaments and lighting, subject to such limitations as the Board may prescribe by Regulations, or (ii) reasonable and customary landscaping treatments subject to such limitations or guidelines as the Board may provide by Regulations or otherwise approve.

**7.12 Recreational Equipment.** No outdoor recreational equipment, including without limitation, swing sets, toys and sandboxes are permitted on or about a Unit or within the Common Areas, except as may be permitted by Regulations adopted by the Board.

**7.13 Outdoor Lighting.** No floodlights, halogen or mercury vapor lights are permitted on the exterior of any Unit without the express written consent of the Board.

**7.14 Leasing.** A Unit Owner may lease his Unit (but only his entire Unit) at any time and from time to time subject to the terms and conditions of this Section 7.14, which limitations and conditions shall only apply to Units owned by Unit Owners other than the Declarant. Each lease shall be in writing, and shall be for an initial term of no less than six (6) months, unless the tenant has entered into a written agreement to purchase the Unit, in which event such lease may



be for a shorter period of time, ending on the scheduled date of settlement on the conveyance of the Unit. A true copy of each lease shall be delivered to the Association, and the Unit Owner and tenant shall supply to the Association such information concerning the tenant including his or her name and contact information, and number of occupants of the Unit, as well as identification of the Unit Owner's vehicles, as the Association may reasonably request from time to time. Whether or not so stated in any lease, all tenants and occupants of a Unit shall be bound by this Declaration and the Regulations, and the Association shall be entitled to enforce the provisions hereof and thereof against such persons directly, provided further that the Unit Owner leasing such Unit shall at all times be responsible to ensure that the tenants and occupants of his or her Unit comply with this Declaration and the Regulations. The Association shall have the right to require that the Unit Owner take all necessary steps to terminate such lease and evict such tenant(s) within thirty (30) days after written notice from the Association as a result of violations by the lessee (or his family, guests or invitees) of this Declaration or the Regulations which continue or recur after written notice thereof is given by the Association to the Unit Owner or the lessee.

#### 7.15 Architectural Approval; Procedures; Regulations and Policies.

(a) When any provision of this Declaration requires approval of any alteration or improvement, the Owner shall submit to the Approval Party (hereinafter defined) plans, specifications, elevations, material and color descriptions and a narrative description of the proposed alteration (as appropriate under the circumstances), all in sufficient detail to depict and describe the style, size, height and proposed location of the proposed Improvement or alteration, and the exterior materials and colors to be used in connection therewith (including roofing materials). All plans and other materials submitted in connection with any request for approval may be retained by the Approval Party whether or not the proposed alteration or improvement is approved.

(b) The Declarant shall have the exclusive right of approval of any alterations or improvements for which approval is required pursuant to this Declaration or pursuant to any Regulations until the last Unit owned by the Declarant has been sold. Thereafter (or at such earlier time as the Declarant may relinquish in writing its rights as the Approval Party hereunder), the Board shall have the exclusive authority to exercise the rights and power of approval under this Article VII, provided that the Board shall have the power to delegate all or any part of its review and approval responsibilities under this Article VII to a committee, in the manner specified or provided for in the By-laws. For purposes hereof, the term "Approval Party" shall mean the Declarant, the Board, or an architectural review committee established by the Board, as applicable, which is then exercising the review and approval functions provided for in this Article VII.

(c) The Approval Party shall have the discretion to disapprove any proposed alterations which it determines are undesirable based upon the nature, size, style and colors of other improvements located (or planned for construction) within the Property, the proximity of the proposed alteration to neighboring Units and the general architectural and aesthetic compatibility of the proposed alteration with other similar improvements constructed or planned for construction on other Units. The Approval Party may also consider the visual impact that such proposed alterations may have on the Owners or occupants of neighboring or nearby Units within the Property.



(d) The Owner or occupant of any Unit proposing any alteration shall endeavor to maximize the aesthetic appeal thereof and minimize the negative visual impact thereof from Unit on adjacent or nearby Unit within the Property.

(e) The Approval Party shall render its decision in writing within thirty (30) days after receipt of the applicant's request for approval accompanied by all plans, specifications and other materials required to be submitted hereunder. If additional information regarding the proposal is requested by the Approval Party, the aforesaid thirty (30) day period shall be extended for the period of time between the date of such request for additional information and the date such additional information is submitted by the applicant. If the proposed alteration is not approved, the reasons for disapproval shall be set forth in the written decision. If a written decision is not rendered within the aforesaid thirty (30) day period (as the same may be extended as aforesaid), the Unit Owner requesting such approval may submit a written demand to the Approval Party to make a decision (a "Second Request"), and if the Approval Party fails to render its written decision within thirty (30) days after its receipt of the Second Request, then the proposed improvement shall be deemed to have been approved as submitted, but no change to the plans or specifications submitted may be made without submission of such changes for approval in accordance with the procedures set forth herein. The disapproval of a proposed improvement shall be without prejudice to the right of the Owner to resubmit an application for approval in which the reasons for disapproval have been addressed by the applicant. Approval may be granted subject to conditions specified in the written decision granting the approval, in which event the proposed alteration shall be deemed to have been approved subject to compliance with such conditions.

(f) In rendering its decision with regard to a proposed alteration, the Approval Party shall have the power to interpret this Declaration and any Regulations relating to architectural and aesthetic standards, and to grant reasonable variances from specific requirements of this Declaration or the Regulations if, in the Approval Party's opinion (i) the particular requirement to be varied poses unreasonable hardship on the applicant as a result of the peculiar features of the applicant's Unit or other existing features of the Unit, (ii) the particular requirement to be varied would not render the proposed alteration aesthetically incompatible or inconsistent with other existing structures on the applicant's Unit or existing structures on neighboring or nearby Units, and/or (iii) the particular requirement, as applied to the particular proposed Alteration, is impractical or would increase the cost of the proposed alteration by an unreasonable amount when compared to the benefit to the Community of literal enforcement of the applicable restriction. The granting of such variances shall be within the sole and absolute discretion of the Approval Party, and no variance granted in any one instance shall create any obligation on the Approval Party to grant a variance in any other instance, whether similar or dissimilar. Such variances may be granted subject to such conditions as the Approval Party may require in its sole discretion. The Approval Party's decision to grant any such variance, and the conditions thereof, shall be binding and conclusive on all parties in interest.

(g) The Association and the Approval Party shall keep records of all alterations approved and disapproved hereunder, and decisions rendered in connection therewith, for a period of not less than five (5) years after the particular approval or disapproval was rendered. The Association and/or the Approval Party shall have the power (but not the obligation) to inspect any alteration in the course of or upon construction thereof to ensure that such alteration is being constructed and has been completed in accordance with the approval granted therefore. If an alteration has been constructed in a manner that deviates from the plans and specifications as approved, the Association or the Approval Party shall have the power to compel compliance with



the terms of approval by any legal means including a suit in equity to require that the alteration, as constructed be modified or removed in order to comply with the terms on which approval thereof was granted.

(h) In connection with and in order to facilitate the administration of this Article VII, the Approval Party may: (i) promulgate Regulations that establish procedures to be followed with respect to matters requiring approval under this Article VII; (ii) establish and charge reasonable fees for review of proposed alterations, subject to any limitations thereon set forth in the Act; (iii) promulgate Regulations and/or architectural standards or policies that are intended as requirements or guidelines for particular types of improvements or alterations; (iv) promulgate standards for particular types of alterations or improvements which, if met, will not require prior approval by the Approval Party; and/or (v) establish modified and/or informal procedures for the review and approval of certain types of improvements or alterations with respect to which the Approval Party determines that strict adherence to the procedures and requirements of this Article VII is unnecessary to protect the interests of the Association and the Unit Owners.

Any Regulations or policies promulgated pursuant to the authority set forth in this Section that are intended to be effective prior to the date on which the Declarant has sold the last Unit owned by the Declarant shall be subject to the Declarant's prior review and approval.

(i) Neither the Declarant, the Association, the Board (or any committee thereof) nor any director, officer, employee, agent or representative thereof shall be liable, in damages or otherwise, to anyone in for approval or disapproval of any plan or proposal for the construction, reconstruction, alteration, modification or addition of any Improvement, or for the consequences of such approval or disapproval. The establishment of a mechanism for the approval of plans and specifications for certain alterations and Improvements is for the limited purpose of protecting aesthetic standards for the benefit of the Unit Owners and Declarant, and is not for the purpose of protecting the health or safety of Unit Owners or others. Accordingly, neither the Declarant nor the Association, nor any of their directors, officers, representatives or agents thereof, are responsible for determining the safety or structural soundness of any Improvement or its compliance with applicable laws, regulations, ordinances or building codes.

**7.16 Compliance with Zoning, Etc.** Neither the Declarant, the Association, the Board nor any officer, director, employee, agent or representative thereof shall be responsible for determining if a proposed alteration complies with applicable zoning, building, health, safety or other laws or ordinances. Each Unit Owner constructing any improvement or alteration shall obtain (at his sole cost) all necessary governmental approvals and permits before commencing the alteration or improvement and shall deliver copies thereof to the Association upon request. Any improvement or thing permitted by this Declaration (or by approval of the Board) shall be subject to and limited by applicable zoning ordinances and other land use laws, ordinances and regulations.

**7.17 Certain Declarant Rights.** Notwithstanding any provision hereof to the contrary, while Declarant owns any Units, Declarant shall be entitled to maintain one (1) or more model homes, sales offices and construction offices (including mobile offices) and to maintain on Units owned by the Declarant such construction equipment, vehicles, lumber and building materials as are necessary from time to time in connection with the development of the Property, the construction of improvements and the Common Elements. Unless otherwise expressly provided in this Article VII, the restrictions and obligations set forth in this Article VII apply only to Unit Owners other than the Declarant. Improvements constructed by the Declarant or any affiliate thereof or any



builder(s) designated by the Declarant are not be subject to the restrictions or review or approval provisions in this Article VII. Declarant reserves the right to change, from time to time, the style, models, configuration, elevations, pricing and other features of the improvements that the Declarant or its affiliates or designated builders may build on the Units, without notice and without approval by the Association or the Unit Owners.

7.18 Regulatory Signs; Parking. The Board shall have the right to erect signs regulating the use of the interior streets, including stop signs, speed limit signs, signs limiting parking, and the like, and all Unit Owners, their tenants, family members, guests and invitees, shall be obligated to obey such signs. On-street parking shall be limited to one side of the street, as set forth on signs to be installed by the Declarant or by the Board

7.19 Additional Regulations. The Board may promulgate reasonable additional Regulations and policies governing the use and enjoyment of the Community, including Regulations regarding activities on or about the Units, for the safety of the Unit Owners

#### ARTICLE VIII - EASEMENTS; SPECIAL DECLARANT RIGHTS

8 01 Easement to Construct and to Dedicate Improvements. Declarant hereby reserves for itself, its successors and assigns, and the Association, the following easements, rights and privileges, in addition to those rights and easements provided for in the Act:

(a) All easements, whether general or specific, shown on the Plans, including utility, storm water, sanitary sewer, water and other easements;

(b) An easement over, under, through and across the Property for the construction, installation, repair, inspection, alteration, maintenance and use of utilities and utility facilities including, without limitation, electrical, telephone, cable television, water, sewer, and similar facilities;

(c) The right to grant easements through, over, across and under the Property and all parts thereof to public or private entities for utility services and facilities (including electric, telephone, cable television, public water, sanitary sewer, storm sewer, natural gas or other utility services);

(d) The right to alter the location of any easements shown on the Plans in a manner which will reflect the actual "as-built" location of any Common Elements or utility facilities constructed thereon, and to amend this Declaration and/or the Plans and/or record one or more separate easement agreements setting forth metes and bounds descriptions of such easement areas; and

(e) The right to dedicate or offer for dedication to the Township or other appropriate municipal or quasi-governmental entity certain open space listed on the Plans, and all drainage easements and other easements necessary or appropriate to provide access to and from any Storm Water Management Facilities or other Common Elements, and any other facilities or easements required or that may be required to be dedicated or offered for dedication to the public.

8.02 General Utility Easements. The Declarant and the Association shall each have the authority to grant to third parties additional utility easements that are deemed reasonable by the Declarant or the Board to supply utility services to the Units or the Common Elements.



8.03 Easement for Inspection and Abatement. The Declarant and the Association (and their respective representatives and agents) shall have the right and easement to have access to each Unit as may be necessary in order to inspect, maintain, repair or replace any Common Elements therein or accessible therefrom, or to inspect for or abate any violation of this Declaration or the Regulations of the Association. The Association shall have the right and easement to access each Single Family Unit as may be necessary in order to inspect, maintain, repair, replace or maintain any landscaping, open space or any buffer area on such Unit for the purpose of enforcing the requirements and provisions of this Declaration related thereto, with the costs of such maintenance and enforcement by the Association being assessed against the applicable Unit.

8.04 Easement of Access and Use of Streets and Accessways. The Unit Owners shall have an easement of use, access, ingress, egress and regress, in common with each other and the Declarant, and others claiming under them, over undedicated streets within the Community for the purpose of providing vehicular and pedestrian access to and from those Unit Owners' respective Units. Such easements shall also be for the benefit of tenants and occupants of those Units, and the family members, guests and permittees of such Unit Owners, tenants and occupants.

8.05 No Obstruction. No Unit Owner shall conduct any activities on or about his Unit or the Common Elements, or construct or place on his Unit any building, structure, trees or other obstruction which may interfere with or obstruct the Declarant's, the Association's or any other persons' right of use or enjoyment of the Common Elements or any of the easements created, granted or reserved herein or on the Plan, or any other easement affecting the Property or any part thereof. No trees shall be planted on or within any sanitary or storm sewer easements shown on the Plans or created subsequent to the recording hereof.

8.06 Easement for Encroachments. If any part of the Common Elements now or hereafter encroaches on any Unit, or if any Unit or improvement thereon hereafter encroaches upon any Common Elements (other than as a result of the intentional or negligent act or omission of a Unit Owner other than the Declarant), a valid easement appurtenant for such encroachment shall exist.

8.07 Easement for Party Walls. The Unit Owners owning adjacent Homes shall have an easement for the use, enjoyment, maintenance, repair and replacement of the party walls dividing such Units. Any such wall separating two contiguous Units shall be considered a party wall whether or not such wall exactly corresponds with the title line dividing the Units, and even if such wall, through construction or engineering error, is located entirely within the title lines of a single Unit. No Unit Owner shall penetrate or damage any such party wall.

8.08 Easement for Protrusions. If any Home, as constructed by the Declarant, includes any deck, porch, roof or eave overhang or other part of the Home that extends beyond the horizontal perimeter boundaries of the Unit on which the Home is located, such Unit shall have a perpetual easement for such protrusion, together with the right of the Unit Owner to maintain, repair and replace the same, but such easement shall not entitle the Unit Owner to extend or expand any such protrusion or encroachment.

8.09 Reservation of Special Declarant Rights. Declarant hereby reserves for itself, and any successor Declarant, the following rights:



(a) The right to maintain and relocate, from time to time one (1) construction office and one (1) sales office on Units owned by the Declarant;

(b) The right to maintain signs on Units owned by the Declarant and on the Common Elements advertising Units owned by the Declarant for sale or lease, and such other signs, including directional, promotional and informational signs, as the Declarant, its contractors or agents may desire to place on its Units or on the Common Elements in connection with the marketing and/or sale of Units and the construction of improvements on the Property;

(c) The right to maintain, locate and relocate offices and models used in connection with the management of and sale or rental of Unit owned by the Declarant on Units owned by the Declarant;

(d) The right and easement to complete all improvements, and Common Elements planned for construction within the Property;

(e) The right to relocate boundaries between Units owned by the Declarant, and between the Declarant's Units and the Common Area, together with the right to prepare, execute and record such amendments to this Declaration and the Plans as may be necessary to show the altered boundaries, to the fullest extent permitted by Section 5214 of the Act;

(f) The right to use and enjoy any and all easements through the Common Elements for the purpose of constructing, maintaining and/or repairing any improvements within the Property.

(g) The right to appoint, remove and replace officers and Directors of the Association during the Declarant Control Period, to the fullest extent permitted hereunder and by the Act;

(h) The right to convey or cause to be conveyed to the Association, as Common Facilities, the interior roads to be constructed within the Community, and the similar right to convey or cause to be conveyed to the Association, as Common Elements, any improvements intended to be dedicated to applicable municipal authorities or public utilities if the same fail or refuse to accept dedication of such facilities; and

(i) The right to transfer, in the manner set forth in the Act, any or all of the Special Declarant Rights reserved unto the Declarant herein.

(j) The right to exercise its rights to convert the Convertible Real Estate as provided in Section 8.09 hereof and in the Act, by filing Supplemental Declarations from time to time, together with corresponding amendments to the Plats and Plans of the Community.

**8.09. Declarant's Rights as to Convertible Real Estate.**

(a) Declarant hereby reserves the right to create additional Units and Limited Common Elements (or both) within the Convertible Real Estate. Such right may be exercised at any time within seven (7) years after this Declaration is recorded, after which time said option shall lapse as to any part of the Convertible Real Estate with respect to which the Declarant has not, on or before that date, exercised its option hereunder. There are no limitations on the



options reserved by the Declarant hereunder, except those created by or imposed by operation of law and those expressly set forth in this Declaration.

(b) If additional Units are created within the Convertible Real Estate, the voting power in the Association and the Common Expense Liability appurtenant to each Unit shall be reallocated on the basis of one (1) vote per Unit.

(c) The Declarant reserves the right to convert parts of the Convertible Real Estate at different times and in any order the Declarant may determine, and no assurances are made with regard to the order in which, or boundaries of, parts of the Convertible Real Estate that may be converted or added at any time.

(d) The maximum number of Units that may be created within the Property, including the Convertible Real Estate, is forty six (46) Units. All Units created within the Convertible Real Estate shall be restricted exclusively to residential use.

(e) No assurances are made with respect to the compatibility of buildings or Units created within the Convertible Real Estate to existing buildings or Units within the Community in terms of architectural style, quality of construction, principal materials employed, size or price range.

(f) All restrictions in this Declaration affecting use, occupancy and alienation of the Units shall apply to Units created within the Convertible Real Estate, subject to such differentiations as the Declarant may deem appropriate based on the different character, style or type of Units created within the Convertible Real Estate, which differentiation the Declarant reserves the right to make in the Declarant's sole and absolute discretion

(g) No assurances are made with respect to other improvements or Limited Common Elements that may be made or created within the Convertible Real Estate. However, the Declarant intends that the type of improvements and Limited Common Elements that will be created within the Convertible Real Estate (if, as and when the same is converted) will be substantially similar to those made within the Community initially subject to this Declaration, including interior private streets, parking spaces, street lighting, sidewalks and the like. No assurances are made as to location of any buildings or other improvements that may be made within the Convertible Real Estate. However, the Declarant intends that the location of buildings, Homes, streets and other improvements will be substantially as depicted on the Plats (provided, however, that such intention shall not be construed as an assurance and the Declarant reserves the absolute right to change the location of such improvements and buildings from time to time at or prior to the time of conversion).

(h) No assurance is made that (i) the Limited Common Elements created within the Convertible Real Estate will be of the same general types, sizes or character as those located within other parts of the Community, or (ii) that the proportion of Limited Common Elements to Units created within the Convertible Real Estate will be approximately equal to the proportion existing within other parts of the Community.

#### ARTICLE IX – PROVISIONS BENEFITTING ELIGIBLE MORTGAGEES



9.01 Notice of Certain Events and Actions. Each Eligible Mortgagee shall have the right to timely written notice from the Association of:

(a) Any condemnation or casualty loss that affects either a material part of the Community or the Unit secured by a mortgage held by such Eligible Mortgagee;

(b) Any delinquency of more than sixty (60) days and the payment of assessments or charges owed by the Unit Owner of a Unit on which it holds an Eligible Mortgage;

(c) A lapse, cancellation or material modification of any insurance policy maintained by the Association; and

(d) A proposed action that requires the consent of Eligible Mortgagees or a specified percentage thereof pursuant to these By-laws or the Declaration

9.02 Financial Statements. Any Eligible Mortgagee who submits a written request to receive annual financial statements of the Association shall have the right to receive copies of such annual financial statements from the Association. An Eligible Mortgagee shall have the right to audit the financial statements of the Association, upon reasonable prior notice, at its expense.

9.03 Approval of Amendments by Eligible Mortgagees.

(a) Material amendments to the Articles of Incorporation of the Association, the Declaration or these By-laws shall require the approval (or deemed approval) of Eligible Mortgagees representing at least fifty-one percent (51%) of the votes allocated to Units that are subject to Eligible Mortgages.

(b) For purposes of Section 9.03(a) above, a "material amendment" shall mean an amendment to the Declaration or By-laws that would (i) change the manner in which votes are allocated among the Units; (ii) change the priority of liens for assessments; (iii) change the responsibility for maintenance and repairs; (iv) reallocate interests in Common Elements or the rights to their use except as otherwise expressly provided herein; (v) a change in the description of Unit boundaries that affects the Unit upon which such Eligible Mortgagee holds a mortgage; (vi) converting Units into Common Elements, or vice versa (except for rights reserved to the Declarant with respect to the Convertible Real Estate); (vii) expand or contract the Community or add to or withdraw Real Estate to or from the Community; (viii) change the requirements for insurance maintained by the Association; (ix) impose any additional restrictions on leasing of Units; (x) impose any additional restrictions on a Unit Owner's right to sell, transfer or encumber his or her Unit; (xi) change any provision expressly benefiting Eligible Mortgagees.

9.04 Eligible Mortgagee's Approval of Certain Decisions. The following decisions of the Board of Directors and/or the Unit Owners shall be subject to the approval of Eligible Mortgagees representing at least fifty-one percent (51%) of the votes allocated to Units that are subject to Eligible Mortgages:



(a) A decision by the Association to establish self-management if professional management was previously required by the Community Documents or Eligible Mortgagees;

(b) A decision to restore or repair the Units or the Common Elements after damage or partial condemnation in a manner other than that specified in the Community Documents;

(c) A decision by the Executive Board to increase Common Expense Assessments to an amount that would increase the previous Common Expense Assessment by more than twenty-five percent (25%), or a decision by the Executive Board to reduce reserves for maintenance, repair and replacement of Common Elements; and

(d) A decision to terminate the legal status of the Community after substantial destruction or condemnation occurs.

A decision to terminate the Community for reasons other than substantial destruction or condemnation, which shall require the approval of Eligible Mortgagees representing at least sixty-seven percent (67%) of the votes allocated to Units subject to Eligible Mortgagees.

9.05 Deemed Approval. Any Eligible Mortgagee to whom notice of any proposed amendment of the Community Documents or decision as described in Sections 9.03 and 9.04 above shall be deemed to have approved such amendment or action if notice thereof has been given to the Eligible Mortgagee at the address set forth in the last notice received from the Eligible Mortgagee, by certified or registered mail, return receipt requested, and such Eligible Mortgagee fails to respond within thirty (30) days after its receipt of such notice as indicated on the return receipt.

9.06 Limitation on Approval Rights. Nothing herein shall be construed to create any right of approval or disapproval on the part of Eligible Mortgagees as a condition of Declarant's exercise of any Special Declarant Rights expressly reserved by the Declarant in the Declaration including, but not limited to, the right to withdraw all or any part of the Withdrawable Real Estate and to create Units and/or Common Elements within the Convertible Real Estate, all of which rights may be exercised by the Declarant without giving notice to or receiving the approval of Eligible Mortgagees.

## ARTICLE X - COMPLIANCE AND ENFORCEMENT

10.01 Compliance and Breach. The Board shall have the authority to exercise any and all remedies provided in this Declaration, or as otherwise may be provided by law, to enforce compliance with or remedy any violation of this Declaration, including the right to bring a suit at law or in equity to compel compliance with this Declaration, to restrain or abate any violation of this Declaration, or to recover damages for such violation. The Association shall be entitled to recover the reasonable costs of enforcement, including attorney's fees, from any Unit Owner or other



person violating this Declaration or the Regulations. For purposes hereof, violation of any Regulations or By-laws adopted by the Association shall be considered a violation of this Declaration.

10.02 Enforcement by Unit Owners; Procedures.

(a) The Association shall have the right and authority to enforce all provisions of this Declaration, including without limitation the covenants in this Declaration relating to the payment of Assessments by Unit Owners.

(b) If the Board (or a committee thereof, as the case may be), approves the construction, alteration or modification of any structure or improvement hereunder, such decision shall be final, binding and conclusive on all Unit Owners, and no Unit Owner shall have the right to bring any action at law or in equity to contest such approval or to compel the removal, modification or alteration of any structure or improvement built, made or altered in accordance with the terms of such approval.

(c) No Unit Owner shall have the right to bring any action at law or in equity to enforce any of the other terms, covenants, restrictions or provisions of this Declaration, or of the By-Laws or the Regulations, unless such Unit Owner shall have first complied with the procedures in Section 10.03 hereof, provided that this provision shall not preclude a Unit Owner from commencing an action if necessary in order to toll any statute of limitations pending compliance with the procedures set forth in Section 10.03 hereof

10.03 Grievance Procedure.

(a) If any Unit Owner alleges that one or more other Unit Owners or occupants of any Unit have violated or are violating the Community Documents, before commencing any action relating thereto such Unit Owner shall first give written notice thereof to the Board and the affected Unit Owner(s) specifying with reasonable particularity the name and address of the alleged violator and the nature of the activities constituting a violation of the Community Documents. Notwithstanding the preceding, nothing herein shall be deemed to preclude a Unit Owner from commencing an action prior to compliance with the grievance procedures set forth herein if reasonably necessary in order to toll any applicable statute of limitations, provided that the Unit Owner bringing such action promptly thereafter complies with the procedures set forth herein.

(b) Within forty-five (45) days after the receipt of such notice, the Board, or a Committee of the Board, shall hold a hearing with respect to such complaint. Notice of the time, date and place of such hearing shall be given to the complainant and the person or persons against whom such complaint is made. Within fifteen (15) days after the date of such hearing, the Board or a Committee thereof, as the case may be, shall render a decision as to whether or not the actions complained of constituted a violation of the Community Documents and, if a violation has been determined to exist, a determination of what, if any, relief or remedies the Board deems appropriate under the circumstances. The Board shall have the authority from time to time to promulgate Regulations relating to the procedure to be followed in cases where an Unit Owner complains of the acts or omissions of other Unit Owners or occupants, and to govern procedures



that shall apply at any hearing or hearings. If deemed necessary by the Board, any hearing with respect to an alleged violation of the Community Documents may be continued from time to time until the Board of Directors has obtained all information and/or testimony necessary in order to render its decision.

(c) In all hearings before the Board or any Committee thereof, all parties are entitled to be represented by legal counsel of their choice. The Board or an applicable committee of the Board shall determine all matters of procedure with respect to hearings before the Board under this Section 10.03, and shall not be bound by the formal rules of evidence.

(d) In connection with any claim at law or in equity by one or more Unit Owners against one or more other Unit Owner(s) or occupants of any Unit alleging any violation hereof, the Association shall have right to intervene in such proceedings if deemed to be in the best interests of the Association, including without limitation any proceeding calling into question the validity, enforceability or interpretation of any covenants, restrictions or provisions of the Community Documents.

**10.04 Remedies Cumulative; No Waiver.** All rights and remedies provided for herein, or as otherwise may be available at law or in equity, shall be cumulative and may be pursued individually, together, at one time or from time to time, as the Board of the Association deems appropriate in its sole discretion. No delay or forbearance in the enforcement of any provisions of this Declaration shall be construed as or constitute a waiver of the right to do so. Neither the Association nor any Unit Owner shall be deemed to have waived any right of enforcement or any breach or default of the provisions of this Declaration on the part of any Unit Owner or occupant unless such waiver shall be in writing, and then only to the extent expressly set forth in such writing.

**10.05 Costs and Attorney's Fees.** In any action at law or in equity by the Association to enforce the Community Documents, the Association shall have the right to recover all costs and expenses and including reasonable attorney's fees (before trial, at trial and on appeal) incurred by it in enforcing or attempting to enforce the Community Documents, and such amounts may be assessed against the Unit Owner and shall constitute a lien on his Unit as provided herein.

**10.06 Alternative Dispute Resolution – Mediation and Binding Arbitration.** In recognition of the high cost and delays of litigation in state and federal courts, all Parties (hereinafter defined) to a Covered Claim (hereinafter defined) shall be obligated to comply with the following procedures:

(a) **Mediation.** Upon notice given by any Party (whether before or after any arbitration or other legal proceedings are commenced), all Covered Parties shall submit to non-binding mediation before a single mediator selected pursuant to the applicable mediation rules of the American Arbitration Association ("AAA"). The mediation shall be held in at a neutral location approved by the Parties or, if they are unable to agree within a reasonable time, as selected by the mediator. In such mediation, the Parties shall endeavor in good faith to mediate and settle such Covered Claim. The expenses of the mediation, including the fees of the mediator and the costs (if any) of the facility at which the mediation is held, shall be borne equally by the Parties. Each Party shall bear its own costs and attorney's fees incurred in attending and participating in the mediation.



(b) Arbitration. If the Parties are unable to resolve and settle all Covered Claims through mediation as provided above, then such Covered Claim shall be submitted to binding arbitration in accordance with the rules of AAA, before a panel of three (3) arbitrators, selected and appointed in accordance with the rules of AAA. The decision of a majority of the arbitrators shall be binding, final and conclusive, shall be unappealable (except as permitted by law) and may be entered as a final judgment in any court of competent jurisdiction, and shall be enforceable as such. All expenses of the arbitration, including the fees of the arbitrators, shall be borne equally by the Parties unless the arbitrators award or impose such costs in some other manner by unanimous agreement. The obligation to arbitrate Covered Claims shall be an absolute bar to the bringing of any action, suit or other proceeding in any state or federal court otherwise having jurisdiction thereof

(c) Covered Claims. Claims subject to mediation and binding arbitration pursuant to this Declaration ("Covered Claims") include all claims, actions, causes of action, suits, counterclaims and disputes to which two (2) or more Parties are parties (whether or not persons or entities other than Parties are also parties), whether arising in contract, in tort, by statute or otherwise, and that arise directly or indirectly out of the following (unless the same constitute Excluded Claims):

(i) Any claim against the Declarant or any Affiliate of the Declarant by the Association (or any member thereof), by any one or more Unit Owners on behalf of themselves or on behalf of or in the right of the Association, the Executive Board (or any member thereof) and/or any other person claiming by, through or under the Association or any Unit Owner, arising directly or indirectly out of (A) any defect or alleged defect in the Units and/or Common Elements, (B) any breach or alleged breach of any statutory, express or implied warranty relating to the Common Elements, Units and/or the Community generally, (C) any violation or alleged violation of law (including without limitation the Act) on the part of the Declarant, or any Affiliate of the Declarant, in any way related to or arising out of the creation, organization, development, construction and sale of the Community and/or the organization, operation or finances of the Association, or (D) any alleged breach by the Declarant of any of its obligations under this Declaration or the other Community Documents;

(ii) Any claim, directly or indirectly, arising out of any act or omission or alleged act or omission on the part of the Executive Board (or any member thereof) any committee of the Executive Board (or any member thereof), or any officer of the Association, including any claim arising out of any alleged violation of this Declaration or breach of duty, but excluding any claim for unemployment compensation, workers' compensation, employment benefits or other statutory benefits of any kind;

(iii) Any claim for indemnity and/or advancement of expenses by a current or former member of the Executive Board, current or former officer of the Association or other person claiming such entitlement pursuant to the terms of this Declaration, the Act or other applicable law, as a result of any action, suit or proceeding to which he is a party or threatened to be made a party, by reason of having acted or served as a member of the Executive Board, officer or agent of the Association, or in any other capacity, and any claim by a Unit Owner against the Association or the Executive Board (or any present or former member thereof), in either case arising out of or in any way related to the Community Documents or the Community; and



(iv) Except as provided below, any claim by the Association or the Executive Board against a Unit Owner, or a resident or tenant of a Unit, and any claim by one or more Unit Owners, tenants or residents of the Community against the Association, the Executive Board (or any member thereof), or any officer or agent of the Association, arising out of any violation or alleged violation of the Act or the Community Documents, or any other matter related to the operation, management, maintenance, repair or replacement of the Association, Community, the Units or the Common Elements

(d) Excluded Claims Notwithstanding the preceding, the following claims, actions, disputes, suits and proceedings ("Excluded Claims") shall not be subject to mandatory mediation and binding arbitration.

(i) Unless the Executive Board so elects, in its sole and exclusive discretion, any suit or action by or on behalf of the Association or the Executive Board to collect Common Expense Assessments from a Unit Owner other than a Declarant, and/or interest, late charges, costs of collection and attorney's fees associated therewith, and any proceedings to foreclose or realize on the Association's lien for such Assessments;

(ii) Any equitable claim by the Association against a Unit Owner or any tenant or resident of the Community to restrain or abate a violation or continued violation of the Community Documents, to compel compliance with the Community Documents, or to abate any nuisance allegedly committed by such person, and to collect costs of suit and reasonable attorney's fees in connection therewith; provided that any claim for monetary damages arising out of such matter shall be subject to mediation and binding arbitration as a Covered Claim;

(iii) Any claim against the Association or the Executive Board, or any member or former member thereof, to the extent that the terms of any insurance policy maintained by the Association or the Executive Board that would otherwise cover all or a part of any liability on such claim would or may, in the judgment of the Executive Board, cause such coverage to be unavailable or limited by reason of the fact that such claim were required to be submitted to mediation or arbitration as provided hereby;

(iv) Any dispute or claim between the Declarant (and/or an Affiliate of the Declarant) and a person who has signed a contract to purchase a Unit or who has purchased a Unit from the Declarant to the extent that the written agreement between the Declarant and such purchaser expressly makes such dispute or claim subject to a different means of dispute resolution and such alternative means of dispute resolution applies to the dispute or claim; and

(v) Any claims between Unit Owners, or claims between a Unit Owner and his or her tenant, other than claims arising out of an alleged violation of the Community Documents, unless the Association, the Executive Board (or any committee or member or former member thereof) and/or a present or former officer or agent of the Association or Executive Board is or are named or added as parties to such claim, suit or proceeding.

(e) Party(ies). A Party means, as the case may be, the Association, the Declarant, any Affiliate of the Declarant, any Unit Owner, any resident or tenant of the Community, the Executive Board (and each individual former and present member thereof), any committee of the Executive Board (and each individual former and present member thereof), and any Eligible



Mortgagee.

(f) **Affiliate** - with respect to the Declarant, (i) any general partner or limited partner thereof, and their respective officers, directors, agents, managers, partners, members and shareholders, (ii) any company or entity directly or indirectly controlled by or under common control with, the Declarant or any person described in clause (i), and, (iii) any company or entity of which the Declarant, or any person described in clauses (i) and/or (ii), alone or in combination with one or more other such persons, owns a controlling interest.

#### ARTICLE XI - MISCELLANEOUS

11.01 **Assignment of Declarant's Rights and Obligations.** Declarant has the right to assign its rights, privileges and obligations hereunder to a successor by a written instrument executed by the Declarant and such successor in compliance with the Act.

11.02 **Amendment.** Subject to the other provisions of this Declaration and the Act, this Declaration may be amended in the following manner:

(a) Any amendment to this Declaration may be proposed by the Declarant, the Board or by Unit Owners entitled to cast at least twenty percent (20%) of the votes which all Unit Owners are entitled to cast with respect to the Association. The manner of proposing amendments to this Declaration and giving notice to Unit Owners thereof shall be the same as the procedure set forth in the By-laws for amending the By-laws.

(b) Except as otherwise provided in this Declaration and except as otherwise permitted by the Act, this Declaration may only be amended only with the affirmative vote or written consent of Unit Owners entitled to cast sixty-seven percent (67%) of the votes which all Unit Owners are entitled to cast.

(c) The Declaration can be amended by the Declarant without the approval of the Unit Owners in any manner or for any purpose set forth in Section 5219(a)(3) of the Act, including without limitation the filing of any Supplemental Declaration for the purpose of exercising Special Declarant Rights, to the maximum extent permitted under the Act.

(d) No amendment to this Declaration shall make any change that would in any way alter, modify or affect any of the rights, easements or privileges of the Declarant, including Special Declarant Rights, without the written consent of the Declarant.

(e) Each amendment to the Declaration shall be executed by or on behalf of the Association or the Declarant, as the case may be, in the manner provided in the Act, and shall be effective upon recording.

11.03 **Severability.** If any provision of this Declaration is determined by a court to be invalid or unenforceable, such provision shall be deemed stricken therefrom and shall not affect the validity or enforceability of the remaining provisions of this Declaration. If any provision of this Declaration is unenforceable or invalid as written, but may be reasonably reformed to make the same valid and enforceable and carry out the reasonable intent of the Declarant as specified herein, it is the intent of the Declarant that any court interpreting such provision shall, to the extent



permitted by law, reform the same so as to make the same valid and enforceable in order to most closely effectuate the reasonable intent of the Declarant expressed therein.

11.04 Governing Law. This Declaration and all substantive rights, obligations and liabilities of the Declarant, the Association and the Unit Owners shall be governed by Pennsylvania law.

11.05 Number and Gender. Wherever any provision of this Declaration refers to the singular, such provision shall be deemed to include the plural whenever necessary or appropriate to give effect to such provisions, and the use of any gender shall be deemed to include any other gender.

11.06 Covenants, Restrictions and Easements Running with the Land. This Declaration, and all covenants, restrictions and easements set forth herein, shall run with the Land, in perpetuity, whether or not any deed conveying the Property or any Unit shall expressly refer to this Declaration; and all such covenants, restrictions and easements, shall, except as otherwise expressly provided herein, shall be binding on and shall benefit the Declarant, the Association and all Unit Owners, and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the Declarant has executed this Declaration the date set forth above.

DECLARANT:

HEATHERBROOK LAND, L.P.  
BY Devland at Heatherbrook, LLC  
Its general partner

By:   
David W. Schusler, President



COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF Chester :

On the 19<sup>th</sup> day of March, 2006, before me the undersigned, a notary public for the Commonwealth of Pennsylvania personally appeared David W. Schusler, who acknowledged himself to be the President of Devland at Heatherbrook, LLC, the sole general partner of Heatherbrook Land, L.P., a Pennsylvania limited partnership, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes herein contained by signing the name of the limited liability company by himself as President.

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



Joanne E. Ruggeri  
Notary Public

Notarial Seal  
Joanne E. Ruggeri, Notary Public  
West Chester Boro, Chester County  
My Commission Expires Mar. 24, 2007  
Member, Pennsylvania Association Of Notaries



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

[to be attached before recording]



REC BK05096-PG1580  
2007016671 03/21/2007 11 08 27 AM 1  
BERKS COUNTY ROD

DECLARATION  
PAGE 42 of 50

ALL THAT CERTAIN tract, parcel or piece of land located along Valley Ponds Drive, South of Valley Ponds Phase 2, and being a portion of Phase 3 in the Development known as Valley Ponds, Caernarvon Township, Berks County, Pennsylvania, as shown on the Final Plan of Valley Ponds Phase 3, prepared by Weiser Engineering Consultants, being Drawing No. D-01006-1, dated February 1, 2001, last revised July 3, 2001, which Plan is recorded in the Office of the Recorder of Deeds in Berks County, Pennsylvania, in Plan Book Volume 252, Page 56, being more fully bounded and described AS FOLLOWS, TO WIT:

BEGINNING at a point on the Northeasterly property line of Valley Ponds Phase 2, said point being a corner monument in common and intersection of the Westerly Ultimate Right-of-Way line of Valley Road (T-306) with the Northeasterly property line of Valley Ponds Phase 2; thence leaving said point and continuing in a Southerly direction along the Westerly Ultimate Right-of-Way line of Valley Road, South 14 degrees 30 minutes 00 seconds East, a distance of 32.81 feet to a point on the Northerly Right-of-Way line of Valley Ponds Drive, Thence leaving said point and continuing along the Westerly Ultimate Right-of-Way line of Valley Road, South 14 degrees 13 minutes 00 seconds East, the distance of 100.26 feet to a point on the Southerly Right-of-Way line of Valley Ponds Drive; Thence leaving said Westerly Ultimate Right-of-Way line of Valley Road and continuing along the Southerly Right-of-Way line of Valley Ponds Drive, the nine (9) following courses and distances along Phase 2 (1) South 81 degrees 00 minutes 49 seconds West, the distance of 96.35 feet to a point, (2) by a line curving to the right, said curve having a radius of 554.801 feet, a chord bearing South 87 degrees 24 minutes 26 seconds West, the distance of 185.49 feet to a point on a curve, (3) by a line curving to the right, said curve having a radius of 554.801 feet, a chord bearing North 79 degrees 10 minutes 56 seconds West, the distance of 73.577 feet to a point of reverse curvature, (4) by a line curving to the left, said curve having a radius of 264.768 feet, a chord bearing North 81 degrees 37 minutes 39 seconds West, the distance of 62.047 feet to a point on a curve, (5) by a line curving to the left, said curve having a radius of 264.768 feet, a chord bearing South 84 degrees 22 minutes 29 seconds West, the distance of 65.17 feet to a point, (6) South 68 degrees 53 minutes 28 seconds West, the distance of 100 feet to a point of curve, (7) by a line curving to the left, said curve having a radius of 380 feet, a central angle of 09 degrees 05 minutes 00 seconds, the arc distance of 60.24 feet to a point of tangency, (8) South 59 degrees 48 minutes 19 seconds West, the distance of 388.32 feet to a point of curve, and (9) by a line curving to the left, said curve having a chord bearing South 41 degrees 19 minutes 03 seconds West, the distance of 107.31 feet to a point on a curve, the TRUE POINT AND PLACE OF BEGINNING.

Thence leaving said point and continuing along the Southerly Right-of-Way line of Valley Ponds Drive, the Three (3) following courses and distances (1) by a line curving to the left, said curve having a radius of 169.20 feet, a chord bearing South 19 degrees 31 minutes 21 seconds East, a chord distance of 227.97 feet to a point, (2) South 61 degrees 52 minutes 27 seconds East, a distance of 114.23 feet to a point on a curve, and (3) by a line curving to the right, said curve having a radius of 319.89 feet, a chord bearing South 44 degrees 21 minutes 25 seconds East, a chord distance of 192.57 feet to a point; Thence leaving said point and southerly Right-of-Way line of Valley Ponds Drive and continuing along the lands of Valley Ponds Phase 1 and Phase 2, the Ten (10) following courses and distances: (1) North 66 degrees 43 minutes 00 seconds East, a distance of 35.39 feet to a point, (2) South 14 degrees 20 minutes 00 seconds East, a distance of 139.34 feet, to a point, (3) North 64 degrees 28 minutes 40 seconds East, a distance of 184.51 feet to a point, (4) South 81 degrees 45 minutes 40 seconds East, a distance of 160.85 feet to a point, (5) North 41 degrees 24 minutes 44 seconds East, a distance of 112.00 feet to a point, (6) North 29 degrees 49 minutes 46 seconds East, a distance of 73.82 feet to a point, (7) North 45 degrees 00 minutes 00 seconds East, a distance of 72.13 feet to a point, (8) North 57 degrees 40 minutes 49 seconds West, a distance of 115.97 feet to a point, (9) North 76 degrees 44 minutes 16 seconds West, a distance of 628.88 feet to a point, and (10) North 67 degrees 10 minutes 11 seconds West, a distance of 169.20 feet to the PLACE OF BEGINNING

CONTAINING 213,079.90 square feet of land (4.892 acres)

Being part of the same premises which Barry J. Jozwiak, Sheriff of Berks County, by Deed dated 6/5/1996 and recorded in Berks County in Deed Book Volume 2737 Page 923, conveyed unto Valley Ponds, L.P., in fee.

And Being the same premises which Valley Ponds, L.P. (Pa. Limited Partnership) by Deed dated 2-27-2006 and recorded in Berks County in Record Book 4822 page 2387 conveyed unto Heatherbrook Land, L.P. (Pa. Limited Partnership), in fee.

**EXHIBIT "A"**



EXHIBIT "B"

LIST OF TITLE EXCEPTIONS

- 125);  
1 Rights granted to Pennsylvania Power and Light Co. (Misc. Book 182 pages 123 and
- 1083);  
2. Rights granted to Conestoga Telephone and Telegraph Co. (Misc. Book 384 page
- 388);  
3. Easement granted to Caernarvon Township for water lines (Record Book 2442 page
- 4 Utility Easement and Utility Right of Way (Record Book 2167 page 2135),
5. Easement and License Agreement (Record Book 2938 page 986);
- 6 Master Declaration of Covenants, Easements, and Restrictions for Brittany Estates  
(Record Book 2096, page 61), as amended by a First Amendment to Master Declaration of Covenants,  
Easements, and Restrictions for Brittany Estates (Record Book 2114, page 1346);
7. Declaration of Restrictions, Covenants and Easements for Brittany Estates  
Homeowners' Association, Inc. (Record Book 2096, page 140), and
8. Conditions as shown on the Plan of Valley Ponds Land Development (Plan Book 252  
page 56).



**EXHIBIT "C"**

**PLANS**

[to be attached before recording]





MORTGAGEE JOINDER

The undersigned ("Mortgagee") is the holder of one or more mortgages executed by the Declarant and encumbering the real property subject to the Declaration of Covenants, Restrictions and Easements ("Declaration") to which this is attached, recorded or about to be recorded in the office of the Recorder of Deeds in and for Berks County, Pennsylvania (as heretofore or hereafter amended, collectively the "Mortgage"), and Mortgagee is or may also be the holder of certain other documents and instruments securing the indebtedness to Mortgagee that is secured by the Mortgage including, but not limited to, one or more UCC-1 Financing Statements, assignments of leases and other security documents (together with the Mortgage, herein collectively called the "Security Documents"). By executing this consent, Mortgagee hereby (i) consents to the execution and recording of the Declaration, and (ii) agrees that Mortgagee's interest in the property subject to the Declaration is subordinate to the easement rights created thereunder, and (iii) in the event of any foreclosure of the Mortgage or any other action to enforce the Security Documents, any sale of such property at foreclosure or other sale, or the acceptance of any deed or other conveyance in lieu of foreclosure, shall be under and subject to the easements and other rights described in the Declaration, and no such foreclosure or other enforcement action brought under any of the Security Documents shall discharge, alter, modify or affect the Declaration or result in the legal or equitable extinguishment of the same, and such Declaration shall survive any such foreclosure, deed in lieu of foreclosure or other action to enforce Mortgagee's rights under any of the Security Documents.

16<sup>th</sup> day of March, 2007. Intending to be legally bound, Mortgagee has executed this Mortgagee Consent this

Wachovia Bank, National Association

By: Tracey A. Eberly  
Tracey A. Eberly, Vice President

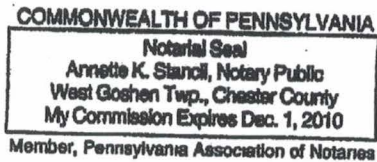


COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF Chester : SS  
:

On the 16<sup>th</sup> day of March, 2007, before me the undersigned, a notary public for the Commonwealth of Pennsylvania residing in the County of Chester, personally appeared Tracey A. Eberly who acknowledged himself or herself to be the Vice President of Wachovia Bank, National Association, and that he or she as such officer, being authorized to do so, executed the foregoing instrument for the purposes herein contained by signing the name of the corporation by himself or herself as such officer.

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

Annette K. Stancil  
Notary Public



MORTGAGEE JOINDER

The undersigned ("Mortgagee") is the holder of one or more mortgages executed by the Declarant and encumbering the real property subject to the Declaration of Covenants, Restrictions and Easements ("Declaration") to which this is attached, recorded or about to be recorded in the office of the Recorder of Deeds in and for Berks County, Pennsylvania (as heretofore or hereafter amended, collectively the "Mortgage"), and Mortgagee is or may also be the holder of certain other documents and instruments securing the indebtedness to Mortgagee that is secured by the Mortgage including, but not limited to, one or more UCC-1 Financing Statements, assignments of leases and other security documents (together with the Mortgage, herein collectively called the "Security Documents"). By executing this consent, Mortgagee hereby (i) consents to the execution and recording of the Declaration, and (ii) agrees that Mortgagee's interest in the property subject to the Declaration is subordinate to the easement rights created thereunder, and (iii) in the event of any foreclosure of the Mortgage or any other action to enforce the Security Documents, any sale of such property at foreclosure or other sale, or the acceptance of any deed or other conveyance in lieu of foreclosure, shall be under and subject to the easements and other rights described in the Declaration, and no such foreclosure or other enforcement action brought under any of the Security Documents shall discharge, alter, modify or affect the Declaration or result in the legal or equitable extinguishment of the same, and such Declaration shall survive any such foreclosure, deed in lieu of foreclosure or other action to enforce Mortgagee's rights under any of the Security Documents.

18th day of March, 2007. Intending to be legally bound, Mortgagee has executed this Mortgagee Consent this

Lindsay Investment Partners, L.P.  
By: DEVLAND CORPORATION, its  
general partner

By:   
David W. Schusler, President



COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF CHESTER :

On the 19<sup>th</sup> day of March, 2007, before me the undersigned, a notary public for the Commonwealth of Pennsylvania residing in the County of Chester, personally appeared David W. Schusler who acknowledged himself to be the President of Devland Corporation, the sole general partner of Lindsay Investment Partners, L.P., and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes herein contained by signing the name of the corporation by himself as such officer.

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



Joanne E. Ruggeri  
Notary Public

Notarial Seal  
Joanne E. Ruggeri, Notary Public  
West Chester Boro, Chester County  
My Commission Expires Mar. 24, 2007  
Member, Pennsylvania Association Of Notaries

2007016671

Ellie Antoine  
Recorder of Deeds

County of Berks  
County Service Center  
Reading, PA 19601  
610-478-3380  
Customer Receipt

Receipt Number: 175464  
Operator ID: JGEHRIS  
Station ID: CASHIER7  
Submitter Name:  
LISA DOLL

DECLARATION

RECORD BK05096-PG1539 2007016671  
Pages: 50  
Recorded: 03/21/2007 11:08:27 AM:1

Recording Fee	\$13.00
Recording Page Fee	\$1.00
No of Pages 50	\$90.00
No of Names 3	\$0.00
ROD Improvement Fund	\$5.00
Writ Tax	\$0.50

Total: \$109.50

Check #75885



RECORDED IN BERKS CO. PA

*Ellie Antoine*

RECORDER OF DEEDS