

A portion of Dauphin County UPI No. 68-022-260

**The Recorder's Office is directed to index this Declaration  
against FISHING CREEK VALLEY ASSOCIATES, L.P. in the grantor index, and  
THE PRESERVE AT BROOK VIEW, A PLANNED COMMUNITY, in the grantee  
index  
pursuant to Section 5201 of the Act (as defined below).**

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**DECLARATION OF COVENANTS AND RESTRICTIONS**  
**FOR**  
**THE PRESERVE AT BROOK VIEW, A PLANNED COMMUNITY**

Pursuant to the provisions of the  
Pennsylvania Uniform Planned Community Act,  
68 Pa. C.S. §5101 *et seq.* (the "Act")

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Date: \_\_\_\_\_, 2015

DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
THE PRESERVE AT BROOK VIEW, A PLANNED COMMUNITY

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DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
THE PRESERVE AT BROOK VIEW, A PLANNED COMMUNITY

ARTICLE I

SUBMISSION; DEFINED TERMS

Section 1.1.        Declarant; Property; County; Name.     Fishing Creek Valley Associates, L.P., a Pennsylvania Limited Partnership ("Declarant"), owner in fee simple of the real estate described in Exhibit "A" attached hereto (the "Real Estate"), located in West Hanover Township, Dauphin County, Pennsylvania, hereby submits the Real Estate, including all easements, rights and appurtenances thereunto belonging and all improvements existing or to be erected thereon (collectively, the "Property" or "The Preserve") to the provisions of the Pennsylvania Uniform Planned Community Act, 68 Pa. C.S. §5101 *et seq.* ("Act"), and hereby creates with respect to the Property a flexible planned community to be known as "The Preserve at Brook view, A Planned Community" (the "Community").

Section 1.1A.        Declarant's Undertakings.

1.1A.1            The Units as initially created may consist of unimproved subdivided lots ("Unimproved Units"). The Declarant shall construct or provide for the construction of certain Common Element improvements, such as roads, water and sewer service lines, drainage facilities, and other infrastructure improvements as provided herein. The construction of improvements to be built upon the portion of the Property outside the Unit title lines (*i.e.*, the Common Elements and certain of the Limited Common Elements) shall be performed in accordance with Section 5414(a) of the Act.

1.1A.2            It is presently anticipated that construction of Dwellings and any other improvements within the Unit title lines of Units owned by Declarant shall be undertaken by or on behalf of Declarant, either pursuant to a construction contract with a third party purchaser, or on the Declarant's own account. As seller, the Declarant shall include in each agreement pursuant to which it constructs or sells a Dwelling Unit to a third-party purchaser a warranty against structural defects that is at least as extensive as the warranty set forth in Section 5411 of the Act. The Declarant shall be responsible for the substantial completion of any Dwelling or other improvements located within the Unit title lines of any Unit owned by Declarant, including any structural components or mechanical systems located within the Unit title lines of such Unit that constitute Common Elements under the provisions hereof or the provisions of the Act.

Section 1.1B. Builder's Undertakings.

1.1B.1 Declarant may, but is not obligated to, transfer title to one or more Unimproved Units to a residential builder or builders (each, a "Builder") pursuant to a contract between the Declarant and such Builder for sale of the Unit and construction of a Dwelling thereon. Notwithstanding the foregoing, the Declarant and the Builder reserve, without limitation, the right to modify the manner in which title to Units is transferred in order to facilitate the orderly development of the Community.

1.1B.2 It is presently anticipated that construction of Dwellings and any other improvements within the Unit title lines of Units conveyed by Declarant to a Builder shall be undertaken by such Builder either pursuant to a construction contract with a third party purchaser, or on the Builder's own account with respect to any Unit which the Builder owns. Each Builder, as seller, shall include in each agreement pursuant to which it constructs or sells a Dwelling Unit to a third-party purchaser (such third-party purchaser, together with any subsequent owner of such Dwelling Unit, collectively, the "Dwelling Unit Purchaser") a warranty against structural defects that is at least as extensive as the warranty set forth in Section 5411 of the Act. The Declarant shall not be responsible for the substantial completion of any Dwelling or other improvements located within the Unit title lines of any Unit conveyed by Declarant to a Builder, including any structural components or mechanical systems located within the Unit title lines of such Unit that constitute Common Elements under the provisions hereof or the provisions of the Act.

1.1B.3 Each Dwelling Unit Purchaser acknowledges and agrees by the acceptance of the deed to the Unit that the Declarant has neither liability under Section 5411 of the Act, or otherwise, with respect to structural or other defects in the Dwelling or in any other improvements constructed within the Unit title lines by a Builder or any party other than the Declarant, nor liability under subsections (c) and (d) of Section 5414 of the Act, or otherwise, with respect to substantial completion of the Dwelling or any other improvements constructed within the Unit title lines by a Builder or any party other than the Declarant.

1.1B.4 No Builder is a Declarant under this Declaration. All of a Builder's right, title and interest in and to a Unit, is, and shall be, subject to the terms of this Declaration.

Section 1.2. Easements and Licenses. Included among the easements, rights and appurtenances referred to in Section 1.1 hereof are the following recorded easements, rights and licenses:

1.2.1. Conditions and easements shown on the Final Subdivision Plan for Brook View Phase IV recorded as Instrument No. \_\_\_\_\_ (the "Preserve at Brook View Subdivision Plan").

1.2.2. Conditions and easements shown on the Declaration Plat for the Preserve at Brook View, a Planned Community, as amended.



1.2.3. Rights granted to Pennsylvania Power and Light Company as set forth in Misc. Book G-&-154 and Misc. Book H-7-125.

1.2.4. Rights granted to Metropolitan Edison Company as set forth in Misc. Book R-7-480.

1.2.5. Rights granted to the Bell Telephone Company of Pennsylvania as set forth in Misc. Book P-10-109.

1.2.6. Deed of Easement and Right of Way granted to Pennsylvania American Water Company set forth in Instrument No. 20090042895

1.2.7. Joint Right of Way Agreement granted to PPL Electric Utilities Corporation set forth in Record Book 5142, Pg. 307.

1.2.8. Utility Crossing and Basin Structure Agreement granted to the Township of West Hanover set forth in Instrument No. 20090022220.

1.2.9. Bridge Crossing Agreement granted to the Township of West Hanover set forth in Instrument No. 20090022221.

1.2.10. Declaration of Reciprocal Easements dated March 6, 2013 and set forth as Exhibit C to certain Third Amendment to Declaration of Covenants and Restrictions for Brookview, a Planned Community recorded as Instrument No. 20130007433.

1.2.11. Conditions shown in prior Plan Book Y-3-99, T-5-10, T-9-23 and M-9-54.

1.2.12. Operation and Maintenance (O&M) Agreement Stormwater Management Best Management Practices (SWM BMPs) recorded as Dauphin County Instrument No. \_\_\_\_\_.

1.2.13. Wetlands and Conservation easements set forth on the Final Subdivision Plan for Brook View Phase III recorded as Instrument No. 20120010241.

1.2.14. Easements and rights-of-way for the installation and continued maintenance of utilities servicing the Community, in conjunction with subsection 6.1.2 hereof.

1.2.15. Easements and rights-of-way in favor of the Association for access in conjunction with subsection 5.6 hereof to enable it to perform any necessary or required maintenance of common areas or limited common areas including stormwater detention areas and wetland areas.

Section 1.3. Defined Terms

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

1.3.2. The following terms when used herein shall have the meanings set forth below:

"Allocated Interest" means the Common Expense liability and the votes in the Association allocated to a Unit.

"Annual Assessment" means a Unit's individual share of the anticipated Common Expenses for each fiscal year as reflected in the budget adopted by the Executive Board for such year.

"Architectural Review Committee" means a committee comprised of three (3) members appointed by the Executive Board, the purpose of which shall be to review and evaluate any alteration to, or change in appearance of, the exterior of a Unit from its initial construction proposed by the Unit Owner and to make a recommendation by majority vote to the Executive Board whether to approve or disapprove, or condition the approval, of such proposed alteration.

"Association" means the Unit Owners' association of the Community, which shall be a Pennsylvania non-profit corporation known as "The Preserve at Brook View Homeowners Association, Inc." and shall have all powers and duties designated by the Act.

"Bylaws" means the Bylaws of the Association providing for the governance of the Association pursuant to Section 5306 of the Act, as such document may be amended from time to time.

"Common Elements" means Common Facilities or Controlled Facilities.

"Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

"Common Facilities" means any real estate within the Property as depicted on the Plats and Plans, as they may be revised from time to time, that is not a Unit and that is owned by or leased to the Association.

"Community" means the Community described in Section 1.1 hereof.

"Community Amenities" means certain real property and any improvements located thereon, situated within the boundaries of the Community intended for recreational and related purposes on a use fee basis, or otherwise.

"Community Documents" include the Declaration, Plats and Plans, Bylaws (including the Chart of Maintenance Responsibilities) and Rules and Regulations.

"Condominium Act" means the Pennsylvania Uniform Condominium Act, 68 Pa. C.S. § 3101 *et seq.*

"Controlled Facilities" means any real estate within the Property, whether or not a part of a Unit, that is not a Common Facility, but is maintained, improved, repaired, replaced, regulated, managed, insured or controlled by the Association.

"Convertible Real Estate" means that portion of the Real Estate described in Exhibit "D" attached hereto, so long as the Declarant's rights to create Units or Limited Common Elements therein continue to exist.

"Declarant" means the Declarant described in Section 1.1 hereof, and all successors to any Special Declarant Rights.

"Declaration" means this document, as the same may be amended from time to time.

"Development Period" means the period within which Declarant has the right to create units, common elements and limited common elements or any combination thereof within Convertible Real Estate, or to add Additional Real Estate, if any, to or withdraw Withdrawable Real Estate from the Community. The Development Period shall terminate on the later of (i) ten (10) years after the recording of this Declaration; or (ii) in the case of a preliminary plat calling for the installation of improvements in sections, one hundred twenty (120) days after municipal approval or denial of each particular section's final plat which was filed prior to the deadline approved or modified by the municipal governing body pursuant to Section 508(4)(v) of the Municipalities Planning Code, or in the event of an appeal from the municipal approval or denial of such final plat, one hundred twenty (120) days after a final judgment on appeal. Notwithstanding the foregoing, if after the date of this Declaration, the Act is amended to permit the extension of the Development Period by Declarant as it relates to one (1) or more of the Development Rights, or any other applicable law permits the tolling or extension of the Development Period as it relates to one (1) or more of the Development Rights, Declarant shall be deemed to have automatically exercised its right to toll or extend (as applicable) the Development Period to the greatest extent permitted by law.

"Dwelling" means the housing unit and related improvement situate within a Unit.

"Dwelling Unit" means a Unit upon which a Dwelling has been substantially completed to the extent required for the lawful occupancy thereof for its intended purposes.

"Executive Board" means the Executive Board of the Association.

"First Settlement" means the date of the first closing whereby a Unit is conveyed to a Unit Owner other than Declarant or a Builder.

"Initial Unit Purchaser" means an initial purchaser of a Unit, other than Declarant or a Builder.

"Limited Common Elements" means Limited Common Facilities or Limited Controlled Facilities.

"Limited Common Facilities" means those portions of the Common Facilities allocated by or pursuant to the Declaration or by operation of Section 5202 of the Act for the exclusive use of one or more, but fewer than all, of the Units.

"Limited Controlled Facilities" means those portions of the Controlled Facilities, not part of a Unit, allocated by or pursuant to the Declaration or by operation of Section 5202 of the Act for the exclusive use of one or more, but fewer than all, of the Units.

"Maintenance" means the maintenance, repair and replacement activities required with respect to any facility located on the Property.

"Municipality" means West Hanover Township, the municipality in which the Community is located.

"Notice and Comment" means the right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon. The procedures for Notice and Comment are set forth in Section 17.1 hereof.

"Notice and Hearing" means the right of a Unit Owner to receive notice of an action proposed to be taken by the Association, and the right to be heard thereon. The procedures for Notice and Hearing are set forth in Section 17.2 hereof.

"PCSM Plan" means the Post Construction Stormwater Management Plan attached as Sheets 9, 10 and 11 of the Preserve at

Brook View Subdivision Plan, as the same may be amended from time to time.

"Plats and Plans" means the Plats and Plans attached hereto as Exhibit "C" and made a part hereof, as the same may be amended from time to time.

"Property" means the Property described in Section 1.1 hereof.

"Rules and Regulations" means such rules and regulations as are promulgated by the Executive Board from time to time, with respect to various details of the use of all or any portion of the Property, either supplementing or elaborating upon the provisions in the Declaration or the Bylaws.

"Security Interest" means an interest in real property or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, land sales contract, and any other consensual lien or title retention contract intended as security for an obligation.

"Special Assessment" means a Unit's individual share of any assessment made by the Executive Board in addition to the Annual Assessment.

"Subdivision and Land Development Plan" or "Subdivision Plan" means all subdivision and land development plans for the Property now or hereafter existing, as the same may be supplemented, amended or modified from time to time in accordance with West Hanover Township and other applicable governmental requirements, including, but not limited to, the approved Preliminary Subdivision and Land Development Plan for Brook View (revised), dated May 16, 2003, revised September 5, 2003, and October 21, 2003, including any carry-over approvals from the plans for the Meadows of Fort Stewart, the former name of Brook View; the Final Subdivision Plan for Brook View Phase III recorded as Instrument No. 20120010241 and the Final Subdivision for Brook View, Phase IV recorded as Instrument No. \_\_\_\_\_, as the same may be amended or modified by the Declarant from time to time in accordance with West Hanover Township and other applicable governmental requirements and specifically including Final Subdivision and Land Development Plans for future phases of The Preserve at Brook View.

"Unimproved Unit" shall mean a Unit upon which a Dwelling has not yet been constructed.

"Unit" means the land located within the lot lines of a lot shown on the Subdivision Plan and expressly designated as a Unit on the Plats and Plans, or the land otherwise designated as a Unit on the

Plats and Plans, whether improved or unimproved, together with any Dwelling and any other permanent improvements constructed thereon from time to time.

"Unit Owner" means the holder of legal title to a Unit.

"Unit Purchaser" means a Unit Owner other than Declarant or a Builder.

"Withdrawable Real Estate" means that portion of the Real Estate described in Exhibit "E" attached hereto, so long as the Declarant's rights to withdraw such Withdrawable Real Estate from the Community continue to exist.

Section 1.4. Provisions of the Act. The provisions of the Act shall apply to and govern the operation and governance of the Community, except to the extent that contrary provisions, not prohibited by the Act, are contained in one or more of this Declaration, the Plats and Plans or the Bylaws.

## ARTICLE II

### ALLOCATED INTERESTS, VOTES AND COMMON EXPENSE LIABILITIES; UNIT IDENTIFICATION AND BOUNDARIES

Section 2.1. Allocated Interests, Votes and Common Expense Liabilities.

2.1.1. Attached hereto as Exhibit "B" is a list of the ten (10) Units being created by the Declarant that sets forth their identifying numbers and the Allocated Interest appurtenant to each such Unit, determined on the basis that all such Units shall be assigned a factor of 1.0. Subject to the provisions of this Section 2.1 and Section 9.2 hereof, a Unit's Allocated Interest shall be calculated by (a) converting a fraction to a decimal, the numerator of which fraction is one (1) and the denominator of which fraction is the total number of Units then currently existing within the Community, and (b) multiplying the aforementioned decimal by a factor to be assigned by the Declarant, as described in this Subsection or in Subsection 2.1.4 hereof.

2.1.2. The Allocated Interest shall automatically change upon conversion of Convertible Real Estate as set forth in Article XX below, and the new Allocated Interest of each Unit existing after such conversion shall be determined in accordance with Subsection 2.1.1 hereof.

2.1.3. Each Unit shall have one (1) vote. The Allocated Interest shall determine the relative weight of a Unit's vote in matters before the Association and, subject to Section 9.2 hereof, the share of Common Expense liability appurtenant to each Unit. A Unit's Allocated Interest shall always be appurtenant to that Unit, and any separate conveyance, encumbrance, judicial sale

or other transfer of such Allocated Interest, whether voluntary or involuntary, shall be void unless the Unit to which the Allocated Interest is allocated is also transferred.

2.1.4. Notwithstanding the foregoing, if the Declarant converts all or any portion of the Convertible Real Estate into Units, the Declarant reserves the right to assign a factor ranging from .75 and 1.5 to any Units created therein based upon the size of the Units, the relative size of any dwellings constructed upon the Units or any other relevant characteristics of the newly created Units. The Declarant shall designate the factor to be assigned to Units in the Community in any amendment to Declaration in which additional Units are created. The Declarant's judgment regarding the factor assigned to any such additional Units shall be final.

Section 2.2. Unit Boundaries. The boundaries of each Unit are situated as shown on the Plats and Plans, and each Unit consists of the land, and all space, fixtures and improvements, including, without limitation, any Dwelling, located within the said boundaries. There are no horizontal boundaries.

Section 2.3. Relocation of Boundaries Between Units.

2.3.1. During the Development Period, Declarant shall have the right, without submitting an application to the Association, to relocate boundaries between Units owned by Declarant by recording an amendment to this Declaration and the Plats and Plans identifying the affected Units and setting forth the new Unit boundaries and the reallocations of Allocated Interests and votes in the Association. Declarant's right to relocate boundaries between Units shall not be limited to the combination of two (2) or more entire adjacent Units. All costs and expenses associated with Declarant's exercise of its rights under this Section 2.3.1, including the costs of preparing and recording an amendment to this Declaration and the Plats and Plans, shall be the responsibility of Declarant.

2.3.2. Subject to the requirements of Sections 6.1 and 6.3 hereof, Unit Owners other than Declarant desiring to relocate the boundaries between adjoining Units shall submit an application to the Association in accordance with Section 5214 of the Act, and the Association shall have the powers and duties with respect to such application for relocation as set forth therein.

Section 2.4. Subdividing a Combined Unit. Subject to Declarant's rights as set forth in Section 2.5 below, no Unit may be subdivided by a Unit Owner except a Combined Unit in accordance with this Section 2.4. Subject to the requirements of Sections 6.1 and 6.3 hereof, a Combined Unit may only be subdivided to restore the Unit boundaries of the original Units that were combined to create it. A Unit Owner of a Combined Unit desiring to subdivide his Unit shall submit an application to the Association in accordance with Section 5215 of the Act, and the Association shall have the powers and duties with respect to such application as are set forth in the Act, including the right to deny any application for the subdivision of a Combined Unit that does not meet the requirements of the Community Documents and/or the Act. The Combined Unit shall remain under single ownership until after the time of effecting such subdivision. Upon approval by the Association of an application by a Unit Owner, the Association shall prepare, execute and record an amendment to the Declaration, including the Plats and Plans,

subdividing the Combined Unit. The amendment shall be executed by the Unit Owner of the Combined Unit being subdivided, assign an identifying number to each Unit created (which shall be the identifying numbers shown for such respective Units in the Plats and Plans prior to the creation of the Combined Unit), and reallocate the Allocated Interest and votes in the Association formerly allocated to the Combined Unit to the new Units being created in accordance with Section 2.1 above and on a proportionate basis.

Section 2.5. Subdividing or Converting Units Owned by Declarant. Declarant hereby reserves unto itself the Special Declarant Right granted in Section 5215 of the Act to subdivide or convert any Unit owned by Declarant into two or more Units, Common Elements or a combination of Units and Common Elements without the consent of the Association or any party whatsoever, but subject nevertheless to all applicable governmental requirements. Declarant shall be permitted to exercise such Special Declarant Right without submitting an application to the Association during the Development Period and thereafter by submitting an application to the Association. If Declarant exercises such right, Declarant (or the Association, as the case may be) shall prepare and record an amendment to this Declaration, including the Plats and Plans, subdividing or converting such Unit(s). The maximum number of Units into which any Unit owned by Declarant may be subdivided or converted shall be ten (10). All costs and expenses of Declarant associated with the exercise of its rights reserved in this Section 2.5 shall be the responsibility of the Declarant.

Section 2.6. Costs of Relocating Unit Boundaries or Subdividing Units By Unit Owners. All costs and expenses associated with relocating Unit Boundaries pursuant to Subsection 2.3.2 above or subdividing a Combined Unit pursuant to Section 2.4 above, and, at the discretion of the Executive Board, the costs and expenses associated with preparing and recording any amendment to the Declaration and Plats and Plans required pursuant to Sections 5214 or 5215 of the Act, shall be the responsibility of the Unit Owner(s) requesting the relocation of Unit Boundaries or the subdivision of a Combined Unit, as the case may be. Such costs and expenses shall include, without limitation, costs of obtaining all required governmental permits and approvals and all costs associated with repairing damage to the Common Elements and/or any other Unit that results from a Unit Owner's exercise of any of the rights granted by Sections 2.3.2 and/or 2.4 hereof.

### ARTICLE III

#### LIMITED COMMON ELEMENTS; FUTURE ALLOCATION OF COMMON ELEMENTS

Section 3.1. Limited Common Elements. Without limiting the generality of Section 1.3.2 hereof, the following portions of the Property are hereby designated as Limited Common Elements:

3.1.1. Any portion of the Property designated as Limited Common Elements allocated by or pursuant to this Declaration or any amendment



thereto, or as shown on the accompanying Plats and Plans or any amendment thereto, from time to time.

3.1.2 Any portion of the Property described as a Limited Common Element in Section 5202 of the Act.

Section 3.2. Common Elements Not Previously Allocated. As permitted by Section 5209(c) of the Act, the Declarant, during the Development Period, and the Association thereafter, shall have the power to allocate a previously unallocated Common Element as a Limited Common Element appurtenant to one (1) or more, but fewer than all, Units in the Community. Any such allocation shall be made by an amendment to the Declaration or an assignment executed by the Declarant during the Development Period and the Association thereafter and recorded in the Office of the Recorder of Deeds for the county in which the Community is located.

## ARTICLE IV

### COMMON FACILITIES

Section 4.1. Reservation. The Declarant hereby explicitly reserves the right to designate as a Common Facility any portion of the Community, or any improvement or facility, existing or contemplated, other than a Unit owned by a Unit Owner other than Declarant or a Builder, as described in this Declaration and the Plats and Plans, as they may be amended from time to time, without the consent of any Unit Owner or holder or insurer of any Security Interest in any Unit, or any party whatsoever. Without limiting the generality of the foregoing, Declarant hereby designates the following portions of the Community as Common Facilities (except those portions of the Property that are designated as Common Infrastructure Elements or are owned or controlled by the Master Association):

4.1.1. All open space areas and any easements, landscaping and/or improvements thereon, if any, located on Common Facilities; and

4.1.2. Any other portion of the Community designated as a Common Facility on the Plats and Plans, as they may be amended.

Section 4.2 Conveyance to the Association. Declarant or Declarant's successor in interest to a Common Facility shall own the Common Facility until such time as it has been conveyed to the Association in accordance with this Section 4.2. After Completion (as hereinafter defined) of the Common Facility, Declarant or any successor in interest to Declarant in the Common Facility shall lease or convey fee simple title to the Common Facility by special warranty deed, or shall transfer easements or other ownership rights, title and interests, to the Association by the later of (a) the date of conveyance by the Declarant of the last Unit the Declarant reserves the right to include in the Community, or (b) the expiration of the Development Period. Except as permitted pursuant to the terms of the remainder of this Section 4.4, no Common Facility shall be conveyed or leased to the Association before it has been Completed in accordance with this Declaration.

A Common Facility shall be deemed "Completed" and "Completion" shall be deemed to have been achieved upon the recording of a certificate (a "Completion Certificate"), executed by an independent registered surveyor, architect or professional engineer stating that the Common Facility is substantially completed in accordance with the descriptions set forth in the Declaration, the Plats and Plans and the Public Offering Statement and so as to permit the general use of such Common Facility for its intended purpose. With respect to any portion of any private streets, alleys, roadways or similar improvements (collectively, the "Accessways") within the Community that are, or are intended to be, Common Facilities, each portion of the Accessways shall be deemed Completed even if the final wearing course has not been installed thereon, provided that a Completion Certificate has been recorded (which may note that the wearing course has not yet been installed) and that Unit Owners are able to use the applicable portion of the private Accessways for access and passage. Upon the recording of a Completion Certificate for a Common Facility, the Association shall be deemed to have accepted the conveyance or lease of the Common Facility and under no circumstances shall the Association have the right to reject acceptance thereof or a deed therefor. The foregoing sentence, however, shall not be construed to waive any warranty claims related to the Common Facility that the Association may have against the Declarant pursuant to the Act. The Association shall not be required to pay any consideration for the conveyance of any Common Facility, unless such facility is leased to the Association, in which case, the Association may be required to pay rent in accordance with any such lease. The obligation to convey a Common Facility to the Association shall be binding upon the Declarant and any successor in interest to Declarant in the Common Facility whether or not such successor succeeds to any Special Declarant Rights.

A Common Facility may be conveyed or leased to the Association before it has been Completed if a third-party guarantee, bond, escrow, letter of credit or other mechanism assuring completion has been provided by the Declarant or a successor to Declarant's interest in the Common Facility, as the case may be, in which case, the Association shall be deemed to have accepted the conveyance or lease of the Common Facility and under no circumstances shall the Association have the right to reject acceptance thereof or a deed therefor. Any such third-party mechanism shall not expire until the Common Facility has been Completed to the degree required by this Section 4.2. Any uncompleted Common Facility conveyed or leased to the Association shall be Completed before the expiration of the Development Period. Until such time as an uncompleted Common Facility is Completed, the Declarant shall be solely responsible for real estate taxes assessed against or allocable to the Common Facility and for all other expenses in connection therewith.

Section 4.3. Common Expense. Upon the Completion and conveyance or leasing of a Common Facility to the Association, all costs and expenses associated with the operation, administration and Maintenance of the Common Facility shall become a Common Expense assessed against all Units in the Community in accordance with their Allocated Interests determined pursuant to the provisions of Section 2.1 and subject to Section 10.2 of this Declaration. No Unit Owner may exempt himself from liability for payment of such Common Expenses by waiver of the use or enjoyment of the Common Facilities or by abandonment of the Unit against which the assessments are made.

## ARTICLE V

### CONTROLLED FACILITIES

Section 5.1. Controlled Facilities. Without limiting the generality of Section 1.3.2 hereof, the Controlled Facilities shall include all of the following areas, and the improvements and/or facilities located therein other than those accepted for dedication to the public (except as may be specifically set forth to the contrary herein) or owned by a utility provider or governmental authority:

5.1.1. Any portion of any Unit designated as a Controlled Facility by or pursuant to the provisions of this Declaration or any amendment thereto, or as shown and identified as a Controlled Facility on the Plats and Plans or any amendment thereto, from time to time, including but not limited to:

(a) All storm water drainage, utility (including water and sanitary sewer), and other easement areas located upon a Unit as shown on the Subdivision and Land Development Plan and/or the Plats and Plans from time to time. Declarant reserves the right to relocate, modify, eliminate or create such easement areas as may be necessary for the orderly and safe development of the Community, provided that if Declarant relocates, modifies, eliminates or creates any easement such that the Unit as developed differs from the Subdivision and Land Development Plan and/or the Plats and Plans as last amended, Declarant shall inform all prospective purchasers of such Unit of all such changes and shall provide the prospective purchasers with a plat of the Unit depicting the actual easement area(s) as constructed. All Controlled Facility easement areas shall remain as initially constructed. No Unit Owner shall be permitted to make any modifications to an easement area that could adversely affect the purpose or function of the easement area, or affect any other Unit or the Common Facilities, without the prior written consent of the Declarant during the Development Period or the Executive Board thereafter, and the owner of any other affected Unit;

(b) All portions of any clear sight triangles located within a Unit as shown on the Subdivision and Land Development Plan and/or the Plats and Plans from time to time. As required by the Subdivision and Land Development Plan, no object shall be permitted within a clear sight triangle which obscures the vision of motorists; and

(g) Permanent storm water facilities, including without limitation, basins, swales, inlets, BMP facilities, infiltration facilities, storm piping and related appurtenances, if any, as required pursuant to the Subdivision and Land Development Plan, including the PCSM Plan.

5.1.2. Common sidewalks, if any, curbing and associated landscaping, including street trees, abutting a Unit and constructed within the rights of way of private streets and streets offered for dedication to the public (to the extent

that the Association is required to maintain them by the Township and for so long as such requirement continues).

5.1.3. Any other portion of the Community designated as a Controlled Facility by or pursuant to the provisions of this Declaration or any amendment thereto, or as shown and identified as a Controlled Facility on the Plats and Plans or any amendment thereto, from time to time.

Section 5.2. Rules and Regulations. Reasonable Rules and Regulations concerning the maintenance, improvement, repair, replacement, regulation, management, insurance and/or control of the Controlled Facilities may be promulgated from time to time by the Executive Board, subject to the right of the Association to Notice and Comment on such Rules and Regulations. Copies of the Rules and Regulations and any amendments thereto shall be furnished to all Unit Owners by the Executive Board promptly after the adoption of such Rules and Regulations or any amendments thereto.

## ARTICLE VI

### ADDITIONS, ALTERATIONS AND IMPROVEMENTS

Section 6.1. Additions, Alterations and Improvements by Unit Owners.

6.1.1. A Unit Owner:

(a) May make any improvements or alterations to the interior of his Dwelling;

(b) May not change the exterior appearance of a Unit or Dwelling or make alterations to the Limited Common Elements appurtenant to such Unit without obtaining the prior written consent of the Executive Board.

(c) May not change the appearance of or make any structural modifications to any portion of the Common Facilities without obtaining the prior written approval of the Executive Board ;

(d) May not change the appearance of or make any structural modifications to any portion of the Controlled Facilities, whether located upon a Unit or otherwise, without obtaining the prior written approval of the Executive Board;

6.1.2. Subject to the limitations of Subsections 6.1.5 and 6.1.6 hereof, a Unit Owner may submit a written request to the Executive Board for approval to do anything that he is forbidden to do under Subsections 6.1.1(b), 6.1.1(c) and 6.1.1(d) hereof. The Executive Board shall submit all such requests to the Architectural Review Committee for review and recommendation. The Executive Board shall consider, but shall not be bound by, the recommendation of the

Architectural Review Committee in deciding whether to approve, disapprove or condition the approval of such requests. The Executive Board shall answer any written request for such approval, after Notice and Hearing, within sixty (60) days after the request thereof. Failure to do so within such time shall not constitute a consent by the Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of the Community Documents.

6.1.3. Any applications to any department or to any governmental authority for a permit to make any addition, alteration or improvement in or to any Unit shall be the responsibility of and executed by the Unit Owner. Such execution will not, under any circumstances, create any liability on the part of the Association or any of its members to any contractor, subcontractor or materialman on account of such addition, alteration or improvement or to any person having any claim for injury to person or damage to property arising therefrom.

6.1.4. All additions, alterations and improvements to the Units and/or Common Elements shall not, except pursuant to prior approval by the Executive Board, cause any increase in the premium of any insurance policies carried by the Association or by the owners of any Units other than those affected by such change. At the discretion of the Executive Board, any such insurance premium increases shall be paid by the Unit Owner(s) whose construction of additions, alterations or improvements resulted in such premium increases.

6.1.5. The provisions of this Section 6.1 shall not apply to the Declarant in the exercise of any Special Declarant Right.

6.1.6. The provisions of this Section 6.1 shall not apply to the owner of an Unimproved Unit (including, without limitation, any Builder, a contractor or designee of the Declarant) in the initial construction of a Dwelling and other improvements within a Unit.

Section 6.2. Additions, Alterations and Improvements by the Executive Board. Subject to the limitations of Sections 11.5 and 11.6 of this Declaration, the Executive Board may make any additions, alterations or improvements to the Common Elements which, in its judgment, it deems necessary or advisable.

Section 6.3 Laws and Ordinances. Each Unit Owner shall promptly comply with all laws, statutes, ordinances, rules and regulations of federal, state and/or municipal governments or authorities applicable to the use, occupancy, construction, improvement, and maintenance of any Unit, including any improvements or facilities erected thereupon. Without limiting the generality of the foregoing, all improvements constructed within or upon a Unit by a Unit Owner shall meet all applicable local and/or county building codes and municipal requirements including, but not limited to zoning requirements. The obligation to comply with all governmental requirements shall rest with the Unit Owner and not the Executive Board, the Association, or the Architectural Review Committee. The Executive Board's or the Architectural Review Committee's approval of a Unit Owner's proposed improvements shall not relieve the Unit Owner of his obligation to design and construct the proposed improvements in accordance with the requirements of

the Community Documents, nor shall such approval constitute nor be construed as certification by the Executive Board or the Architectural Review Committee that the proposed improvements meet or otherwise comply with architectural, engineering, or construction industry standards, or applicable building codes, laws, ordinances, rules, or regulations of any governmental authority or any other applicable agency. None of the Declarant, the Executive Board, the Association, or the Architectural Review Committee shall be liable for any defects in any plans or specifications submitted, revised or approved in accordance with the Community Documents, or any defects in construction undertaken in accordance with such plans and specifications, and the Unit Owner undertaking the construction, reconstruction, renovation or installation of any improvements within the Community shall indemnify and hold harmless all of the foregoing from and against all costs, expenses, damages and claims whatsoever arising out of such Unit Owner's improvement activities in the Community.

## ARTICLE VII

### MAINTENANCE, REPAIR AND REPLACEMENT RESPONSIBILITIES

Section 7.1. Maintenance Responsibilities. The Units and Common Elements shall be maintained and repaired by each Unit Owner and by the Association in accordance with the provisions of Section 5307 of the Act, except as expressly set forth to the contrary in the Community Documents.

Section 7.2. Common Elements. The Association shall maintain, repair and replace the Common Elements, except any portions thereof to be maintained, repaired or replaced by the Unit Owners.

Section 7.3. Units and Limited Common Elements. Each Unit Owner shall maintain, repair and replace, at his own expense, all portions of his Unit and the Limited Common Elements appurtenant thereto, except any portions thereof to be maintained, repaired or replaced by the Association. Unit Owners shall be responsible for maintaining erosion and sedimentation controls and storm water management controls provided by the Declarant, to include individual on-lot infiltration beds and/or rain gardens and roof leaders, if any, in accordance with the requirements of the PCSM Plan.

Section 7.4. Failure to Maintain Units and Common Elements. Each Unit Owner shall reimburse the Association for the reasonable cost of repair of any damage to the Common Elements caused by such Unit Owner's failure to properly maintain, repair or replace any portion of his Unit or the Limited Common Elements appurtenant thereto for which the Unit Owner is responsible. The Association shall reimburse a Unit Owner for the reasonable cost of repair of any damage to his Unit caused by the Association's failure to properly maintain, repair or replace any portion of the Common Elements or any portion of a Unit or the Limited Common Elements appurtenant thereto which is to be maintained, repaired or replaced by the Association.

Section 7.5. Chart of Maintenance Responsibilities. The respective responsibilities of the Association and the Unit Owners with respect to maintenance, repair and replacement of the Units, (Common Facilities and Controlled Facilities), Limited Common Elements (Limited Common Facilities and Limited Controlled Facilities) are set forth in the Chart of Maintenance Responsibilities attached as Exhibit "A" to the Bylaws, as amended from time to time. Notwithstanding the foregoing, the Chart of Maintenance Responsibilities is not intended to describe or encompass every maintenance function or to delineate all respective responsibilities among the Unit Owners and the Association.

Section 7.6. Access. Any person authorized by the Executive Board shall have the right of access to all portions of the Community including the right to enter upon the exterior portion of each Unit, for any proper purpose, at reasonable times and in a reasonable manner, upon such notice to the affected Unit Owner, if any, as shall be reasonable under the circumstances. For example, any authorized person shall have the right to enter upon the exterior portion of each Unit for the purpose of correcting any condition threatening a Unit or the Common Elements; for the purpose of performing installations, alterations, maintenance or repairs; for the purpose of repairing or replacing utility meters and related pipes, valves, wires and equipment; for the purpose of performing pest control inspections and treatment; and for any other purpose necessary for the Association to carry out its powers or responsibilities, including correction of any violation of Article VII hereof, provided that all requests for entry are made in advance and that any such entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no such request or notice is required and such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

**Section 7.7. Rights of Township.** If the Association shall fail to maintain those portions of the Common Facilities for which it is responsible in safe order and condition, including but not limited to, any private roadways, storm water drainage facilities and easement areas within the Community, the Township may serve written notice upon the Association setting forth the details of any such deficiencies. The notice shall require that such deficiencies in maintenance be cured within thirty (30) calendar days and shall state the date and place of a hearing thereon which shall be held within fourteen (14) calendar days of the notice.

At such hearing, the Township may modify the terms of the original notice and may give an extension of time within which the deficiencies shall be cured. If the deficiencies, as finally described, shall not have been cured within said thirty (30) calendar day period, or any extension thereof, the Township, in order to preserve the taxable values of the Community and to prevent the Common Facilities from becoming a public nuisance, may enter upon such Common Facilities and maintain the same for a period of one (1) year. Said entry and maintenance by the Township shall not vest the public with any rights to use the Common Facilities.

Prior to the expiration of the one (1) year period, the Township shall, upon its initiative or upon the request of the Association, call a public hearing with notice to the Association, at which hearing the Association shall show

cause why such maintenance by the Township, at the election of the Township, should not continue for an additional year. If the Township shall determine that the Association shall resume the maintenance responsibilities for the Common Facilities, then the Township shall cease its maintenance activities at the end of the initial year. If the Township shall determine that the Association shall not resume the maintenance of the Common Facilities, then, at the Township's discretion, the Township may continue its maintenance activities during the next succeeding year, and, subject to a similar hearing, a determination for each year thereafter shall be made. The decision of the Township in each such case shall constitute a final administrative decision subject to judicial review.

This Section 7.7 may not be amended without the prior consent of the Township.

**Section 7.8. Cost of Township's Maintenance Activities.** If the Township shall assume maintenance activities for all or any portion of the Common Facilities in accordance with Section 7.7 above, the Township shall have the right to impose a Municipal Lien (see, 53 P.S. §7106, as amended) against the Association and/or the Unit Owners for the costs incurred by the Township, together with any other amounts collectible by the Township under the Pennsylvania Municipal Lien Law, as amended from time to time.

This Section 7.8 may not be amended without the prior consent of the Township.

**Section 7.9. Pennsylvania Municipalities Planning Code.** The rights of the Township set forth in Section 7.7 above and the provisions of Section 7.8 above are imposed consistent with the requirements of the Pennsylvania Municipalities Planning Code and shall be construed consistent with the rights of the Association with respect to the imposition of assessments, the creation of liens for same, and the collection of same as provided herein or in the Act.

## ARTICLE VIII

### EASEMENTS

**Section 8.1. Additional Easements.** Each Unit Owner shall have a perpetual nonexclusive easement of use and enjoyment over, upon and through the Common Facilities, including without limitation, any streets constructed within the Community until or unless such streets are accepted for dedication by the Township, subject nevertheless, to the Association's right to promulgate Rules and Regulations concerning the use and enjoyment of the Common Facilities. In addition to such and in supplementation of the easements provided for and hereby created pursuant to Sections 5216, 5217, 5218 and 5302(a)(9) of the Act, the following additional easements are hereby created or described, as applicable:



8.1.1. Declarant's Use for Sales Purposes. As permitted by Section 5217 of the Act, the Declarant shall have the right to maintain one or more sales offices, management offices, and/or models throughout the Community and to maintain one or more directional, promotional and/or advertising signs on the Common Facilities and on Units owned by the Declarant, even if such Units are under contract with a Unit purchaser. The Declarant reserves the right to place models, management offices, and/or sales offices on any portion of the Common Facilities or in a Unit in such a manner, or such size and number and in such locations as the Declarant deems appropriate. The Declarant may from time to time relocate models, management offices, and/or sales offices to different locations within the Community notwithstanding that the Community Documents may otherwise preclude such use in those locations. Declarant may enter into certain agreements with Builders pursuant to which Declarant may grant to the Builder the right to maintain one or more sales offices and/or models throughout the Community and to maintain one or more directional, promotional and advertising signs on the Common Facilities and on Units owned by the Builder.

8.1.2. Utility Easements. The Units and Common Elements shall be, and are hereby made subject to easements in favor of the Declarant and appropriate utility and service companies and governmental agencies or authorities designated by Declarant (including West Hanover Township and any applicable municipal authorities) for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Community. The easements created in this subsection shall include, without limitation, rights of the Declarant, or the providing utility or service company, or governmental agency or authority, to install, lay, maintain, repair, relocate and replace gas lines (including, without limitation, propane gas lines), pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise), electric wires, conduits and equipment over, under, through, along and on the Units and Common Elements. Notwithstanding the foregoing provisions of this subsection, unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Unit by the Declarant or a Builder or as shown on an approved recorded plan, or so as not to materially interfere with the use or occupancy of the Unit by its occupants.

8.1.3. Declarant's Easement to Correct Drainage. The Declarant reserves an easement on, over and under those portions of the Common Elements and/or Units not improved with buildings for the purpose of constructing, maintaining, replacing and correcting drainage of surface water in order to maintain reasonable standards of health, safety and appearance, and further reserves the right to grant and/or assign such easements to appropriate persons, parties or entities. The easement created by this subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil, or to take any other action reasonably necessary to achieve this purpose, following which the Declarant shall restore the affected property as closely to its original condition as practicable.

8.1.4. Declarant's Reservation of Right to Grant Easements. The Declarant reserves the right to grant, sell and convey easements for the

purpose of benefiting the Community and/or any tract of land adjacent to or near the Property. Without limiting the generality of the preceding sentence, the Declarant may subject the Community to access easements, storm water management easements, storm water detention pond easements, and utility easements to be used by or jointly with nearby properties.

8.1.5. Declarant's Easement to Facilitate Completion, Conversion and Expansion. The Declarant reserves an easement on, over and under all portions of the Community except through or under any existing Building as as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights, however arising, including but not limited to, the development of the Convertible Real Estate, Withdrawable Real Estate and any other real estate for all purposes relating to the construction, development, leasing and sale of improvements within the Community and any other real estate owned by Declarant. The easement rights reserved in this Subsection shall include, without limitation, the right of vehicular and pedestrian ingress and egress, the right to park motor vehicles and to engage in construction and marketing activities of any nature whatsoever, including the movement and storage of building materials and equipment, the conduct of sales, leasing and management activities, the maintenance of models and offices and the erection and maintenance of directional and promotional signs. The Declarant's easements hereunder shall remain in full force and effect on, over and under any portions of the Withdrawable Real Estate, even after said portion(s) have been withdrawn from the Community.

8.1.6. Temporary Easement for Construction. Without limiting the generality of the easements reserved unto Declarant in Subsection 8.1.5 above, for so long as Declarant has development and/or construction obligations anywhere in the Community, Declarant reserves unto itself, its successors, assigns, agents, employees and contractors, the right to enter onto any portion of a Unit in the Community as may reasonably be necessary to facilitate the Declarant's construction or Maintenance activities, including, but not limited to, for the construction of improvements on the Common Facilities, for the completion of grading on the Unit and/or adjacent Units, for the construction of Dwellings or other improvements on the Unit and/or on adjacent Units or portions of the Common Facilities, for the construction, reconstruction and/or relocation of any type of utility facilities, and for the construction of facilities for surface water run-off and control as may be necessary for the orderly and safe development of the Community; provided however, that the Declarant shall take reasonable steps to minimize any interference with a Unit Owner's use of his Unit and shall promptly repair any damage to a Unit resulting from the Declarant's exercise of such rights.

8.1.7. Association's Easement to Inspect and Maintain Units and Limited Common Elements. The Units and the Limited Common Elements are hereby made subject to an easement in favor of the Association and its agents, employees and independent contractors, (i) for inspection of the exterior of Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of Maintenance for which they are responsible, and to perform such items of Maintenance on behalf of a nonperforming Unit Owner as the Association shall elect to perform in its discretion; (ii) for inspection and Maintenance of any portion of a Unit for which the Association is responsible (including, without limitation, a

Controlled Facility), the Common Elements or the Limited Common Elements situated in or accessible from such Unit or Limited Common Elements, or both; (iii) for correction of emergency conditions in one or more Units, Limited Common Elements, or Common Elements; and (iv) for inspection, verification or correction of any Unit Owner's or occupant's compliance with or performance under the Community Documents, including without limitation Articles VI, VII and IX hereof, it being understood and agreed that the Association and its agents, employees and independent contractors shall take reasonable steps to minimize any interference with a Unit Owner's use of his Unit resulting from the Association's exercise of any rights it may have pursuant to this Subsection.

8.1.8. Easement for Encroachments. To the extent that any Unit or portion of the Common Elements encroaches upon any other Unit or portion of the Common Elements because of the construction, reconstruction, repair, shifting, settlement or other movement of any portion of the improvements, a valid easement for the encroachment and its maintenance shall exist, provided that the physical boundaries of the Units after construction, reconstruction or repair will be in substantial accord with the descriptions thereof set forth in the Declaration. The easement shall extend for whatever period of time the encroachment continues to exist. This easement does not relieve the Unit Owner (including a Builder) of liability in the case of willful misconduct.

8.1.9 Subdivision Plan Easements. The Community is subject to easements, including without limitation, storm water easements, storm water management easements, sidewalk easements, clear sight triangle easements, existing and proposed utility easements and drainage easements, wetlands easements, conservation easements and such other easements as may be created by, or depicted on, the Plats and Plans and/or the Subdivision and Land Development Plan. The said easements shall be utilized, maintained, repaired and replaced by the Association in accordance with the Community Documents, the requirements set forth on the Subdivision and Land Development Plan and all applicable local, state and federal requirements and laws.

## ARTICLE IX

### RESTRICTIONS

Section 9.1. Use and Occupancy of Units and Common Elements. Except as otherwise expressly set forth in the Community Documents, all Unit Owners, including the Declarant and any Builder, shall have the same rights and duties that are appurtenant to each Unit. The occupancy and use of the Units and Common Elements shall be subject to the following restrictions:

9.1.1. Permitted Use. The buildings in the Community (with the exception of any Units during the time period when they are being used by the Declarant or a Builder as a model, sales or management office and of any buildings that may be constructed upon the Common Elements for recreational or other reasonable and appropriate Community purposes) are restricted to residential use, which is deemed to expressly exclude any aviation use or activity, and may not be

used for any other purpose by the Unit Owner or occupant. Notwithstanding the foregoing, Units may also be used for accessory uses that are customarily incidental to the foregoing use, including a professional office; provided that any such use conforms with the applicable zoning regulations of the Municipality in which the Unit is located, as the same may be amended from time to time, and further provided that the prior written consent of the Executive Board is obtained.

9.1.2. No Unlawful Purposes. No Unit Owner may permit his Unit to be used or occupied for any prohibited or unlawful purpose.

9.1.3. Preservation of Exterior of Units. The Declarant will establish the structural location, architectural style and exterior appearance of each Dwelling and other improvements that are first constructed upon a Unit (whether by the Declarant, a Builder or their respective designee), all of which are intended to be preserved to maintain the overall appearance and continuing value of the Units within the Community. To accomplish this intention, the following requirements are created and imposed:

(a) Except as otherwise approved by the Declarant during the Development Period and the Executive Board thereafter if required by the Community Documents in accordance with Articles VI and IX hereof, the exterior structural and aesthetic appearance and architectural style of all exposed portions of all improvements constructed upon all Units shall not be altered in any way that would change the appearance of such Units as first constructed. Executive Board approval shall be consistent with the intent to maintain the overall architectural character and exterior appearance of the Community and shall not be unreasonably withheld.

(b) Except as otherwise approved by the Declarant during the Development Period and the Executive Board thereafter if required by the Community Documents in accordance with Articles VI and IX hereof, exterior masonry elements of all such exposed portions of all Buildings shall remain as first constructed and shall not be removed, painted, covered, enclosed or otherwise obstructed or modified in appearance.

(c) Except as otherwise approved by the Declarant during the Development Period and the Executive Board thereafter if required by the Community Documents in accordance with Articles VI and IX hereof: (i) the exterior colors of all such exposed portions, roofs and doorways of all improvements constructed upon Units shall remain the same as originally installed, including, but not limited to the color of siding, roof shingles, trim materials, doors, windows, shutters, garage doors and driveway/parking surfaces; and (ii) all replacement materials, whether structural or covering, shall perpetuate the same colors as originally installed in order to provide a consistent color scheme.

9.1.4. Unit Condition. Each Unit Owner shall be solely responsible for maintaining the interior of his Dwelling and other Buildings constructed upon a Unit. Each Unit Owner and/or the Association shall be responsible for maintaining the exterior of the Dwelling and other Buildings constructed upon such Unit in a clean, sanitary and safe manner and a manner that is consistent with the overall architectural character and exterior appearance of the Community in accordance with the allocation of responsibilities set forth in the "Chart of Maintenance Responsibilities" (as it may be amended from time to time) attached as Exhibit "A" to the Bylaws.

9.1.5. Unit Grounds; Landscaping. Each Unit Owner and the Association shall be responsible for maintaining the exterior grounds of such Unit, including, but not limited to, any landscaping in accordance with the allocation of responsibilities set forth in the "Chart of Maintenance Responsibilities" (as it may be amended from time to time) attached as Exhibit "A" to the Bylaws.

9.1.6. Wetlands and Waterways; Special Restrictions. Wetlands and regulated waterways exist throughout the Property and are located on the Common Elements and on certain individual Units as set forth in 9.1.6.a. below. Pursuant to a determination by the Department of the Army, U.S. Army Corps of Engineers, Baltimore District, and Pennsylvania State Programmatic General Permit-2 (PASPGP-2) referenced in letter to Yingst Homes, Inc. dated May, 2005, all such wetlands and waterways are by this Declaration burdened with additional restrictions specifically prohibiting the following: discharge of fill or dredge material; changes of drainage patterns; mechanized land-clearing; application of herbicides; destruction of vegetation by mowing, digging, or cutting. Further, the common area depicted on the Subdivision Plan and on the Plats and Plans as Open Space B-2, Open Space C-3, Open Space E and Open Space G or any derivative of said Open Spaces (e.g., E-1, E-2, etc.) is designed to perform storm water detention and while this area may be entered upon for passive recreation, all maintenance is prohibited by the U.S. Army Corps of Engineers, Baltimore District, to include no mowing, no dredging, no grading or other change in drainage patterns.

(a) The following Units are directly affected by the U.S. Army Corps of Engineers, Baltimore District, jurisdictional wetlands and to the extent such wetland areas exist on these particular Units, such wetland areas are subject to the additional restrictions set forth in the preceding paragraph and any Unit Owner of these Units, by acceptance of a Deed to said Unit, agrees to be bound by such restrictions as a covenant running with the land: Units 43, 44, 45, 46, 47, 48 and 75, inclusive.

9.1.7. Signs. No sign or billboard of any kind shall be displayed to the public view on any Unit, except for directional signs established by the Declarant, Builder or their respective designees, signs used by the Declarant, Builder or their respective designees, their successors in title or assigns, to advertise Units for sale or rent, or political signs provided they are removed within five (5) days of final election. The Unit Owner of a particular Unit shall be permitted to place a sign upon the Unit for the purpose of advertising the Unit for sale or rent, subject to the provisions governing signs in the Rules and Regulations.

9.1.8. Temporary Structures. Except as provided in Section 9.1.12 (relating to hot tubs and swimming pools), no structure of a temporary character, trailer, tent, shack, or other temporary out-building shall be constructed or used on any Unit at any time, either temporarily or permanently, without the prior consent of the Executive Board. Notwithstanding the provisions of this Subsection 9.1.8, the Declarant or a Builder may construct and maintain on any Unit it owns temporary buildings, structures and vehicles used in connection with the initial construction of improvements on any portion of the Property.

9.1.9. Satellite Dishes; Antennas.

(a) Subject to subsection 9.1.9(b) below, each Unit Owner may install and maintain on his or her Unit satellite dishes or other facilities for the receipt of radio or television broadcasts, subject to compliance with the following requirements:

(i) The satellite dish or other facilities must be of the smallest size reasonably commercially obtainable that will provide radio or television reception;

(ii) The satellite dish or other facilities may not be located in front of the plane created by the front of the Dwelling;

(iii) If possible, the satellite dish or other facilities shall not be visible from the street in front of the Dwelling;

(iv) Without limiting the preceding requirements, the location of such installations must be as unobtrusive as possible, provided reception is of adequate quality in such location;

(v) Unit Owners may not install such facilities on or over the Common Elements or any other Unit not within the exclusive use or control of the Unit Owner;

(vi) The Executive Board, in its sole discretion, may require a Unit Owner at the sole expense of the Unit Owner, to paint or screen any such installation, provided that the painting or screening does not invalidate any manufacturer's warranty relating to such installation; and

(vii) The Unit Owner must submit a plan showing the proposed location and size of the satellite dish or other facilities to the Executive Board at least thirty (30) days prior to the installation thereof for a determination by the Executive Board whether such installation would comply with the requirements of this Subsection 9.1.9 (subject, however, to the Executive Board's discretion pursuant to Articles VI and IX hereof).

(b) In the event that the provisions of subsection 7.1.9(a) above contradicts any rulings of the Federal Communications Commission or any other agency having jurisdiction (the "FCC") in effect, the then current rulings of the FCC shall prevail.

9.1.10. Fences. Unit Purchasers shall not be permitted to construct a fence anywhere on the Property without the prior written approval of the Executive Board, and all fence construction is subject to the provisions governing fences in the Rules and Regulations and all municipal ordinances.

9.1.11. Animals. No animals other than customary household pets shall be housed, maintained or otherwise permitted in any Unit, and no animals shall be housed or maintained on any Common Element. All permitted pets shall be regularly housed inside a Dwelling, and no exterior housing of pets shall be permitted on any Unit at any time, either temporarily or permanently. All pet owners shall immediately clean up, remove and discard in a proper receptacle all animal excrement, produced by his pet, except that which is contained within a fenced area authorized by the Executive Board or Architectural Review Committee, and shall otherwise obey the Pet Rules and Regulations promulgated by the Executive Board.

9.1.12 Swimming Pools, Hot Tubs, Spas and Saunas. In-ground swimming pools, hot tubs, spas, saunas and customary accessory structures may be installed by Unit Owners only within the rear yards of Units, subject to the prior written approval of the Executive Board in accordance with the Community Documents. All permitted installations must be done within the boundaries of a Unit and not on any portion of the Common Facilities or Controlled Facilities and Unit Owners shall be solely responsible for obtaining all necessary governmental permits and approvals and for complying with all applicable municipal requirements, including but not limited to, any fencing or screening requirements, size limitations and any setback requirements. Permanent above-ground swimming pools shall be prohibited

9.1.13. Storage Tanks. No above-ground or underground tanks for storage of petroleum products, propane or any other substance except small containers approved for and designed for gasoline storage and small propane tanks (less than ten (10) gallons) for use with outdoor gas grills and propane tanks for home heating and other purposes shall be permitted on any Unit without the prior written consent of the Executive Board.

9.1.14. Parking. Unless otherwise authorized by the Executive Board, vehicles shall only be parked in driveways, within garages or in areas designated for parking by the Executive Board. Except in emergencies, no vehicle shall be parked on any portion of the lawn within a Unit or on any portion of the Common Facilities not specifically designated as a parking area. Recreational Vehicles (RVs) may be parked only on driveways in the Community provided no recreational vehicles, boats or trailers may be parked on an owner's driveway, on a year round basis, but instead must be garaged. In the event the Unit Owner has no garage facility, any recreational vehicle, boat or trailer shall be parked or stored to the rear of the front building setback lines of the Unit and screened from view from any street or neighboring Unit.

9.1.15. Use of Streets. All streets within the Community are intended only for vehicular transportation, limited parking, and pedestrian travel of the Unit Owners, occupants and their invitees. Streets shall not be used as playgrounds, or for skateboarding, basketball, street hockey or any other athletic or recreational purposes, and such use is prohibited.

9.1.16. Use of Common Elements. There shall be no obstruction of the Common Elements. Nothing may be placed or stored on the Common Elements without the prior consent of the Executive Board. Nothing may be done on the Common Elements that would in any way interfere with the function, use and enjoyment of any other Common Element, Unit, and Unit Owner or occupant within the Community. The Executive Board may impose additional restrictions on the use of the Common Elements as it deems necessary or advisable.

9.1.17. Limitations on Application of Restrictions. The restrictions set forth herein shall not apply to the Declarant, the Declarant's agents or employees or any approved Builder or Builders, during the course of construction of improvements upon any portion of the Property, to the extent that the restrictions would interfere with such construction.

9.1.18. Laws and Ordinances. Each Unit Owner shall promptly comply with all laws, statutes, ordinances, rules and regulations of federal, state and/or municipal governments or authorities applicable to the use, occupancy, construction, improvement, and Maintenance of any Unit, including any improvements or facilities erected thereupon. Without limiting the generality of the foregoing, all improvements constructed within or upon a Unit by a Unit Owner shall meet all applicable local and/or county building codes and municipal requirements including, but not limited to zoning requirements. The obligation to comply with all governmental requirements shall rest with the Unit Owner and not the Executive Board or the Association. The Executive Board's approval of a Unit Owner's proposed improvements shall not relieve the Unit Owner of his obligation to design and construct the proposed improvements in accordance with the requirements of the Community Documents, nor shall such approval constitute nor be construed as certification by the Executive Board that the proposed improvements meet or otherwise comply with architectural, engineering, or construction industry standards, or applicable building codes, laws, ordinances, rules, or regulations of any governmental authority or any other applicable agency. None of the Declarant, the Executive Board or the Association shall be liable for any defects in any plans or specifications submitted, revised or approved in accordance with the Community Documents, or any defects in construction undertaken in accordance with such plans and specifications, and the Unit Owner undertaking the construction, reconstruction, renovation or installation of any improvements within the Community shall indemnify and hold harmless all of the foregoing from and against all costs, expenses, damages and claims whatsoever arising out of such Unit Owner's improvement activities in the Community.

9.1.19. Drainage. Each Unit Owner hereby covenants and agrees for himself, his heirs, assigns, contractors and successors in interest that he will refrain from interference with the established drainage pattern over his Unit from



adjoining or other Units, and that he will make adequate provision for proper drainage from any such other Unit in the event the established drainage over his Unit is changed or altered by his use of, occupation of, maintenance of, addition to, alteration of or improvements to, his Unit. For the purpose hereof, "established drainage" is defined as the drainage that will occur at the time the overall grading of the Units and Common Facilities, including the landscaping of each Unit and the Common Facilities, is completed, including, but not limited to within any drainage easement areas designated as Controlled Facilities in accordance with the provisions of this Declaration. Unit Owners shall be responsible for maintaining erosion and sedimentation controls and storm water management controls provided by the Declarant, to include individual on-lot infiltration beds and/or rain gardens and roof leaders, if any, in accordance with the requirements of the PCSM Plan.

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

Section 9.2. Waiver Requests. A Unit Owner may submit a written request to the Executive Board for approval to do anything that is forbidden under Section 9.1. The Executive Board shall submit all requests for waivers of the restrictions imposed by Subsections 9.1.3, 9.1.9 and 9.1.12 to the Architectural Review Committee for review and recommendation. The Executive Board shall consider, but shall not be bound by, the recommendation of the Architectural Review Committee in deciding whether to approve, disapprove or condition the approval of such requests. All other such requests may be decided by the Executive Board without prior submission of the request to the Architectural Review Committee. The Executive Board shall answer any written request for such approval, after Notice and Hearing, within sixty (60) days after the request thereof. Failure to do so within such time shall not constitute a consent by the Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of the Community Documents.

Section 9.3. Alterations and Improvements. Subject to the limitations of Subsection 9.1.17 above, any applications to any municipal or other governmental department or to any governmental authority for a permit or approval to make any addition, alteration or improvement by a Unit Owner in or to any portion of the Community shall first be submitted to the Executive Board for approval. Upon receipt of approval by the Executive Board, any such application shall be the responsibility of and executed by the Unit Owner. The making or execution of such application will not, under any circumstances, create any liability on the part of the Association or any of its members (other than the Unit Owner making the application) to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom. All costs and expenses incurred for

such applications, permits, approvals, additions, alterations or improvements by a Unit Owner shall be the responsibility of such Unit Owner.

## ARTICLE X

### ASSESSMENT AND COLLECTION OF COMMON EXPENSES

Section 10.1.        Definition of Common Expenses. Common Expenses shall include:

10.1.1.        Expenses of administration, maintenance, and repair or replacement of the Common Elements, subject to the provisions of Section 9.2 hereof;

10.1.2.        Expenses declared to be Common Expenses by the Community Documents or the Act;

10.1.3.        Expenses agreed upon as Common Expenses by the Association; and

10.1.4.        Such reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Units or Common Elements or to any other real or personal property acquired or held by the Association.

Section 10.2.        Apportionment of Common Expenses.

10.2.1.        Subject to the terms of this Section 10.2, and except as provided in Section 10.3, all Common Expenses shall be assessed against all Units in accordance with their Allocated Interests determined in accordance with Section 2.1 hereof. In the event that the Community is merged or consolidated with one or more additional communities, as described in Section 18.3 hereof, the Allocated Interests shall be modified as described in Subsection 18.3.2 hereof. As set forth in Section 5314(b) of the Act, any past due assessment or installment thereof shall bear interest at the rate established by the Association, provided that such rate shall not exceed fifteen percent (15%) per year.

10.2.2.        Notwithstanding Subsection 10.2.1 hereof, until a Dwelling Unit is completed to the extent required so as to permit the use of the Dwelling Unit for its intended purpose, a Unit Owner shall be entitled to pay a reduced assessment for Common Expenses. That reduced assessment shall be an amount equal to the projected Common Expense assessment for the Dwelling Unit, less those items not then benefiting the Unit such as property insurance and replacement reserves. The owner of an Unimproved Unit or a Unit upon which improvements are incomplete shall be required to pay his proportionate share of the Common Expense assessments for such items as Common Element landscaping, snow plowing, liability insurance, property management, etc. Notwithstanding anything herein to the contrary, upon an Unimproved Unit becoming an Improved

Unit, the foregoing reduced assessment provision shall no longer be applicable even if all improvements on a Unit are thereafter demolished or removed for any reason

Section 10.3.            Special Allocations of Expenses as Limited Common Expenses.

10.3.1.            Any Common Expense benefiting one or more, but fewer than all of the Units shall be assessed exclusively against the Unit or Units benefited.

10.3.2.            Any Common Expense for services provided by the Association to an individual Unit shall be assessed against the Unit which benefits from such service.

10.3.3.            Assessments to pay a judgment against the Association may be made only against the Units in the Community at the time the judgment was rendered, in proportion to their Common Expense liabilities, except as provided in Section 5319(c) of the Act.

10.3.4.            If any Common Expense is caused by the negligence or misconduct of a Unit Owner, his guests, invitees, or other occupants of such Unit,, the Association may, after Notice and Hearing, assess that expense exclusively against his Unit.

10.3.5.            Fees, including attorneys' fees, charges, late charges, recording fees, fines and interest charged against a Unit Owner pursuant to the Community Documents and the Act and reasonable costs and expenses of the Association, including legal fees, incurred in connection with collection of any sums due to the Association by a Unit Owner, or enforcement of the provisions of the Community Documents against the Unit Owner are enforceable as assessments under Section 5315 of the Act and may be charged to such Unit Owner.

Section 10.4.            Lien.

10.4.1.            The Association has a statutory lien on a Unit for (a) any assessment levied against that Unit, and (b) late fees or fines imposed against the Unit Owner, each from the time the assessment, late fee or fine becomes delinquent. Fees, including attorneys' fees, charges, late charges, recording fees, fines and interest and reasonable costs and expenses of the Association, including legal fees, incurred in connection with collection of any sums due to the Association by a Unit Owner, or enforcement of the provisions of the Community Documents against the Unit Owner charged pursuant to the Act and the Community Documents are enforceable as assessments under this Section 10.4. If an assessment is payable in installments, and one or more installments is not paid when due, the entire outstanding balance of the assessment becomes effective as a lien from the due date of the delinquent installment.

10.4.2.            Any lien for delinquent Common Expense assessments or other charges that the Association has on a Unit will be subordinate to a first mortgage on the Unit, if the mortgage was recorded before the due date of the

assessment or the due date of the unpaid installment, if the assessment is payable in installments, or to a judgment obtained for obligations secured by any such mortgage.

10.4.3. Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this Section 10.4 is required.

10.4.4. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the assessments become payable; provided, that if an Owner of a Unit subject to a lien under this Section 10.4 files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

10.4.5. This Section 10.4 does not (a) prohibit actions to recover sums for which Subsection 10.4.1. creates a lien or (b) prohibit the Association from taking a deed in lieu of foreclosure.

10.4.6. A judgment or decree in any action brought under this Section 9.4 shall include costs and reasonable attorney's fees for the prevailing party.

10.4.7. The Association's lien may be foreclosed in like manner as a mortgage on real property.

10.4.8. If a holder of a first or second Security Interest in a Unit forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid assessments against that Unit which became due before the sale, other than the assessments which are prior to that Security Interest in accordance with the provisions of the Act. Any unpaid assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Unit Owners, including the purchaser.

10.4.9. Notwithstanding any restrictive endorsement, designation or instructions placed on or accompanying a payment, any payments received by the Association in the discharge of a Unit Owner's obligation may, at the Association's discretion, be applied first to any interest accrued by the Association, then to any late fee, then to any costs and reasonable attorney fees incurred by the Association in collection or enforcement and then to any delinquent assessment.

10.4.10. Any fees, including attorneys' fees, late charges, fines and interest which may be levied by the Executive Board pursuant to Sections 5302(a)(10), (11) and (12) of the Act, shall be subordinate to the lien of a Security Interest on a Unit.

Section 10.5. Budget Adoption. Immediately after adoption of any proposed budget or approval of any capital expenditure for the Community, the Executive Board shall provide a copy or summary of the budget and notice of any

capital expenditure approved by the Executive Board to all Unit Owners. Unless a majority of all Unit Owners vote to reject the budget or any capital expenditure approved by the Executive Board within thirty (30) days after the approval, the budget or capital expenditure is ratified. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners shall be continued until such time as a subsequent budget is adopted by the Executive Board, and such subsequent budget is not rejected in accordance with this Section 9.5 and Section 5303(b) of the Act.

Section 10.6. Adoption of Non-Budgeted Common Expense Assessments. If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 10.3 of this Declaration, the Executive Board shall immediately submit a copy or summary of such Common Expenses to the Unit Owners and such Common Expenses shall be subject to rejection in the same manner as a budget under Section 10.5 hereof. Notwithstanding the foregoing, the Unit Owners shall not have the power to reject the imposition of Common Expense assessments due to the actual cost of a budgeted item being in excess of the amount originally budgeted.

Section 10.7. Certificate of Payment of Common Expense Assessments. Upon receipt of a written request, the Association shall furnish to a Unit Owner a statement in recordable form setting forth the amount of unpaid assessments currently levied against the Unit as required by Section 5315(h) of the Act and any credits of surplus in favor of his Unit pursuant to Section 5313 of the Act. The statement, which shall be furnished within ten (10) business days after receipt of the request, shall be binding on the Association, the Executive Board and every Unit Owner.

Section 10.8. Frequency of Payment of Common Expenses. All Common Expenses and Limited Common Expenses assessed under Sections 10.2 and 10.3 shall be due and payable either on a monthly, quarterly, annual, or other basis, as the Executive Board deems advisable and initially, shall be on an annual basis. Special Assessments shall be due and payable in one or more installments and at such times determined by the Executive Board to be advisable.

Section 10.9. Acceleration of Common Expense Assessments. In the event of default for a period of ten (10) days by any Unit Owner in the payment of any Common Expense assessment levied against his Unit, the Executive Board shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable.

Section 10.10. Commencement of Common Expense Assessments. Common Expense assessments shall begin as of the date of the First Settlement. Notwithstanding the foregoing, the Declarant may elect to delay the commencement of Common Expense assessments until a date later than the First Settlement, provided that it shall be solely responsible for all Association expenses prior to such commencement.

Section 10.11. Personal Liability of Unit Owners. The Owner of a Unit at the time a Common Expense assessment or portion thereof is due and payable is

personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless he agrees to assume the obligation.

Section 10.12. No Waiver of Liability for Common Expenses. No Unit Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the assessments are made.

Section 10.13. Working Capital Fund Assessment. Commencing upon the First Settlement and thereafter at the closing with each Third Party Unit Purchaser, the Association shall collect from each such Third Party Unit Purchaser a Working Capital Fund Assessment in the amount of Two Hundred Fifty Dollars (\$250.00), which amount may be used by the Association for proper Association purposes. The Declarant shall not use the Working Capital Fund Assessment to defray any expenses with respect to construction of the Common Elements or development of the Property for which the Declarant is obligated; however, the Working Capital Fund Assessment may be used by the Association to offset any deficits in its budget. No amount paid Working Capital Fund Assessment shall be considered an advance payment of regular Common Expense assessments. No Unit Owner is entitled to a refund of these monies from the Association upon the subsequent conveyance of his Unit or otherwise.

Section 10.14. Surplus Funds. Any excess amounts accumulated from Common Expense assessments, Limited Common Expense assessments or reserves, together with any income related thereto, which exceed the amounts required for each, shall, at the discretion of the Executive Board, (a) be credited to each Unit in accordance with Section 5313 of the Act and shall be applied to subsequent assessments against each such Unit until exhausted; or (b) be included in the budget of the Association for the ensuing fiscal year of the Association, to be applied against the payment of Common Expenses, Limited Common Expenses, or to fund reserves. A reasonable amount of operating capital maintained by the Association shall not be deemed to be surplus funds as described in this Section 10.14.

Section 10.15. Association Records. During the period of the Declarant control of the Association, the Association shall keep detailed financial records, including, without limitation, a record of expenses paid by the Declarant until the commencement of Common Expense assessments by the Association under Section 5314(a) of the Act, and, for the period commencing on such date, a record for each Unit in the Community, including those owned by the Declarant or a Builder, of its Common Expense assessments and the payments thereof. The Association shall keep financial records sufficiently detailed to enable the Association to comply with Section 10.7 of the Declaration and Section 5407 of the Act. All Association financial records and other Association records that do not contain confidential information pertaining to Unit Owners (such as social security numbers or personal financial information, etc.) shall be made reasonably available for examination by any Unit Owner and his authorized agents.

## ARTICLE XI

### DECLARANT CONTROL OF THE ASSOCIATION AND SPECIAL DECLARANT RIGHTS

#### Section 11.1. Control of the Association.

11.1.1. The Declarant shall have the right to appoint and remove any and all officers and members of the Executive Board until the earliest of:

(a) seven (7) years after the date of the first conveyance of a Unit to a person other than the Declarant,

(b) sixty (60) days after seventy-five percent (75%) of the Units that may be created have been conveyed to Unit Owners other than the Declarant,

(c) two (2) years after the Declarant has ceased to offer Units for sale in the ordinary course of business, or

(d) two (2) years after any development right to add new Units was last exercised by the Declarant.

11.1.2. Upon the expiration of the period of Declarant control described in Subsection 11.1.1 above, all members of the Executive Board shall resign, and the Unit Owners (including the Declarant to the extent of Units owned by the Declarant) shall elect a new five (5) member Executive Board.

11.1.3. Notwithstanding the terms of Subsections 11.1.1 and 11.1.2 above, no later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units to Unit Owners other than the Declarant or a Builder, two (2) of the five (5) members of the Executive Board appointed by Declarant shall resign, and replacement members shall be elected by Unit Owners other than the Declarant.

11.1.4. Within sixty (60) days of the termination of the period of Declarant control of the Association, the Declarant shall deliver to the Association all property of the Unit Owners and of the Association held by or controlled by the Declarant, together with all applicable items designated in Section 5320 of the Act.

11.1.5. Following the transfer of control of the Executive Board by the Declarant to the Unit Owners pursuant to Subsection 11.1.2 hereof, the Unit Owners shall have the right to increase or decrease from time to time the number of members comprising the Executive Board.

Section 11.2. Special Declarant Rights. Notwithstanding the transfer by Declarant to Unit Owners of control of the Association pursuant to Section 11.1 hereof, the Declarant reserves unto itself all Special Declarant Rights as defined in the Act. These Special Declarant Rights include, *inter alia*, the right to transfer any or all of the Declarant's Special Declarant Rights to one or more successors, provided that the transfer(s) shall be effected in accordance with the provisions of

this Declaration and Section 5304 of the Act. Any successor to any Special Declarant Right shall have the liabilities and obligations set forth in Section 5304(e) of the Act.

## ARTICLE XII

### LIMITATION OF LIABILITY

Section 12.1. Limited Liability of Members of the Executive Board. To the fullest extent permitted by Pennsylvania law, as now in effect and as modified from time to time, a member of the Executive Board shall not be personally liable for monetary damages for any action taken or any failure to take any action by:

12.1.1. the Executive Board.

Section 12.2. Indemnification of Members of the Executive Board and Officers of the Association.

12.2.1. Third Party Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that the person is or was an Executive Board member or officer of the Association, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by the person in connection with such threatened, pending or completed action, suit or proceeding.

12.2.2. Derivative Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that the person is or was an Executive Board member or officer of the Association, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by the person in connection with such threatened, pending or completed action or suit by or in the right of the Association.

12.2.3. Procedure for Effecting Indemnification. Indemnification under Subsections 12.2.1 and 12.2.2 shall be automatic and shall not require any determination that indemnification is proper, except that no indemnification shall be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness.

12.2.4. Expenses Advanced. The Association shall advance expenses incurred by an Executive Board member or officer of the Association who is entitled to be indemnified pursuant to the provisions of this Section 12.2 in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately



be determined by a court of competent jurisdiction that such person is not entitled to be indemnified by the Association.

12.2.5. Indemnification of Other Persons. The Association may, at the discretion of, and to the extent and for such persons as determined by the Executive Board of the Association, (a) indemnify any person who neither is nor was an Executive Board member or officer of the Association but who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (and whether brought by or in the right of the Association), by reason of the fact that the person is or was a representative of the Association, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by the person in connection with such threatened, pending or completed action, suit or proceeding, and (b) pay such expenses in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined by a court of competent jurisdiction that such person is not entitled to be indemnified by the Association.

## ARTICLE XIII

### INSURANCE

Section 13.1. Coverage. Commencing no later than the date of the First Settlement and to the extent reasonably available, the Association shall obtain and maintain insurance coverage as set forth in Sections 13.2 and 13.3 and in accordance with the provisions of Section 5312 of the Act. Any property or comprehensive general liability insurance carried by the Association may contain a deductible provision. If such insurance is not reasonably available, and the Executive Board determines that any insurance described herein will not be maintained, the Executive Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States Mail to all Unit Owners at their respective last known addresses.

Section 13.2. Property Insurance. The Association shall obtain and maintain all property insurance required to be maintained by the Association by Section 5312 of the Act. Insurance policies issued to the Association shall not prevent a Unit Owner from obtaining insurance for the Unit Owner's own benefit, including, but not limited to, insurance to cover any deductibles or losses not covered by the Association's property or comprehensive general liability insurance.

Section 13.3. Liability Insurance. The Association shall obtain and maintain comprehensive general liability insurance, including medical payments insurance, in an amount reasonably determined by the Executive Board but in no event less than One Million Dollars (\$1,000,000.00), covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. The policy shall name any managing agent as an additional insured.

**Section 13.4. Unit Owner Policies.** Each Unit Owner shall be solely responsible for obtaining all property and liability insurance on his Unit in compliance with Section 5312 of the Act, including (1) property insurance on any Dwelling located upon the Unit insuring against all common risks of direct physical loss in an amount at least equal to the full replacement value of the Dwelling, exclusive of land, excavations, foundations and other items normally excluded from property policies, and (2) comprehensive general liability insurance covering all occurrences commonly insured against for death, bodily injury and property damage, arising out of or in connection with the use, ownership or maintenance of the Unit in an amount not less than Three Hundred Thousand Dollars (\$300,000.00), or such other amount as may be reasonably determined from time to time by the Executive Board. The Executive Board shall provide all Unit Owners with written notice of any change in the amount of insurance required pursuant to this Section 13.4 no less than thirty (30) days before the effective date of the new requirement. A Unit Owner's insurance policies may cover losses to his Unit not covered by the insurance maintained by the Association due to a deductible provision or otherwise.

**Section 13.5. Other Provisions.** Insurance policies carried by the Association pursuant to this Article shall provide that:

13.5.1. Each Unit Owner is an insured person under the policy with respect to liability arising out of his membership in the Association.

13.5.2. The insurer waives its rights to subrogation under the policy against any Unit Owner or member of his household.

13.5.3. No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

13.5.4. If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

13.5.5. The insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

**Section 13.6. Fidelity Bonds.** The Association shall maintain a blanket fidelity bond or similar security for anyone who either handles or is responsible for funds held or administered by the Association, whether or not he receives compensation for his services. The bond shall name the Association as obligee and shall cover the maximum funds that will be in the custody of the Association or the manager at any time while the bond is in force, and in no event less than the sum of three (3) months Common Expense assessments and reserve funds on deposit. The bond shall include a provision that calls for thirty (30) days' written notice to the

Association before the bond can be canceled or substantially modified for any reason. However, if cancellation is for nonpayment of premiums, only ten (10) days notice shall be required.

Section 13.7. Workers' Compensation Insurance. The Executive Board shall obtain and maintain workers' compensation insurance to meet the requirements of the laws of the Commonwealth of Pennsylvania.

Section 13.8. Indemnification Insurance. The Executive Board shall obtain directors' and officers' liability insurance to satisfy the indemnification obligations set forth in Section 12.2 hereof, if and to the extent available at a reasonable cost.

Section 13.9. Other Insurance. The Association may carry other insurance in such reasonable amounts and with such reasonable deductibles as the Executive Board considers necessary or advisable to protect the Association or the Unit Owners.

Section 13.10. Premiums and Deductibles. Insurance premiums and deductibles for policies maintained by the Association shall be a Common Expense, unless the deductible may be charged against one or more Unit Owners pursuant to Section 5314(c) of the Act.

## ARTICLE XIV

### DAMAGE TO OR DESTRUCTION OF PROPERTY

Section 14.1. Unit Owner's Duty to Restore. Any portion of the Property for which insurance is required to be maintained by a Unit Owner under Section 5312 of the Act or this Declaration, or for which insurance carried by the Unit Owner is in effect, whichever is more extensive, shall be repaired or replaced promptly by the Unit Owner in accordance with Section 5312 of the Act.

Section 14.2. Association's Duty to Restore. Any portion of the Property for which insurance is required to be maintained by the Association under Section 5312 of the Act or this Declaration, or for which insurance carried by the Association is in effect, whichever is more extensive, shall be repaired or replaced promptly by the Association in accordance with Section 5312 of the Act.

14.2.1. Cost. With respect to losses for which insurance is required to be maintained by the Association by Section 5312 of the Act or this Declaration, except for the costs of repair or replacement which are not covered due to deductibles, the cost of repair or replacement in excess of insurance proceeds and reserves which have not been identified by the Executive Board to fund costs of capital expenditures budgeted for the current fiscal year of the Association shall be a Common Expense. If any insurance policy maintained by the Association contains a deductible, then that portion of any loss or claim which is not covered by insurance due to the application of a deductible, as well as any claim or loss for which the

Association is self-insured, shall be a Common Expense levied by the Executive Board in accordance with the provisions of Section 5314(c) of the said Act.

14.2.2. Plans. The Property must be repaired and restored substantially in accordance with either the original plans and specifications or other plans and specifications which are compatible with the remainder of the Community and which have been approved by the Executive Board and the Municipality, following receipt of a recommendation from the Architectural Review Committee.

14.2.3. Replacement of Common Elements. The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Community.

14.2.4. Insurance Proceeds. Any loss covered by a property policy maintained by the Association pursuant to Subsection 13.1 shall be adjusted with the Association, but the insurance proceeds for that loss shall be payable to an insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee, or if there is no insurance trustee, the Association, shall hold any proceeds from insurance maintained by the Association in trust for the Association, Unit Owners and lien holders as their interests may appear. Subject to the provisions of Section 5312(h)(1) of the Act, the proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements and Units (to the extent that Association policies cover damage to Units), and the Association, Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Community has been completely repaired or restored, or the Community is terminated.

14.2.5. Certificates by the Executive Board. A trustee, if any, may rely on the following certifications in writing made by the Executive Board:

(a) Whether or not any portion of the damaged or destroyed Community is to be repaired or restored;

(b) The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

14.2.6. Certificates by Attorneys. If payments are to be made to Unit Owners, the Executive Board, and the trustee, if any, shall obtain and may rely upon an attorney's certificate of title or a title insurance certificate, based on a search of the land records of the county in which the Community is located, from the date of the recording of the original Declaration stating the names of the Unit Owners and the holders of any mortgages upon the Units.

## ARTICLE XV

### AMENDMENTS TO DECLARATION

Section 15.1. Amendment Generally. Except in cases of amendments that may be executed by the Declarant in the exercise of its Special Declarant Rights, including those rights described in Articles XX, XXI and XXII of this Declaration, or by the Association pursuant to Section 15.6 hereof, or as otherwise permitted or required by other provisions of this Declaration or the Act, this Declaration, including the Plats and Plans, may be amended only by vote or agreement of Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

Section 15.2. Limitation of Challenges. No action to challenge the validity of an amendment adopted by the Association pursuant to this Article may be brought more than one year after the amendment is recorded.

Section 15.3. Recordation of Amendments. Every amendment to this Declaration shall be recorded in the county in which the Property is located and shall be effective only on recording. An amendment shall be indexed in the name of the Community in both the grantor and grantee index.

Section 15.4. Execution of Amendments. Amendments to this Declaration required by the Act to be recorded by the Association, which have been adopted in accordance with this Declaration and the Act, shall be prepared, executed, recorded and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 15.5. Special Declarant Rights. Provisions in this Declaration or in the Act creating or modifying Special Declarant Rights may not be amended without the consent of the Declarant.

Section 15.6. Corrective Amendments. If any amendment is necessary in the judgment of the Executive Board (i) to cure any ambiguity or to correct or supplement any provision of this Declaration, including the Plats and Plans, that is defective, missing or inconsistent with any other provisions contained therein or with the Act, or (ii) to conform to the requirements of the Federal Housing Administration, Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or other agency or entity with national or regional standards for mortgage loans with respect to planned community projects, or (iii) to comply with any statute, regulation, code or ordinance which may now or hereafter be made applicable to the Community or Association, including without limitation with respect to any storm water management obligations under the PCSM Plan; (iv) or to make a reasonable accommodation or permit a reasonable modification in favor of handicapped, as may be defined by prevailing federal or state laws or regulations applicable to the Association, Unit Owners, residents or employees, then at any time and from time to time the Executive Board may effect an appropriate corrective amendment without the approval of the Unit Owners or the holders of any Security Interest in all or any part of the Community, upon receipt by the Executive Board of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this Section 15.6 and Section 5219(f) of the Act.

## ARTICLE XVI

### AMENDMENTS TO BYLAWS

Section 16.1. Amendments to Bylaws. The Bylaws may be amended only by vote of three-fifths (3/5) of the members of the Executive Board, following Notice and Comment to all Unit Owners, at any meeting duly called for such purpose. Corrective amendments to the Bylaws may be effected in the same manner as amendments to the Declaration described in Section 15.6 hereof.

## ARTICLE XVII

### RIGHTS TO NOTICE AND COMMENT; NOTICE AND HEARING

Section 17.1. Right to Notice and Comment. Before the Executive Board amends the Bylaws or the Rules and Regulations, whenever the Community Documents require that an action be taken after "Notice and Comment," and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Unit Owner in writing and shall be delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or published in a newsletter or similar publication that is routinely circulated to all Unit Owners. The notice shall be given not less than five (5) days before the proposed action is to be taken.

Section 17.2. Right to Notice and Hearing. Whenever the Community Documents require that an action be taken after "Notice and Hearing," the following procedure shall be observed: The party proposing to take the action (e.g., the Executive Board, a committee, an officer, the manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing and shall be given no less than five (5) days before the hearing is to occur. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

Section 17.3. Appeals. Any person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of any person or persons other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting. Otherwise, the decisions of the Executive Board are final.

## ARTICLE XVIII

### POWERS OF THE ASSOCIATION

Section 18.1. Powers of the Association. Subject to the provisions of this Declaration, the Association shall have all of the powers designated in Section 5302 of the Act, including the right to assign its right to receive future income, including payments made on account of an assessment against any Unit for Common Expenses and Limited Common Expenses, provided however, that reserve funds held for future major repairs and replacements of the Common Elements may not be assigned or pledged.

Section 18.2 Master Association. Following the expiration or termination of the Special Declarant Rights described in Subsection 18.2.1 below, the Association shall have the right to assign or delegate any of its powers listed in Section 5302 of the Act to a Master Association, provided that any such assignment or delegation is made subject to the provisions of Section 5222 of the Act. The Association shall also have the right to serve as a Master Association, to accept any assignment or delegation of powers from one or more planned community or condominium associations, also provided that such acceptance or assignment is effected in accordance with and subject to Section 5222 of the Act.

18.2.1. Reservation. The Declarant hereby explicitly reserves the Special Declarant Right, under Section 5205(13) of the Act, to assign or delegate any or all of the powers of the Association to a Master Association under Section 5222 thereof, or to cause the Association to accept the assignment or delegation of any of such powers from one or more planned community or condominium associations, without the consent of any Unit Owner or holder of any Security Interest in any Unit. These rights shall continue until the expiration of the Development Period, or such longer period of time as may be permitted by law from time to time, unless terminated prior to such anniversary upon the filing of an amendment to this Declaration by the Declarant. The Declarant expressly reserves the right to make or accept such assignment(s) or delegation(s) at any time, at different times, in any order and without limitation.

Section 18.3. Merger or Consolidation. Following the expiration or termination of the Special Declarant Rights described in Subsection 19.3.1 below, the Association shall have the power to merge or consolidate the Community with one or more other planned communities into a single planned community provided that such merger or consolidation is made in accordance with the provisions of Section 5223 of the Act.

18.3.1. Reservation. The Declarant hereby explicitly reserves the Special Declarant Right, under Section 5205(14) of the Act, to cause the Community to be merged or consolidated with one or more other planned communities under Section 5223 thereof, without the consent of any Unit Owner or holder or insurer of any Security Interest in any Unit. This right shall continue until the expiration of the Development Period, or such longer period of time as may be

permitted by law from time to time, unless terminated prior to such anniversary upon the filing of an amendment to this Declaration by the Declarant. The Declarant expressly reserves the right to make such merger(s) or such consolidation(s) at any time, at different times, in any order, without limitation.

18.3.2. Restrictions. No assurances are made that the buildings and the Units that are part of other planned communities merged or consolidated with the Community will be compatible in terms of architectural style, quality of construction, and materials with the Units in the Community. No assurances are made that the restrictions in this Declaration affecting use, occupancy and alienation of Units shall apply to the units in the other planned communities. No assurances are made regarding the exact configuration, description or location of any buildings, improvements, common elements or limited common elements that may be created in other planned communities. No assurances are made regarding the proportion of units to limited common elements that may be created in the additional planned communities. The maximum number of Units in the merged or consolidated planned communities (including the Community) shall be no more than the maximum number of Units permitted by Municipal requirements applicable to the communities being merged. The Community may be merged with one or more planned communities at any time, at different times, in any order, without imitation and without any requirement that any other planned community be merged with the Community at any time. In the event that the Community is merged with one or more additional planned communities as described in Subsection 18.3.1 hereof, the Allocated Interest appurtenant to each Unit shall be recalculated (decreased) by: (1) converting a fraction to a decimal, the numerator of which fraction shall be one (1) and the denominator of which fraction shall be the total number of units in the merged or consolidated planned communities (including the Community); and (2) multiplying the product by any applicable factor assigned by the Declarant, pursuant to Section 2.1 hereof. In the event that the Declarant does not merge or consolidate any other planned communities with the Community, the assurances contained in this Section 18.3 shall not apply in any way to the other planned communities or any portion thereof

Section 18.4. Conveyance or Encumbrance of the Common Facilities. If Unit Owners entitled to cast at least eighty percent (80%) of the votes in the Association, at least eighty percent (80%) of which affirmative votes are allocated to Units not owned by the Declarant or Builder, agree, any one or more portions of the Common Facilities may be conveyed or subjected to a Security Interest by the Association. Any conveyance or encumbrance of the Common Facilities by the Association shall be effected in strict accordance with Section 5318 of the Act.

Section 18.5. Judgments Against the Association. Any creditor of the Association pursuant to a Security Interest obtained under Section 18.1 hereof shall exercise its rights against the Common Facilities before its judgment lien on any Unit may be enforced. Otherwise, as a general rule, any judgment for money against the Association, upon perfection as a lien on real property, shall not be a lien on the Common Facilities, but shall constitute a lien against all of the Units in the Community at the time the judgment was entered. Any Unit Owner may have his Unit released from the lien of the judgment upon payment of that portion of the lien attributable to his Unit in accordance with Section 5319(c) of the Act. After payment,



the Association may not assess or have a lien against that Unit Owner's Unit for any portion of the Common Expense incurred in connection with that lien. A judgment indexed against the Association must be indexed against the Community and the Association, and when so indexed, shall constitute notice of the lien against the Units.

## ARTICLE XIX

[RESERVED]

## ARTICLE XX

### CONVERTIBLE REAL ESTATE

Section 20.1. Reservation. The Declarant hereby explicitly reserves an option, until the expiration of the Development Period, to convert all or any portion of the Convertible Real Estate to Units, Limited Common Elements or any combination thereof from time to time in compliance with Section 5211 of the Act, without the consent of any Unit Owner or holder or insurer of any Security Interest in any Unit, or any other party whatsoever. This option to convert may be terminated prior to such date only upon the filing of an amendment to this Declaration by the Declarant. The Declarant expressly reserves the right to convert any or all portions of the Convertible Real Estate at any time, at different times, in any order, without limitation and without any requirement that any other real estate be converted, added or withdrawn; provided, however, that the Convertible Real Estate shall not exceed the area(s) described as such on Exhibit "D" attached hereto. There are no other limitations on this option to convert Convertible Real Estate.

Section 20.2. Assurances. If the Convertible Real Estate is converted, no assurances are made regarding the actual Unit configuration, or the description or location of any Building or structure, or other improvements, Common Elements or Limited Common Elements that may be created on the Convertible Real Estate. At such time as all of the Convertible Real Estate is completely converted, the maximum number of Units in the Community as an aggregate will be no more than eighty (80) Units. All Units that may be created within the Convertible Real Estate are restricted to residential use substantially to the same extent as all other Units. Any buildings or improvements to be constructed upon Units created by the conversion of Convertible Real Estate shall be compatible (but not necessarily the same) in quality of construction, materials and architectural style with the buildings, improvements and Units on other portions of the Community. However, all restrictions in this Declaration affecting use, occupancy and alienation of Units shall apply to Units created by the conversion of Convertible Real Estate. No assurances are made as to any other improvements and Limited Common Elements to be made or created in the Convertible Real Estate, nor to the proportion of Limited Common Elements to Units therein. The Allocated Interest appurtenant to each Unit created by the conversion of the Convertible Real Estate and the other existing Units shall be recalculated as required by Sections 2.1 and 10.2 hereof.

## ARTICLE XXI

### WITHDRAWABLE REAL ESTATE

Section 21.1. Reservation to Withdraw. The Declarant hereby explicitly reserves an option, until the expiration of the Development Period, to withdraw all or any portion of the Withdrawable Real Estate in compliance with Section 5212 of the Act, without the consent of any Unit Owner, the holder or insurer of any Security Interest in any Unit, or any other party whatsoever. This option to withdraw may be terminated prior to such date only upon the filing of an amendment to this Declaration by the Declarant. The Declarant expressly reserves the right to withdraw any or all portions of the Withdrawable Real Estate at any time, at different times, in any order, without limitation and without any requirement that any other real estate be converted, added or withdrawn; provided, however, that the Withdrawable Real Estate shall not exceed the area(s) described as such on Exhibit "E" attached hereto. There are no other limitations on this option to withdraw Withdrawable Real Estate. The Allocated Interest appurtenant to each Unit in the Community as of the date this Declaration or any amendments thereto are recorded will be unaffected by the withdrawal of all or any part of the Withdrawable Real Estate unless Units were created within the Withdrawable Real Estate prior to withdrawal, in which case, the Allocated Interests and votes in the Association of the withdrawn Units shall be reallocated to the remaining Units in the Community in proportion to the respective interests and votes of those Units before the withdrawal. In the event that the Declarant withdraws all or any portion of the Withdrawable Real Estate, the assurances, if any, contained in this Declaration shall not apply to the Withdrawable Real Estate withdrawn from the Community.

Section 21.2. Easements Regarding Withdrawable Real Estate. If and when Withdrawable Real Estate is withdrawn from the Community in accordance with the provisions of this Declaration and such withdrawn real estate is not either dedicated and accepted by the Municipality or any other governmental authority, the following reciprocal easements shall be created and granted in favor of and against the Unit Owners and the Association, on the one hand, and the owners and occupants of the portion of the Withdrawable Real Estate withdrawn from the Community, on the other hand to the extent that such easements are appropriate in the sole but reasonable discretion of Declarant:

21.2.1. A non-exclusive easement and right-of-way over, on, and upon any roads and streets created within the Property for ingress and egress to and from any public streets serving the Community;

21.2.2. The right of access for the placement and maintenance of underground utility facilities to serve any owner of any portion of the Community, including, *inter alia*, electrical, gas, telephone, sewer and water lines provided that the exercise of said rights does not materially interfere with the existing utility facilities;

21.2.3. The right to use and gain access to existing utility facilities located on the Community, including, *inter alia*, the waterlines, sanitary sewer and storm sewer facilities, and to tie into said facilities, together with the right

to install and maintain new utility facilities, provided that the exercise of such rights does not materially interfere with the existing utility facilities;

21.2.4. The right to enter upon the Community at reasonable times for the purpose of laying, constructing, inspecting, maintaining, repairing or removing said utility facilities.

Section 21.3. Declaration of Reciprocal Easements. Prior to withdrawing Withdrawable Real Estate that is not either dedicated and accepted by the Municipality or any other governmental authority, the Declarant shall execute and record a Declaration of Reciprocal Easements creating the rights above, subject, *inter alia*, to the following conditions:

21.3.1. The party exercising such easement rights for the installation of utility facilities shall be solely responsible for all expenses of whatever nature with regard to the initial construction and installation of said utility facilities;

21.3.2. Any party exercising the easement right to install utility facilities over, under or through the Community shall observe all applicable laws pertaining thereto. All work shall be done during reasonable times, following reasonable notice to any party who will be affected by the work, and shall be done in a manner which shall not unreasonably interfere with the use of the Community by the owners and occupants thereof;

21.3.3. The party exercising such easement right, at its sole cost, shall promptly restore the Community to its original condition;

21.3.4. The expense of operating, maintaining and repairing any area or facility, subject to a reciprocal easement, shall be equitably apportioned among the owners using said areas or easements, considering all pertinent use factors.

21.3.5. The party exercising any easement right shall indemnify and hold harmless all other owners within the Community from all loss, damage, claims or expenses, including reasonable attorneys' fees, resulting from its negligent or improper exercise of the easements and other rights granted herein.

## ARTICLE XXII

[RESERVED]

## ARTICLE XXIII

### TERMINATION OF THE COMMUNITY

Section 23.1. Procedure for Termination. Except in the case of a taking of all of the Units in the Community by eminent domain, the Community may be terminated by agreement of Unit Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated, provided that at least eighty

percent (80%) of the affirmative votes are allocated to Units not owned by the Declarant or a Builder.

#### ARTICLE XXIV

##### INTERPRETATION

Section 24.1. Interpretation. The provisions of this Declaration shall be liberally construed in order to effectuate the Declarant's desire to create a uniform plan for development and operation of the Community. The headings preceding the various paragraphs of this Declaration and the Table of Contents are intended solely for the convenience of readers of this Declaration.

#### ARTICLE XXV

##### SEVERABILITY

Section 25.1. Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof unless such deletion shall destroy the uniform plan for development and operation of the planned community which this Declaration is intended to create.

#### ARTICLE XXVI

##### EFFECTIVE DATE

Section 26.1. Effective Date. This Declaration shall become effective on the date on which it is recorded (the "Effective Date").

[Signature page follows.]

IN WITNESS WHEREOF, the Declarant, intending to be legally bound hereby has duly executed this Declaration, as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

ATTEST/WITNESS:

FISHING CREEK VALLEY  
ASSOCIATES, L.P.  
By: REY, Inc., its Managing  
General Partner

By \_\_\_\_\_

By \_\_\_\_\_

RICHARD E. YINGST, JR.,  
President

COMMONWEALTH OF PENNSYLVANIA

:

: SS:

COUNTY OF DAUPHIN

:

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public, the undersigned officer, personally appeared RICHARD E. YINGST, JR. who acknowledged himself to be the President of REY, Inc., a Pennsylvania corporation (the "Corporation"), said Corporation being the Managing General Partner of FISHING CREEK VALLEY ASSOCIATES, L.P., a Pennsylvania limited partnership (the "Partnership"), and that he as such officer, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the Corporation by himself as such officer in the Corporation's capacity as Managing General Partner of, and as authorized by, the Partnership.

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

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

## EXHIBIT A

### LEGAL DESCRIPTION OF THE REAL ESTATE

All that certain tract of lands located in West Hanover Township, Dauphin County, Pennsylvania, identified as Phase IV and Future Phase V on that certain Final Subdivision Plan for Brookview Phase IV prepared by Mellot Engineering, Inc., dated April 28, 2014 and recorded in the Office of the Recorder of Deeds in and for Dauphin County as Instrument No.

\_\_\_\_\_ and more particularly described as follows:

**Beginning** at a point at the northeast community boundary corner of The Preserve at Brookview a Planned Community, thence along the eastern boundary of said community the following four courses and distances:

1. S06°39'12"E for a distance of 755.23' to a point;
2. thence S81°34'12"W for a distance of 434.16' to a point;
3. thence S20°07'12"W for a distance of 826.46' to a point;
4. thence S27°04'56"E for a distance of 507.38' to a point on the northern right of way line of Interstate 81, said point being the southeast boundary corner of said community;

thence along the southern boundary of said community the following four courses and distances;

1. following the northern right of way line of interstate 81 by a curve to the left having a radius of 4003.83', an arc length of 89.37', a chord bearing of S48°21'22"W and a chord distance of 89.37' to a point;
2. thence continuing along the northern street right of way line of interstate 81 N42°17'00"W for a distance of 30.00' to a point;
3. thence continuing along the northern street right of way line of interstate 81 by a curve to the left having a radius of 4033.83', an arc length of 196.94', a chord bearing of S46°19'05"W and a chord distance of 196.92' to a point;
4. thence N87°59'01"W for a distance of 1,191.47' to a point, said point being the southwest boundary corner of said community;

thence along the western boundary of said community the following ten courses and distances;

1. N01°02'48"W for a distance of 161.78' to a point;
2. thence S89°05'54"W for a distance of 125.32' to a point at the eastern dedicated street right of way of Piketown Road;
3. thence along dedicated street right of way of Piketown Road N08°55'29"W for a distance of 50.49' to a point;
4. thence N89°05'54"E for a distance of 132.17' to a point;
5. thence by a curve to the left having a radius of 12.00', an arc length of 18.81', a chord bearing of N43°58'06"E and a chord distance of 16.94' to a point;
6. thence N01°16'17"W for a distance of 312.97' to a point;
7. thence N89°05'54"E for a distance 100.00' to a point;
8. thence N01°16'17"W for a distance of 150.67' to a point;

Declaration—The Preserve at Brook View

9. thence N89°05'54"E for a distance of 29.68' to a point;
10. thence N13°55'21"W for a distance of 128.58' to a point, said point being the northwest boundary corner of said community;

thence along the northern boundary of said community the following eight courses and distances;

1. N54°27'03"E for a distance of 993.43' to a point;
2. thence N29°34'55"W for a distance of 180.02' to a point;
3. thence N38°38'56"E for a distance of 150.00' to a point;
4. thence S51°21'04"E for a distance of 125.00' to a point;
5. thence N38°38'56"E for a distance of 150.00' to a point, said point being located on the western dedicated right of way of Beaver Creek Road (25' from centerline);
6. thence across said street right of way N88°19'49"E for a distance of 69.35' to a point on the eastern street right of way of Beaver Creek Road;
7. thence N70°42'49"E for a distance of 149.09' to a point;
8. thence N50°26'29"E for a distance 654.63' to a point, said point being the point and place of beginning.

Community Area = 2,011,595 sq. ft. or 46.179 acres

## EXHIBIT B

### ALLOCATED INTEREST IN COMMON EXPENSE LIABILITY AND VOTES APPURTENANT TO UNITS

Unit Number	Allocated Interest	Number of Votes
42	10.0	1
43	10.0	1
44	10.0	1
45	10.0	1
46	10.0	1
47	10.0	1
48	10.0	1
73	10.0	1
74	10.0	1
75	10.0	1
<b>TOTAL (10 Units)</b>	100.00	10



## **EXHIBIT C**

### **PLATS AND PLANS**

The Declaration Plat for The Preserve at Brook View, A Planned Community, consisting of two (2) pages dated September 15, 2015 and is being filed in the Office of the Recorder of Deeds in and for Dauphin County, Pennsylvania, concurrently with the filing of this Declaration, and said Plats and Plans are hereby incorporated herein and made an integral part hereof by this reference thereto.

A summary listing of the easements and setbacks shown on said Plats and Plans follows this page.

## EASEMENTS & SETBACKS FOR UNITS CREATED IN PHASE I THE PRESERVE AT BROOK VIEW, A PLANNED COMMUNITY

UNIT NO	FP	FP- SB	CS	DR	C&D	SA N	WL	SIGN	FS	S S	RG	OLB
42												
43					X		X				X	X
44					X		X				X	X
45		X			X		X				X	X
46		X			X		X				X	X
47		X			X		X					
48		X	X		X							
73												
74												
75			X								X	X

**10 Total Lots**

**KEY:**

**FP—FLOODPLAIN**  
**FP SB—FLOODPLAIN SETBACK**  
**CS—CLEAR SIGHT**  
**DR—DRAINAGE**  
**C&D—CONSERVATION & DRAINAGE**  
**SAN—SANITARY**  
**WL—WETLAND PROTECTION OVERLAY**  
**SIGN—SIGNAGE**

**FS—FENCE SCREENING**  
**SS—STEEP SLOPE**  
**RG – RAIN GARDEN**  
**OLB – ON LOT BASIN**

Declaration—The Preserve at Brook View

## **EXHIBIT D**

### **LEGAL DESCRIPTION OF THE CONVERTIBLE REAL ESTATE**

ALL THAT CERTAIN parcel of land containing 46.179 acres, more or less, more particularly described on Exhibit "A" to this Declaration, less and excepting therefrom: Units 42 through 38, inclusive, and Units 73 through 75, inclusive, as described on the Plats and Plans.

## **EXHIBIT E**

### **LEGAL DESCRIPTION OF THE WITHDRAWABLE REAL ESTATE**

ALL THAT CERTAIN parcel of land containing 46.179 acres, more or less, more particularly described on Exhibit "A" to this Declaration, less and excepting therefrom: Units 42 through 38, inclusive, and Units 73 through 75, inclusive, as described on the Plats and Plans.