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**DECLARATION OF  
COLONEL'S PLACE,  
A PLANNED COMMUNITY**

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**DECLARATION OF  
COLONEL'S PLACE,  
A PLANNED COMMUNITY**

This **Declaration** is made this 24 day of May, 2016 by Mikelen, LLC, a Pennsylvania limited liability company, for itself, its successors, grantees and assigns other than ultimate Unit-purchasers (the "Declarant").

**Article I - The Real Estate/Property**

**Section 1.01 The Real Estate/Property.** The Declarant is the owner of the real estate located in the Borough of Trappe, Montgomery County, Pennsylvania as more fully described in Exhibit "1.01" (the "Real Estate"), together with the easements, rights and appurtenances belonging thereto (the "Property").

**Article II - Submission of Property to Uniform Planned Community Act; Name**

**Section 2.01 Submission of Property.** The Declarant hereby submits the Property to the provisions of the Pennsylvania Uniform Planned Community Act, Act No. 1996-180, (68 Pa. Cons. Stat. Ann. §§5101 et seq.), as amended, (the "Act") which is incorporated herein by reference, and the Declarant hereby creates a planned community with respect to the Property (the "Community").

**Section 2.02 Name.** The name by which the Community shall hereafter be identified is Colonel's Place, a Planned Community.

**Article III - Definitions**

**Section 3.01 Definitions.** The following terms when used herein and in the Bylaws of Colonel's Place Homeowner's Association (the "Bylaws") are to be defined according to the meanings ascribed to them by this Section 3.01. Any capitalized term used herein or in the Bylaws which is not defined in this Section 3.01, elsewhere in this Declaration or the Bylaws, but is defined in the Act, shall have the meaning ascribed to it by the Act.

a. "Assessments" shall mean those levies, charges, assessments or sums payable by the Unit Owners from time to time upon notification by the Association, as provided herein.

b. "Association" or "Community Association" shall mean an association of all Unit Owners within the Community organized under Section 5301 of the Act.

c. "Borough" shall mean the Borough of Trappe, Montgomery County, Pennsylvania.

d. "Bylaws" are defined above and are the governing regulations of the Association as are adopted pursuant to the Act and this Declaration for the regulation and

management of the Association by its Executive Board, including such amendments as may be adopted from time to time.

e. "Common Elements" shall mean the Common Facilities or Controlled Facilities.

f. "Common Expenses" shall mean expenditures made by or financial liabilities of the Association, together with any allocation to reserves, and shall include General Common Expenses and Limited Common Expenses and such other amounts as this Declaration shall designate as Common Expenses.

g. "Common Facilities" shall mean all portions of the Community which are owned by or leased to the Association, other than the Units as shown and so designated on the Plats and Plans, which may include, but not be limited to, the cul-de-sac bulb within Colonel's Place and the rain garden within the cul-de-sac bulb.

h. "Controlled Facilities" shall mean all real estate within the Community that is not a part of the Common Facilities, but which is inspected, maintained, improved, repaired, replaced, regulated, managed, insured or controlled by the Association. Controlled Facilities include, without limitation, the underground detention facility located under Units 7, 8 and 9 and its appurtenant piping, inlets and other appurtenant facilities; and any other storm sewer lines under Units. The Community may also include entrance features which, if the Declarant chooses to include them, will be a Controlled Facility as well.

i. "Convertible/Withdrawable Real Estate" shall have the meaning ascribed to it by the Act, however, this Community does not have Convertible/Withdrawable Real Estate.

j. "Declarant" shall mean Mikelen, LLC, a Pennsylvania limited liability company, its successors or assigns.

k. "Director" shall mean a member of the Executive Board.

l. "Dwelling" means any single-family detached residence erected on or to be erected on a Unit.

m. "Eligible Mortgagee" means any holder, insurer or guarantor of a first mortgage lien on one or more Units in the Community who shall have provided to the Association both initially and every other year thereafter a statement of its name, address and the Unit(s) against which the mortgagee holds a mortgage.

n. "Executive Board" or "Board" shall mean a board of natural individuals of the number stated herein and in the Bylaws, who shall manage the business, operation and affairs of the Community on behalf of the Unit Owners and in compliance with and subject to the provisions of the Act, this Declaration, the Bylaws and Rules and Regulations.

o. "General Common Expenses" shall mean those expenditures for which the Unit Owners are liable as provided herein, including, but not limited to:

(i) Expenses of administration, management, operation, maintenance repair, replacement or insurance, together with any allocation to reserves, of the Common Elements, and for the administration, management and operation of the Association;

(ii) Expenses or liabilities agreed upon by the Unit Owners as common; and

(iii) Expenses not designated as a Limited Common Expense or Limited Direct Charge by the provisions of the Act, this Declaration or the Bylaws..

p. "General Common Expense Percentage" shall have the meaning ascribed to it in Section 7.07.

q. "Limited Common Elements" or "Limited Common Facilities" shall mean any real estate within the Community that is a Common Facility which is designated for the use of that Unit or Units to which such Common Facilities are assigned or appurtenant (but fewer than all Units) and which are limited and restricted to the sole and exclusive use of the Owner or Owners of such Unit or Units. There are no Limited Common Elements contemplated for this Community.

r. "Limited Common Expenses" shall mean those expenses for which one Owner or several Owners, but not necessarily all Owners, are liable, including, but not limited to:

(i) Any Common Expense benefiting fewer than all Units; or

(ii) Any Common Expense caused by the negligence or misconduct of any Owner.

s. "Limited Direct Charge" shall mean an Assessment against one or more Unit Owners for Limited Common Expenses that are charged directly to the Unit Owners receiving such services before, at or after the time such services are rendered, and that are not included in the annual budget of General Common Expenses or Limited Common Expenses.

t. "Owner" or "Unit Owner" shall mean the record owner, whether one or more Persons, of fee simple title to any Unit which is or are part of the Community, but excluding those having an interest in any Unit merely as security for the performance of an obligation.

u. "Person" shall mean any natural individual, corporation, partnership, association, trust or other legal entity or any combination thereof.

v. "Plats and Plans" shall mean those plats or plans prepared in accordance with the requirements of Section 5210 of the Act, as amended from time to time, and attached hereto as Exhibit 5.01.

w. "Recorded" shall mean that an instrument has been duly entered of record in the Office of the Recorder of Deeds in and for Montgomery County, Pennsylvania.

x. "Rules and Regulations" shall mean the policies and procedures of the Association established from time to time by the Executive Board.

y. "Special Assessment" shall mean the assessment made by the Association in a given year for the purpose of defraying, in whole or in part, the cost of any unexpected operational expenses as well as construction, reconstruction, expansion, repair, or replacement of the Common Elements.

z. "Special Declarant Rights" shall mean all rights reserved for the benefit of the Declarant under the Act, which include, but are not limited to, the rights to:

- (i) Complete the improvements indicated on the Plats and Plans;
- (ii) Maintain offices, signs and models;
- (iii) Use and grant easements through the Common Facilities or Controlled Facilities for the purpose of making improvements within the Community; and
- (iv) Appoint or remove a member of the Executive Board during the period of time that the Declarant controls the Association.

aa. "Stormwater Management Facilities" shall mean all of the stormwater management facilities located in the Community, including, but not limited to, an underground detention facility and rain garden as well as their piping, inlets and other appurtenant facilities; amended soils; and other BMPs as may be required by the Borough. Stormwater Management Facilities are a permanent part of the Community and shall not be removed, altered or modified.

bb. "Unit" shall mean a part of the Community designated for separate ownership on which a single-family detached Dwelling is built and completed as evidenced by the issuance of a certificate of occupancy by the Borough. Each Unit shall be designed or intended for independent use, shall have a direct exit to a public street or way, or to a Common Facility or Common Facilities leading to a public street or way, and shall include the General Common Expense Percentage which is assigned to a Unit in this Declaration or any amendments thereto.

cc. "Unit Designation" shall mean the number, letter or combination thereof designating a Unit on the Plats and Plans.



## **Article IV - Applicability and Interpretation**

**Section 4.01 Applicability.** The Property is subject to the provisions of this Declaration, the Act, the Bylaws and such Rules and Regulations as may be issued by the Executive Board from time to time to govern the conduct of the Association's members and the use and occupancy of the Property. All present and future Owners and tenants, their guests, licensees, servants, agents, employees and any other person or persons who shall be permitted to use the Common Facilities described in this Declaration shall be subject to this Declaration, the Bylaws and any Rules and Regulations. Ownership, rental or occupancy of any of the Units in the Community shall be conclusively deemed to mean that the Unit Owner, tenant or occupant has accepted and ratified this Declaration, the Bylaws and such Rules and Regulations and will comply with them.

**Section 4.02 Interpretation of Declaration and Bylaws.** In the event of a conflict of interpretation between the provisions set forth in the Bylaws and this Declaration, this Declaration shall govern except to the extent this Declaration is inconsistent with the Act. In the event that the Internal Revenue Code is hereafter amended or changed, both this Declaration and the Bylaws shall be interpreted in a manner so as to conform to the provisions of the Internal Revenue Code with respect to non-profit entities, it being the intention to preserve the lawful status of the Association as a bona-fide non-profit entity.

## **Article V - Plats and Plans**

**Section 5.01 Plats and Plans.** The Plats and Plans are attached hereto as Exhibit "5.01". The Plats and Plans describe the Property, the name of the Property, the location of the Units (including Unit Designation), Common Elements and such other information as is required by the Act.

## **Article VI - Units and Maintenance Obligations for Units**

**Section 6.01 Number of Units.** The Community consists of those Units shown on the Plats and Plans and designated on Exhibit "6.01" which is attached hereto and made a part hereof. The maximum number of Units shall not exceed twenty (20).

**Section 6.02 Description of Units.** Each Unit is as shown on the Plats and Plans, which Plats and Plans may be amended from time to time. Each Unit shall consist of the subdivided lot, the Dwelling and all other improvements appurtenant thereto within the subdivided lot. Subject to Borough approval, the Declarant reserves the right to modify the design, size and appearance of the Units. The Dwellings on the Units will be single-family detached homes.

### **Section 6.03 Maintenance of Units.**

a. Each Unit Owner shall be responsible for the maintenance, repair and replacement of his Unit and features in the public right of way contiguous to such Unit including, without limitation, the common sidewalk adjacent to the Unit. No structures such as fences or any other improvement shall be placed or constructed within the public right of way. Without



limiting the foregoing, any water, sewer or other utility laterals located under a Unit are considered part of the Unit and shall be the responsibility of the Unit Owner, not the Association. Moreover, Unit Owners shall be responsible for snow removal and ice melting within the Unit as well as the public sidewalk adjacent to the Unit. The Association shall have the ability (but not the obligation) to dictate the manner in which ice melting is conducted pursuant to Rules and Regulations.

b. Unit Owners shall be responsible for the maintenance of any drainage, storm water or any other easements to the extent that all or a portion of these easements are located within a Unit, including without limitation, any easements for Stormwater Management Facilities. More specifically, a Unit Owner shall be responsible for the following within any easements on their Unit: keeping the area free of obstructions, structures, vegetation, or accumulated sediment that may block or hinder the function and purpose of the easement; keeping the area free from litter or garbage; repairing erosion and restoring vegetation as necessary to keep the easement in good repair. Without limiting the generality of the foregoing, Unit Owners are prohibited from altering, changing or amending in any way the Stormwater Management Facilities, whether on their Unit or not, from the plans approved by the Borough without the written consent and approval of the Borough and other government agencies having jurisdiction.

c. **Amended Soils.** Each Unit has amended soils which are part of the Stormwater Management Facilities. Unit Owners shall be responsible for the maintenance, repair and replacement of any amended soils. Unit Owners shall not block or hinder the function and purpose of the amended soils.

d. **Clear Sight Triangles.** Unit 1 has a clear sight triangle located within the area of the Unit between the driveway and College Avenue. Unit 20 also has a clear sight triangle located within the area of the Unit between the driveway and the adjacent condominium's driveway off of Colonel's Place. These areas shall be kept free of all obstructions including structures, fences, vegetation and signs that would prohibit clear sight to College Avenue and Colonel's Place with respect to Unit 1 and Colonel's Place and the condominium's driveway with respect to Unit 20. The Owners of these Units are responsible for the proper maintenance of these areas including the pruning of trees that may interfere with sight line as well as compliance with the Borough's Subdivision and Land Development Ordinance regarding sight triangles. The Borough shall have the right to remove any obstructions from these areas without the payment of reimbursement for any objects or plantings removed by the Borough.

e. **Storm Water Drains.** It shall be the responsibility of the Unit Owner to maintain surface swales on their Unit, if any, to preclude flooding. Easements where storm drains have been installed shall be kept free from all structures, including accessory structures such as fences and sheds and there shall be no trees or shrubs planted in these easements. The Borough shall make the final determination of the proper maintenance of such easement. Should such Unit Owner where surface swales have been installed fail to properly maintain any portion of the drainage system, above provided, or place structures, plants or trees within the easement, after notification to such Unit Owner by the Borough, the Borough is authorized to enter upon

the easement to perform such maintenance, improvements or repairs or to remove these plants or structures therefrom or to otherwise restore the easement to its original condition and thereafter recover the cost of performing such service from the Unit Owner. In order to enforce the recovery of such cost of services, Borough shall have the right to file a municipal lien against such Unit and thereafter to exercise its remedies in accordance with the provisions of the Borough Code.

f. **Street Trees.** To the extent a Unit has street trees on it, the Unit Owners must keep this area free from structures and other plants so as not to interfere with the planting of street trees. The Borough reserves the right to adjust the interval between trees and approve substitution of species from those on the approved plans. The Unit Owners of the Units where street trees are located are responsible for maintenance of the trees. Should the trees not be properly taken care of by the Unit Owner, they will be responsible for replacement of the tree with an approved type of tree. Should such Unit Owner where such trees have been located fail to properly maintain any of the trees as above provided, after notification to such Unit Owner by the Borough, it is authorized to enter upon the Unit Owner's Unit to perform such maintenance or to remove any structures interfering with such maintenance to replace or maintain the trees and thereafter recover the cost of performing such service from the Unit Owner. In order to enforce the recovery of such cost of services, the Borough shall have the right to file a municipal lien against such Unit and thereafter to exercise its remedies in accordance with the Borough Code.

g. **No Direct Access to College Avenue.** No Unit shall be permitted direct access to College Avenue.

h. **No Accessory Use Structures Fronting on College Avenue.** No accessory use structures are permitted in the yards of Units fronting on College Avenue.

i. The failure of any Unit Owner to perform the foregoing obligations shall give the Association the right, but not the obligation, after notice to the Unit Owner, to perform the obligations and assess the Unit Owner for the expenses incurred by the Association either as a Limited Common Expense or Limited Direct Charge.

**Section 6.04 Borough's Maintenance Rights.** In the event that a Unit Owner shall at any time fail to maintain the Unit as set forth herein, the Borough may enforce its easement rights as set forth in Article XI hereof.

## **Article VII - Common Elements and Limited Common Elements**

**Section 7.01 Common Facilities.** The Common Facilities are defined in Section 3.01 and shown on the Plats and Plans.

**Section 7.02 Controlled Facilities.** The Controlled Facilities are described in Section 3.01. Without limiting the generality of the foregoing:

i. **Underground Detention Facility.** The Association shall be responsible for maintenance, repair and replacement of the underground detention facility

located under Units 7, 8 and 9 as well as all appurtenant piping, inlets and other appurtenant facilities which may be located on these or other Units and which may be shown on the Plats and Plans.

ii. **Storm Sewer Lines.** The Association shall be responsible for maintenance, repair and replacement of the underground storm sewer lines located under Units.

### **Section 7.03 Construction, Lease and Transfer of Common Facilities.**

a. The Declarant shall construct the Common Facilities and convey same to the Association no later than conveyance of the last Unit in the Property all in accordance with the requirements of the Act. The Declarant reserves the right to convey the Common Facilities, in whole or in part, at any time prior to this event, and in the event the Common Facilities are not substantially complete at the time of conveyance, the Declarant covenants that it shall substantially complete the Common Facilities and shall guaranty completion for the benefit of the Association. The Declarant will not provide any third-party guarantee, bond, escrow, letter of credit or other mechanism to assure completion of the Common Facilities. The obligations of the Declarant in this Section shall be a covenant running with the Property and shall be binding on the Declarant. Until such time as the Common Facilities are conveyed to the Association, they shall be owned by the Declarant but may be treated as Controlled Facilities subject to the Act.

b. The Declarant shall convey to the Association, and the Association shall accept, the Common Facilities by special warranty deed for no consideration. The Declarant shall be responsible for any realty transfer tax due, recording fees and title insurance, if any. Acceptance of the Common Facilities shall not constitute a waiver of the Declarant's obligation to complete the Common Facilities. The deed of conveyance shall be Recorded.

### **Section 7.04 Maintenance and Repair of Common Elements.**

a. The Association shall provide for the current, regular and periodic maintenance, repair and replacement of the Common Elements in accordance with the terms and conditions of this Declaration as well as any Recorded agreements with the Borough, if any. Subject to the terms of this Declaration, the cost and expense of the foregoing shall be a General Common Expense and the Executive Board shall include in the annual budget of the Association as part of the Assessments reasonable reserves for replacement of Common Elements.

b. **NPDES Permit, Stormwater Management Facilities and BMPs.** The Association shall be perpetually responsible for operating and maintaining the Stormwater Management Facilities (underground detention facility and rain garden and their respective piping, inlets and other appurtenant facilities) and Best Management Practices (BMPs) in proper working order as detailed in the approved post-construction stormwater management (PCSM) plans which are part of the approved Recorded plans for the development of this Community. The Association shall also be responsible for replacement and/or rebuilding of the Stormwater Management Facilities (underground detention facility and rain garden and their respective piping, inlets and other appurtenant facilities) and BMPs in the event of failure. It shall be unlawful to modify, fill, landscape, alter or remove any permanent Stormwater Management

Facility or BMP required by the approved PCSM plans or to allow the Property to remain in a condition which does not conform to the approved PCSM plans unless an exception is granted in writing by the Borough or appropriate government entity and it is part of an approved maintenance program. The Borough reserves the right, but not the duty, to inspect the Stormwater Management Facilities and BMPs to insure they are working as designed. Such inspection by the Borough may include, without limitation, an inspection of the Association's operation, maintenance and repair requirements for the Stormwater Management Facilities. The Association shall be subject to any operations and maintenance agreements with the Borough whether or not such agreements are Recorded. Without limiting the generality of the foregoing, the Association shall maintain the Stormwater Management Facilities (underground detention facility and rain garden and their respective piping, inlets and other appurtenant facilities) in accordance with the NPDES permit obtained by the Declarant as said NPDES permit may be amended from time to time, the post-construction stormwater management and BMP provisions attached hereto and made a part hereof as Exhibit 7.04.b. and any Recorded stormwater management documents, plans, notes or agreements with the Borough. Moreover, the Association and Unit Owners authorize the Declarant to execute any and all documents necessary to terminate Declarant's duties and responsibilities under the NPDES permit upon completion of Declarant's obligations under the NPDES permit as determined by Declarant including, without limitation, a Notice of Termination, and assign it to the Association which will thereafter assume all duties and responsibilities of the Declarant under the NPDES permit. For this reason, the Declarant is hereby irrevocably appointed agent for the Association and each Owner for the purposes set forth in this Section 7.04.b.

**Section 7.05 Use of Common Facilities.** Except as their use may otherwise be limited by this Declaration, the Bylaws, Rules and Regulations or otherwise by the Executive Board, or by the Recorded agreements with the Borough, if any, each Unit Owner, tenant and occupant of a Unit, and the family members and guests of such Unit Owner, tenant and occupant, may use the Common Facilities in common with all other Unit Owners and tenants or occupants of other Units and their respective family members and guests in accordance with the purposes for which they are intended without hindering or encroaching upon the lawful rights of the other Unit Owners.

**Section 7.06 Alteration to Common Elements by Unit Owners.** No Owner may make any improvements or alterations or do any work which would impair the structural integrity or mechanical systems of any Common Element, lessen the support of any portion of the Community, or jeopardize the soundness or safety of the Property. No Owner shall impair any easement or hereditament within the Community. No Owner shall alter any of the Common Elements, change the appearance of the Common Elements or any other portion of the Community without the prior written approval of the Executive Board and, as long as the Declarant owns a Unit, the Declarant. None of the foregoing shall be applicable to or in any way impair or restrict construction, renovations and improvements in connection with the development of the Community by the Declarant.

**Section 7.07 Liability for Common Expenses.** Each Unit Owner covenants and agrees to pay the Association his share of the General Common Expenses and all Limited Common Expenses or Limited Direct Charges assessed against his Unit. Except as provided

below, all General Common Expenses shall be assessed equally against all Units pursuant to the formula set forth in the next sentence. Each Unit's share of liability for General Common Expenses (the "General Common Expense Percentage") is determined by multiplying one hundred (100) and the quotient (rounded to nearest thousandth) resulting from dividing one (1) by the total of all Units in the Community. The obligation to pay Assessments is a covenant running with the Property, inseparable from each Unit. No Owner may exempt himself from liability with respect to the payment of Assessments by waiver of the enjoyment of the right to use any of the Common Facilities or by abandonment of his Unit or otherwise. The obligation to pay Assessments is absolute and unconditional and shall not be subject to setoffs or counterclaims. Any Common Expense which benefits fewer than all of the Units shall be assessed exclusively against the Units benefited.

**Section 7.08 General Common Expense Percentage to Remain Undivided.** The General Common Expense Percentage of a Unit shall be inseparable from each Unit, and any conveyance, lease, devise or other disposition or mortgage or other encumbrance of any Unit shall extend to and include the General Common Expense Percentage, whether or not expressly referred to in the instrument effecting the transfer. The General Common Expense Percentage appurtenant to each Unit shall be deemed to be conveyed, transferred, alienated or encumbered with its respective Unit.

**Section 7.09 Amendment of General Common Expense Percentage.** Except as otherwise provided in the Act, the General Common Expense Percentage appurtenant to each Unit shall have a permanent character, shall be inseparable from each Unit and shall not be altered or changed except by the recording of an amendment to this Declaration, with revised Plats and Plans, approved by all Unit Owners and by at least two-thirds (2/3) of the Eligible Mortgagees.

**Section 7.10 Partition or Division of Common Facilities.** The Common Facilities shall remain undivided and no action for partition or division of any part thereof shall be permitted, unless otherwise provided by law.

**Section 7.11 Declarant's Right to Contribute to the Revenues of the Association.** Declarant shall have the right, in its sole discretion and from time to time, to contribute to the revenues of the Association. The Declarant may reflect such contribution on the books and records of the Association as a loan, in which event it shall be repaid by the Association to the Declarant at the discretion of the Declarant. If treated as a loan, the contribution may accrue interest, compounded monthly, from the date Declarant requests payback of the loan until the date of its repayment, at the short term Applicable Federal Rate ("AFR"), as published by the Internal Revenue Service, and adjusted each month to reflect the AFR for such month.

**Section 7.12 Obsolescence.** Subject to the provisions of the Act and this Declaration, in the event that the Executive Board shall determine that any Common Facility is obsolete, the Executive Board may call for a vote of the Unit Owners to determine whether such Common Facility should be demolished, removed or replaced. In the event that eighty percent (80%) of the Unit Owners and at least two-thirds (2/3) of the Eligible Mortgagees shall determine that



such Common Facility should be demolished, removed or replaced, the costs thereof shall be assessed equally against all of the Unit Owners.

**Section 7.13 Power to Convey or Encumber.** Subject to the limitations of the Act and the provisions of this Declaration, the Association may convey or encumber portions of the Common Facilities, other than those portions prohibited under Section 5318(g) of the Act, if approved by the affirmative vote of at least eighty percent (80%) of the Owners, other than the Declarant; provided that the affirmative vote of one hundred percent (100%) of the Owners of Units to which any Limited Common Element is allocated, if any, is needed to convey or encumber any such Limited Common Element, if any. An agreement to convey or encumber Common Facilities must be evidenced by the execution of an agreement or ratification thereof, in the same manner as a deed, by the requisite number of Owners.

**Section 7.14 Borough's Maintenance Rights.** In the event that the Association or any successor thereto shall at any time fail to maintain the Common Elements in reasonable order and condition, the Borough may enforce its easement rights as set forth in Article XI hereof. The Association will be required to reimburse the Borough for any maintenance costs borne by the Borough.

**Section 7.15 Limited Common Elements.** There are no Limited Common Elements contemplated for this Community.

**Section 7.16 Governmental Compliance.** The Common Elements shall be constructed, preserved, maintained and repaired in accordance with the Plats and Plans and all approvals, decisions and permits of the Borough and all governmental entities having jurisdiction over the Community.

## **Article VIII - Convertible/Withdrawable Real Estate - Not Applicable to This Community**

## **Article IX - The Association**

**Section 9.01 The Association.** The Association is the governing body for all of the Unit Owners and, except as otherwise provided in this Declaration, is responsible for the maintenance, repair, replacement, insurance, cleaning, sanitation, management, regulation, operation and administration of the Common Elements and the making of any additions or improvements thereto. The duties of the Association shall be undertaken as provided herein and in the Bylaws, but nothing herein contained shall be construed so as to preclude the Association from delegating any of these duties to a manager or agent or to another Person subject to the authority of the Association. In the event that the Association, having delegated its duties, decides to terminate professional management for the Community, this termination shall be subject to the provisions of Subsection 22.03c. hereof. The Common Expenses incurred or to be incurred for the maintenance, repair, replacement, insurance, administration, management, regulation, operation or use of the Common Elements or the making of any additions or improvements thereto shall be assessed by the Association against, and collected from, the Unit Owners in accordance with this Declaration and the Act; subject however, to the following sentence. Except as otherwise provided in this Declaration or permitted by the Act, Common Expenses benefiting fewer than all of the Units may be assessed as Limited Common Expenses

or Limited Direct Charges exclusively against the Units benefited. All Owners, upon acceptance of a deed to a Unit, shall become members of the Association. No Owner may exempt himself from liability with respect to any Common Expenses by waiver of the enjoyment of the right to use any of the Common Facilities or by the abandonment of his Unit or otherwise and no action for division or partition of any part of the Common Elements shall be permitted except as provided herein, in the Bylaws or the Act.

#### **Section 9.02 Membership in Association.**

a. Unit Owners upon acceptance of a deed to a Unit become members of the Association. Membership in the Association shall be limited to the Unit Owners of the Community.

b. Every Unit Owner who shall be a member of the Association shall be entitled to all of the rights and shall be bound by all of the obligations accompanying membership, provided that any party who is holding the interest in a Unit merely as a security for the performance of an obligation shall not be a member of the Association.

c. Each Unit in the Community shall have one (1) vote associated with such Unit. When more than one person holds an interest or interests in any Unit, all such persons shall be members, and the vote for such Unit shall be exercised as provided in this Declaration and in the Bylaws, but in no event shall more than one (1) vote be cast with respect to any such Unit.

d. Only those Unit Owners in good standing and entitled to vote shall be considered "Unit Owners" for purposes of obtaining a quorum, or determining the percentage of Unit Owners voting on a matter. A Unit Owner shall be deemed to be "in good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, (i) he shall have fully paid all Assessments made or levied against the Unit Owner and against his Unit by the Executive Board together with all interest, costs, attorneys' fees, penalties and other expenses, if any, properly chargeable to the Unit Owner and against his Unit, at least five (5) days prior to the date fixed for such annual or special meeting; and (ii) he has cured to the Association's sole and reasonable satisfaction any outstanding violations of the Rules and Regulations at least five (5) days prior to the date fixed for such annual or special meeting.

e. In the event that a Unit Owner shall lease or permit another to occupy his Unit in accordance with the provisions of this Declaration, the tenant or occupant shall be permitted to use the Common Facilities (subject however to such limitations on such use as would be applicable to the Unit Owner) but shall not vote in the affairs of the Association.

f. Every lawful transfer of title to a Unit shall include membership in the Association and, upon making such transfer, the previous Unit Owner's membership shall automatically terminate. Except as otherwise expressly provided, membership in the Association may not be assigned or transferred without the transfer of legal title to a Unit and any attempt at such assignment or transfer thereof shall be void and of no effect.

g. Membership in the Association shall automatically terminate when such Unit Owner sells, transfers or otherwise conveys his Unit.

**Section 9.03 Certificate of Voting.** If a Unit is owned by one person, the Unit Owner's right to vote shall be established by the recorded title to the Unit. If a Unit is owned by more than one Person, the Person entitled to cast a vote for the Unit shall be designated in a certificate signed by all of the record Owners of the Unit and filed with the Secretary of the Association, or in the absence of such named person from the meeting or the failure to sign and file the certificate, the person entitled to cast the votes of such Unit shall be the person owning such Unit who is present at the meeting or, if not voting in person, identified on a mail-in ballot or the like. If a Unit is owned by a corporation, joint venture, partnership, unincorporated association or the like, the officer, partner or employee thereof who shall be entitled to cast the votes of that Unit shall be designated in a certificate for this purpose, signed by that entity in accordance with its governing documents, and filed with the Secretary of the Association. If the Owner of a Unit is a trust, the trustee or trustees shall be deemed the Owner for voting purposes. The natural Person designated in such certificate, who is entitled to cast votes for a Unit, shall be known as the "Voting Member." If such a certificate is not on file with the Secretary of the Association for a Unit owned by more than one natural Person or by a corporation, joint venture, partnership, unincorporated association or the like, the votes of the Unit concerned may not, in the discretion of the Executive Board, be considered in determining the requirement for a quorum, or for any purpose requiring the approval of a Person entitled to cast votes for the Unit except if such Unit is owned by a couple. A certificate shall be valid until revoked in writing by any Owner of the Unit, or until superseded by a subsequent certificate, or until a change in the ownership of the Unit concerned. If a Unit is owned by a couple, the following three provisions are applicable to voting by such Unit:

a. The Unit Owners may, but they shall not be required to, designate a Voting Member.

b. If they do not designate a Voting Member, and members of the couple are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting.

c. Where they do not designate a Voting Member and only one is present at a meeting, or otherwise casts a vote, the Person present or identified on a mail-in ballot or the like may cast the vote for the Unit, without establishing the concurrence of the absent or non-listed Person, just as though he or she owned the Unit.

#### **Section 9.04 Executive Board.**

a. Subject to the provisions of this Declaration and the Bylaws, the Executive Board shall have the power to act on behalf of the Association. The initial Executive Board shall consist of three (3) Directors. The initial Directors shall be appointed, removed and replaced from time to time by the Declarant without the necessity of obtaining resignations. Except as modified below, the period of Declarant control of the Association shall extend from the date of the first conveyance of a Unit to a Unit Owner other than Declarant for a period of not more than five (5) years. The Declarant-appointed Directors shall be replaced with Directors elected by the



Unit Owners in accordance with the provisions of this Section. The Executive Board after replacement with Owners elected in accordance with this Section shall remain a three (3) member Board.

b. For purposes of this Declaration, the term "First Election Meeting" shall mean the first meeting of the Association which shall occur no later than sixty (60) days after twenty-five percent (25%) of the Units are conveyed to Unit Owners, other than the Declarant. The term "Transitional Meeting" shall mean the meeting of the Association which shall be held no later than the earlier of (i) sixty (60) days after seventy-five percent (75%) of all Units are conveyed to Unit Owners, other than the Declarant; or (ii) two (2) years after the Declarant has ceased to sell Units in the ordinary course of its business.

c. Subject to the right of the Declarant to alter the following procedure so as to have all or part of the transition process occur earlier than as hereafter described, the transition from an Executive Board comprised solely of Directors appointed by the Declarant to an Executive Board comprised solely of Directors elected by the Unit Owners shall occur as follows:

(i) At the First Election Meeting, the Unit Owners, other than the Declarant, shall elect one (1) Unit Owner ("Unit Owner Director") to serve as a Director who shall replace one of the initial Declarant-appointed Directors. This Unit Owner Director shall serve either a two (2) year term or until the Transitional Meeting election, whichever occurs first. If it takes longer than two (2) years from the First Election Meeting to reach the Transitional Meeting, then there shall be an election at the end of such two-year period and the Unit Owner Director or his successor shall serve either a two (2) year term or until the Transitional Meeting, whichever occurs first.

(ii) At the Transitional Meeting, the Unit Owners, other than the Declarant, shall elect three (3) Unit Owners to serve as Directors who shall replace the two (2) remaining Directors appointed by the Declarant and who may replace the Unit Owner Director if he is not re-elected. The Director receiving the most votes at the Transitional Meeting shall serve until the Annual Meeting election that is three (3) years after the Transitional Meeting. The Director receiving the next highest number of votes shall serve until the Annual Meeting election that is two (2) years after the Transitional Meeting. The Director receiving the fewest votes shall serve until the Annual Meeting election that is one (1) year after the Transitional Meeting. Each Director elected thereafter shall be elected for a term of three (3) years and shall serve until his successor shall be elected and shall qualify.

(iii) Notwithstanding the foregoing, the Declarant shall have the right to appoint one additional non-voting member to the Board to serve until sixty (60) days after the Declarant conveys the last Unit to a Unit Owner.

d. For purposes of determining whether the period of Declarant control has terminated or whether Unit Owners other than the Declarant are entitled to elect members of the Executive Board, the percentage of Units conveyed is presumed to be that percentage of the

maximum number of Units the Declarant has reserved the right to create in the Community as set forth in Section 6.01.

e. After the election held pursuant to Subsection 9.04c.(ii) above and until the Declarant has conveyed the last Unit in the Community, the Executive Board shall notify the Declarant in advance of all meetings of the Executive Board and the Association at the same time as notices are given to the Executive Board members or the Unit Owners as the case may be. Until the Declarant conveys the last Unit in the Community, the Declarant shall be entitled to send a representative to observe all meetings of the Executive Board and Association.

f. Not later than sixty (60) days (or any other time period set forth in the Act) following the Transitional Meeting, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant including, without limitation, the items required by Section 5320 of the Act.

g. Despite any assumption of control of the Board by Unit Owners other than the Declarant, no action shall be taken by the Association or the Board that would affect any rights, privileges, powers and options of the Declarant under this Declaration, the Bylaws or the Act, including any action which would discriminate against the Declarant, or would be detrimental to the sale or leasing of Units owned by the Declarant, without the prior written approval of the Declarant. The Board will be required to continue at least the same level and quality of maintenance, operations and services as provided immediately prior to the assumption of control of the Association by the Unit Owners other than the Declarant until the Declarant sells the last Unit owned by it in the ordinary course of business.

## **Article X - Insurance**

**Section 10.01 Liability.** The Executive Board shall obtain or cause to be obtained "broad-form" comprehensive general liability insurance and property damage insurance, including medical payments, insurance, insuring the Association, Owners, in their capacity as Unit Owners and Association members, and any managing agent retained by the Association, against any liability to the public or to other Unit Owners, their occupants or invitees, relating in any way to the ownership, use and/or maintenance of the Common Facilities and any part thereof covering liability for loss or damage to persons or property in those amounts, against those risks and in those insurance companies which the Executive Board shall from time to time determine, but in no event less than One Million (\$1,000,000) Dollars for bodily injury, including deaths of persons and property damage arising out of a single occurrence. This insurance shall include protection against death, bodily injury and property damage that results from the operation, maintenance, repair, replacement or use of the Common Facilities and all other risks which are customarily covered in insurance policies for similar communities. All liability insurance contracts shall contain severability of interest provisions or endorsements precluding the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners and cross liability endorsements to cover liabilities of the Association or the Owners as a group to a single Owner. Each Unit Owner shall be responsible for obtaining liability insurance for his Unit as the liability insurance obtained by the Association does not cover Units.

### **Section 10.02 Property.**

a. The Executive Board shall obtain or cause to be obtained blanket “all-risk” hazard insurance coverage covering damage to and insuring all of the Common Facilities, including fixtures and equipment therein and thereof, and including all personal property owned by the Association as well as the Controlled Facilities (entrance features, if any) (collectively, the “Insured Property”). The Insured Property shall be insured in and for the interest of the Association or the Executive Board, all Owners and their Eligible Mortgagees, as their interests may appear, in a company or companies acceptable to the standards set by the Executive Board in an amount equal to the maximum insurable replacement value, as determined annually by the Executive Board, with an “agreed amount endorsement” or its equivalent and an “Inflation Guard Endorsement” (provided these two endorsements are commonly available and required by prudent institutional mortgage investors in the area in which the Community is located) exclusive of land, excavation, foundations and other items normally excluded from property insurance policies.

b. Each Unit Owner shall insure his Unit in an amount equal to the insurable replacement value.

### **Section 10.03 General Insurance Provisions.**

a. All policies required to be obtained by the Association shall be purchased by the Association for the benefit of the Association, the Executive Board, all Owners and all Eligible Mortgagees, as their interests may appear; however, the Association and the Owners shall be the named insureds and it shall not be necessary to name the Executive Board or each individual Owner. Mortgagee endorsements may be issued upon request.

b. Any property or comprehensive general liability insurance carried by the Association may contain a deductible provision.

c. The Association shall maintain the appropriate insurance coverage as is required under applicable law and under the guidelines and regulations promulgated, and amended from time to time, by the Federal National Mortgage Association (“FNMA”), the Federal Home Loan Mortgage Corporation (“FHLMC”), the Department of Housing and Urban Development (“HUD”) and the Veterans’ Administration (“VA”) or their successors, including, without limitation, all fidelity bond coverage as is described in the Bylaws or this Declaration.

d. The company or companies with whom the Executive Board shall place its insurance coverage, as provided in this Declaration, must be qualified and reputable companies, authorized to do business in the Commonwealth of Pennsylvania and rated A, with a V financial size category, by A. M. Best Company, Inc. in its “Key Rating Guide: Property Casualty” or a comparable rating if A.M. Best Company, Inc. shall no longer be in existence.

e. Subject to the provisions of this Declaration and the Act, premiums for insurance coverage and other expenses related to insurance shall be paid by the Executive Board and charged as a Common Expense. The Executive Board shall determine in its sole discretion whether any deductible paid by the Association is to be assessed as a General Common Expense or Limited Common Expense. 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 has not been identified by the Executive Board to fund costs of capital expenditures for the current fiscal year of the Association is a Common Expense.

f. An insurer that has issued an insurance policy under this Declaration shall issue certificates of insurance to the Association and, upon request, to any Owner, Eligible Mortgagee or beneficiary under a deed of trust. All insurance policies shall provide that they may not be canceled or substantially modified, by any party, without at least thirty (30) days prior written notice to the Association, each Unit Owner and to each Eligible Mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.

g. All insurance policies obtained by the Association shall provide for the following, if available and where applicable: recognition of any Insurance Trust Agreement should the Board decide to create one; waiver of the right of subrogation as to any claims against Unit Owners and members of their households, the Association, the Executive Board and their respective servants, agents and guests; that the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of these Owners collectively; and that the policy is primary in the event the Owner has other insurance covering the same loss (all of which are generally provided by an insurer in the form of a "Special Community Endorsement" or its equivalent).

h. All insurance policies purchased by the Association shall be deposited with the Executive Board.

i. The types and amounts of insurance coverage described in this Article are minimum amounts for the first year in which the Association is created based upon the requirements of the Act and the standards established by FNMA, FHLMC and/or HUD. The Executive Board shall review periodically all insurance coverage carried pursuant to this Declaration to evaluate this coverage with respect to its compliance with the Declaration and with respect to the then current requirements of the Act and, to the extent the Community is or will be subject to the approval of FNMA, FHLMC, HUD or VA, standards set by FNMA, FHLMC, HUD and VA, as well as with respect to what is reasonably appropriate coverage for communities comparable to the Property. In the event the Executive Board determines after this review and evaluation that the insurance coverage required hereunder is not consistent with the requirements of the Act, the standards set by FNMA, FHLMC, HUD or VA or otherwise reasonably appropriate coverage when compared to coverage for communities comparable to the Property, the Executive Board shall have the power to deviate from the specific provisions of this Article only to the extent of providing such consistent and reasonably appropriate coverage; provided the Executive Board shall give the Owners and the Eligible Mortgagees at least thirty (30) days prior written notice of any deviation.

j. In the event it shall be impossible or extremely difficult to obtain insurance coverage in accordance with the provisions of this Section, the Board, subject to the terms of the Act, shall have the power to deviate from these provisions but only to the extent necessary to obtain adequate insurance coverage. Any deviation shall not occur without thirty (30) days advance written notice to all Owners and all Eligible Mortgagees.

**Section 10.04 Proceeds From Property Insurance.** Proceeds from property insurance policies maintained by the Association shall be paid to the Association or a designated insurance trustee. The duty of the Executive Board, or any insurance trustee so designated, shall be to receive the proceeds which are paid pursuant to any insurance policy and hold the same for the purposes elsewhere stated herein, and for the benefit of the Association, the Owners and their respective Eligible Mortgagees, as their interests may appear.

**Section 10.05 Disposition of Insurance Proceeds.**

a. Any portion of the Community for which the Association or any Unit Owner is required to maintain insurance hereunder is damaged or destroyed shall be repaired or replaced promptly by the Association or such Unit Owner, as set forth in Section 5312(h) of the Act.

**Section 10.06 Association's Power to Compromise Claim.** The Executive Board is hereby irrevocably appointed agent for the Association and each Owner and Eligible Mortgagee for the purpose of compromising and settling claims arising under insurance policies purchased by the Association, and to execute and deliver releases therefore upon the payment of claims.

**Section 10.07 Other Insurance.** The Executive Board shall also cause the following insurance coverage as may be applicable to the Community to be obtained. All premiums for insurance coverage shall be charged as General Common Expenses:

- a. Workmen's Compensation Policy to meet the requirements of law.
- b. Directors' and Officers' Liability and such other insurance as the Executive Board shall deem necessary to satisfy the indemnification obligations of the Association as provided in this Declaration.
- c. Blanket fidelity bonds as required in the Bylaws for all members of the Executive Board, officers and employees of the Association and all other persons who handle or are responsible for funds of or administered by the Association or the management company.
- d. Such other insurance as the Executive Board shall determine from time to time to be necessary or desirable.

**Section 10.08 Limitation of Liability.** The Executive Board shall not be liable for injury or damage caused by the failure of the Executive Board to maintain or repair parts of the Community, except to the extent of the proceeds of insurance carried, collected and received by the Executive Board.

**Section 10.09 Use of Unit and Insurance Premiums.** No Unit shall be used, occupied or kept in a manner which will in any way increase the insurance premiums payable by the Association, without the prior written permission of the Executive Board, which permission, if given at all, shall be conditioned upon the Unit Owner of such Unit being required to bear the full amount of such increase as a Limited Common Expense or Limited Direct Charge. To the



extent that the use or occupancy of a Unit or the Common Elements (whether permitted or without the permission of the Association) increases any insurance premium payable by the Association, the Association shall have the right to charge the amount of such increase to the Unit Owner of the Unit to which such increase is attributable as a Limited Common Expense or Limited Direct Charge. No Unit, Limited Common Element (if any) or any part of the Common Elements shall be used, occupied or kept in any manner which would violate any law, statute, ordinance or regulation of any governmental body or which would lead to the cancellation of any insurance policy or policies on the Property.

## **Article XI - Easements and Declarant Rights**

**Section 11.01 Utility Services Easements.** The Declarant or the Executive Board may grant easements for the present and future installation and maintenance, including the right to read meters, service or repair lines and equipment, and to do everything and anything necessary to properly maintain and furnish the following services, which, for purposes of this Declaration, are defined as "Utility Services"; electric, water, sewer, gas, telephone, cable and other utility services and facilities and appurtenances necessary to the same, which shall apply to the Property. Unit Owners shall not put any plantings or structures within any utility easements. Nothing contained in this Section is intended to create public easements over the Property. The easements provided for in this Section, if granted, shall be limited to the Person identified in each grant of easement.

**Section 11.02 Assignment of Rights.** The rights granted herein to the Declarant may be assigned by the Declarant in whole or in part, as determined in the sole discretion of Declarant and as otherwise permitted under the Act.

**Section 11.03 Owners Easements.** Each Unit Owner shall have an easement in common with all other Unit Owners to use all pipes, wires, ducts, cables, conduits and Utility Services lines servicing that Unit and located in any of the Common Facilities or Controlled Facilities.

**Section 11.04 Easement Over Unit 4 for Benefit of Unit 5 - Ingress, Egress and Regress; and Utility Services Lines.** Unit 5 shall have an easement over Unit 4 as more particularly shown on the Plats and Plans for ingress, egress, regress as well as installation and use of any Utility Services lines.

### **Section 11.05 Association, Executive Board and Declarant.**

a. The Association, the Executive Board and the Declarant and their respective, officers, agents, contractors, sub-contractors, management company and employees, shall have the irrevocable right and easement to have access to each Unit as may be necessary for the inspection, maintenance, repair or replacement of the Common Facilities or Controlled Facilities (for the purposes described elsewhere in this Declaration) or the making of any additions or improvements thereto; or to make repairs to the Unit, the Common Facilities or the Controlled Facilities if such repairs are reasonably necessary for public safety or to prevent damage to the Unit, any other Unit(s), the Common Elements or the Controlled Facilities, or to

abate any violation of law, orders, Rules or Regulations of the Association or of any governmental authorities having jurisdiction thereof or for emergencies.

b. The Association, the Executive Board and the Declarant shall have the right to grant permits, licenses and easements over and through the Common Facilities and Controlled Facilities (underground detention facility and its piping, inlets and other appurtenant facilities; and entrance features, if any) for the necessary, useful or proper maintenance and operation of the Community provided, however, that grants shall not impair any rights of the Declarant under this Declaration and if such permit, license or easement materially impairs any right or benefit that one or more Owners may have with respect to the Common Facilities or Controlled Facilities described above, then such permit, license or easement shall not be granted without the prior written approval of those Owners. This Section shall not be amended without the prior written consent of the Declarant.

c. **Drainage Easements on Units.** Without limiting the generality of this Section, the Association and the Declarant shall have an easement over Units to ensure that Unit Owners are properly maintaining any Stormwater Management Facilities, drainage easements, storm easements or the like that may be located on a Unit. Unit Owners are prohibited from installing or constructing any structures within any easement for Stormwater Management Facilities but are nevertheless required to maintain the surface of such easement areas, i.e., mowing, landscaping and the like.

**Section 11.06 Declarant's Offices, Models, Construction Trailers and Signs.** The Declarant reserves the right with respect to its marketing and construction of Units to use the Common Facilities for the ingress and egress of itself, its officers, employees, agents, contractors and subcontractors and for prospective sale or rental of Units, including the right to park in parking spaces. The Declarant shall also have the right, until the conveyance of the last Unit it owns, to erect signs on the Common Facilities and on its Units advertising such Units for sale or lease. The Declarant shall have the right from time to time to locate and relocate model Units and sales or rental offices or construction trailers in connection with the marketing and construction of Units. Declarant shall have the right to assign its rights under this easement. This Section shall not be amended without the prior written consent of the Declarant.

**Section 11.07 Easements for Construction.** The Declarant, for its own benefit and the benefit of its officers, employees, agents, contractors and subcontractors reserves the right and privilege without let or hindrance with respect to construction of the Units and Common Elements of the Community, to go upon any and all of the Units and Common Elements for purposes of construction, reconstruction, maintenance, repair, renovation, replacement or correction of the Units or Common Elements (including, without limitation, to change the grade of grounds or to install drainage control devices so as to control possible drainage or run off of storm water in connection with the development of the Property or adjacent land). Declarant shall have the right to assign its rights under this easement. This Section shall not be amended without the prior written consent of the Declarant.

**Section 11.08 Encroachments.** If any portion of the Common Facilities hereafter encroaches upon any Unit, or if improvements on any Unit hereafter encroaches upon any other

Unit or upon any portion of the Common Facilities, as a result of settling or shifting of any Dwelling or for other reasons, other than as a result of the purposeful or negligent act or omission of the Unit Owner of the encroaching Unit, or of the Association in the case of encroachments by the Common Facilities, a valid easement appurtenant to the encroaching Units or Common Facilities for the encroachment and for the maintenance of the same shall exist for so long as the encroachment shall exist.

**Section 11.09 Easement in Favor of Borough.**

a. The Borough, its agents and employees, shall have the irrevocable right and easement to have access to the Common Elements to perform such obligations as may be necessary to complete, maintain, repair or replace the Common Elements in the event that the Declarant, Association or Unit Owner, as the case may be, fails to do so. In addition, the Borough, its agents and employees, shall have the irrevocable right and easement to have access to the Community to carry out the corrective or remedial orders of any governmental authority having jurisdiction over the Community, upon reasonable prior written notice of any such order to the Association, in the case of a corrective or remedial order affecting the Common Elements, or to a Unit Owner, where such corrective or remedial order affects a Unit, except in the case of an emergency. Moreover, the Borough shall have an easement in order to conduct its respective maintenance rights as set forth in this Declaration.

b. **Drainage Easements on Units and Common Facilities.** Without limiting the generality of the foregoing, drainage easements may be located on Units. These areas are vital components of the storm water drainage course and may not be altered in any manner. These areas must be maintained as grass and kept free from all other plantings, structures and debris, including fences. Should the owners of these areas fail to properly maintain any portion of these areas as provided above, or place structures, plants or trees within the channel that impede the flow of storm water, after notification to such Unit Owner or the Association (for Common Elements), as and where applicable, the Borough shall be authorized to enter upon the property to perform such maintenance or to remove these plants or structures therefrom or to otherwise restore the channel to its original condition and thereafter to recover the cost of performing such service from the owner of the property. In order to enforce the recovery of such cost of service, the Borough shall have the right to file a municipal lien against such property and thereafter to exercise its remedies in accordance with the provisions of the Borough Code.

**Section 11.10 Recorded Easements and Licenses.** Attached to and made a part of this Declaration as Exhibit "11.10" is a list of the recording data for Recorded easements and licenses appurtenant to or included in the Community or to which any portion of the Community is or may become subject.

**Section 11.11 Light, Air and View.** No Unit Owner shall have an easement for light, air or view over the Unit of another Unit Owner and no diminution of light, air or view by any building or improvement now existing or hereafter erected shall entitle the Unit Owner or any other Person to claim any easement for light, air or view within the Community.



**Section 11.12 Plats and Plans and Recorded Subdivision/Land Development Plan.**

The Plats and Plans and Recorded subdivision/land development plans may include easements, covenants, conditions, restrictions or licenses appurtenant to or included in the Community or to which any portion of the Community is or may become subject.

**Section 11.13 Easement Over Colonel's Place Until Dedication.** The Unit Owners shall have an easement over Colonel's Place for ingress, egress and regress to and from their Units for so long as needed until Colonel's Place is accepted for dedication as a public street by the Borough. The Association shall also have an easement over Colonel's Place for stormwater management, utility connections and other purposes until Colonel's Place is accepted for dedication as a public street by the Borough. Moreover, the Declarant and the Association hereby grant an easement over Colonel's Place for ingress, egress and regress, stormwater management, utility connections and other purposes for the benefit of the condominium to be created on the other side of Colonel's Place from this Community until Colonel's Place is accepted for dedication as a public street by the Borough.

**Section 11.14 Snow Easement.** As more particularly shown on the Recorded record plan for the Community as well as on the Plats and Plans, there is a snow easement in favor of the Borough located by the cul-de-sac.

**Section 11.15 Continuing Easements and Declarant Rights.** The easements and Declarant's rights set forth herein shall run with the land and inure to the benefit of and be binding upon (as applicable) the Declarant (its successors and assigns), the Association, each Unit Owner, the Borough and each Eligible Mortgagee, lessee, occupant or other person having any interest in any Unit or in the Common Elements at the time of reference.

**Article XII - Assessment of Taxes**

**Section 12.01 Assessment of Taxes.** Each Unit shall be assessed and taxed as a separate parcel of real estate entirely independent of the Property of which the Unit is a part, and each Owner is charged with the payment of all taxes, municipal claims and liens assessed, lienied or filed against his Unit. In the event that for any year the taxes are not separately taxed to each Unit, but are taxed on the Property as a whole, then each Owner shall pay a proportionate share thereof in accordance with the Unit's respective General Common Expense Percentage. The Executive Board shall determine the amount due and notify each Owner as to the proportionate share thereof due for each Unit.

**Article XIII - Unit Owner Obligations**

**Section 13.01 Assessment Obligations.**

a. Each Unit Owner by acceptance of the deed for the Unit, whether or not it shall be so expressed in the deed or other conveyance, covenants and agrees to pay to the Association all Assessments including, but not limited to: (i) regular Assessments for General Common Expenses and Limited Common Expenses to be made due and payable on a periodic basis based upon the budget of the Association; (ii) Limited Direct Charges; (iii) Special Assessments to be fixed, established and collected from time to time as hereinafter provided; (iv)

late charges, as established from time to time by the Executive Board, against any Unit Owner whose Assessments are delinquent for a period exceeding fifteen (15) days after the due date ("Delinquency Assessment"); (v) Assessments for other Limited Common Expenses or Limited Direct Charges as provided in this Declaration; (v) any fines or interest charges; and (vi) Assessments for what may from time to time be determined by the Association to be Common Expenses.

b. The obligation to pay Assessments is a covenant running with the land. Each Assessment shall be separate for each Unit and payable by the Owner thereof. The Assessments and costs of collection (including attorneys' fees) shall be a charge on the Unit and shall be a continuing lien upon the Unit from the time each Assessment or costs of collection become due. Each Assessment, Special Assessment, Delinquency Assessment and costs of collection as hereinafter provided and pursuant to the Act, shall be the personal obligation of the Unit Owner at the time when the Assessment first became due. No Owner may exempt himself from contributing toward the Common Expenses, Limited Direct Charges or Limited Common Expenses by waiver of the use or enjoyment of any of the Common Facilities or by abandonment of the Unit owned by him or by setoff or counterclaim.

c. Each Owner shall be assessed for Limited Common Expenses or Limited Direct Charges and is legally obligated to pay for such Limited Common Expenses or Limited Direct Charges assessed against the Owner's Unit in accordance with the following:

i. any Common Expense benefiting, or any service provided to, fewer than all of the Units may be assessed exclusively against those Units benefited in proportion to the relative General Common Expense Percentages assigned to the Units or in any other reasonable manner as determined by the Board; and

ii. if any Common Expense is caused by the negligence or intentional misconduct of any Owner or his tenants, guests, agents or licensees, such Common Expense shall be assessed exclusively against the Unit of such Owner.

Except for the Assessments for Limited Common Expenses or Limited Direct Charges which are assessed at the same time as Assessments for General Common Expenses, all Assessments for Limited Common Expenses or Limited Direct Charges shall be paid by each Owner within fifteen (15) days of his receipt of notice from the Association.

**Section 13.02 Non-refundable Contribution.** The Association shall collect from each purchaser of a Unit, conveyed by the Declarant, Two Hundred Fifty Dollars (\$250.00) as a one-time nonrefundable contribution to the Association which amount shall be used by the Association as the Executive Board shall determine.

**Section 13.03 General Common Expense Percentages.** Each Unit in the Community shall be assigned a General Common Expense Percentage which represents such Unit's proportionate share of the General Common Expenses of the Association. The General Common Expense Percentage, as allocated to each Unit in the Community on Exhibit "6.01", is established pursuant to the formula set forth in Section 7.07.

**Section 13.04 Amount of Assessments.** Each Unit Owner is legally obligated to contribute to the General Common Expenses of the Association providing for the administration and maintenance, replacement and repair of the Common Elements, the administration and maintenance of the Association and all of its real and personal property, in such amount as shall be determined by multiplying the General Common Expense Percentage of the Unit by the total General Common Expenses for the Community computed on an annual basis based upon amounts established in the budget prepared by the Executive Board. Limited Common Expenses and Limited Direct Charges shall be assessed in accordance with this Declaration.

**Section 13.05 Time of Payment.** Except as otherwise provided in this Declaration, payment by the Unit Owner of his share of the expenses aforesaid shall be made at the discretion of the Executive Board, provided that all regular Assessments shall be declared by the Executive Board annually and payable on a monthly basis or as otherwise determined by the Executive Board. The failure of the Executive Board to formally declare any such annual Assessment shall result in the regular Assessment for the immediately preceding period being the payment of the Assessment due and payable for the next period. In the event Assessments are not paid as required, the Executive Board may assess fines, Delinquency Assessments, the costs of collection (including attorneys' fees) and may charge interest on any unpaid Assessment at the maximum rate permitted under the Act or other applicable law, whichever is greater.

**Section 13.06 Effect of Non-Payment of Assessment.** Any Assessment or installment thereof (whether for General Common Expenses or Limited Common Expenses) not paid within thirty (30) days after the due date may, in the reasonable discretion of the Executive Board, shall bear interest from the due date at the rate not greater than (a) fifteen percent (15%) per annum or (b) the highest rate permitted by the Act or other applicable law. The Association shall have the right to accelerate payment of all remaining proposed monthly, quarterly, annually or as otherwise scheduled, payments of any Assessments for a period of twelve (12) months including the amount of any Special Assessments. The Association may bring an action at law or in equity against the Unit Owner personally obligated to pay the same, or foreclose the lien described in this Article against the Unit or do both, or it may seek and obtain any other remedy provided at law or in equity.

**Section 13.07 Lien of Assessments.** All Assessments and charges to any Unit, including, but not limited to, all fines, fees, charges, Limited Direct Charges, late charges, interest and costs of collection thereof (including attorneys' fees), shall constitute a lien against said Unit in favor of the Association; provided that the above shall be subordinate to the lien of any first mortgage on a Unit in accordance with the Act. Such lien shall be effective from and after the time the Assessment or charges described above become due. If the Assessment is payable in installments and one or more installments is past due, the entire unpaid balance of the Assessment becomes effective as a lien from the due date of the delinquent installment. Upon full payment of all sums secured by the lien and a preparation fee, the party making payment shall be entitled to a recordable satisfaction of lien to be recorded at his sole expense. Such lien of the Association shall have the priority accorded Association liens by Section 5315 of the Act.

**Section 13.08 Method of Enforcing Collection of Assessments.** Any Assessment charged against a Unit, may be enforced by a lawsuit brought by the Executive Board on behalf of the Association or of the members of the Association in an action at law or equity. Any judgment against the Unit Owner and his Unit shall be enforceable in the same manner as is otherwise provided by law. Reasonable attorneys' fees and court costs incurred by the Executive Board incident to the collection of any Assessments or the enforcement of any lien, together with all sums advanced and paid by the Executive Board for taxes and payments on account of superior liens which may be required to be advanced by the Executive Board in order to protect its lien, shall be payable by the Unit Owner and secured by such lien.

**Section 13.09 Unpaid Assessments at the Time of Execution Sale Against a Unit.** In the event that title to a Unit is transferred by Sheriff's sale pursuant to execution upon any lien against the Unit, the Executive Board may give notice in writing to the Sheriff of any unpaid Assessments which are a charge against the Unit and the Sheriff shall pay the Assessments of which he has such notice out of the proceeds of the sale which remain in his hands for distribution after payment of all other claims which he is required by law to pay (including any claims of the Association given priority by the Act), but prior to any distribution of the balance to the former Unit Owner against whom the execution issues. The purchaser at such Sheriff's sale and the Unit involved shall not be liable for unpaid Assessments which became due prior to the Sheriff's sale of the Unit (except as provided under the Act). Any such unpaid Assessments which cannot be promptly collected from the former Unit Owner may be reassessed by the Executive Board as a General Common Expense to be collected from all of the Unit Owners, including the purchaser or acquirer of title at the Sheriff's sale, his successors and assigns. To protect its right to collect unpaid Assessments which are a charge against a Unit, the Executive Board may, on behalf of the members of the Association, purchase the Unit at Sheriff's sale provided such action is authorized by the affirmative vote of all members of the Executive Board, and if it does so purchase, the Executive Board shall thereafter have the power to sell, convey, mortgage or lease such Unit to any person whatsoever.

**Section 13.10 Voluntary Sale of a Unit.** Upon the voluntary sale or conveyance of a Unit, or any other transfer of the Unit, by operation of law or otherwise, except a transfer described in Sections 13.09 or 13.11, and a transfer by deed in lieu of foreclosure to an Eligible Mortgagee, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments which are charges against the Unit as of the date of the sale, conveyance or transfer, but such joint and several liability shall be without prejudice to the right of the grantee to recover from the grantor, in the amount of any such unpaid Assessments which the grantee may pay, and until any such Assessments are paid, they shall continue to be a charge against the Unit, which may be enforced in the manner set forth in this Article; provided, however, any Person who shall have entered into a written agreement to purchase a Unit shall be entitled to obtain a written statement from the Association setting forth the information required by Section 5407 of the Act including, without limitation, the amount of unpaid Assessments charged against the Unit Owner and its Unit, and if such statement does not reveal the full amount of the unpaid Assessments as of the date it is rendered, neither the purchaser nor the Unit after transfer thereof, shall be liable for the payment of the amount in excess of the unpaid Assessments shown on such statement.

**Section 13.11 Mortgage Foreclosure.** If an Eligible Mortgagee or other purchaser of a Unit acquires title to such Unit as a result of foreclosure of the first mortgage, or by deed in lieu of foreclosure, such acquirer of title, his successors and assigns, shall be liable only for the share of Common Expenses or other charges by the Association pertaining to such Unit or chargeable to the former Unit Owner which have accrued during the six (6) month period immediately preceding the commencement of the foreclosure proceeding by such holder and are not paid out of the proceeds of the judicial sale. Such unpaid share of the charges may be deemed to be General Common Expenses collectible from all of the remaining Unit Owners, including such acquirer, his successors and assigns.

**Section 13.12 Assignment of Assessments.** The Association may pledge or assign its right to collect and receive Assessments to a financial institution in order to secure a loan for the financing of the costs of maintaining, repairing or replacing any portion of the Common Elements if the Association does not have sufficient reserves to pay the costs of such maintenance, repair or replacement.

**Section 13.13 Unit Owners' Negligence.** Each Unit Owner shall be obligated to reimburse the Association for any expenses incurred by it in repairing or replacing any part or parts of the Common Elements damaged by his act, omission or negligence or by the act, omission or negligence of his tenants, agents, guests or licensees, promptly upon receipt of the Association's statement therefore. Such reimbursement shall be considered an unpaid Assessment collectable in any manner provided herein in the case of unpaid and past due annual Assessments.

**Section 13.14 Surplus Revenues.** If, after the conclusion of any fiscal year, the Association income exceeds its expenses for that fiscal year, the Executive Board may carry forward the surplus income to the following fiscal year. This carry forward of surplus revenues may be either applied by the Executive Board as a credit against current assessments, set aside as a contingency reserve, set aside as a capital reserve or any combination of these choices as the Executive Board shall so elect.

#### **Article XIV - Transfer of Units**

**Section 14.01 Transfer of Units.** Any Unit Owner may, at any time, transfer all of his ownership in his Unit to any other person, and it shall not be necessary to secure the prior consent of the Association, the Executive Board or any other Unit Owner. However, all Unit Owners shall comply with the appropriate provisions of Act, including Section 5407, as shall apply to the sale or transfer of a Unit.

**Section 14.02 Non-Refundable Contributions.** The Association may impose a capital improvement fee on the resale or transfer of any Unit by an Owner other than the Declarant in accordance with the Act.



## **Article XV - Leasing of Units**

### **Section 15.01 Leasing of Units.**

a. No Unit Owner, except the Declarant, shall be permitted to lease his Unit unless such Unit Owner has complied with the relevant provisions of this Declaration, the Bylaws and any applicable Rules and Regulations. All leases must provide that the lessee shall be subject in all respects to the provisions of this Declaration, the Bylaws and the Rules and Regulations, as may from time to time be promulgated by the Executive Board. The leasing of a Unit shall not affect the liability of the Unit Owner with respect to his obligations under this Declaration, the Bylaws and such Rules and Regulations. The second sentence of this paragraph shall not apply to an Eligible Mortgagee.

b. In the event the Unit Owner shall fail to pay any Assessment levied by the Executive Board against a leased Unit, and such failure to pay continues for fifteen (15) days, the Executive Board shall so notify the lessee of such Unit in writing of the amount due and, within fifteen (15) days after the date of such notice, the lessee shall pay to the Association the amount of such unpaid Assessment, subject however to Section 15.01c. The amount of such unpaid Assessment paid to the Association by lessee after the nonpayment by the Unit Owner shall be credited against and shall offset the next monthly rental installment due to the Unit Owner following the payment by the lessee of such Assessment to the Association.

c. In no event shall the lessee be responsible to the Association for any amount of unpaid Assessment during any one month in excess of one monthly rental installment.

## **Article XVI - Use Restrictions**

### **Section 16.01 Use Restrictions.** Each Unit shall be subject to the following restrictions:

a. Except as used by the Declarant in connection with construction and marketing of Units in the Community, each Unit shall be used for residential purposes only; provided (subject to Subsection k. below) that occupations carried on in the Unit are permitted only if such use is incidental to the Unit's primary residential use; provided further that Unit Owners who pursue such incidental occupational use of their Unit shall have no employees, customers or clients at the Unit and shall obtain prior approval from all authorities having jurisdiction over the use of the Unit.

b. Units shall be occupied by no more persons than the maximum permitted by law for the Unit.

c. Except for work done by the Declarant in connection with the construction and marketing of Units, nothing shall be built, caused to be built or done in or to any part of the Property which will alter or cause any alteration to the Common Facilities or Controlled Facilities (underground detention facility and its piping, inlets and other appurtenant facilities; and entrance features, if any). Without limiting the foregoing, Unit Owners or occupants may not obstruct the Common Facilities in any way. Moreover, Unit Owners or occupants may not store anything in or on the Common Facilities.

d. Each Unit Owner or occupant shall maintain his Unit in a safe, clean and sanitary manner and condition, in good order and repair and otherwise in a manner satisfactory to the Association and in accordance with the Declaration, all applicable restrictions, conditions, ordinances, codes and any Rules or Regulation which may be applicable hereunder or under law. In the event that a Unit is not so maintained, the Association shall have the right to enter upon the Unit to maintain the same, after giving the Unit Owner at least fifteen (15) days' written notice to cure any maintenance problems or deficiencies. In the event that the Association exercises its right of entry for maintenance purposes, the Association shall have the right to assess the particular Unit Owner for the cost of such maintenance. The Association, by its Executive Board, shall have the right to establish Rules and Regulations governing the maintenance of any Unit.

e. No Unit Owner or occupant of any Unit shall carry on, or permit to be carried on, any practice on his Unit or on the Property which unreasonably interferes with the quiet enjoyment and proper use of another Unit or the Common Elements by the Unit Owner or occupant of any other Unit, or which creates or results in a hazard or nuisance on the Property.

f. Flags of the United States not exceeding fifteen (15) square feet shall be permitted. All other signs, banners, flags, billboards or advertisements of any kind, including, without limitation informational signs, "for sale" or "for rent" signs and those of contractors and subcontractors, shall not be erected on the Unit unless permitted by the Rules and Regulations. No sign shall be nailed or otherwise attached to trees.

g. Unit Owners may not interfere with any storm water system or drainage whether such storm water system or a portion thereof is on the Unit or part of the Common Facilities or Controlled Facilities (underground detention facility and its piping, inlets and other appurtenant facilities).

h. No clothes lines and no outdoor clothes drying or hanging shall be permitted in the Community, nor shall anything be hung, painted or displayed on the outside of the windows (or inside, if visible from the outside) or placed on the outside walls or outside surfaces of doors of any of the Dwellings. This restriction shall not apply to certain holiday decorations, which are permitted subject to the Rules and Regulations but must be removed in accordance with the Rules and Regulations.

i. Window air conditioners are not permitted.

j. Above-ground pools, as that term may be more particularly defined in the Rules and Regulations, are not permitted.

k. No commercial, industrial, recreational or professional activity not permitted by the present zoning or other applicable laws or ordinances, shall be pursued on any Unit at any time. If zoning regulations change to expand the scope of activities that Unit Owners may pursue lawfully within the Unit, a Unit Owner may apply to the Executive Board for approval to commence the permitted use of his Unit as incidental to the Unit's primary residential use as set forth in Subsection a. above. Each application shall be considered by the Executive

Board on an individual basis. Once the Executive Board has given its approval to a particular use of a Unit, it may not revoke the approval as long as the nature and scope of the approved use remains unchanged. No Unit Owner shall permit his Unit to be used or occupied for any prohibited purpose.

l. Unit Owners shall not keep in any Unit animals, wildlife, livestock, reptiles or poultry of any kind, other than domesticated household birds and fish, house dogs or domesticated house cats or other domesticated household animals. Pets shall not be permitted to run loose or uncontrolled on their Unit and the Common Facilities. The Association may restrict the walking of pets to certain areas. Unit Owners shall immediately clean up any waste left by their pets anywhere on the Property. No dog houses shall be permitted. Commercial activity involving pets, including, without limitation, boarding, breeding, grooming or training is not allowed. The ability to keep a pet is a privilege, not a right. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the owner, upon written notice, may be required to remove the pet from the Community. Pets may not be left unattended or leashed in yards or garages or on porches or lanais. Any Unit Owner who keeps or maintains any pet upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association, each Unit Owner, the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Community.

m. No portion of the Property shall be used or maintained as a dumping ground for rubbish, trash, new or used lumber or wood, metal scrap, garbage or other waste, except that such material may be kept in the Unit or in areas of the Property designated for this purpose by the Declarant (in connection with their respective construction) or by the Executive Board, provided that these materials are kept in sanitary containers in a clean and sanitary condition. Unit Owners shall place these containers for collection only in the designated areas and only on the day these refuse materials are to be collected.

n. Installation of antennae, including satellite dishes (but only to the extent such satellite dishes exceed dimensions currently permitted by Federal law) shall not be permitted without the prior approval of the Executive Board. The Executive Board shall make all reasonable effort to accommodate such requests and shall make prompt decisions upon proper application submitted by Unit Owners in accordance with any Rules and Regulations all of which shall be in compliance with federal law. No antenna may be erected on Common Facilities.

o. No Unit Owner may subdivide or partition his Unit.

p. No Unit Owner shall perform or permit to be performed any work to any portion of his Unit, which work may require access to, over or through Common Facilities or other Units without compliance with the Rules and Regulations.

q. **Decks.** Decks are permissible so long as the Unit Owner (i) obtains all necessary licenses and permits, (ii) complies with all governing laws including, without



limitation, the Borough's subdivision and land development ordinance and zoning ordinance, and (iii) complies with the impervious requirements set forth in the Recorded Record Plan.

- r. No chain link fences shall be allowed.

**Section 16.02 Parking Restrictions.** Each Unit shall be subject to the following restrictions:

- a. Garages of Units shall be used for parking of vehicles only and vehicles must be parked in the garage. Garages shall not be converted for living, recreational activities, business or storage that would prevent the ability of an Owner, tenant or lessee to park the number of vehicles in the garage for which the garage was designed. Doors to garages shall be kept closed except during exit or entry therefrom or thereto.

- b. Driveways on Units and streets within the Community shall be used by Owners, occupants and guests for fully operable, inspected and registered four wheel passenger vehicles, motorcycles, and standard bicycles only. No recreational vehicles, van (other than non-commercial passenger vans), mobile homes, trailers, boats or trucks (unless licensed as a passenger vehicle and less than three-quarter ton capacity) shall be permitted to be parked within the Community unless any of the above can be entirely enclosed in a Unit Owner's garage. Notwithstanding the foregoing, commercial vehicles (whether or not registered as a commercial vehicle with the State Department of Transportation) used in conjunction with repairs, maintenance or construction work on a Unit shall be permitted on a Unit's driveway on a day-to-day temporary basis.

- c. The Board, or its designee, shall have the power to impose enforcement measures for, among other things, illegally or improperly parked vehicles including, without limitation, the ability to have vehicles towed at the Unit Owner's expense without advance notice.

**Section 16.03 General Restrictions.** The provisions of this Article are intended to restrict certain uses that may be harmful or affect the ambience or aesthetic appeal of the Community to be constructed by Declarant. The restrictions are not intended to prohibit Declarant from performing such work as may be necessary in the completion of the work in the Community. The Board shall have the power to, among other things, set and amend from time to time "Due Process Resolutions" which detail fines and other administrative charges which can be imposed by the Association for covenants violations. Nevertheless, the restrictions are not intended to prohibit Declarant from performing such work as may be necessary in the completion of the work in the Community. The restrictions of this Article shall therefore not be binding upon Declarant in the performance of any of the work required in order to complete construction of the Community.

**Section 16.04 Borough Zoning Code.** The foregoing use restrictions are not intended to and do not expand permitted uses under the applicable zoning code of the Borough in effect at the time of the final approval of the Community.

## **Article XVII - Compliance and Default**

### **Section 17.01 Compliance and Default.**

a. Each Unit Owner shall be governed by and shall comply strictly with the terms, covenants, conditions and restrictions of the Act, this Declaration, the Bylaws and the Rules and Regulations adopted pursuant thereto, and the same as they may be amended from time to time.

b. The Executive Board shall have the power to adopt, amend and enforce compliance with such reasonable Rules and Regulations relative to the operation, use and occupancy of the Units and the Common Elements consistent with the provisions of this Declaration and the Act, including, but not limited to such enforcement procedures and penalties for violations as the Executive Board shall deem appropriate. Any such Rules and Regulations shall be adopted or amended, from time to time, by means of appropriate resolutions duly approved by the Executive Board in accordance with the Bylaws. A copy of such Rules and Regulations and copies of any amendments thereto shall be delivered or mailed to each Unit Owner or occupant of a Unit promptly after the adoption thereof and shall become binding upon all Unit Owners, their successors in title and assigns, and occupants.

c. Failure of any Unit Owner, other than the Declarant to the extent permitted by the Act, to comply with any provisions of the Act, this Declaration, the Bylaws or any Rules and Regulations shall entitle the Association or the other Unit Owners to the remedies provided in this Declaration and the Act, and also to the following relief, none of which remedies shall be exclusive of any other remedies:

(i) To sue for the recovery of damages or for injunctive relief, or both, subject to compliance with Section 17.02 if applicable.

(ii) Except as otherwise provided in Section 17.03 below, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees; provided, however, that no attorneys' fees may be recovered against the Executive Board in any such action unless the court shall first expressly find that the Executive Board acted in bad faith.

d. The failure of the Declarant, Executive Board, or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the Bylaws or the Rules and Regulations, shall not constitute a waiver of the right to do so thereafter.

### **Section 17.02 Agreement to Encourage Resolution of Disputes Without Litigation.**

a. The Association, the Declarant, all Owners and all Persons subject to this Declaration (and any Person not otherwise subject to this Declaration who agrees to submit to this Article) (collectively, "Bound Parties" and each a "Bound Party"), agree to attempt to resolve disputes against the Declarant and/or the Association without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit against the Association and/or the Declarant in any court with respect to a Claim described in subsection (b), unless and until he has first submitted such Claim to the alternative dispute resolution procedures set forth

in Section 17.03 in a good faith effort to resolve the Claim. The provisions of this Section 17.02 shall not apply to the Association's and/or the Declarant's enforcement of the Declaration, Bylaws and/or any Rules and Regulations or architectural guidelines, nor shall the provisions of this Section 17.02 apply to any efforts of the Association to collect assessments or other amounts owed to the Association.

b. As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) The interpretation, application, or enforcement of this Declaration, the Bylaws and/or any Rules and Regulations or architectural guidelines;

(ii) The rights, obligations, and duties of any Bound Party under this Declaration, the Bylaws and/or Rules and Regulations or architectural guidelines;

(iii) The design or construction of improvements within the Community, including, without limitation, any improvements located within Common Facilities; and/or

(iv) Any actions taken or untaken by the Executive Board or by the Declarant.

The foregoing notwithstanding, the following shall not be considered Claims unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 17.03:

(i) Any action to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the ability to enforce the provisions of this Declaration;

(ii) Any suit that does not include Declarant and/or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Declaration; and

(iii) Any suit as to which the applicable statute of limitations would expire within ninety (90) days of giving the Notice required by Section 17.03(a), unless the party or parties against whom the Claim is made agree in writing to toll, or extend, the Claim's statute of limitations to comply with this Article.

### **Section 17.03 Dispute Resolution Procedure.**

a. Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") to each Respondent and Declarant stating plainly and concisely:

(i) The nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) The legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) The Claimant's proposed resolution or remedy; and

(iv) The Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

b. Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

c. Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other agreed upon period), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by Declarant if Declarant is not a party to the Claim or, if Declarant is a party to the Claim, to an independent agency providing dispute resolution services in the County in which the Property is located. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the claim, and the Respondent shall be relieved of any and all liability to the claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within thirty (30) days after submitting the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs hereunder, including attorneys' fees, and each Party shall pay an equal share of the representative's and/or mediator's fees.

d. Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this section. In such event, the party taking action to enforce the agreement shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

## **Article XVIII - Indemnification of Officers, Executive Board, Committee Members**

### **Section 18.01 Indemnification.**

The Association shall indemnify every Executive Board member, officer and committee member, his heirs, executors and administrators, against all losses, costs and expenses, including attorneys' fees, reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been an Executive Board member, officer or a committee member, except as to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matter covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been found liable for gross negligence or willful misconduct in the performance of this duty as such Executive Board member, officer or committee member in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such Executive Board member, officer or committee member may be entitled. All losses, costs and expenses incurred or suffered by the Association by reason or arising out of or in connection with the foregoing indemnification provisions shall be treated by the Association as General Common Expenses; provided, however, that nothing contained in this Article shall be deemed to obligate the Association to indemnify any member, who is or has been an Executive Board member, officer or a committee member of the Association with respect to any duties or obligations assumed or liabilities incurred by him under and by virtue of his membership in the Association.

## **Article XIX - Amendments**

**Section 19.01 Generally.** Subject to the other provisions of this Declaration and the Act relative to amendments, this Declaration may be amended in the following manner:

a. Prior to the first transfer of any Unit by the Declarant to a Unit Owner, the Declarant may amend this Declaration in any legal fashion as the Declarant may deem appropriate. After such first transfer of title, the terms of the following subsections shall apply; provided, however, that any other provisions of this Declaration setting forth other conditions of amendment shall take precedence.

b. An amendment may be proposed by either the Executive Board or twenty percent (20%) of the Unit Owners. No resolution of the Executive Board adopting a proposed amendment shall be effective unless it has been adopted by the affirmative vote of at least sixty-seven percent (67%) of the Unit Owners. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the Executive Board in which a proposed amendment is considered, and shall be served upon all Unit Owners in the manner hereinafter provided for service of notices.

c. An amendment may be made by an agreement signed and acknowledged by at least sixty-seven percent (67%) of the Unit Owners in the manner required for the execution of a deed, and such amendment shall be effective when Recorded.

d. Except as otherwise permitted by the Act and provided in this Declaration, no amendment may increase the number of Units or change the boundaries of any Unit, General Common Expense Percentage or voting strength in the Association allocated to a Unit, or the uses to which any Unit is restricted without the unanimous consent of the Unit Owners and the consent of the Eligible Mortgagees of Units to which at least two-thirds (2/3) of the votes in the Community are allocated. No amendment of this Declaration or any action taken by the Association or its Executive Board, shall be made or taken which, in any way would affect any of the rights, privileges, powers and options of the Declarant, their respective successors or assigns, or the Borough, unless the Declarant, or its successors or assigns, or the Borough, as the case may be, shall join in the execution of such amendment or consent, in writing, to the action of the Association or Executive Board.

e. A copy of each amendment shall be attached to or included with a certificate, certifying that the amendment was duly adopted, which certificate shall be executed and acknowledged by the officers of the Executive Board with the formalities of a deed. The amendment shall be effective when such certificate and copy of the amendment are Recorded.

f. If any amendment to this Declaration or Plats and Plans is necessary in the judgment of the Executive Board to change, correct or supplement anything appearing or failing to appear therein which is ambiguous, incorrect, defective or inconsistent with anything in either this Declaration, the Bylaws or the Act, or if such amendment is necessary to conform to the requirements of FNMA or FHLMC, HUD or VA, to comply with any statute, regulation, code or ordinance which may now or hereafter be made applicable to the Community or the Association or to make a reasonable accommodation or permit a reasonable modification in favor of a person with special needs, as may be defined by prevailing Federal or State laws or regulations applicable to the Association, Owner, residents, tenants or employees, or as otherwise permitted by the Act, the Executive Board may, at any time and from time to time effect an appropriate corrective amendment without the approval of the Unit Owners or Eligible Mortgagees upon receipt by the Executive Board of an opinion from independent counsel to the effect that the proposed amendment is permitted by the terms of this Subsection and by the Act, together with an opinion from an independent registered architect or licensed professional engineer, in the case of an amendment to the Plats and Plans.

g. No Amendment of this Declaration which affects the provisions benefiting the Borough shall be effective without the written consent of the Borough.

h. No Amendment of this Declaration which affects the provisions benefiting the Declarant shall be effective without the written consent of the Declarant

## **Article XX - Termination**

**Section 20.01 Statute.** The Declaration and, thus, the Community may be terminated as provided by Section 5220 of the Act and the relevant sections of this Declaration.

**Section 20.02 Destruction.** In the event it is determined in the manner provided in the Act and the Bylaws that any Unit or Common Elements shall not be reconstructed after casualty,



the Community will be thereby terminated as to such Unit or Common Elements and the vote in the Association and General Common Expense Percentage of any Unit or Units not rebuilt shall be reallocated as provided in the Act. The determination not to reconstruct after casualty shall be evidenced by a certificate of the Executive Board executed by the President and Secretary or Treasurer certifying as to the facts effecting the termination, which certificate shall become effective upon being Recorded.

**Section 20.03 By Agreement.** The Declaration may be terminated at any time by agreement, in writing, in the form of a Deed of Revocation, executed by one hundred percent (100%) of the Unit Owners. Such Deed of Revocation shall become effective upon being Recorded.

**Section 20.04 General Provisions.** Upon termination of the Community, each Unit Owner shall thereby become a tenant-in-common of the Property as provided in Section 5220 of the Act, and the Eligible Mortgagee and lienor of a former Unit shall have a mortgage and lien solely and exclusively upon the respective interest of the Owner of the Unit in the Property after the termination. If the Property is to be sold following termination, title to the Property vests in the Association as trustee for the holders of all interests in the Units.

**Section 20.05 Borough Consent.** The Community shall not be terminated as provided in the Act or in this Article without the written consent of the Borough.

## **Article XXI - Notice**

**Section 21.01 Notice.** All notices required to be served upon Unit Owners pursuant to the Act, this Declaration or the Bylaws shall be sufficient if delivered to the Unit or mailed to the Unit Owner at the Unit mailing address by regular mail. The effective date of a notice shall be the date of delivery to the Unit in the case of actual delivery and the date of deposit in the mail in the case of notice sent by mail.

## **Article XXII - Rights of Eligible Mortgagees**

**Section 22.01 Eligibility.** An Eligible Mortgagee shall be required to provide to the Association a statement of its name, address and the Unit against which it holds, insures or guarantees a first mortgage lien in order to be an Eligible Mortgagee as this term is used in this Declaration and thereby entitled to the rights set forth for its benefit in this Article and elsewhere in this Declaration. Eligible Mortgagees shall be required to update the information provided every two years in order to remain an Eligible Mortgagee.

**Section 22.02 Notices to Eligible Mortgagees.** Upon written request to the Community Association, identifying the name and address of the Eligible Mortgagee and the designation of the particular Unit, any Eligible Mortgagee shall be entitled to timely notice of any of the following:

a. Any condemnation loss or any casualty loss which affects a material portion of the Community or any Unit against which it holds, insures or guarantees a first mortgage lien;

b. Any delinquency in the payment of Assessments or charges owed by any Owner of a Unit subject to a first mortgage held, insured or guaranteed by the Eligible Mortgagee, or any other default in the performance by any Owner of the Unit against which the mortgage lien applies of any obligation under this Declaration, the Bylaws or any Rules and Regulations which delinquency or other default continues for a period of sixty (60) days;

c. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and/or

d. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Sections 22.03 and 22.04 below.

### **Section 22.03 Approval of Eligible Mortgagees.**

a. Any restoration or repair of the Community, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Plats and Plans, and the original plans and specifications, unless other action is approved by at least fifty-one percent (51%) of the Eligible Mortgagees.

b. Any election to terminate the legal status of the Community after substantial destruction or a substantial taking in condemnation of any of the Property shall require the approval of at least fifty-one percent (51%) of the Eligible Mortgagees. Any other abandonment or termination of the Community by act or omission shall require the prior written approval of at least sixty-seven percent (67%) of the Eligible Mortgagees.

c. If the Association chooses to hire a management company to help manage the Community and then decides to fire such management company and "self-manage" the Association, then any decision to establish self-management by the Association shall require the prior consent of at least sixty-seven percent (67%) of the Owners of Units and the approval of at least fifty-one percent (51%) of the Eligible Mortgagees.

d. Any abandonment, partition, subdivision, encumbrance, sale or transfer of any of the Common Facilities (except for granting easements for utilities or other public purposes consistent with the intended use of the Common Facilities) by act or omission shall require the prior written approval of at least sixty-seven percent (67%) of the Eligible Mortgagees.

### **Section 22.04 Document Amendments.**

a. Other than amendments to this Declaration or the Bylaws or termination of the Community made as a result of destruction, damage or condemnation, the consent of one hundred percent (100%) of the Owners of Units and the approval of at least sixty-seven percent (67%) of the Eligible Mortgagees shall be required to terminate the Community.

b. The consent of at least sixty-seven percent (67%) of the Owners of Units and the approval of at least fifty-one percent (51%) of the Eligible Mortgagees shall be required to add or amend any material provision of this Declaration or the Bylaws which establish, provide for, govern or regulate any of the following:

- (i) Assessments, assessment liens or subordination of these liens;
- (ii) Reserves for maintenance, repair and replacement of the Common Elements;
- (iii) Insurance or fidelity bonds;
- (iv) Rights to the use of the Common Facilities;
- (v) Responsibility for maintenance and repair of the Common Elements;
- (vi) Expansion or contraction of the Community or the addition, annexation or withdrawal of property to or from the Community;
- (vii) Interests in the Common Elements;
- (viii) Convertibility of Units into Common Elements or of Common Elements into Units;
- (ix) Leasing of Units;
- (x) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Unit; and
- (xi) Any provisions which are for the express benefit of Eligible Mortgagees.

c. An addition or amendment to the Declaration shall not be considered material if it is for the purpose of correcting technical errors or for clarification as described in Section 19.01f. hereof.

#### **Section 22.05 Notice to Eligible Mortgagees and Deemed Approval.**

a. If the notice to an Eligible Mortgage states that the Eligible Mortgagee will be deemed to have approved the actions specified in the written notice if it does not respond to the request within 60 days, and the Eligible Mortgagee does not respond in writing within 60 days, then the Eligible Mortgagee will be deemed for all purposes to have approved the actions specified in the notice.

b. Written notice to the Eligible Mortgagee shall be given by certified, registered or first-class mail, as evidenced by United States Postal Service certificate of mailing,

postage prepaid, at the address provided by the Eligible Mortgagee, or in the absence thereof, at the address of the Eligible Mortgagee endorsed on any mortgage or deed of trust of record and at the address to which the Owner mails any periodic payment paid to the Eligible Mortgagee. The notice to the Eligible Mortgagee shall include a statement of the specified action and a copy of the full text of any proposed amendment and a form prepared by the Association upon which the Eligible Mortgagee may indicate its approval or rejection of the specified action or amendment.

### **Article XXIII - Miscellaneous Provisions**

**Section 23.01 Severability.** If any provisions of this Declaration are determined to be invalid, that determination shall not affect the validity or effect of the remaining provisions hereof or the Bylaws or any Rules and Regulation, all of which shall continue in effect as if such invalid provisions had not been included herein.

**Section 23.02 Headings.** The headings herein are for reference purposes only and shall not affect the meaning or interpretation of this Declaration.

**Section 23.03 Effective Date.** This Declaration shall become effective when it has been Recorded.

**Section 23.04 Binding.** This Declaration shall inure to the benefit of and shall be binding upon the Declarant's successors or assigns.

**Section 23.05 Construction.** Number and gender, as used in this Declaration, shall extend to and include both the singular and plural and all genders as the context and construction require.

**Section 23.06 Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

**Section 23.07 Compliance With Law.** The Association shall comply with all governmental laws, ordinances and regulations.

**Section 23.08 Excusable Delays.** Whenever performance is required of any Person under this Declaration, the Person shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at anytime by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, inability or delays in receiving approvals or permits, provided such Person has used all due diligence and good faith in seeking such approvals or permits in a timely manner, unforeseen site conditions, or any cause beyond the reasonable control of such Person, then the time for performance as specified in this Declaration shall be appropriately extended by the amount of the delay actually so caused. This provision shall not operate to excuse any Person from the prompt payment of Assessments or other sums required to be paid under this Declaration.

**Section 23.09 Approval Rights.** Nothing contained in this Declaration shall limit the right of the Declarant, the Association or the Executive Board to exercise its business judgment or act in a subjective manner with respect to any matter as to which it has been granted such right and any such exercise shall not be deemed inconsistent with any covenant of good faith or fair dealing implied by law to be a part of this Declaration. The Declarant, the Executive Board and the Association may each act in its sole, commercially reasonable discretion and business judgment and, with respect to any requested consent and any such exercise, such action shall not be deemed to be inconsistent with any covenant of good faith and fair dealing otherwise implied by law to be a part of this Declaration.

**Section 23.10 Continuation.** No breach of this Declaration shall (a) entitle any Owner or other Person to cancel, rescind or otherwise terminate this Declaration or the Person's duties and liabilities under this Declaration; or (b) defeat or render invalid the lien of any mortgage or other lien made in good faith and for value as to any Units or the Common Facilities; however, this limitation does not impair any other rights or remedies for the breach that a Person may have under this Declaration or otherwise under applicable laws.

**Section 23.11 Binding Effect.** This Declaration, unless otherwise provided, shall upon recording run with the Property and the Declarant, Association, Executive Board, all Unit Owners, their successors and assigns shall be bound thereby.

**Section 23.12 Prohibited Actions.** Despite any assumption of control of the Board by owners other than the Declarant, until the Declarant has conveyed every Unit in the Community, the Board is prohibited from taking any action which would discriminate against the Declarant which would be detrimental to the sale or leasing of Units owned by the Declarant in the Declarant's sole discretion. The Board will be required to continue at least the same level and quality of maintenance, operations and services as that provided immediately prior to the assumption of control of the Association by owners other than the Declarant until the Declarant conveys the last Unit owned by it in the ordinary course of business.

**Section 23.13 Declarant's Power of Attorney.** The Declarant hereby reserves for itself, its successors and assigns, the right to execute on behalf of all contract purchasers, Owners, mortgagees, other lienholders or other parties claiming a legal or equitable interest in the Common Facilities, and by any such agreements, documents, amendments or supplements to this Declaration, the Bylaws, the Articles of Incorporation of the Association or the Rules and Regulations (collectively, the "Governing Documents") which may be so required by any such institutional lender, governmental or quasi-governmental agency, or title insurance company designated by the Declarant to insure title to any portion of the Common Facilities. By acceptance of a deed to any Unit or by the acceptance of any other legal or equitable interest in the Common Elements, each and every such contract purchaser, Owner, mortgagee, or other lienholder, or any party having a legal or equitable interest in the Common Elements does automatically and irrevocably name, constitute, appoint and confirm Declarant, its successors and assigns, as attorney-in-fact for the purpose of executing the Governing Documents as described above necessary to effect the foregoing, subject to the limitations set forth herein. The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all Units and

be binding upon the heirs, personal representatives, successors and assigns, of any of the foregoing parties. Further, said power of attorney shall not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to said powers. Said power of attorney shall be vested in the Declarant, its successors and assigns, for a period of twenty-five (25) years from the date the first Unit is conveyed to an individual purchaser, or until it conveys title to the last Unit within the Community, whichever occurs first. Thereafter, said power of attorney shall automatically vest in the Association and may be exercised by the Board.

## **Article XXIV - Provisions Benefitting the Borough**

### **Section 24.01 Rights of Borough.**

a. The Borough shall be a third party beneficiary of the provisions of this Declaration that require the Declarant to substantially complete the Common Facilities and require the Association to maintain, repair and replace the Common Facilities and Controlled Facilities (underground detention facility and its piping, inlets and other appurtenant facilities). In addition to those rights which the Borough may have under law, the Borough shall have the right (subject to the notice and grace periods set forth below), but not the obligation, to enforce the restrictions, conditions and covenants of this Declaration regarding the Common Elements in the event that the Association shall fail to do so all as more particularly set forth in any Recorded agreements with the Borough. The Borough shall have the right to compel the substantial completion, maintenance, repair and replacement of the Common Facilities and Controlled Facilities (underground detention facility and its piping, inlets and other appurtenant facilities) under this Declaration as well as under the Recorded agreements with the Borough in the event of the Association's or Declarant's, as the case may be, failure to fulfill their respective obligations. In the event that the Borough reasonably believes that the Association has failed to properly maintain, repair or replace any of the Common Facilities Controlled Facilities (underground detention facility and its piping, inlets and other appurtenant facilities), the Borough shall give the Association written notice of such default and if the Association fails to cure such default within thirty (30) days (or such other period as may be set forth in the Recorded agreements with the Borough) after receipt of such notice (or if the default cannot reasonably be cured within thirty (30) days (or such other period as may be set forth in the Recorded agreements with the Borough) after receipt of such notice, if the Association fails to commence such cure within thirty (30) days (or such other period as may be set forth in the Recorded agreements with the Borough) of such written notice or fails to diligently pursue such cure to completion thereafter), the Borough may take such steps as the Borough deems reasonably necessary to cure such default, and the cost of such cure shall be borne by the Unit Owners pursuant to this Declaration as a "Special Assessment"; provided, however, in the event of emergencies which present a danger to life or property, the Borough shall not be required to give the Association prior written notice to commence work to cure a default by the Association under this Declaration. For this purpose, the Borough shall have the right to impose a lien on each Unit, and shall further be entitled to exercise any other rights and remedies it may have at law or in equity to collect the amounts disbursed by the Borough to cure such default.

b. The Association and the Declarant shall indemnify and hold the Borough harmless from and against all loss, costs, and expenses, including reasonable counsel fees, reasonably incurred by the Borough in connection with any action, suit or proceeding to which

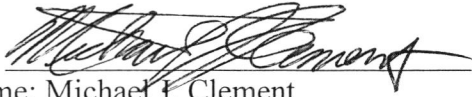


the Borough may be made a party by reason of the location, design, installation, construction and maintenance of the Common Facilities and Controlled Facilities (underground detention facility and its piping, inlets and other appurtenant facilities), unless such claims arise from the gross negligence or willful misconduct of the Borough.

**[Signatures Appear on Next Page.]**

**IN WITNESS WHEREOF**, the Declarant has caused this instrument to be executed the day and year first above written.

Mikelen, LLC  
a Pennsylvania limited liability company

By:   
Name: Michael J. Clement  
Title: Managing Member

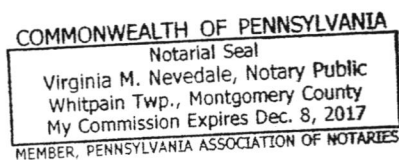
# ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF Montgomery : S.S.  
:

**Be it Remembered**, that on this 24<sup>th</sup> day of May, 2016, before me, a Notary Public in and for the Commonwealth and County aforesaid, personally appeared MICHAEL J. CLEMENT, who acknowledged himself to be the Managing Member of MIKELEN, LLC, and that he, as such Managing Member, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Managing Member.

Virginia M. Nevedale  
Notary Public

My Commission Expires:



## **EXHIBIT 1.01**

### **DESCRIPTION OF THE REAL ESTATE/PROPERTY**

The Real Estate includes, without limitation, all Units and Common Elements as more particularly described and shown on the Plats and Plans, as amended from time to time. The Real Estate shall not include the rights of way when they are accepted for dedication by the Borough.

**ALL THAT CERTAIN** tract or parcel of land situate on the southwesterly side of College Avenue, (60 feet wide ultimate right-of-way), in the Borough of Trappe, County of Montgomery and Commonwealth of Pennsylvania, being Lots 1 through 20 inclusive, Colonel's Place, (proposed 50 feet wide right-of-way), and a portion of College Avenue, of the Old School/New House Subdivision and Land Development Plan, Drawing No. D-15-0760-0062-C101, dated March 3, 2015, last revised April 5, 2016, prepared by Systems Design Engineering, Inc., and being more fully bounded and described in accordance with said plan as follows, to wit:

**BEGINNING** at a point near the middle of College Avenue; thence in and through said College Avenue, South 38 degrees 22 minutes 29 seconds East, a distance of 356.70 feet to a point on the southwesterly side of said College Avenue; thence in and through said College Avenue, South 60 degrees 48 minutes 56 seconds East, a distance of 324.28 feet to a point; thence South 29 degrees 11 minutes 04 seconds West, a distance of 24.00 feet to a point of curvature on the southwesterly ultimate right-of-way line of said College Avenue, a corner of Lot 21; thence along said Lot 21 the five (5) following courses and distances: 1) along the arc of a reverse tangent curve to the left, having a radius of 15.00 feet, a central angle of 90 degrees 00 minutes 08 seconds, a distance along the arc of 23.56 feet, having a chord bearing South 74 degrees 11 minutes 00 seconds West for a distance of 21.21 feet to a point of tangency; 2) South 29 degrees 10 minutes 56 seconds West, a distance of 111.22 feet to a point of curvature; 3) along the arc of a curve to the right, having a radius of 175.00 feet, a central angle of 46 degrees 07 minutes 08 seconds, a distance along the arc of 140.86 feet, having a chord bearing South 52 degrees 14 minutes 30 seconds West for a distance of 137.09 feet to a point; 4) South 14 degrees 41 minutes 56 seconds East, a distance of 116.60 feet to a point; and, 5) South 67 degrees 41 minutes 42 seconds West, a distance of 105.99 feet to a point; thence along the same and along lands of Save the Speakers House, Inc., lands of Richard W. Czop, lands of Barbara Ann Coccio and David Coccio, lands of Charles L. Miller and Judith E. Miller, and lands of M.C. Weeks, Inc., North 59 degrees 09 minutes 00 seconds West, a distance of 705.29 feet to an iron pin in line of lands of The Historical Society of Trappe, Pennsylvania; thence along said lands of The Historical Society of Trappe, Pennsylvania, lands of Derek Adams, lands of Dana N. Adelizzi and Robert C. Sohl, and said lands of Mary Jane Roth, North 39 degrees 48 minutes 36 seconds East, a distance of 568.75 feet to the point of BEGINNING.

**CONTAINING IN AREA:** 7.4993 acres of land, more or less.

**BEING** **PARCEL NO.** 23-00-00349-00-9 (new)

**BEING PART OF THE SAME PREMISES WHICH** Perkiomen Valley School Authority, by Deed dated December 14, 1983, and recorded December 22, 1983, in the Office of the Recorder of Deeds in and for the County of Montgomery, in Deed Book 4726, page 104, did grant and convey unto Perkiomen Valley School District, Grantor herein.

**EXHIBIT 5.01**

**PLATS AND PLANS**



BOROUGH OF TRAPPE MONTGOMERY COUNTY PENNSYLVANIA

**SDE**  
SYSTEMS DESIGN  
ENGINEERING, INC.

1323 JAMES DR., LEESPORT, PA 15033  
PHONE: 610/916-8500 FAX: 610/916-8501  
SCHUYLER HAVEN, PA 17022-2546  
BOYERTOWN, PA 17006-1318

[illegible]

## EXHIBIT 6.01

### LIST OF UNITS, GENERAL COMMON EXPENSE PERCENTAGES AND VOTING INTERESTS

Unit Designation	General Common Expense Percentages	Votes
1	5%	1
2	5%	1
3	5%	1
4	5%	1
5	5%	1
6	5%	1
7	5%	1
8	5%	1
9	5%	1
10	5%	1
11	5%	1
12	5%	1
13	5%	1
14	5%	1
15	5%	1
16	5%	1
17	5%	1
18	5%	1
19	5%	1
20	5%	1
<b>Totals:</b>	100%	1

**EXHIBIT 7.04**  
**STORMWATER CONTROL AND BMP MAINTENANCE NOTES**

PCSM Operation and Maintenance Procedures

Owner Responsibilities:

The Unit Owners within the Community are responsible for operating and maintaining all post construction stormwater management best management practices ("PCSM BMP's") located within the Community as set forth in the Declaration and Recorded plans. The Association will be responsible for maintenance of the subsurface detention basin and all storm collection and conveyance systems outside of public rights-of-way.

Rain Garden:

The general maintenance objective is to prevent sediment migration into the basin and maintenance of the vegetative/aquatic plants, ground cover in and around the basin.

The rain garden should be inspected periodically. The inspections shall be made to insure that the facilities are operating properly. An important purpose of periodic inspections is to ascertain the condition and safety of the facility, in particular, to inspect the operation and effectiveness of the system.

The structure shall be checked for general stability during each annual inspection. The outlet structure shall be checked for stability and signs of settling or erosion problems. Embankments shall be checked for any signs of erosion and formation of rills or gullies. Accumulated trash and debris shall be removed from all areas. Inspection shall be made for invasive vegetation and removed. The Association shall be responsible for performing the following maintenance to ensure that the facilities function as designed:

1. While vegetation is being established, pruning and weeding shall be required.
2. Detritus shall be removed every year. Perennial plantings may be cut down at the end of the growing season.
3. Shredded landscape mulch should be re-spread when erosion is evident and be replenished as needed. Once every 2 to 3 years the entire area may require mulch replacement.
4. Inspect and correct flow paths and spillways when signs of altered water flow (channelization, obstructions, erosion, etc.) are identified.
5. Remove any accumulated sediment in and around the inlet filters within the proposed rain garden area.
6. Bio-retention areas should be inspected at least two times per year for sediment buildup, erosion, vegetative conditions, etc.
7. During periods of extended drought, rain gardens may require watering.
8. Plantings should be subject to a one-year 80% care and replacement warranty by the contractor.

### Subsurface Detention Facility:

Maintenance of the subsurface detention facility shall take place on a quarterly basis. The Association shall be responsible for performing the following maintenance to ensure that the basin functions as designed:

1. Inspect the outlet structure, discharge orifices, inlet grates and sumps for clogging and debris along with sediment accumulation at least four times per year, as well as after every storm greater than 1 inch and clean as necessary. Sediment shall be disposed of properly off-site.
2. Inspect for excessive water levels in the outlet structure, which could indicate a blockage within the discharge orifices.
3. Mowing and/or trimming of vegetation on the surfaces and around the inlets should be performed as necessary to sustain the system and all detritus should be removed from the inlet grates.
4. Inspect vegetated surface inlet areas annually for erosion and formation of rills or gullies and repair as necessary.

### Soils Amendment and Restoration:

The soil restoration process shall occur after all construction is completed for the individual Dwelling, including all excavation around the Dwelling. The subsoil areas around the construction zone may have become compacted during construction. These areas can be treated by soil restoration, ripping, subsoiling, tilling or scarification. For this site, only soil restoration methods will be applicable.

#### Treating compaction by Soil Restoration:

1. Soil amendment media usually consists of compost, but can include mulch, manures, sand and manufactured microbial solutions. Soil amendment compost is to be certified by the U.S.Composting Council's Seal of Testing Program ([www.compostingcouncil.org](http://www.compostingcouncil.org)). Spent mushroom substrate (SMS) is an acceptable compost material. Other compost media can consist of sand and site topsoil (Having organic material of at least 5 percent) Compost:Sand:Topsoil Ratio is 1:1:1.
2. Compost should be added at a rate of 2:1 (soil:compost).
3. Soil restoration shall not be used on slopes greater than 30%. In these areas, deep rooted vegetation can be used to increase stability.
4. Soil restoration should not take place within the drip line of a tree to avoid damaging the root system.
5. On-site soils with an organic content of at least 5 percent can be properly stockpiled (to maintain organic content) and reused.
6. Procedure: rototill or rip the subgrade, remove rocks, distribute the compost, spread the nutrient and rototill again.
7. Add 6 inches compost/amendment and till up to 8 inches for minor compaction.
8. Add 10 inches compost/amendment and till up to 20 inches for major compaction.

The soil restoration process may need to be repeated over time, due to compaction by use and/or settling.

Amended soils shall not be compacted. Periodic observations of vegetation success should be made and erosion or bare spots must be corrected immediately.

## **EXHIBIT 11.10**

### **RECORDED INFORMATION**

1. Rights granted to Bell Atlantic-Pennsylvania, Inc., as being Recorded in Deed Book 5293, page 1813.
2. Title to that portion of the premises in the bed of Will Street (College Avenue) is subject to public and private rights therein.
3. Voluntary Declaration of Restrictive Covenant, dated August 11, 2014, by Perkiomen Valley School District, Recorded October 9, 2014, in Deed Book 5930, page 2523.