

BYLAWS OF

TOWNS AT SOUTH MOUNTAIN HOMEOWNERS' ASSOCIATION

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ARTICLE I - NAME AND ADDRESS

Section 1.01. Name. The name of this association shall be Towns at South Mountain Homeowners' Association (the "Association").

Section 1.02. Address. The office of the Association shall be at a place to be designated by the Executive Board, subject to change upon notice to the Owners.

ARTICLE II-APPLICABILITY, INTERPRETATION, PURPOSE AND DEFINITIONS

Section 2.01. Applicability. These Bylaws shall be applicable to the Association created to govern the Towns at South Mountain, a Planned Community (the "**Community**"). All present and future Owners and occupants of Units, and their employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, tenants, subtenants, ground tenants, sub-ground tenants, concessionaires, and any other person or persons who shall be permitted to use the premises described in the Declaration of Planned Community for Towns at South Mountain, a Planned Community (the "**Declaration**") shall be subject to these Bylaws and to any Rules and Regulations which may be promulgated by the Executive Board of the Association from time to time to govern the conduct of the Owners and occupants of Units but shall be subject to and shall not supersede the terms and provisions of the Declaration.

Section 2.02. Interpretation. In the event of a conflict of interpretation between the provisions set forth in these Bylaws and the Declaration, the Declaration shall govern. In the event that the Internal Revenue Code is hereafter amended or changed, both the Declaration and these Bylaws shall be interpreted in a manner which conforms to the provisions of the Internal Revenue Code with respect to nonprofit entities, it being the intention to preserve the lawful status of the Association as a bona-fide nonprofit entity.

Section 2.03. Purpose. The purpose of the Association is to (i) maintain, regulate and administer the Common Facilities for the use, benefit and enjoyment of the Owners and lawful occupants of the Units in the Community; (ii) provide for the orderly economical management and maintenance of the Common Facilities; (iii) Controlled Facilities and to provide for the collection of such revenue as necessary to effectuate the maintenance, repair and replacement of the Common Facilities and other such facilities as may be established for the Owners; and (iv) enforce the terms and conditions of these Bylaws, the Declaration and other Community rules, regulations and policies. This Association does not contemplate pecuniary gain or profit to its members.

Section 2.04. Definitions. Unless it is plainly evident from the context that a different meaning is intended, the terms used herein shall have the same meanings as provided in the Declaration.

ARTICLE III - MEMBERSHIP

Section 3.01. Membership. Membership in the Association shall be limited to the Owners in the Community as provided in the Declaration.

Section 3.02. Affirmative Vote. Except as otherwise provided herein or in the Declaration, all decisions shall require for passage the affirmative vote of at least a majority of the votes of the Owners in good standing and entitled to vote in attendance at a meeting having present, in person, by mail ballot or by proxy, the quorum required hereof.

Section 3.03. Proxies and Mail Ballots. Votes may be cast in person, by mail ballot or by written proxy. Mail ballots and written proxies may be submitted by United States mail or delivered to the office of the Association or delivered directly to the Secretary of the Association. A mail ballot vote shall be defined as a written vote submitted by an Owner which states the specific vote of the Owner with respect to the issues, resolutions or elections being voted on by the Owners at the annual or special meeting. A proxy shall be defined as written permission for the Executive Board or a specific Board Member to exercise the Owner's vote as the Executive Board or the specific Board Member sees fit.

Section 3.04. Quorum. Except as otherwise determined by the Executive Board, the presence in person, by mail ballot or by proxy of a majority of the Owners shall constitute a quorum at the beginning of any annual or special meeting of the Association.

Section 3.05. Adjournment of Meetings. If at any meeting of the Association a quorum is not present, Unit Owners entitled to cast a majority of the votes represented at such meeting may adjourn the meeting to a time not less than forty-eight (48) hours after the time for which the original meeting was called. All proxies and mail-in ballots submitted to the Association by Unit Owners for use at the first scheduled meeting date shall remain valid for use in quorum calculations and balloting at the adjournments thereof, unless they are revoked before the adjourned meeting is called to order. Unit Owners who have not submitted proxies or mail in ballots for a scheduled meeting may participate in the adjourned meetings, and be deemed present for purposes of quorum calculations, by submitting proxies or mail-in ballots for use in casting votes at an adjourned meeting, provided that all proxies or mail-in ballots must be delivered to the Secretary or the person presiding over the meeting prior to the time the meeting is called to order.

Section 3.06. Actions Without Meeting. Any action which, under any provision of these Bylaws, may be taken at a meeting of the Association, may be taken without a meeting if authorized by a writing signed by two-thirds (2/3) of the Owners entitled to vote for that particular matter and filed with the Secretary of the Association.

ARTICLE IV - MEETINGS OF THE ASSOCIATION

Section 4.01. Place of Annual and Special Meetings. All annual and special meetings of the Association shall be held at the principal office of the Association or at any other suitable and convenient place permitted by law and from time to time fixed by the Executive Board and designated in the notices of these meetings.

Section 4.02. Date of Annual Meeting. Annual meetings of the Association shall be held each year on a date to be designated by the Executive Board. The Owners may transact business which may properly come before the meeting.

Section 4.03. Notice of Annual and Special Meetings. The Secretary shall cause notices of annual and special meetings to be hand delivered (left at their Units in their absence) or mailed, by regular mail, postage prepaid, to each Owner. If mailed, the notice shall be directed to their last known post office address as shown on the records of the Association. The notice of each annual or special meeting shall be sent not less than ten (10) nor more than sixty (60) days before the date of the annual or special meeting and shall state the date, time and place of the meeting and the items on the agenda, including, without limitation, the general nature of any proposed amendment to the Declaration or Bylaws, any budget or assessment changes and, where the Declaration or Bylaws require approval of Unit Owners, any proposal to remove an Executive Board Member or Officer.

Section 4.04. Special Meetings. It shall be the duty of the President to call a special meeting of the Association for the following: (a) holding elections of members of the Executive Board; (b) whenever directed to do so by resolution of the Executive Board; and (c) upon presentation to the Secretary of a petition, stating the specific purposes of such meeting, signed by one third (1/3) of the members entitled to vote at such meeting. No business shall be transacted at a special meeting except as stated in the notice.

Section 4.05. Conduct of Meetings. The President (or in his or her absence, the Treasurer) shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting as well as a record of all transactions occurring at the meeting. The President may appoint a person to serve as parliamentarian at any meeting of the Association. All votes shall be tallied by tellers appointed by the President. The order of business at all annual meetings of the Members and at special meetings, so far as practicable, will be:

- (A) Calling of the roll and certifying of proxies;
- (B) Proof of notice of meeting or waiver;
- (C) Reading of minutes of preceding meeting;
- (D) Reports of officers;
- (E) Reports of committees;
- (F) Appointment of inspectors of election;
- (G) Election of Board;
- (H) Unfinished business;
- (I) New business;
- (J) Election of officers.

All votes shall be tallied as prescribed by the President. The President, or the Board by majority vote, shall call all motions for the vote of the Unit Owners. The President, or the Board by majority vote, shall have the power to close debate on, or table, any questions, motions or discussions pending before the Unit Owners, and where necessary to preserve order, to direct that any Unit Owner(s), who may become disruptive of the business of a meeting of the members to leave the meeting.

ARTICLE V - EXECUTIVE BOARD

Section 5.01. Number of Board Members. The affairs of the Association shall be initially governed by an Executive Board consisting of three (3) Board Members and, ultimately, as provided in Article VII of the Declaration, five (5) Board Members. The Board Members shall be appointed or elected as provided for in the Declaration. Executive Board members who are elected shall be Unit Owners in good standing (or, as to Units owned by a corporation, joint venture, partnership or unincorporated association, a natural person duly appointed by the corporation, joint venture, partnership or unincorporated association to serve on its behalf) elected by the Unit Owners present in person, by ballot or by proxy at a meeting of the Association. The Declarant shall have the right to appoint one (1) additional non-voting Board Member to serve on the Executive Board until sixty (60) days after the Declarant has conveyed the last Unit in the Community.

Section 5.02. Term of Board Members and Compensation. Subject to the terms of the Declaration, the Owners who are elected to be Board Members shall all serve two (2) year terms. The Board Members shall serve without compensation.

Section 5.03. Nominations to Executive Board. Owners may be nominated for election to the Executive Board in one of the following ways:

(a) A Board Member shall be deemed to have been nominated for reelection to that position by signifying his or her intention to seek reelection in writing addressed to the Executive Board.

(b) An Owner who is not a Board Member and who desires to run for election to that position shall be deemed to have been nominated for election as a Board Member upon his or her filing with the Executive Board a written notice of nomination consistent with any Rules and Regulations established by the Executive Board in advance.

Section 5.04. Vacancy on Executive Board. If the office of any Board Member shall become vacant by reason of his or her death, resignation, retirement, disqualification, removal from office or otherwise, the remaining Board Members, at a special meeting duly called for this purpose, shall choose a successor, who shall hold office until the expiration of the term of the Board Member he or she is replacing. In the event that there shall be a deadlock in the voting for a successor, the Board Member with the longer continuous term on the Executive Board shall select a successor from the successor candidates. At the expiration of his or her term, the replacement Board Members shall be re-elected or his or her successor shall be elected in accordance with Section 5.01 hereof. Declarant shall have the right to remove and replace any or all members appointed by the Declarant at any time and from time to time until the end of the Period of Declarant Control.

Section 5.05. Removal of Board Members. Subject to the right of the Declarant to nominate and elect members of the Executive Board, Board Members may be removed with or without cause, by a two-thirds (2/3) vote of all of the Owners of the Association at any special meeting of the Association of which notice has been properly given as provided in these Bylaws; provided that the same notice of the special meeting has also been given to the entire Executive

Board and any individual Board Member whose removal is to be considered at this special meeting.

Section 5.06. Organizational Meeting of the Executive Board. No later than twenty (20) days following each annual meeting of the Association, the Executive Board shall hold a regular meeting for the purposes of organization, election of officers and transaction of other business. Notice of this meeting shall be given to all Board Members in the manner provided in Section S.08 hereof

Section 5.07. Place of Meetings. All meetings of the Executive Board shall be held at the principal office of the Association or at any other place or places designated at any time by resolution of the Executive Board.

Section 5.08. Notice of Regular Executive Board Meetings. Regular meetings of the Executive Board may be held at any time and place permitted by law or as may be determined from time to time by the Executive Board. Notice of regular meetings of the Executive Board shall be given to each Board Member personally, by telegram, telephone, email or by United States mail, with postage prepaid, directed to him or her at his or her last known post office address as the same appears on the records of the Association, at least three (3) days before the date appointed for this meeting. This notice shall state the date, time, place and purpose of the meeting.

Section 5.09. Special Executive Board Meetings. Special meetings of the Executive Board may be called by the President of the Association on three (3) days' written notice to each Board Member given in the same manner as provided in Section 5.08 hereof. Special meetings of the Executive board shall be called by the President or the Secretary in like manner upon the written request of any Board Member.

Section 5.10. Waiver of Notice. Before any meeting of the Executive Board, whether regular or special, any Board Member may, in writing, waive notice of the meeting and this waiver shall be deemed equivalent to the giving of the required notice. All written waivers shall be filed with the records of the Association or made a part of the minutes of the meeting. Attendance by a Board Member at any meeting of the Executive Board shall likewise constitute a waiver by him or her of the required notice. If all Board Members are present at any meeting of the Executive Board, no notice of the meeting shall be required and any business may be transacted at this meeting except as prohibited by law or these Bylaws.

Section 5.11. Quorum. At all duly convened meetings of the Executive Board, two-thirds (2/3) of the Board Members shall constitute a quorum for the transaction of business, except as otherwise expressly provided in these Bylaws or by law, and the acts of the majority of the Board Members present at a meeting at which a quorum is present shall be the acts of the Executive Board. If at any meeting of the Executive Board there shall be less than a quorum present, the Board Members present may adjourn the meeting from time to time and, at the adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting as originally called may be transacted without further notice to any Board Member.

Section 5.12. Consent in Writing. Any action by the Executive Board may be taken without a meeting if all of the Board Members shall individually or collectively consent in writing to the action. This written consent or consents shall be filed with the minutes of the proceedings of the Executive Board. Any action by written consent shall have the same force and effect as a unanimous vote of the Executive Board.

Section 5.13. Records. The Executive Board shall cause a complete record of all of its acts and corporate affairs to be kept and to present a statement thereof to the Owners at annual meetings of the Association or at any special meeting where this statement is requested in writing by one-third (1/3) of the Owners entitled to vote.

Section 5.14. Power and Duties. The Executive Board shall have and exercise all lawful powers and duties necessary for the proper administration of the affairs of the Association for the Community and the operation and maintenance of the Community and may do or cause to be done all such other lawful acts and things as are now by law or by these Bylaws directed or required to be done by members of the Association. In the performance of its duties, in addition to those powers and duties set forth in the Act and the Declaration, the Executive Board shall have powers and duties (which powers and duties shall be subject to the terms, provisions and limitations set forth in the Declaration) including, but not limited to, the following:

(a) Duties:

(i) Each Board Member, individually, and the Executive Board collectively shall perform the duties of the Executive Board in good faith, as a fiduciary of the Association, in a manner which the Board Member reasonably believes to be in the best interests of the Association and perform these duties with the care, including reasonable inquiry, skill and diligence, of a person of ordinary prudence under similar circumstances.

(ii) Provide for the management, operation, maintenance, administration, regulation, repair, replacement, care, upkeep and insurance of the Common Facilities, Controlled Facilities and all property, real or personal, of the Association.

(iii) Determine the expenses to be assessed against the Owners in accordance with the provisions of the Declaration, the Act and these Bylaws.

(iv) Levy and collect, in addition to any Assessments pursuant to the Declaration and these Bylaws, Special Assessments in those amounts which the Executive Board deems proper.

(v) Use and expend any sums collected from regular and Special Assessments for the management, operation, maintenance, administration, regulation, repair, replacement, care, upkeep and insurance of all Common Facilities, Controlled Facilities and property, real or personal, of the Association.

(vi) Pay all taxes and assessments levied or assessed against any property that may be owned by the Association, exclusive of any taxes or assessments levied against any Unit or otherwise properly chargeable to an Owner.

(vii) Collect delinquent Assessments, late charges and other charges made by the Association through the Executive Board against any Unit and the Owner thereof, together with the costs and expenses incurred in connection therewith, including, but not limited to, court costs and attorneys' fees, whether by suit or otherwise.

(viii) Cause operating, escrow and other accounts, if any, to be established and opened as the Executive Board may deem appropriate from time to time and as may be consistent with generally accepted accounting practices.

(ix) Adopt a budget for each fiscal year which shall contain estimates of the cost and expenses of the Association. Copies of the budget shall be available to all Owners for inspection during regular business hours at the Association's office. Notwithstanding the foregoing, the Executive Board shall deliver to all Unit Owners copies of each budget approved by the Executive Board and notice of any capital expenditure approved by the Executive Board promptly after either such approval.

(x) Within 180 days after the end of each fiscal year prepare an annual financial statement consisting of at least a balance sheet and a statement of revenues and expenses.

(xi) Maintain and keep accounting records and financial records in accordance with generally accepted accounting principles.

(xii) May require, in its discretion, blanket fidelity bonds for all members of the Executive Board, officers, management companies and employees of the Association and all other persons or firms who handle or are responsible for funds of or administered by the Association. The total amount of fidelity bond coverage shall be adequate as determined by the best business judgment of the Executive Board but not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management firm employed by the Association, as the case may be, at any given time during the term of each bond. Such fidelity bonds shall name the Association as an obligee; contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions; provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association, and to any Posted Mortgagee. The premiums for such fidelity bonds shall be paid by the Association as part of the Common Expenses.

(xiii) Establish depositories for the Association with the bank(s) which shall be designated from time to time by the Executive Board and in which monies of the Association shall be deposited. The Executive Board shall have the power to invest monies of the Association in investments which the Executive Board shall deem to be reasonably prudent in accordance with the Act.

(xiv) Keep the Common Facilities, Controlled Facilities, fixtures, equipment and personal property owned by the Association insured, as provided in the Declaration, for the benefit and protection of the Owners and the Association. The Executive

Board shall have the power to name as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall be given exclusive authority to negotiate losses under any policy providing property or liability insurance. The Association, by its Executive Board, shall be required to receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Owners and their respective Posted Mortgagees, as their interests may appear, in accordance with the Declaration and the Act. The Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, shall have the power to act as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purposes.

(xv) All duties required by the Act or the Declaration.

(b) Powers:

(i) Employ and dismiss such personnel or independent contractors, and to purchase or arrange for services, materials and supplies, which, in the opinion of the Executive Board, may be necessary from time to time for the proper management, operation, maintenance, administration, regulation, repair, replacement, care, upkeep and insurance of the Common Facilities and Controlled Facilities.

(ii) Enter into a contract for professional management of the Community and the Association, at a price and upon terms determined by the Executive Board, to perform those duties and services which the Executive Board may lawfully delegate.

(iii) Employ or retain and receive advice from professional counsel and consultants which the Executive Board may deem proper for any purpose of the Association, and to fix the compensation for professional advice or services.

(iv) Make and enforce compliance with reasonable Rules and Regulations, including, but not limited to, penalties to be levied for violations of these Bylaws, the Declaration and any Rules and Regulations which the Executive Board shall adopt, and to amend the same from time to time as and when approved by appropriate resolutions which shall be binding on the Owners and occupants of Units, their successors and assigns.

(v) Create committees from time to time as the Executive Board shall deem appropriate and to delegate to these committees various duties and powers subject to the ultimate responsibility and authority of the Executive Board.

(vi) Borrow and repay monies, give notes, mortgages or others security, upon the term or terms which are deemed necessary by the Executive Board.

(vii) Sell, transfer or otherwise convey real and personal property owned by the Association by deed or bill of sale executed by the appropriate officers of the Association,

provided that eighty percent (80%) of the Owners approve any such sale, transfer or other conveyance.

(viii) Acquire by purchase, gift, bequest, devise, annexation, or lease real property, if, at any time in the future, it deems it to be proper and not inconsistent with the terms hereof to do so; provided that eighty percent (80%) of the Owners approve the acquisition.

(ix) Abate nuisances and enforce observance of the Declaration, these Bylaws and any Rules and Regulations relating to the Community, by injunction or any other legal action or means which the Executive Board may deem necessary or appropriate.

(x) Do all things incidental and necessary to the accomplishment of the above.

The duties and powers imposed on the Executive Board by this Section shall not be amended so as to reduce or eliminate any duties or powers of the Executive Board without the affirmative vote of at least eighty percent (80%) of Owners entitled to vote.

Section 5.15. Conduct of Meetings. The President shall preside over all meetings of the Executive Board and the Secretary shall keep a minute book of the Executive Board, recording therein all resolutions adopted by the Executive Board and a record of all transactions and proceedings occurring at such meetings.

ARTICLE VI- OFFICERS

Section 6.01. Officers. The officers of the Association shall be a President, Secretary and Treasurer. The Secretary may be eligible to hold the office of Treasurer. The President shall be a member of the Executive Board. The Secretary and Treasurer need not be members of the Executive Board.

Section 6.02. Election. The officers of the Association shall be elected annually by the Executive Board at the organizational meeting held pursuant to these Bylaws and shall hold office until their successors are elected or appointed by the Executive Board; provided that each officer shall hold office at the pleasure of the Executive Board and may be removed either with or without cause and his or her successor elected at any annual or special meeting of the Executive Board called for this purpose, upon the affirmative vote of a majority of the Board Members. The Executive Board may appoint from time to time other officers which in its judgment are necessary. Any officer may resign at any time by giving written notice to the Executive Board or to the President or Secretary of the Association. Any resignation shall take effect as of the date of the receipt of the notice or any later time specified therein and, unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

Section 6.03. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office.

Section 6.04. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Executive Board. He or she shall have the general powers and duties usually vested in the office of the president of a community association, including, but not limited to, the power to appoint ad hoc committees from among the Owners from time to time as he or she may deem appropriate to assist in the conduct of the affairs of the Association. The President shall be an ex-officio member of all committees. He or she shall execute all amendments to the Declaration, deeds, contracts and other instruments in the name and on behalf of the Association and under its corporate seal when a seal is required, except when these documents are required or permitted by law to be otherwise executed and except when the signing and execution thereof shall be delegated by the Executive Board to another officer or agent of the Association.

Section 6.05. Secretary. The Secretary shall attend all meetings of the Executive Board and all meetings of the Association and record all votes and the minutes of all meetings and proceedings, including resolutions, in the minute book, and shall perform these duties for any committees when required. He or she shall have charge of the minute book and the records and papers which the Executive Board shall direct and shall perform all duties incident to the office of Secretary, including the sending of notices of meetings to the Owners, the Board Members and committee members, and all other duties which may be prescribed by these Bylaws, the Declaration or by the Executive Board or the President. He or she shall also have custody of the corporate seal, and, when authorized by the Executive Board, shall affix the same to any instrument requiring it and attest the same when appropriate. The Secretary may keep or cause to be kept at the principal office of the Association, a membership register showing the following: (a) the names and addresses of all Board Members; (b) the names and addresses of all Owners; and (c) the Unit as to which each ownership relates.

Section 6.06. Treasurer. The Treasurer shall have responsibility for the Association's funds and securities, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies, checks and other valuable effects in the name and to the credit of the Association, in depositories which may be designated from time to time by the Executive Board. He or she shall disburse the funds of the Association which may be ordered from time to time by the Executive Board or by the President to disburse, and shall render to the President and the Board Members at the regular meetings of the Executive Board, or whenever they or either of them shall require, an account of his transactions as Treasurer and of the financial condition of the Association. Nothing shall prohibit the functions of the Treasurer to be delegated to a management company for the Association provided this delegation is approved by resolution of the Executive Board. The delegation of the duties of the Treasurer shall not relieve the Treasurer from any responsibility related to overseeing and reviewing any duties performed by the management company.

Section 6.07. Compensation. The officers of the Association shall serve without compensation except that they shall be entitled to reimbursement for all expenses reasonably incurred by them in the discharge of their duties.

ARTICLE VII - AMENDMENTS TO BYLAWS

Section 7.01. Amendments to Bylaws. Except as otherwise provided herein, these Bylaws may be amended from time to time by the affirmative vote, present in person, by mail ballot or by proxy at a meeting of the Association of at least eighty percent (80%) of the Owners.

ARTICLE VIII-TERMINATION

Section 8.01. Termination. In the event the Community is terminated in its entirety, the Association shall remain in existence until the distribution of assets, allocation of interests and all other aspects of the termination have been completed.

ARTICLE IX - MISCELLANEOUS

Section 9.01. Fiscal Year. The fiscal year of the Association shall be the calendar year.

Section 9.02. Construction. Number and gender, as used in these Bylaws, shall extend to and include both singular and plural and all genders as the context and construction require.

ARTICLE X – MEDIATION

Section 10.01. Disputes. Any disputes between or among the Association, any Unit Owner or Owners, the Executive Board or any officer or Executive Board member, and relating to the Community, the Declaration, these Bylaws, and/or the use or condition of the Property, other than disputes regarding claims by the Association against a Unit Owner for collection of General Common Expense assessments, Limited Common Expense assessments and/or Special Assessments (any of which is called an “**Association Claim**”) shall be subject to the following provisions:

(a) **Notice.** Any person or entity with an Association Claim (the “**Claimant**”) shall notify the adverse party or parties (collectively, the “**Adverse Party**”) in writing of the claim, which writing shall describe the nature of the claim and the proposed remedy (the “**Claim Notice**”).

(b) **Right to Inspect and Right to Corrective Action.** Within a reasonable period after receipt by the Adverse Party of the Claim Notice, which period shall not exceed sixty (60) days, the Adverse Party and the Claimant shall meet at a mutually-acceptable place to discuss the claim. The parties shall negotiate in good faith in an attempt to resolve the Association Claim. If the Adverse Party elects to take any corrective action to which the Claimant has consented, the Adverse Party and its representatives and agents shall be provided full access to take and complete such corrective action, if necessary.

(c) **Non-Binding Mediation.**

(i) If the parties cannot fully resolve the Association Claim pursuant to the procedures described in Section 10.01(b) above, and the parties are in agreement to utilize the mediation provided for in this Section 10.01(c), the unresolved portion of the Association

Claim shall be submitted to non-binding mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. No person shall serve as a mediator in any dispute in which such person has any financial or personal interest in the result of the mediation, except with the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.

(ii) Within ten (10) days after the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issue or issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following the submittal of all such memoranda and shall conclude within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in Lehigh County or at such other place as is mutually acceptable to the parties.

(iii) The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral or written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, if the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

(iv) Prior to the commencement of the mediation session, the mediator and all parties to the mediation shall execute an agreement for the purpose of excluding the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including (but not limited to) court proceedings. Such agreement shall provide that evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. No document (or copy thereof) prepared for the purpose of, or in the course of, or pursuant to, the mediation shall be admissible in evidence unless such document states otherwise; and disclosure of any such document may not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given.

(v) Persons other than the parties, their representatives and the mediator may attend mediation sessions only with the permission of all parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

(vi) The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the expenses of any witnesses, or the cost of any proofs or

expert advice, produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

(d) **Judicial Reference.** If the parties do not agree to utilizing the mediation process and/or cannot fully resolve the Association’s Claim pursuant to the procedures described in the foregoing subsections of this Section 10.01, the parties shall have the right to pursue a private cause of action or seek other relief as each deems fit.

(e) **General.** Notwithstanding any other provision herein to the contrary, in any dispute with respect to an Association Claim, each party shall bear its own attorneys’ and experts’ fees. Except in the event of a settlement between or among the parties to the mediation, the fees and expenses of the mediator and the costs and expenses of mediation shall be split evenly between the parties. Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle an Association Claim shall be considered communications undertaken in the course of effecting a settlement or compromise and as such shall not be admissible as the admission on the part of any party or any representative or agent of that party to be utilized for any such purpose in any action or proceeding. Nothing in this Section 10.01 shall be considered to reduce or extend any applicable statute of limitations or statute of repose.

Section 10.02. Non-Waiver. Nothing in this Article X shall be construed to affect or impair the right of a Unit Owner, Declarant or the Association to pursue a private cause of action or seek other relief as such party sees fit.

[END OF DOCUMENT]

Prepared by & Return to:
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645 W. Hamilton Street
Suite 800
Allentown, PA 18101
(610) 797-9000

RECORDED
09/29/2020 10:30:23 AM
RECORDER OF DEEDS
LEHIGH COUNTY
PENNSYLVANIA
Inst Num: 2020031275

PIN No. 549420946925-1

*Pennsylvania Ave. Rear, Borough of Emmaus, County of Lehigh PA

**DECLARATION OF PLANNED COMMUNITY
FOR TOWNS AT SOUTH MOUNTAIN,
A PLANNED COMMUNITY**

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made as of September 8, 2020, by **FORINO CO., L.P.**, a Pennsylvania limited partnership as owner in fee simple of the Property (hereinafter described) (the "Declarant").

ARTICLE I. DEFINITIONS

1. All capitalized terms used in this Declaration shall have the meaning given to them in the Index of Defined Terms that is attached hereto and incorporated herein by this reference. Any such term used in this Declaration and not otherwise defined shall have the meaning as provided by the Act.

ARTICLE II. SUBMISSION OF PROPERTY TO DECLARATION

2. The Declarant, the owner in fee simple of the property described in Exhibit "A" attached hereto, located in the County of Lehigh, Pennsylvania, for itself, its successors, and assigns, hereby submits the Property, including all easements, rights, and appurtenances and improvements erected or to be erected on it to the provisions of the Act and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, that the Property is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the Act and the covenants, obligations, conditions, easements, duties and other provisions created, declared and contained in this Declaration (as amended from time to time).

ARTICLE III. DESCRIPTION, BOUNDARIES AND EASEMENTS

1. **The Community.** The Community shall consist of the Lots within the Property as described in Exhibit "A-2" attached hereto (excluding the Additional Real Estate) and made a part hereof, the Common Facilities, and any Controlled Facilities together with the easements, rights and appurtenances belonging thereto.

2. **Plats and Plans.** The Plats and Plans, incorporated by reference, show each Lot and identifies each of the Common Facilities in the Community.

3. **Boundaries and Identification of Each Unit.** Each Unit shall consist of the subdivided residential Lot as designated on the Plan with a Building for which an occupancy permit has been, or is anticipated to be, issued by the Borough. The boundaries of each Unit, including the Unit's identifying number, are shown on the Plan.

4. **Recording Data for Recorded Easements and Licenses.** The recording data for recorded easements and licenses appurtenant to or included in the Community submitted to this Declaration, or to which this Community is subject, is listed on Exhibit "B" attached hereto.

ARTICLE IV: COMMON FACILITIES

1. **Common Facilities.** Common Facilities shall consist generally of all real estate not included within the title lines of any Unit, and any improvements on such real estate to be owned by the Association, and shall include the following (to the extent not dedicated to the Borough or any applicable municipal or private authority) as shown on the Plat or Plan:

- (a) **Trail Area and Open Spaces:** The trail and areas of Open Space as shown on the Plan shall be Common Facilities, and shall be owned and maintained by the Association.
- (b) **Stormwater Management Facilities:** Except as may be otherwise provided herein, the Stormwater Management Facilities (including Detention Basins) located on Open Space shall be Common Facilities.
- (c) **Entrance Improvements:** The entrance improvements that may be installed by the Declarant and the landscaping and lighting as necessary to maintain each such area as an attractive entrance to the Community shall be Common Facilities (to be owned and maintained by the Association), whether located on Units, within easement areas, in Open Space, or in space that has been dedicated to the Borough.
- (d) **Gang Mailboxes:** Gang Mailboxes whether located on Lots, streets or Open Space, shall be owned and maintained by the Association.
- (e) **Other Common Facilities:** All buffers, berms, landscaped areas, street trees, fencing, and any other improvements located in Open Space shall be Common Facilities to be owned and maintained by the Association.
- (f) **Facilities Prior to Dedication:** Any and all other improvements, not included within the title lines of any Unit, prior to dedication to a governmental agency, authority or municipality.

2. **Stormwater Management System – Operation and Maintenance.** Upon approval of Declarant's notice of termination for the NPDES Permit by the Commonwealth Department of Environmental Protection or the Lehigh County Conservation District, as applicable, pursuant to Section 5205(16.1) of the Act, the Association shall become responsible for compliance with all terms and conditions of any approval relating to the Stormwater Management Facilities, including, but not limited to, the NPDES Permit. Such obligation shall include, but not be limited to, long-term operation and maintenance of the post-construction stormwater best management practices in accordance with the applicable requirements therefor. The Declarant's obligations for the Stormwater Management Facilities under the NPDES Permit, the Land Development Plans or this Declaration shall end as of approval of the notice of termination. The Association, through its Executive Board and duly authorized officers, shall execute any documents required by the Borough, the Pennsylvania Department of Environmental Protection or any other applicable governmental agency to facilitate transferring from the Declarant to the Association ownership of the Stormwater Management Facilities and the

obligation for maintenance the Stormwater Management Facilities (regardless of the location of such Stormwater Management Facilities) as stated herein. Without limiting the foregoing and in addition thereto, the operation, maintenance and repair of the Stormwater Management Facilities shall be governed by the Stormwater Agreement, and notice is provided that this Agreement creates certain covenants and places certain duties on the Association, individual Unit Owners and the Declarant with respect to the Stormwater Management Facilities.

3. **Controlled Facilities.** The Controlled Facilities are facilities not owned by the Association but can be the responsibility of the Association. As shown on the Plats and Plans, these include specified streets, accompanying street sidewalks and front/rear lawns located in whole or part on a Lot. The Association shall be responsible for the day-to-day maintenance of such facilities, including, but not limited to, mowing and snow plowing. Individual driveways and walkways are not Controlled Facilities. Individual driveways and walkways shall be maintained, including specifically and without limitation, ice and snow removal, by Owners.

ARTICLE V. EASEMENTS

1. **Grant of Easements.** The Property and any portion, Lot or Building therein, shall be owned, held, transferred, conveyed, assigned, sold, leased, occupied, used and enjoyed subject to the easements as shown on the Plats and Plans and set forth in this Article and any and all other easements of record. The Easements include the Recorded Easements and those Easements referred to in this Declaration and/or identified on the Easement Plan attached as Exhibit "B-1". Subject to the appropriate approvals by the Borough, the Declarant reserves unto itself, its successors and assigns, the right to relocate, change or modify from time to time, the location of any easement either granted or reserved herein.

2. **Recorded Easements.** All easements, licenses and other encumbrances upon the Property and appurtenant to or included in the Community or to which any portion of the Community is or may become subject, are listed on Exhibit "B-1" hereto; or are otherwise described in this Declaration and/or shown on the Plan.

3. **Owner Easements.** With respect to the Property, every Owner and the Owner's successors and assigns, shall have the following easements:

- (a) **Access to Common Facilities:** Subject to the provisions of this Declaration, the Bylaws, Rules and Regulations and applicable law, a perpetual and non-exclusive easement for access to, and enjoyment of, the Common Facilities by the Owner, the Owner's invitees, guests, tenants and lessees, in common with other Owners and such other Owner's families, guests, tenants and lessees, for any purpose not prohibited by this Declaration, the Rules and Regulations or Bylaws.
- (b) **Access to Lot:** Subject to the provisions of this Declaration, the Bylaws, Rules and Regulations and applicable law, and as shown on the Plan, a perpetual and non-exclusive easement for access to and enjoyment of an

Owner's Lot by the Owner, the Owner's invitees, guests, tenants and lessees.

- (c) **Party Walls:** Each wall, part of the thickness of which is on a Lot and the rest of the thickness of which is on a contiguous Lot, and which therefore is a party wall or party fence, shall be used as such by their respective Owners jointly with each other. Each such Lot shall be benefited and burdened by an easement for the support and maintenance of such party wall. Except as is otherwise expressly provided herein, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply to each party wall. If a party wall is deliberately or negligently damaged or destroyed by the act or omission of the Owner, of one (but not both) such Lots, its Owner shall promptly repair such party wall at its sole expense. If a party wall is damaged or destroyed in another manner or otherwise requires maintenance, such Owners shall promptly repair it at their joint expense.

4. **Declarant Easements.** The Declarant reserves unto itself, its successors and assigns, the following easements with respect to the Property:

- (a) **Development Easements:** A blanket and non-exclusive easement in, upon, through, under, over and across the Property for the purpose of construction, installation, maintenance and repair of any improvements to the Property, for ingress and egress therefrom, for the use of all roadways and parking areas, and for the utilization of existing and future models for sales promotion and exhibition until the expiration of two (2) years from the date the last Lot is sold and conveyed in the normal course of business.
- (b) **Entrance Improvements/Marketing Facilities:** Subject to all applicable Borough ordinances regarding entrance improvements and marketing facilities, the Declarant reserves the right to erect and maintain one or more signs identifying the Community and monuments in which to mount such signs within and/or outside of the Lot lines of one or more Units within each phase in the Community, and to install electrical lines to such signs to illuminate them. Declarant reserves the right to construct and maintain any sales related facility, including one or more sales trailers, and one or more construction trailers or other structure or structures within the Property for such period of time as the Declarant may determine in its discretion but in no case for longer than the time that the Declarant is actively selling and/or constructing Units. The Association will repair, replace, maintain and pay to illuminate each such sign.
- (c) **Inspection, Service and Remedy:** In addition, the Declarant hereby reserves the irrevocable right to enter into, upon, over and under any Lot or Unit for such purposes as may be reasonably necessary for the Declarant or its agents to service such Lot or Unit, to inspect such Unit or Lot, to remedy any violation of law and to perform any operations required in connection

with the maintenance, repair or replacement of the Lot or Unit, Common Facilities or any facilities or equipment affecting or serving the Common Facilities, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate whether the Owner is present at the time or not.

- (d) **Drainage Easements:** The Declarant reserves a perpetual, blanket and non-exclusive easement in, upon, over, under, across and through the Property for surface water runoff and drainage caused by natural forces and elements, grading and/or the improvements located upon the Property. No individual Owner shall directly or indirectly interfere with or alter the drainage and runoff patterns and systems within the Property. This easement shall be held by the Declarant so long as any Lot owned by the Declarant remains unsold. This easement shall then be held by the Association for so long as the Association is the record owner of lands designated as Common Facilities. For a period of ten (10) years from the date of conveyance of each Unit and the Common Facilities, the Declarant reserves an easement and right, but not the obligation, for the benefit of the Declarant, its agents, employees and contractors, on, over and under the ground within that Unit to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance or to address other concerns raised by the Borough. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil and/or to take any other similar action reasonably necessary, following which the Declarant shall restore the affected Unit or the Common Area or cause the affected Unit to be restored, as nearly as practicable, to the condition in which it was found prior to the exercise of such right. The Declarant shall give timely notice of intent to take such action to the Owner of each Unit to be entered, unless, in the sole opinion of the Declarant, an emergency exists which precludes the ability to provide such notice.
- (e) **Maintenance, Correction, Modification or Repair:** Declarant shall have the right and privilege to enter upon the Property and any Lot at any time to (i) correct any violations of ordinances, including set back requirements or other construction-related matters, (ii) change the grade of the ground to transition the grade to adjacent areas and/or install or change drainage control devices so as to alleviate any possible drainage or runoff problems, and (iii) to repair, maintain or replace any Common Facility including any utility facility, entrance improvements, Community signage or associated landscaping.
- (f) **Maintenance Period Easements:** The Declarant reserves to itself its successors and assigns, a perpetual, nonexclusive right and easement to enter upon each and every Lot and Common Area until the later of two (2) years after the sale of the last Lot in the Community by Declarant, or the

expiration of the statutory maintenance period following dedication of public improvements as set forth in Section 509 of the Pennsylvania Municipalities Planning Code, as amended, 53 P.S. 10509, for the purpose of completing any landscaping as required by the Borough and further to make such modifications in grading and/or drainage on any Lot as may be necessary in the discretion of the Declarant, its successors or assigns, and/or the Borough Engineer for satisfactory storm water management.

- (g) **Declarant's Easements for Construction:** Declarant hereby reserves unto itself, until the later of two (2) years after the sale of the last Lot in the Community by Declarant, or the expiration of the statutory maintenance period following dedication of public improvements as set forth in Section 509 of the Pennsylvania Municipalities Planning Code, as amended, 53 P.S. 10509, the right and privilege with respect to the construction of Units or Common Facilities, or any other improvements, to go upon such portions of the Property as may be reasonably necessary: (i) for the purposes of construction, reconstruction, maintenance, repair, renovation, replacement or correction of a Unit or any other Common Facilities; (ii) at any time with reasonable prior notice, to conduct grading activities and change the existing grade to match or tie in to the grading of the adjacent Lots; (iii) to correct any violations of ordinances, including setback requirements or other construction related matters; and (iv) for the purpose of discharging the Declarant's obligations or exercising the Declarant's rights. This Section shall not be amended without the prior written consent of the Declarant.

5. **Association Easements.** The Association shall have the following easements for the benefit of the entire Community:

- (a) **Maintenance of Common Facilities and Controlled Facilities:** A perpetual and exclusive easement over the entire Property for the maintenance of the Common Facilities and Controlled Facilities, including that which currently or may hereafter encroach upon a Lot.
- (b) **Stormwater Management Easements on Specific Lots:** There is hereby reserved for the benefit of the Association and each of the Units in the Community, perpetual, non-exclusive easements as shown on the Plan for the free and uninterrupted natural flow and drainage of surface waters over the easement area and into any storm water detention basins, pipes, swales, channels or other natural or artificial means to convey surface waters from any portion of the Property.
- (c) **Inspection and Remedy:** The Executive Board or any manager or managing agent, or their respective agents or employees shall have the perpetual and non-exclusive right of access to each Lot and Unit (i) to inspect same, (ii) to remedy any violations of the provisions of this Declaration, the Bylaws or any Rules and Regulations of the Association, and (iii) to perform any work required in connection with the maintenance,

repairs or replacements of or to the Common Facilities or any equipment, facilities or fixtures affecting or serving other Lot(s) or Unit(s) or Common Facilities; provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate, whether the Owner is present at the time or not.

6. **Utility Easements.** Any municipality, public authority or utility company or entity furnishing utility service (including, for purposes of this paragraph street lights), including master or cable television or electronic security service to the Property, its agents and employees shall have a blanket, perpetual and non-exclusive easement to enter the Property, or any part thereof, to read meters, service or repair utility lines and equipment and do everything and anything else necessary to properly maintain and furnish utility service to the Property, including but not limited to within those areas as shown on the Plats and Plans. The Declarant (during the period of Declarant Control) and the Association may grant any such easements in their discretion and dedicate any such easements or improvements, subject to terms that reasonably provide for and protect the interests of the Community While the Association and/or the applicable government or public Authority may maintain an easement for the maintenance of utility facilities located on a Lot to be exercised if necessary for the health and welfare of the Community, the Owner shall be responsible for the maintenance of any and all such facilities.

7. **Trail Area.** Association hereby reserves and conveys to the Borough, its successors and assigns, an irrevocable, non-exclusive, perpetual easement to enter upon the Trail Area, as shown on the Plan to make available to the public a perpetual non-exclusive easement and right-of-way over Trail Area and the right to use the trail facilities for the purposes described herein. Use of the Trail Area by the general public shall be restricted to: (1) walking, hiking, jogging, bicycling, horseback riding, bird watching, nature study; (2) power-driven mobility devices for use by persons who have mobility impairments; and (3) emergency vehicles in the case of emergency within the Trail Area. Prohibited uses shall include other motorized vehicles, events such as charity runs or competitive races and other purposes such as picnicking or other stationary activities. No party is permitted to charge a fee for access to the Trail Area. The Association shall be responsible for any and all maintenance of the Trail Area and shall undertake all necessary repairs and replacements when and as necessary. Neither Association nor Borough, assume any duty to or for the benefit of the general public for defects in the location, design, installation, maintenance, or repair of the trail facilities; for unsafe conditions within the Trail Area; or for the failure to inspect for or warn against possibly unsafe conditions; or to close the Trail Area to public access when unsafe conditions may be present. Borough and Association shall maintain comprehensive general liability insurance covering the use of the Trail Area. Nothing contained in this Declaration shall be interpreted or applied to create in the Borough a possessory interest in the Trail Area or constitute a waiver of any rights, privileges, immunities or limitations of damages or liability accruing to the Borough as a governmental entity under applicable law.

8. **Easement in Favor of Borough.** Borough and any pertinent public authorities, and their agents, employees and independent contractors, shall have the irrevocable right and easement to have access to the Common Facilities to perform such obligations as may be necessary to complete, maintain, repair or replace the Common Facilities in the event that the Declarant or

Association fails to do so. In addition, each Borough and public authority, and their 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 at the cost of the Association, upon at least ten (10) days prior written notice of any such order to the Association, in the case of a corrective or remedial order affecting the Common Facilities, 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 or right of entry in order to conduct its maintenance rights as provided herein. Without limiting the generality of the foregoing, the Borough shall have easement rights over the Stormwater Management Facilities for access, inspection and maintenance purposes in accordance with the Stormwater Agreement. In the event the Declarant or Association shall fail to properly maintain the Stormwater Management Facilities, then, in the case of the Association, the Association shall be required to reimburse the Borough for any repair, maintenance or replacement costs borne by the Borough and the Borough shall have the right to place a lien on each Unit for the cost of such remedial maintenance, all as more particularly described in the Stormwater Agreement.

ARTICLE VI. CONSTRUCTION OF COMMUNITY AND DECLARANT CONTROL.

1. **Declarant to Construct Community.** Declarant has agreed to construct the improvements to the Community, including the Buildings and Common Facilities, in material accordance with the Plan that has been approved by the Borough (as the Plan may be amended or modified). In the exercise of its rights and obligations under the Plan, Declarant has reserved the rights contained in this Article and in this Declaration.

2. **Completion of Common Facilities.** The Declarant will complete the Common Facilities not later than the last conveyance by Declarant of a Unit included in the Community. Until such completion, the Declarant shall be solely responsible for real estate taxes assessed against or allocable to such incomplete Common Facilities. The Declarant guarantees completion of these Common Facilities that are indicated on the Plat as "MUST BE BUILT".

3. **Conveyance of Common Facilities.** All Common Facilities consisting of land not required by the Plan to be improved, graded or disturbed in any way from their natural state will become Common Facilities upon the recording of this Declaration. All other Common Facilities will become Common Facilities upon substantial completion of any required improvement, grading or disturbance as required by the Plan and the Borough. The Declarant may convey the Common Facilities to the Association at any time and from time to time, but not later than the date of the last conveyance by Declarant of a Unit included in the Community. This obligation to convey will be binding upon the Declarant and any successor in interest of the Declarant in the portion of the Community consisting of such Common Facilities, whether or not the successor succeeds to any special declarant rights of Declarant. The Common Facilities will be owned by the Declarant, prior to such conveyance. Declarant shall convey the Common Facilities to the Association by delivery of a fee simple deed of special warranty to the Association, which will be recorded. No consideration shall be payable by the Association, other than the Association's acceptance of such deed or deeds. The Association shall accept any such deed duly tendered and may not seek to evade its responsibilities by attempting to raise to accept any such deeds.

4. **Period of Declarant Control.**

- (a) **Continuation:** The period of Declarant Control shall begin with the filing of this Declaration and shall end as provided in sub-section (e) below.
- (b) **Sole Right:** Until the sixtieth (60th) day after the conveyance of twenty-five percent (25%) of the Units to Unit Owners other than Declarant, Declarant shall have the right to appoint and remove any and all officers and members of the Board.
- (c) **First Transition:** Not later than sixty days after the conveyance of twenty-five percent (25%) of the Units to Unit Owners other than Declarant, at least one member of the Board, but not less than twenty-five percent (25%) of the Board, shall be elected by Owners other than Declarant, as provided in the Bylaws.
- (d) **Second Transition:** Not later than sixty days after the conveyance of fifty percent (50%) of the Units to Unit Owners other than Declarant, not less than thirty-three percent (33%) of the Board shall be elected by Owners other than Declarant, as provided in the Bylaws.
- (e) **Termination:** This period of Declarant Control shall terminate not later than the earlier of (i) seven (7) years after the date of the first conveyance of a Unit; or (ii) sixty (60) days after seventy-five percent (75%) of the Units have been conveyed to Owners other than the Declarant; or (iii) two years after Declarant has ceased to offer Units for sale in the ordinary course of business. At that time, all members of the Board appointed by the Declarant shall resign, and the Owners shall elect successor members as provided herein and in the Bylaws.

5. **Reservation of Special Declarant Rights.** Declarant hereby reserves to itself as Special Declarant Rights, the right to:

- (a) Maintain offices, model homes and signs in the Community.
- (b) Use easements through the Common Facilities or Controlled Facilities for the purpose of making improvements in the Community.
- (c) Appoint or remove an officer of the Association or a member during any period of Declarant Control;

6. **Reservation of Rights for Models and Offices.** Declarant reserves the right, on behalf of itself and its sales agents, customers and representatives, to the nonexclusive use of the Common Facilities, without charge, for sales, display, access, ingress, egress and exhibit purposes, for offices and for models. Declarant may also maintain such offices and models in Units that have been constructed but not transferred by the Declarant or in trailers placed by Declarant on the Common Facilities. Declarant shall have the right to remove part or all of any such offices, models

or other improvements at any time up until sixty days after the conveyance of the last Unit owned by Declarant in the Community.

7. **Non-Interference with Declarant.** Declarant or its representatives, successors or assigns will undertake the work of constructing Units and completing the Common Facilities. The completion of that work and the sale, rental and other disposal of Units is essential to the establishment and welfare of the Property as a residential community. As used in this Section and its subparagraphs, the words "its representatives, successors and assigns" specifically do not include purchasers of Units. In order that Declarant's work may be completed and the Community established as a fully occupied residential community as rapidly as possible, no Unit Owner shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

- (a) **Completion of Work on Lots:** Prevent or interfere with Declarant, its representatives, successors or assigns, or its contractors, subcontractors or suppliers, from doing, on any Lot owned by them, whatever they determine to be necessary or advisable in connection with the completion of said work, including, without limitation, the alteration of its construction plans and designs as Declarant deems advisable in course of development.
- (b) **Structures on Lots:** Prevent or interfere with Declarant, its representatives, successors or assigns from erecting, constructing and maintaining on any Lot, or portion thereof, owned or controlled by Declarant, or its successors or assigns or its contractors, subcontractors or suppliers, such structures as may be reasonably necessary for the conduct of its or their business or completing said work and establishing the Community as a residential community and disposing of the same in Units by sale, lease or otherwise.
- (c) **Other Improvements on Lots:** Prevent or interfere with Declarant, its representatives, successors or assigns, or its contractors, subcontractors or suppliers, from conducting on any Lot, or any portion thereof, owned or controlled by Declarant, or its representatives, successors or assigns, their business of developing, subdividing, grading and constructing Units and other improvements in the Community and of disposing of Units thereon by sale, lease or otherwise.
- (d) **Signage on Lots:** Prevent or interfere with Declarant, its representatives, successors or assigns, or their contractors, subcontractors or suppliers, from maintaining such sign or signs on any Lot, or controlled by any of them as may be necessary, including, without limitation, safety and Lot identification signs in connection with the sale, lease or other marketing of Units in the Property.
- (e) **Grant Utility or Easement Rights:** Prevent or interfere with Declarant from granting any additional easements, licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and marketing of the

Community. Nothing provide herein shall preclude the Declarant from granting any additional easements, licenses, reservations and rights-of-way on any Unit after it has been sold to an Owner and shall be limited to the Common Facilities *and/or* Units owned by the Declarant.

ARTICLE VII. COMMUNITY GOVERNMENT.

1. **The Association.** The Association is the governing body for all of the Owners and, except as otherwise provided in this Declaration, is responsible for the maintenance, repair, replacement, cleaning, sanitation, management, operation and administration of the Common Facilities and the making of any additions or improvements to the Common Facilities and Controlled Facilities. The Association shall have all powers granted to it by the Act and by law, including without limitation the power to assign its right to future income, including its right to receive common expense assessments, in those circumstances reasonably determined to be necessary by the Executive Board. 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 Executive Board. The Common Expenses incurred or to be incurred for the maintenance, repair, replacement, insurance, administration, management, operation and use of the Common Facilities and the making of any additions or improvements to the Common Facilities shall be assessed by the Association against, and collected from, the Owners in accordance with this Declaration and the Act.

2. **Membership in Association.**

- (a) **Membership.** Owners shall become members of the Association upon acceptance of the deed to their Unit. Membership in the Association shall be limited to the Owners of the Community.
- (b) **Rights and Privileges.** Every Owner as 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 Owner who is holding the interest in a Unit merely as security for the performance of an obligation shall not be a member.
- (c) **Voting Power:** Each Unit in the Community shall have one vote. 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.
- (d) **Good Standing:** Only those Owners in good standing and entitled to vote shall be considered "Owners" for purposes of (i) obtaining a quorum, or (ii) determining the percentage of Owners voting on a matter, or (iii) voting on a matter. A 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, he shall have fully paid all Assessments made or levied against the Owner and against his Unit by the Executive Board together with

all interest, costs, attorneys' fees, penalties and other expenses, if any, chargeable to the Owner and against his Unit, at least five (5) days prior to the date fixed for such annual or special meeting.

- (e) **Leaseholds:** In the event an 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 of the Association (subject however to such limitations on such use as would be applicable to the Owner) but shall not vote in the affairs of the Association, except as the Owner shall permit the tenant or occupant to exercise by proxy its vote as a member.
- (f) **Termination of Membership:** Every lawful transfer of title to a Unit shall include membership in the Association and, upon making such transfer, the previous Owner's membership shall automatically terminate. Except as otherwise expressly provided herein or in the Act, 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) **Sale of Unit:** Membership in the Association shall automatically terminate when an Owner sells, transfers or otherwise conveys his Unit.

3. **Executive Board.**

- (a) **Directors:** Subject to the provisions of the Act, this Declaration and the Bylaws, the Executive Board shall have the power to act on behalf of the Association. The Executive Board shall initially consist of three (3) members appointed by the Declarant. The initial Directors shall be appointed, removed and replaced from time to time by the Declarant without the necessity of obtaining resignations. On the 60th day after twenty-five percent (25%) of the total Units to be included in the Community are conveyed to Owners other than Declarant, the Executive Board shall be increased to five (5) Directors in the manner provided in (b) below.
- (b) **Meetings:** For purposes of this Subsection (b), the term "First Election Meeting" shall mean the first meeting of the Association that shall occur no later than sixty (60) days after twenty-five percent (25%) of the total Units intended to be included in the Community are conveyed to Owners other than the Declarant. The term "Transitional Meeting" shall mean the meeting of the Association that shall be held no later than the earliest of (i) sixty (60) days after seventy-five percent (75%) of the Units intended to be included in the Community are conveyed to 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. 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 a Board comprised solely of Directors elected by the Owners shall occur as follows:

- (c) **First Election Meeting:** At the First Election Meeting, the Owners shall elect two (2) Owners to serve on the Board, and the Declarant shall appoint three (3) Directors. The Owner-elected Directors shall serve until the next annual meeting of the Association, which shall occur at least one hundred and eighty (180) days after the First Election Meeting. At that meeting, one Owner-elected director shall be elected for a two (2) year term, and one shall be elected to a one (1) year term, so that going forward, their terms are staggered.
- (d) **Transitional Meeting:** At the Transitional Meeting, the Owners, other than the Declarant, shall elect three (3) Owners to serve as Directors, who shall replace the remaining three (3) Directors appointed by the Declarant. The three (3) candidates receiving the highest number of votes shall be the three new Directors. The Directors elected pursuant to this Subsection shall serve until the annual meeting of the Association next following the annual meeting at which the two (2) Directors elected pursuant to subsection (1) above are reelected or replaced. Thereafter, their terms shall be staggered, in coordination with the terms of the two (2) Directors elected pursuant to subsection (1) above, so that three Directors are elected in one year, and two directors are elected the following year.
- (e) **Non-Voting Member:** From and after the Transitional Meeting, 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 an Owner. The Association shall give the non-voting member and the Declarant the same notice as must be given for each other member of the Executive Board for all meetings of the Executive Board, and the Association at the same time as notices are given to the Executive Board members or the Owners as the case may be. The non-voting member shall have the right to attend all Board and Committee meetings, and shall also be entitled to receive financial reports and all other materials that are distributed to each other member.

4. **Organization of Other Advisory Committees.** The Executive Board may create such advisory committees as it may from time to time determine to be necessary or helpful in the management of the affairs of the Community. Each such committee shall have such members, rights, powers and responsibilities as the Executive Board may determine in its sole discretion.

5. **Non-Liability of Board or Committee Members.** Neither the AR Committee, any advisory committees nor the Executive Board, nor any member thereof, nor their duly authorized representatives shall be liable to the Association, or to any Unit Owner for any loss, damage or injury arising out of or in any way connected with the performance of the duties

hereunder, unless due to the willful misconduct or bad faith of the AR Committee, advisory committee or Executive Board or any such member or representative.

ARTICLE VIII. ARCHITECTURAL REVIEW

1. **Creation of the Architectural Review Committee.** The Executive Board may create an Architectural Review Committee (the "AR Committee"), which may consist of up to three (3) members, as may be determined by the Executive Board. All members shall initially be appointed by the Declarant. Following the period of Declarant Control, all members shall resign, and the Board that is elected by the Owners shall then appoint new members of the AR Committee. At that time, members of the AR Committee shall be appointed for one-year terms. Members of the AR Committee shall serve at the pleasure of the Board, and may be removed by the Board at any time with or without cause. The AR Committee may be delegated the exclusive power over review and approval of all proposed alterations and improvements by Owners to their Units, subject always to the review and approval of the Executive Board. Each power and Obligation mentioned in this provision that may be exercised by the Executive Board may also be delegated to the AR Committee.

2. **Meetings of the AR Committee.** The AR Committee shall meet from time to time as necessary to perform its duties hereunder. The AR Committee may from time to time, by resolution unanimously adopted in writing, designate an AR Committee representative (who shall be one of its members) to take any action or perform any duties for and on behalf of the AR Committee, except the granting of variances pursuant to the Declaration. In the absence of such designation, the vote of a simple majority of the members of the AR Committee taken without a meeting shall constitute an act of the AR Committee.

3. **Compensation of Members.** The members of the AR Committee shall receive no compensation for services rendered, other than reimbursement for expenses reasonably incurred by them in the performance of their duties hereunder.

4. **Architectural Review.**

(a) **Regulated Activities:** The AR Committee shall review and enforce the restrictions set forth herein and shall otherwise insure that all structures in the Community shall exist in general harmony and character with each other and the topography, vegetation and other natural features. Notwithstanding the above, the Executive Board shall have no power or authority with respect to Units still owned or any improvements made by the Declarant.

(b) **Review Fees:** The Executive Board may require that a fee be paid to the Association for the review work of the Executive Board in an amount designated by the Board. Further, the Executive Board may require reimbursement of out-of-pocket expenses reasonably incurred in performing its obligations.

(c) **Submission of Plans; Approval or Disapproval.**

- (1) **Standards:** The Executive Board may prepare and promulgate reasonable standards and procedures governing all proposed alterations and improvements by Owners, and the necessary review and approval by the Executive Board or any committee to which such powers have been delegated.
- (2) **Submission of Plans:** Each Owner shall submit to the Executive Board its plans and specifications showing the nature, kind, shape, height, materials, finish, colors and location of the Owner's proposed change, alteration or addition (the "Improvements") to the Building or Lot.
- (3) **Additional Information:** The Executive Board shall have the right to request additional information, plans and materials concerning any proposed Improvements.
- (4) **Time for Review:** In the event the Executive Board fails to approve, with or without conditions, or deny the application within forty-five days from the date all plans and specifications, including all additional information, plans and materials which may be requested by the Executive Board, have been submitted, then the application will be deemed to have been *denied*.
- (5) **Review and Enforcement:** The Executive Board shall review the plans to determine, *inter alia*, whether the Improvements are harmonious and compatible with the Lots in the Community. The Declarant, the Association and the Executive Board, on behalf of the Association, shall have the power and the right to enforce the decisions made regarding proposed Improvements in courts of competent jurisdiction, including but not limited to the power and right to enjoin the construction of any Improvement and the power and right to order the removal of any Improvement.
- (6) **Standards for Review:** The Executive Board shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Community Property generally. The Executive Board shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. Approval shall not be unreasonably denied.

- (d) **Variance:** The Executive Board may authorize variances from compliance with any of the architectural provisions of this Declaration or any supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by at least a simple majority of the members of the Executive Board, and shall become effective upon approval by the Executive Board. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose, except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Unit Owner's obligation to comply with all governmental laws and regulations affecting his or her use of the premises, including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by any governmental or municipal authority.
- (e) **Borough Approval:** Notwithstanding anything to the contrary contained herein, any construction shall be subject to all rules, regulations and ordinances of the Borough, including the issuance of a building permit where applicable.
- (f) **Non-Applicability to Declarant:** The rights granted to the Executive Board are intended to preserve the aesthetic appeal of the Community once it has been constructed by Declarant. This section does not grant to the Executive Board the right to review and approve or disapprove any work being performed by Declarant. However, the Executive Board shall have the right to review and approve the proposed alterations or improvements of any other Owner, once the Unit has been conveyed by the Declarant.

ARTICLE IX. USE RESTRICTIONS

1. **Declarant Exemption.** 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 contemplated by the Plan. The restrictions of this Article shall therefor not be binding upon Declarant in the performance of any work in the Community, whether that work is required by the Plan or not.

2. **Compliance with Plan.** No use of any Unit shall be made which is contrary to the Plan approved by the Borough, or such changes or amendment to the Plan as may from time to time be properly approved by the Borough. Each Owner and all Units shall be bound by all provisions of such Plan including but not limited to all notes thereon, as well as easements and other matters shown on said Plan.

3. **Plans and Specifications.** No construction, including excavation or site preparation, shall begin upon any Lot, residence or accessory building, nor shall any major alterations be made to the exterior of any existing building, until the plans and specifications showing size, shape, floor plans, materials, colors, location, elevations and disposition of fill shall have been submitted to and approved by the Declarant prior to the formation of the Executive Board, and shall be submitted and approved by the Executive Board after its formation. The intent of such approval is to insure that all structures at the Property shall exist in general harmony and character with each other and the topography, vegetation and other features of the Community.

4. **Rules and Regulations.** The Executive Board may, from time to time, promulgate reasonable Rules and Regulations that do not conflict with the provisions of this Declaration, concerning the use and enjoyment of the Property.

5. **Restricted Uses.** The following uses and improvements are prohibited or restricted unless hereinafter specifically permitted with the prior approval of the Declarant or the Association:

- (a) **Unit Maintenance by Owner:** Each Unit Owner or occupant shall maintain his Unit in a safe, clean and sanitary manner and condition, in good order and repair and in accordance with all applicable restrictions, conditions, ordinances, codes and any Rules and Regulations which may be applicable hereunder or under law.
- (b) **No Alteration of Common Facilities:** 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 without the prior written approval of the Executive Board and the Declarant. The Declarant's approval shall be required until one (1) year after the conveyance by the Declarant of the last Unit.
- (c) **Quiet Enjoyment:** 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 primer use of another Unit or the Common Facilities by the Owner or occupant of any other Unit, or which creates or results in a hazard or nuisance on the Property.
- (d) **No Obstruction in Common Facilities:** Owners or occupants may not obstruct the Common Facilities in any way including, but not limited to, interfering with any storm water drainage. Owners or occupants may not store anything in or on the Common Facilities without the prior written approval of the Executive Board.
- (e) **Local Ordinances:** No activity not permitted by the present zoning or other applicable laws or ordinances shall be pursued on any Unit, at any time. No

Unit Owner shall permit his Unit to be used or occupied for any prohibited purpose.

- (f) **Rubbish; Outdoor Storage:** 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 Lot or in areas of the Property designated for this purpose by the Declarant (in connection with its 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. Empty containers shall be removed promptly after collection.
- (g) **Maintenance Rights and Obligations:** Each Owner shall maintain his Unit in a manner satisfactory to the Association and in accordance with the Declaration and Rules and Regulations of the Association. Each Owner's maintenance responsibility shall include ~~but not be limited to mowing and proper maintenance of any and all lawns and landscaping as well as~~ the removal of snow from any and all sidewalks and driveways. 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.
- (h) **Subdivision or Partition of Lot:** Except for the Declarant, no Lot Owner may subdivide or partition his Lot.
- (i) **Work Affecting Common Facilities:** No 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 Lots without the prior consent of the Executive Board (and the Declarant for two years after the sale by the Declarant of the last Lot in the Community) except in the case of an emergency. All such work may only be performed by a Person who shall deliver to the Executive Board prior to commencement of such work, in form satisfactory to the Executive Board:
 - (1) Releases of the Executive Board and the Association for all claims that such Person may assert in connection with such work.
 - (2) Indemnities of the Executive Board and the Association, holding each and all of them harmless from and against any claims asserted

for loss or damage to persons or property, including, but not limited to, Common Facilities or other Lots.

- (3) Certificates of insurance, including liability and workmen's compensation coverage, in amounts and with companies reasonably acceptable to the Executive Board.
 - (4) All other information and protections which the Executive Board may reasonably require.
- (j) **No Further Regulation of Declarant Property:** Nothing herein shall give the Executive Board authority to regulate, control or determine external design, appearance, use or location of portions of the Property under development, or to be developed, or Units under construction, or to be constructed, marketed or sold by the Declarant.
 - (k) **Restrictions on Use of Common Facilities:** The Executive Board may prohibit or restrict the use of the Common Facilities from time to time, on a non-discriminatory basis, if and to the extent required for safety or other valid reasons.
 - (l) **Time Share Estates:** None of the Units may be owned in time-share estates.
 - (m) **Residential Use:** The Units are restricted to residential use and may not be used for any other purposes. However, Units may also be used for accessory uses that are customarily incidental to the residential use, provided that any such use conforms with the applicable zoning regulations of the pertinent municipality, as they may be amended from time to time.
 - (n) **Lighting:** Any exterior lighting installed on the Units must either be indirect or of such controlled focus and intensity that it does not disturb the residents of the Property. The source of illumination must be shielded so as not to be visible from any location off the Unit. Except for exterior lighting installed by the Declarant as part of the lighting package provided by it to Owners, no exterior lighting may be installed by Owners.
 - (o) **Temporary Structure:** No used, previously created, or temporary house structure or house trailer, and no temporary, nonpermanent outbuilding including, but not limited to, storage sheds, may ever be placed, erected, or allowed to remain on the Units or Common Facilities, except by the Declarant or during construction activities approved as provided in this declaration.
 - (p) **Clotheslines:** No clotheslines may be erected nor may laundry be hung to dry on any patio or otherwise outside.

- (q) **Overhead Wires:** Overhead wires, including, but not limited to, electrical, telephone, and television cable wires may not be installed on or outside of a Unit by any person or entity. Any exterior wires must be buried beneath the ground. The Declarant and the Association, however, have the power to waive this restriction regarding overhead wires. Any such waiver must be in writing and, if necessary, approved by the Borough.
- (r) **Radio antennae, television antennae, satellite dishes:** No exterior radio antennae, television antennae, satellite dishes or other signal receptors of any type may be erected or maintained whereon the Common Facilities. An antenna or dish may be installed on a Unit, as long as the antenna or dish is not visible from any street or sidewalk adjacent to such Unit. Any signal receptors installed in a Unit will be subject to the following restrictions, subject to any additional requirements or restrictions of, or rights permitted by, the FCC or any other applicable governmental agency:
- (1) Only one antenna or satellite dish will be permitted per Unit.
 - (2) No satellite dish may be greater than one meter in diameter.
 - (3) Any external installation must be colored to match the surrounding or background structure.
 - (4) Any such structure must be kept in good repair.
 - (5) The Association has the right to establish additional rules and regulations as to locations and screening of any externally placed signal receptor not in conflict with FCC regulations.
- (s) **Mailboxes.** No individual mailbox and no newspaper tubes may be erected. Only the group mailboxes supplied by the Declarant, or replacement mailboxes supplied by the Association will be permitted on the Property.
- (t) **Fencing and Sheds.** No fence shall be permitted in front yards. No fence shall exceed five (5) feet in height; provided, six (6) foot high fences for a distance of ten (10) feet from the back wall of the home are permitted. Any fence shall be made of white PVC (as approved by the Executive Board or AR Committee). No Gazebos are permitted.
- (u) **Storm doors.** Only full view storm doors are permitted (as approved by the Executive Board or AR Committee). No other style storm door is permitted in the development.
- (v) **Exterior Paint.** No exterior paint colors (other than those approved by the Executive Board or AR Committee) may be utilized.

- (w) **Patios and Decks.** Except for patios and decks installed by the Declarant prior to the initial sale of a Unit, no patios and/or decks may be installed, constructed, modified or expanded.
- (x) **Porch Furniture.** No porch equipment/furniture which is required to be attached to a dwelling or impinges or in a Common Area is permitted. Deck furniture is permitted on decks or rear patio only. Deck furniture is not permitted on the lawn area. Furniture on the front porch is permitted but is limited to a bistro-like table (max. 36" in diameter) and two bistro-like chairs or one bench. The front porch furniture must be white, beige or black. No bright colors or plastic is permitted.
- (y) No pools (above ground or otherwise), hot tubs, trampolines, jungle gyms, bounce houses, basketball facilities or other similar structures are permitted.
- (z) **Hoses.** All hoses must be contained in decorative freestanding hose containers or in attached or freestanding hose reels while not in use. All hoses and freestanding reels must be stored inside the Owner's unit.
- (aa) **House Numbers.** House numbers must be visible at all times. House numbers are provided by the developer and replacement of these numbers must be the same finish, font and size as the existing house numbers.
- (bb) **Vehicles and Trailers.** No commercial vehicles of any kind, except for work related pickup trucks/vans (no box trucks) of the Owner shall be lodged, parked or maintained on or adjacent to the subject premises. Exterior storage or campers, boats, motorcycles, ATV's, trailers or like structures and/or items shall be permitted on subject premises for a total period not to exceed seven days in a given year. These vehicles are permitted to be stored in garages. This shall not apply to builders' vehicles engaged in construction or sport utility vehicles. Non-operational vehicles or any other vehicle which current registration plates and inspections stickers are not displayed must be parked in a closed garage. No Owner may conduct any restoration or major repairs on any motor vehicle upon any portion of the property or street.
- (cc) **Parking on Grass.** Parking on the grass is not permitted. Parked vehicles are not to block any sidewalks and/or driveways. Parked vehicles are not to impair or deny access to other Owners' driveways.
- (dd) **Awnings.** Retractable awnings may be installed by a licensed and insured contractor. The awnings may be placed in the rear of the home over decks or patios with a maximum size of 14' 0" deep x 18' 0" wide and must be solid in color, retractable in design and operation, with no support posts (permanent or temporary) and made of fabric. (Acceptable designs and colors are available through the Association). The top of the hood is to fit

parallel to the horizontal bottom edge of the siding approximately nine feet above the interior floor. The front bar shall finish approximately seven feet above the deck floor. The wall brackets must be installed in such a way as to avoid compressing the vinyl siding. The outside edge of the hood cannot be placed beyond the outside edge of the deck railing. The projection of the awning cannot extend more than one foot beyond the front edge of the deck. Owners must follow the Borough's Ordinances. A copy of a certificate of insurance for all contractors must be provided to the Association in advance to the installation.

- (ee) **Drilling and Mining.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot.
- (ff) **Animals.** No animals, livestock or poultry of any kind shall be raised, bred, or kept in any dwelling or on any Lot, except that dogs, cats or other regularly domesticated household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. Family pets (no more than two) must be kept primarily within the dwelling. Pets must be either leashed or otherwise contained by the Owner when leaving their Unit. Fencing to contain pets shall be limited to underground electronic fencing or other fencing permitted in this document and by the municipal zoning ordinance. In addition, scoopers must be used to collect animal excrement.

6. **Leasing of Units.**

- (a) **Declarant Rights:** Declarant reserves the right to lease any and all of the Units owned by Declarant subject only to the provisions of this Section.
- (b) **Conditions to Leasing:** No Unit Owner 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 Rule and Regulations of the Association. All leases must be in writing for a term not to be less than one (1) year and approved by the Association, which approval shall not be unreasonably withheld. All leases shall provide that the lessee shall be subject in all respects to the provisions of this Declaration, the Bylaws and the Rules and Regulations of the Association, 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.
- (c) **Tenant Obligations:** 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 ten (10) 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 paragraph (d) of this Section. 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.

- (d) **Limitation on Tenant Obligation:** 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.
- (e) **Notice in Lease:** The inclusion of subsections (c) and (d) of this Section in a lease or addendum to a lease for the rental of a Unit shall be a condition precedent to the approval of such lease by the Executive Board.

7. **Sight Distances at Intersections.** All Units located at the intersection of roads shall be subject to sight easements that prohibit plantings that may obstruct sight lines. No wall or shrub planting which obstructs sight lines at elevations between two and six feet above the roadway shall be placed on any corner Unit within the triangular area formed by the street property lines and a line connecting them at a point twenty-five feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. No tree shall be permitted to remain within the distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of the sight lines. In the event any applicable law, ordinance or regulation imposes a more restrictive requirement for maintaining sight distances at intersections, then the more restrictive requirement shall govern.

ARTICLE X. MAINTENANCE AND REPAIR OBLIGATIONS

1. **Maintenance Obligations of Owners.** Each Owner shall be obligated, at its cost and expense, to maintain and repair its Unit in a neat, safe, sanitary and attractive condition, in accordance with the provisions of this Declaration, the Rules and Regulations, and all applicable laws.

2. **Maintenance Obligations of Association.** In general, the Association shall have the obligation to maintain all Common Facilities located on the Property. The expenses of same shall be Common Expenses. All Common Maintenance Obligations shall be performed at such times and in such manner as shall be determined by the Board or by any applicable governmental approvals or regulations.

ARTICLE XI. INSURANCE

1. **Casualty Insurance.**

- (a) **Coverage.** Commencing not later than the time of the first conveyance of a Unit to a person other than the Declarant, the Association shall cause to

be maintained, to the extent reasonably available, property insurance on the Common Facilities insuring against fire and extended coverage perils and all other perils customarily covered by standard extended coverage endorsements in such amount as the Association may determine, but in no event less than One Hundred (100%) percent of the current replacement cost of the insured property, exclusive of land, foundations and other items normally excluded from property policies. The Association may also insure any other property, whether real or personal, owned by the Association, against the loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance.

- (b) **Disposition of Proceeds.** The insurance coverage with respect to the Common Facilities shall be written in the name of, and the proceeds thereof shall be payable to, the Association. The insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessment made by the Association. In the event of damage to or destruction of any part of the Common Facilities, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the cost of repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment against all Unit Owners to cover the additional costs of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Owners.

2. **Liability Insurance to be Maintained by Association.** Commencing not later than the time of the first conveyance of a Unit to a person other than the Declarant, the Association shall cause to be maintained comprehensive general liability insurance coverage covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Facilities. The limits of such policies and other policy terms shall be as determined by the Board, but in no event less than \$1,000,000 per occurrence, \$3,000,000 aggregate. Liability insurance shall include medical payments insurance.

3. **Additional Endorsements.** All policies obtained pursuant to the provisions of Section 1 and Section 2 shall:

- (a) Provide that the Association or its authorized representatives shall be the sole adjuster of any losses.
- (b) Contain waivers of all rights of subrogation.
- (c) Provide that the coverage afforded to any insureds shall not be affected by the acts or omissions of any one or more other insured.

- (d) Provide that such policy shall not be canceled or modified without thirty (30) days' prior written notice to all whose interests are covered thereby.

Each policy shall designate that insurance proceeds for the loss shall be payable to the Association and not to any mortgagee, and shall otherwise comply with the provisions of Section 5312 of the Act.

4. **Other Insurance.** The Association shall cause to be maintained workers' compensation insurance and employer's liability as required by law for any employees of the Association. The Association shall cause to be maintained directors and officers' liability insurance, to the extent reasonably available.

5. **Waiver of Subrogation and Release.** Subject to the provisions of this Article, each Unit Owner and the Board hereby waives and releases any and all claims which he or it may have against any other Owner, the Association, the Board and members thereof, the Declarant and its respective employees and agents, for damage to the Common Facilities, the Units or to any personal property located in the Units or Common Facilities, caused by fire or other casualty or any act or omission of any such party, to the extent that such damage is covered by property or casualty insurance. Such release and waiver shall be valid only if such release or waiver does not affect the right of the insured under the applicable insurance policy to recover thereunder. In no event shall insurance obtained and maintained by the Association and by individual Owners be the subject of any action for contribution.

6. **Insurance Underwriting Standards.** The Association reserves the right from time to time to implement any requirements that may be imposed or suggested by insurance underwriters of those companies that actually provide any of the coverages maintained by the Association on the Community.

ARTICLE XII. BUDGETS, ASSESSMENTS AND COLLECTIONS.

1. **Creation of Lien and Personal Obligation of Assessments.** The Declarant for each Unit owned by it within the Property hereby covenants, and each Unit Owner by acceptance of a deed for a Unit, whether or not it is so expressed in such deed, is deemed to covenant and agree to pay to the Association its proportionate share as shown on Exhibit "C": (i) Common Assessments for Common Expenses, and (ii) Special Assessments. Each such assessment, together with interest, costs, and reasonable attorneys' fees (if the assessment is not timely paid), will be the personal obligation of the person who was the Unit Owner of the Unit at the time when the assessment fell due, and if the assessment remains unpaid, the entire outstanding balance of the assessment will become effective as a lien against the Unit from the due date of the delinquent installment pursuant to section 3315 of the Act. Subject to provisions of this Declaration protecting first Mortgagees, the personal obligation for delinquent assessments as disclosed in the Resale Certificate will pass to the successors-in-title of the Unit Owner. The Executive Board will establish one or more separate accounts into which will be deposited all assessments paid to the Association, and from which disbursements will be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration.

2. **Power to Assess.** The Association, acting through the Executive Board in accordance with the Bylaws, has the power to fix and determine, from time to time, the sum or sums necessary and adequate to provide for the General Common Expenses, including, but not limited to, any amounts that are necessary for uncollectible assessments, budget deficits, any reserves that are hereinafter described, and any additional reserves that the Executive Board may deem necessary or prudent, and any other expenses specifically provided for in the Act, this Declaration, or the Bylaws. The Executive Board will establish one or more separate accounts (each, an “Operating Fund”) into which will be deposited all such assessments paid to the Association, and from which disbursements will be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration.

3. **Date of Commencement of Monthly Assessment.** Monthly Assessments provided for herein will commence with the first day of the month after settlement on the first Unit to a non-Declarant purchaser or the first of the month after the first assessment is made by the Association or such later date as designated by Declarant. The Executive Board will arrange for the preparation of an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, including deposits in and withdrawals from the Operating Fund, and distribute a copy of each such statement to each Member, and to each first Mortgagee who has filed a written request for copies of it with the Executive Board, in the manner provided in the Bylaws of the Association. At least thirty (30) days prior to the beginning of each fiscal year, the Executive Board will prepare and distribute the Budget to the Unit Owners.

4. **Surplus.** The Budget of the Association will segregate capital expenses from General Common Expenses. Any amounts accumulated from Common Assessments and Special Assessments and income from the operation of the Common Facilities to which General Common Expenses pertain in excess of the amount required for actual General Common Expenses will be paid into the Capital Reserve Fund.

5. **Reserves.** The Association will establish an adequate reserve fund for material capital expenditures, and repairs and replacement of those Common Facilities that are anticipated to require replacement, repair, or major repair on a periodic basis. There will be no separate reserve for material capital expenditures. The Capital Reserve Fund will be maintained in an account separate and apart from the Operating Fund. The Capital Reserve Fund will be funded by monthly payments made as a part of the Common Assessment, and any capital improvement fee that the Executive Board may impose as authorized by the Act.

6. **Special Assessments.** If the Budget proves to be insufficient to cover the actual General Common Expenses for the related fiscal year for any reason (including, by way of illustration and not limitation, any Unit Owner’s nonpayment of his or her assessment), the Executive Board has the power, at any time (and from time to time) it deems necessary and proper, to levy one or more Special Assessments against each Unit Owner.

7. **Payment of Assessments.** Each Owner must pay all assessments levied by the Association. Such assessments will be due and payable on a monthly basis as designated by the Executive Board.

8. **Failure to Fix New Assessments.** If the Executive Board fails to fix new Monthly Assessments for Common Expenses for the subsequent fiscal year before the expiration of any fiscal year, the Unit Owners will continue to pay the same sums they were paying for the Monthly Assessments during the fiscal year just ended and these sums will be deemed to be the new Monthly Assessments for the succeeding fiscal year. If the Executive Board changes the Monthly Assessment at a later date, the new Monthly Assessment will be treated as if it were a Special Assessment under this Declaration.

9. **No Exemption by Waiver.** No Unit Owner may exempt himself or herself from liability with respect to the General Common Expenses by waiver of the enjoyment of the right to use any of the Common Facilities or by the abandonment of his or her Unit or otherwise.

10. **Liability Related to Assessments.**

- (a) All sums assessed by the Association as a Monthly Assessment or Special Assessment will constitute the personal liability of the Unit Owner of the Unit so assessed and also will, until fully paid, constitute a lien against the Unit pursuant to section 5315 of the Act. The Association may take action for failure to pay any assessment or other charges pursuant to sections 5314 and 5315 of the Act. Any assessment, or installment thereof, not paid within five (5) days after due will accrue, and any delinquent Unit Owner must pay, a late charge in the amount of five percent (5%) of the overdue assessment or installment in addition to interest at the rate of fifteen percent (15%) per annum or any greater amount permitted by applicable law from the date the assessment was due. In addition to any late charges assessed in accordance with section 5314 of the Act or this Declaration, the delinquent Unit Owner will be obligated to pay (i) any fines that may be assessed for nonpayment of fees and assessments, and (ii) all expenses of the Executive Board, including reasonable attorneys' fees, incurred in the collection of the delinquent assessment by legal proceedings or otherwise, and (iii) any amounts paid by the Executive Board for taxes or on account of superior liens or otherwise to protect its lien. These expenses and amounts, together with accrued interest, will be deemed to constitute part of the delinquent assessment and will be collectible as such.
- (b) Notwithstanding anything provided above (but subject to the provisions of section 5407(c) of the Act), upon the voluntary sale, conveyance, or any other voluntary transfer of a Unit or any interest therein, the grantee will be jointly and severally liable with the grantor for all unpaid Monthly Assessments and Special Assessments that are a charge against the Unit as of the date of consummation of the sale, conveyance, or transfer, but such joint and several liability will be without prejudice to the grantee's right to recover from the grantor the amount of any unpaid Monthly Assessments and Special Assessments that the grantee may have paid, and until any of the Monthly Assessments and Special Assessments are paid, they will continue to be a lien against the Unit, which may be enforced in the manner set forth in section 5315 of the Act.

11. **Unpaid Assessments Upon Execution Sale Against a Unit.** Any unpaid assessments that 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 (by way of illustration and not limitation) the purchaser who acquired title at the sheriff's sale, his or her successors and assigns, and any holder of a mortgage who comes into possession of a Unit by deed in lieu of foreclosure or assignment in lieu of foreclosure.

12. **Subordination of Certain Charges.** Any fees, charges, late charges, fines, and interest that may be levied by the Association pursuant to sections 5320(10), (11), and (12) of the Act will be subordinate to any first lien Mortgage.

13. **Acceleration.** If a Unit Owner is in default in the payment of the charges or monthly installments of assessments described in this Article XII for sixty (60) days, the Executive Board may, in addition to all other remedies contained in the Act or this Declaration, accelerate all other charges and monthly installments of assessments to become due for the next twelve (12) months on the basis of the Budget for the fiscal year in which the default occurs and assuming the same Budget for the following year; however, a Mortgagee registered with the Secretary of the Association pursuant to this Declaration that is foreclosing pursuant to a first lien Mortgage will be entitled to automatic subordination of such sums in excess of the amounts that are prior in lien or payment to mortgage liens under the Act.

14. **Assignment of Income Rights.** The Association may assign its rights to future income, including payments made on account of assessments for General Common Expenses, to secure any loan obtained by the Association for repairs, replacements, or capital improvements to the Common Facilities, provided that any such assignment is authorized by the vote of not less than fifty-one percent (51%) of the members of the Executive Board.

15. **Taxes.** The Association shall be operated as a non-profit entity and the Executive Board shall take any and all actions necessary to obtain, maintain or achieve exemptions from any and all taxes.

16. **Declarant's Rights to Contribute to the Operating Funds of the Association.** Declarant shall have the right, in its sole discretion and from time to time, to contribute to the operating funds of the Association. At the option of the Declarant, such contribution may be reflected 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 direction of the Declarant. If treated as a loan, the contribution shall accrue interest, compounded monthly, from the date it is made 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.

17. **Transfer Fee.** A non-refundable contribution to the general fund of the Association (i.e. transfer fee) shall be paid by the purchaser of a Unit (or an undivided interest in such Unit) at the closing of each sale or resale of a Unit in an amount to be determined from time to time by the Executive Board. Notwithstanding the foregoing, this contribution shall not be due from (i) any grantee who is the spouse, former spouse or registered domestic partner of the grantor; (ii) any entity that is wholly owned by the grantor; (iii) any grantee to whom the Unit is conveyed

by a deceased grantor by will or through the laws of intestacy; or (iv) any grantee who obtains title to a Unit pursuant to judicial or non-judicial foreclosure of any first priority deed to secure debt of record (provided that such contribution to the working capital fund of the Association/transfer fee shall be due upon any subsequent sale or transfer by such grantee).

ARTICLE XIII. RIGHTS AND OBLIGATIONS OF MORTGAGEES AND LENDERS.

1. **Notices Upon Request.** If a prior written request is made to the Association by a Mortgagee, then the Association shall agree to give written notice of to the Mortgagee of any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation of the Association or the Bylaws, which default is not cured within thirty (30) days after the Association gives notice to the Mortgagor of such default. The Association may give such notice to the last known address of the Mortgagee, and shall not be required to seek out the identity or new address for the Mortgagee if the last known address is invalid.

2. **Right to Inspect Books and Records.** Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

3. **Notice of Amendments; Casualty; Condemnation.** The Association shall give to all Mortgagees who have made a prior written request to the Association:

- (a) Thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles of Incorporation or Bylaws of the Association, and prior to the effective date of any termination of an agreement for professional management of the Community Property following a decision of the Unit Owners to assume self-management of the Community.
- (b) Immediate notice following any damage to the Common Facilities whenever the cost of reconstruction exceeds Fifty Thousand Dollars (\$50,000); or as soon as the Board learns of any threatened condemnation proceeding.

The Association may give such notice to the last known address of the Mortgagee, and shall not be required to seek out the identity or new address for the Mortgagee if the last known address is invalid.

4. **Payments by Mortgagees.** Mortgagees may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against any Common Facilities; and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property. The Association agrees that any such Mortgagee making such advance shall be entitled to immediate reimbursement therefor from the Association.

ARTICLE XIV. COMPLIANCE AND ENFORCEMENT

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

2. **Enforcement by Unit Owners: Procedures.**

- (a) The Association shall have the sole and exclusive right and authority to enforce the covenants in this Declaration relating to the payment of Assessments by Unit Owners, and no Unit Owner shall have the right to bring any action at law or in equity to compel any other Unit Owner(s) to pay Assessments or other sums payable by one or more Unit Owners hereunder; provided, however, that nothing herein shall be construed to prevent one or more Unit Owners from commencing an action on behalf of or in the right of the Association, or to compel the Association to collect Assessments from any Unit Owners who have failed to pay Assessments if the Association shall have failed or refused to make reasonable efforts to collect such Assessments from the delinquent Unit Owners without reasonable cause.
- (b) If the Board (or the AR Committee, as the case may be), approves the construction, alteration or modification of any structure or improvement under Article VII hereof, such decision shall be final, binding and conclusive on all Unit Owners, and no Unit Owner shall have the right to bring any action at law or in equity to contest or appeal such approval or to compel the removal, modification or alteration of any structure or improvement built, made or altered in compliance therewith.
- (c) No Unit Owner shall have the right to bring any action at law or in equity to enforce any of the other terms, covenants, restrictions or provisions of this Declaration, or of the By-Laws or the Rules and Regulations.

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

4. **Substitute Performance.** The Association may, after fifteen (15) days prior written notice, without being liable to any Unit Owner, enter upon any Unit, for the purpose of enforcing by peaceful means the provisions of this Declaration or the other governing documents, or for the purpose of maintaining or repairing any such Unit if for any reason whatsoever the Owner thereof fails to maintain or repair any such Unit as required by this Declaration. The cost of any such maintenance and repairs incurred by the Association shall be an obligation of the Owner, shall be a lien on the Unit, and may be collected as permitted herein for assessments and other charges,

ARTICLE XV. AMENDMENTS TO DECLARATION.

1. **Right to Amend Declaration.** Except as limited or as otherwise permitted by Section 5219 of the Act or this Declaration, this Declaration may be amended by the vote of the Unit Owners holding sixty-seven percent (67%) of the allocated votes in the Association. Any proposed amendments to this Declaration that would affect the specific rights of the Borough or Declarant that are granted herein shall not be effective unless also approved in writing by the Borough or the Declarant (as applicable).

2. **Declarant's Joinder for Specific Amendments.** Except to the extent expressly permitted or required by other provisions of the Act, without the unanimous consent of all Unit Owners affected, no amendment may create or increase any Special Declarant Rights, alter the terms or provisions governing the completion or conveyance or lease of Common Facilities or increase the number of Units or change the boundaries of any Unit, the Common Expense liability or voting strength in the Association allocated to a Unit, or the uses to which any Unit is restricted. In addition, no Declaration provisions pursuant to which any Special Declarant Rights have been reserved to the Declarant shall be amended without the express written joinder of the Declarant in such amendment.

3. **Curative Amendments.** If any amendment is necessary in the judgment of the Board to cure any ambiguity or to correct or supplement any provision of this Declaration or the Plats and Plans which is defective or inconsistent with any other provision hereof or thereof or with the Act, the Board may, at any time and from time to time, effect such amendment without the approval of the Unit Owners, upon receipt by the Board of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of the Act, together with a like opinion from an independent registered architect or licensed professional engineer in the case of any such amendment to the Plan. Each such amendment shall be effective upon the Recording of an appropriate instrument setting forth the amendment and its due adoption, execution and acknowledgments by one or more officers of the Board.

ARTICLE XVI. GENERAL PROVISIONS.

1. **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order in no way affects any other provisions which shall remain in full force and effect. In the event any provision of this Declaration is determined by any court order to be invalid, enforcement of the Declaration as revised by such court order shall be prospective only.

2. **Parties Bound.** Each present and future Unit Owner, occupant and Mortgagee of a Unit, shall be subject to and shall comply with the provisions of the Act, this Declaration, the Plan, the Bylaws, the Rules and Regulations, and the deed to such Unit. The acceptance of a deed or mortgage to any Unit, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the Act, this Declaration, the Plan, the Bylaws, the Rules and Regulations and the covenants, conditions and restrictions set forth in the deed to such Unit are accepted and ratified by such grantee or Mortgagee. All of such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance or mortgage thereof.

3. **Continuing Effect.** The covenants and restrictions of its Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Unit Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns and the Association.

4. **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community. In case of inconsistencies in the governing documents of the Community, then the articles of incorporation of the Association shall have precedence over this Declaration; this Declaration in turn has precedence over the Bylaws of the Association; and the Bylaws have precedence over any rules and regulations adopted by the Association. The section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter. All Exhibits attached hereto are hereby made a part hereof.

5. **Covenant Running with the Land, Constructive Notice and Acceptance.** The provisions of this Declaration shall at all times hereafter be appurtenant to, affect and bind the Property and are intended to be covenants running with the land with regard to the Property. This Declaration shall be Recorded, and when so Recorded, every person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of the Property does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Property, or any portion thereof.

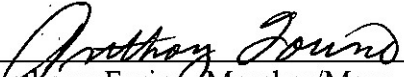
[Signatures appear on following page.]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first written above.

DECLARANT:

FORINO CO., L.P.
ANTHONY FORINO LLC its General Partner


Attest: 

By: 
Anthony Forino, Member/Manager

BOROUGH OF EMMAUS

For the Limited Purposes of Consent related to
specific Provisions of this Declaration

Attest: 

By: 
Shane Pepe, Borough Manager

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
 : SS:
COUNTY OF Berks :

On this day, September 27 2020, before me, a notary public, the undersigned officer, personally appeared Anthony Forino, who acknowledged himself/herself to be the Member/Manager, of Anthony Forino LLC, the General Partner of Forino Co., L.P a Pennsylvania limited partnership, and that he/she in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited partnership by himself/herself in such capacity.

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

Eileen Hauptly
Notary Public

My Commission Expires: 4.25.2021

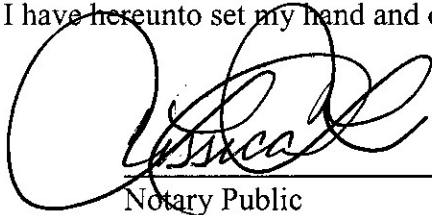
COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Eileen Hauptly, Notary Public
South Heidelberg Twp, Berks County
My commission expires April 25, 2021

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
 : SS:
COUNTY OF LEHIGH :

On this day, September 18, 2020, before me, a notary public, the undersigned officer, personally appeared Shane Pepe, who acknowledged himself to be the Borough Manager, of the Borough of Emmaus, and that he in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

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



Notary Public

My Commission Expires: 6.25.2024

Commonwealth of Pennsylvania - Notary Seal
Jessica L. Wessner, Notary Public
Lehigh County
My commission expires June 25, 2024
Commission number 1373112
Member, Pennsylvania Association of Notaries

INDEX OF DEFINED TERMS

The following terms when used in this Declaration shall have the meanings given to them by this Section:

“Act” shall mean the Pennsylvania Uniform Planned Community Act, 68 P.S. §§5101 et seq., as amended.

“Assessments” shall mean those assessments, payable by the Owners upon notification by the Association as provided herein. Each Assessment shall be separate and payable by the Owner of the Lot against which the Assessment is levied.

“Association” shall mean Towns at South Mountain, a Pennsylvania non-profit corporation, being an association of all Owners (including the Declarant while it owns a Lot subject to this Declaration).

“Authority” shall mean a municipal authority (including a joint municipal authority) providing services to the Community.

“Board” shall mean the Executive Board as it may from time to time be constituted.

“Borough” shall mean the Borough of Emmaus and its agents, servants, public officials, workmen and independent contractors.

“Building” shall mean a structure constructed upon a Lot.

“Bylaws” shall mean the Bylaws of the Association that have been or will be adopted by the Executive Board for the management of the affairs of the Association, as amended from time to time.

“Capital Reserve Fund” shall mean the fund created by the Association.

“Common Assessments” shall mean those general, limited and special assessments as determined and levied by the Association from time to time for the payment of the debts and obligations of the Association.

“Common Facilities” shall mean the real estate and attached improvements to be made, and which will be owned by the Association.

“Common Expenses” shall mean the expenses and financial liabilities of the Association, and future expenses that may be reasonably anticipated, together with any allocations for reserves and capital items, for which the Owners may be liable pursuant to this Declaration or the Bylaws. In the discretion of the Association and in accordance with this Declaration and the Act, Common Expenses may be designated as “General” (benefiting all Owners) or “Limited” (benefiting fewer than all Owners).

"Common Maintenance Obligations" shall mean the obligations of the Association to maintain and repair the Common Facilities, and to perform those other duties that may be required hereunder or may be necessary or desirable for the maintenance and improvement of the Community.

"Common Receipts" shall mean the funds collected from Owners as Assessments and receipts designated as common by the provisions of this Declaration and the Bylaws.

"Common Surplus" shall mean the excess of all Common Receipts over all Common Expenses.

"Controlled Facilities" shall mean any real estate and attached improvements within the Community, whether or not a part of a Unit, that is not a Common Facility, and for which the Association may be obligated to maintain, improve, repair, replace, regulate, manage, insure or otherwise control.

"Declarant" means Forino Co, L.P. or its successors and assigns.

"Declarant Control" means the time period described in Section 4 in which Declarant has reserved various rights with respect to the Community.

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

"Detention Basins" shall mean the areas within the Property, whether in Open Space or within the Lot lines of any Unit, that are intended to be used as stormwater detention basins as part of the Stormwater Management Facilities, all as further depicted on the Plan and described herein.

"Drainage Systems" shall mean any pipes, swales, channels, conduit or any other natural or artificial means and all parts and components thereof, which have been or will be constructed and laid within the Stormwater Management Facilities for the purpose of conveying storm water runoff from the roads and other impervious surfaces to detention basins and certain other Stormwater Management Facilities.

"Executive Board" or *"Board"* shall mean a group of individuals who shall manage and administer the business affairs and operation of the Association on behalf of the Members.

"Lot" shall mean each of the forty-nine (49) numbered parcels of land shown on the Plan, and all structures that are or will be erected thereon.

"Manager" shall mean the person or firm, if any, appointed by the Association as its agent to perform certain management obligations of the Association.

"Member" shall mean the Owners of each Unit who are required to be members of the Association as provided in the Bylaws.

"Mortgage" shall mean any mortgage on a Lot or other part of the Property.

"Mortgagee" shall mean a lender who holds a first mortgage on a Unit.

"Mortgagor" shall mean a Unit Owner who has granted a first mortgage on his Unit.

"NPDES Permit" means that certain National Pollutant Discharge Elimination System Permit No. PAD390137, issued on April 28, 2020, and all attachments, plans and supplements relating thereto, which regulates stormwater controls during construction activities on the Property.

"Open Space" shall mean the land within areas designated as Open Space on the Plan (if any).

"Operating Account" shall mean the accounts created for receipts and disbursements of the Association, pursuant to Section 12.01 hereof.

"Owner" shall mean the record Owner of any Unit, excluding those persons having an interest merely as security for the performance of an obligation. Multiple Owners of a single Unit shall together be deemed one Owner for purposes of this Declaration.

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

"Plan" shall mean a plan titled Towns at South Mountain (the "Plan") which was approved by the Borough of Emmaus and recorded in the Recorder's Office of Lehigh County, Pennsylvania as Number 2020031272 et seq. on 9/29/2020. The contents of the Plan are incorporated herein by this reference.

"Plat" shall mean the plan showing various aspects of the Community as required by the Act, which will be delivered to each prospective Owner with a public offering statement, prior to or at the time of the signing of an agreement of sale for a Unit in the Community.

"Property" shall mean the entire parcel of real estate (including all Additional Real Estate that may or may not be added) on which the Community may be situated, as further described in the legal description attached as Exhibit A-1 hereto.

"Recorded" shall mean that an instrument has been duly recorded in the Office of the Recorder of Deeds in and for Lehigh County, Pennsylvania.

"Rules and Regulations" shall mean rules and regulations that may be adopted from time to time by the Association to govern the Community and its affairs.

"Special Assessment" shall mean a charge levied against some or all of the Unit Owners to pay for Common Expenses not covered by the Common Assessment.

"Special Declarant Rights" shall mean the rights that Declarant has reserved to itself under this Declaration.

"Stormwater Agreement" shall mean the Stormwater Best Management Practices, Operation, Maintenance, Waiver and Indemnity Agreement between the Borough and the Declarant, recorded in the Office of the Recorder of Deeds for Lehigh County.

"Stormwater Management Facilities" shall mean, as the context requires, any and all stormwater management or Detention Basins or other containment structures, stormwater diversion and/or discharge structures, Drainage Systems, and any other structures, devices, berms, walls, basins and other improvements, installed or to be installed or constructed in accordance with the Plan for the purpose of collection, transmission, containment, diversion and/or discharge of stormwater, including also any inlets, outlets, headwalls, endwalls, pipes or piping, and any and all other structures or facilities to be constructed or installed on any part of the Property or on any easements appurtenant thereto or on any Lot or Lots for the purpose of managing and/or controlling stormwater runoff, as the same may be modified, reconstructed, enlarged, altered or replaced from time to time. The Stormwater Management Facilities, as currently approved, are shown on the Plat and Plan. For so long as the Declarant owns a Lot the design and location of any Stormwater Management Facilities may be amended by the Declarant to the extent that the same are located within a Common Facility

"Unit" shall mean and refer to each of the Lots, the boundaries of which shall be the boundaries of such Lots as depicted on the Plan, together with the improvements and Buildings built on the Lot (if applicable) and the other legal rights and obligations associated with ownership of that Lot. Each Unit is given a Unit number as depicted on the Plan. When Units include a party wall, the boundary of such Unit shall be the center of the party wall separating one dwelling from another.

"Unit Assessment" shall mean a charge against a particular Owner and his Lot directly attributable to the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest and expenses of collection thereon as provided for in this Declaration.

EXHIBIT "A"

PROPERTY

ALTA COMMITMENT FOR TITLE INSURANCE
ISSUED BY Security Title Guarantee Corporation of Baltimore

Exhibit A - Legal description

File No.: 28245-RS

ALL THAT CERTAIN tract or parcel of land with improvements thereon, situate at the Southwesterly terminus of Tilghman Street and the Northwesterly side of the Perkiomen Railroad in the **Borough of Emmaus**, County of Lehigh and Commonwealth of Pennsylvania, bounded and described in accordance with a survey conducted by Keystone Consulting Engineers, Inc., on February 26, 1999, as follows, to wit:

BEGINNING at an iron pin found in the Northwesterly right-of-way of Tilghman Street (50 feet wide), said point being the Southwesterly corner of lands now or formerly of Robert R. Schmeltzle; thence along the Southwesterly terminus of said Tilghman Street and further along lands now or formerly of Carol J. Gibiser South $37^{\circ} 49' 28''$ East, 295.73 feet to an iron pipe found in the Westerly right-of-way of the Perkiomen Railroad, now or formerly of the Pennsylvania Department of Transportation; thence along said Perkiomen Railroad right-of-way parallel and 30 feet West of the centerline thereof, the following three (3) courses and distances: (1) along the arc of a curve to the left having a radius of 985.57 feet, a central angle of $23^{\circ} 23' 47''$ and a chord bearing and distance of South $30^{\circ} 57' 31''$ West, 399.66 feet, an arc length of 402.45 feet to an iron pin; (2) along the arc of a curve to the left having a radius of 1,392.77 feet, a central angle of $6^{\circ} 01' 16''$ and a chord bearing and distance of South $16^{\circ} 15' 02''$ West, 146.30 feet, an arc length of 146.36 feet to an iron pin set; (3) South $13^{\circ} 14' 21''$ West, 9.65 feet to an iron pin set at a corner of lands now or formerly of Anthony and Mary Hnatyssy; thence along said Hnatyssy land the following two (2) courses and distances: (1) North $76^{\circ} 49' 05''$ West, passing through enroute, an iron pipe found set in concrete at 0.37 feet, a total distance of 273.34 feet to an iron pipe found set in concrete; (2) North $42^{\circ} 12' 00''$ West, 430.67 feet to an iron pipe found set in concrete at a corner of lands now or formerly of the Borough of Emmaus; thence along said Borough of Emmaus lands and further along the Southerly terminus of Arch Street (50 feet wide) and various lots of the subdivision entitled Arch-Way Townhouses (recorded in Lehigh County Map Book Volume 28 page 80), North $33^{\circ} 42' 13''$ East, 737.57 feet to an iron pipe found set in concrete in the line of lands now or formerly of George J. and Ellen L. Soltis; thence along said Soltis lands, South $39^{\circ} 06' 38''$ East, 23.14 feet to an iron pipe found at a corner of lands now or formerly of Robert R. Schmeltzle; thence along said Schmeltzle lands, South $38^{\circ} 25' 03''$ East, 320.16 feet to an iron pin found at the point and place of beginning.

CONTAINING 9.838 acres of land, more or less.

SUBJECT to easements, restrictions, rights-of-way, agreements, leases and covenants of record.

BEING THE SAME PREMISES WHICH RODALE INC, formerly known as RODALE PRESS, INC., A Pennsylvania Corporation, by Deed dated 8/10/2017 and recorded 8/10/2017 in the Office for the Recorder of Deeds in and for the COUNTY of LEHIGH, and Commonwealth of PENNSYLVANIA in Instrument No. 2017023122, granted and conveyed unto W2B2, LLC, a Pennsylvania limited liability company

EXHIBIT "A-2"

LOTS

- Forty Nine (49) residential townhome Lots as shown on the Plan.

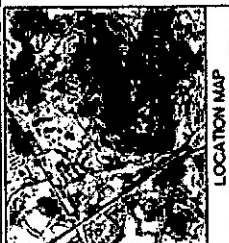
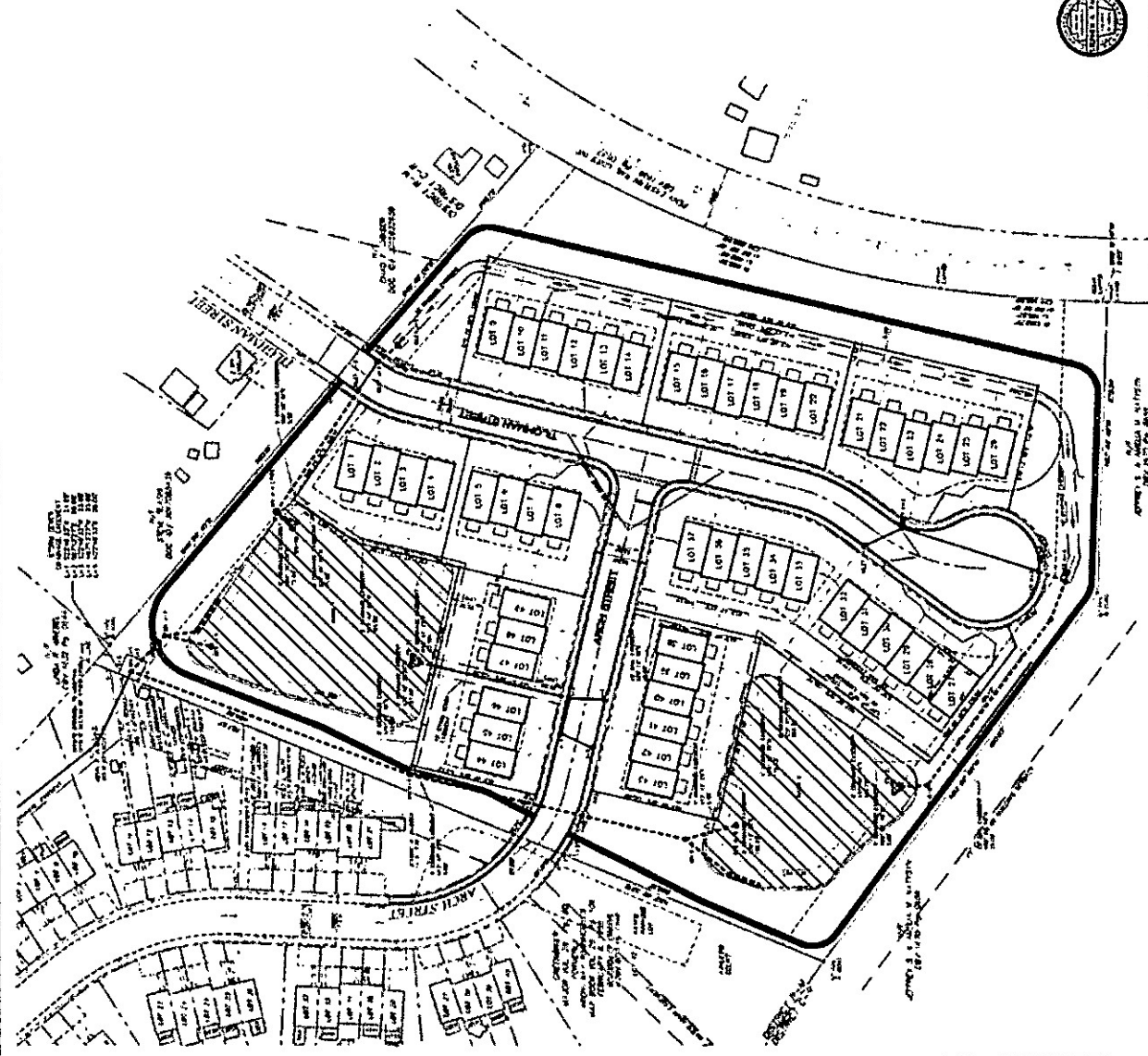
EXHIBIT "B"
EASEMENT PLAN

OWNER'S STATEMENT
I, the undersigned, being duly qualified by law to practice as a Professional Engineer, do hereby certify that the information furnished to me by the applicant is true and correct and that the same conform to the requirements of the laws of the State of Maryland.

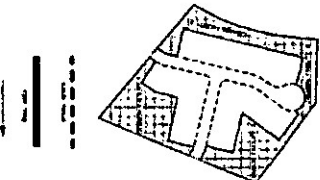
DEVELOPER'S STATEMENT
I, the undersigned, being duly qualified by law to practice as a Professional Engineer, do hereby certify that the information furnished to me by the applicant is true and correct and that the same conform to the requirements of the laws of the State of Maryland.

DECLARATION PLAT
I, the undersigned, being duly qualified by law to practice as a Professional Engineer, do hereby certify that the information furnished to me by the applicant is true and correct and that the same conform to the requirements of the laws of the State of Maryland.

OWNER'S STATEMENT	DATE
DEVELOPER'S STATEMENT	DATE
DECLARATION PLAT	DATE



LOCATION MAP
Scale: 1" = 1000'



LOT NO.	ACRES	SQ. FT.	REMARKS
101	0.10	10,890	RESIDENTIAL
102	0.10	10,890	RESIDENTIAL
103	0.10	10,890	RESIDENTIAL
104	0.10	10,890	RESIDENTIAL
105	0.10	10,890	RESIDENTIAL
106	0.10	10,890	RESIDENTIAL
107	0.10	10,890	RESIDENTIAL
108	0.10	10,890	RESIDENTIAL
109	0.10	10,890	RESIDENTIAL
110	0.10	10,890	RESIDENTIAL
111	0.10	10,890	RESIDENTIAL
112	0.10	10,890	RESIDENTIAL
113	0.10	10,890	RESIDENTIAL
114	0.10	10,890	RESIDENTIAL
115	0.10	10,890	RESIDENTIAL
116	0.10	10,890	RESIDENTIAL
117	0.10	10,890	RESIDENTIAL
118	0.10	10,890	RESIDENTIAL
119	0.10	10,890	RESIDENTIAL
120	0.10	10,890	RESIDENTIAL
121	0.10	10,890	RESIDENTIAL
122	0.10	10,890	RESIDENTIAL
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127	0.10	10,890	RESIDENTIAL
128	0.10	10,890	RESIDENTIAL
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138	0.10	10,890	RESIDENTIAL
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143	0.10	10,890	RESIDENTIAL
144	0.10	10,890	RESIDENTIAL
145	0.10	10,890	RESIDENTIAL
146	0.10	10,890	RESIDENTIAL
147	0.10	10,890	RESIDENTIAL
148	0.10	10,890	RESIDENTIAL
149	0.10	10,890	RESIDENTIAL
150	0.10	10,890	RESIDENTIAL

LEGEND

EXISTING FEATURES

- CONTOUR 400
- CONCRETE CURB
- EDGE OF PAVEMENT
- CONCRETE WALK OR PAD
- FENCE
- FREE LINE
- ZONING BOUNDARY

PROPOSED FEATURES

- CONTOUR 352
- CONCRETE CURB
- EDGE OF PAVEMENT
- CONCRETE WALK OR PAD
- FENCE
- EDGE OF PAVEMENT
- WALKING PATH EASEMENT
- WALKING PATH



WALKING PATH EASEMENT EXHIBIT

P ANY ENGINEERING COMPANY
LENTZ
 CONSULTING ENGINEERS
 CIVIL, MECHANICAL, ELECTRICAL, MECHANICAL
 609 Hamilton Street • Allentown, PA 18101
 Office: 610/433-1634 • Fax: 610/433-1636

DESIGNED	DATE	BY	REV.
DRAWN	DATE	BY	REV.
CHECKED	DATE	BY	REV.
SCALE	DATE	BY	REV.
DATE	DATE	BY	REV.
DATE	DATE	BY	REV.
SHEET NO.	1	TOTAL SHEETS	0

THE TOWNS AT SOUTH MOUNTAIN
 ARCH AND TILGHMAN STREETS
 LEHIGH COUNTY, PA

W2B2, LLC
 3600 ORCHID LANE
 EMMAUS, PA 18046

DATE	REVISIONS	BY



EXHIBIT "B-1"

RECORDING DATA FOR RECORDED EASEMENTS AND LICENSES

All information disclosed by Plan on Schmeltzle-Holland Properties recorded in Minor Subdivision Plan Book Volume 10 page 103.

Subject to Cross-Easement Agreement as cited in Misc. Book page 727.

*See also all Easements identified in this Declaration or as shown on the Plan.

EXHIBIT "C"

PROPORTIONATE SHARE

Each Unit – 2.0408%

ANDREA E. NAUGLE
LEHIGH COUNTY CLERK OF JUDICIAL RECORDS



Recorder of Deeds Division
Karen S. Collura, Chief Deputy
Lehigh County Courthouse
455 W. Hamilton Street - Room 122
Allentown, PA 18101-1614
(610) 782-3162

*RETURN DOCUMENT TO:
FITZPATRICK LENTZ & BUBBA
TWO CITY CENTER
645 W HAMILTON ST
ALLENTOWN, PA 18101

Instrument Number - 2020031275

Recorded On 9/29/2020 At 10:30:23 AM

* Instrument Type - DECLARATION

Invoice Number - 415923 User ID: BMS

* Grantor - FORINO CO LP ANTHONY FORINO LLC

* Grantee - TOWNS AT SOUTH MOUNTIAN

* Customer - FITZPATRICK LENTZ & BUBBA

*Total Pages - 49

* FEES

STATE WRIT TAX	\$0.50
RECORDING FEES	\$101.50
COUNTY ARCHIVES FEE	\$2.00
ROD ARCHIVES FEE	\$3.00
UPI CERTIFICATION FEES	\$10.00
TOTAL PAID	\$117.00

I hereby CERTIFY that this document is
Recorded in the Recorder of Deeds Office
of Lehigh County, Pennsylvania



Andrea E. Naugle
Andrea E. Naugle
Clerk of Judicial Records
Recorder of Deeds Division

LCGIS Registry UPI Certification
On September 28, 2020 By LY

THIS IS A CERTIFICATION PAGE

Do Not Detach

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

* - Information denoted by an asterisk may change during the verification process and may not be reflected on this page.

INSTRUMENT NUMBER - 2020031275

