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TAX PARCEL NO. 38-06-0009-007A  
CLT 097

**RECORDER: Pursuant to Section 5219(c) of the PA Uniform Planned Community Act, please index this Declaration in the name of Millfording Preserve, a Planned Community in both the Grantor index and Grantee index.**

**DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
MILLFORDING PRESERVE, A PLANNED COMMUNITY**

**ARTICLE I  
SUBMISSION; DEFINED TERMS**

Section 1.1. Declarant; Property; County; Name. **Avian Grasslands, LLC**, a Pennsylvania limited liability company, having a principal place of business at 3 Lemoyne Drive, Lemoyne, Pennsylvania ("Declarant"), equitable owner of the real estate described in Exhibit A attached hereto ("Real Estate"), located in Silver Spring Township, Cumberland County, Pennsylvania, hereby submits the Real Estate, including all easements, rights and appurtenances thereunto belonging and the Dwellings and other improvements to be erected thereon (collectively, the "Property" or "Millfording Preserve") to the provisions of the Pennsylvania Uniform Planned Community Act, 68 Pa. C.S. 5101 et seq. ("Act"), and hereby creates with respect to the Property a flexible planned community to be known as "Millfording Preserve, A Planned Community" (the "Community").

Section 1.2. Declarant's Undertakings.

1.2.1. The Units as initially created may consist of unimproved subdivided lots ("Unimproved Units"). The Declarant shall construct or provide for the construction of certain Common Element improvements, such as roads, water and sewer service lines, drainage facilities, and other infrastructure improvements as provided herein. The Declarant shall not be responsible for the substantial completion of any Dwelling or other improvements located within the Unit title lines, including any structural components or mechanical systems located within the Unit title lines that constitute Common Elements under the provisions hereof or the provisions of the Act.

1.2.2. The construction of improvements to be built upon the portion of the Property outside the Unit title lines (i.e., the Common Elements and certain of the Limited Common Elements) shall be performed in accordance with Section 5414(a) of the Act.

1.2.3. It is expected that title to a Unit will be transferred directly from the Declarant to a residential builder (each, a "Builder") pursuant to a contract between the Declarant and the Builder for sale of the Unit and construction of a Dwelling thereon. Notwithstanding the foregoing, the Declarant and the Builder reserve, without limitation, the right to modify the manner in which title to Units is transferred in order to facilitate the orderly development of the Community.

Section 1.3. Builder's Undertaking; Consent of Builder.

1.3.1. No Builder is a Declarant under this Declaration; however, each Builder acknowledges and agrees that all of the Builder's right, title and equitable interest in and to the Units under contract(s) with Declarant, is, and shall be, subject to the terms of this Declaration.

1.3.2. It is presently anticipated that construction of Dwellings and any other improvements within the Unit title lines shall be undertaken by a Builder either pursuant to a construction contract with a third party purchaser, or on the Builder's own account with respect to any Unit which the Builder owns. Each Builder, as seller, shall include in each agreement pursuant to which it constructs or sells a Dwelling Unit to a third-party purchaser (such third-party purchaser, together with any subsequent owner of such Dwelling Unit, collectively, the "Dwelling Unit Purchaser") with a warranty against structural defects that is at least as extensive as the warranty set forth in Section 5411 of the Act.

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

Section 1.4. Easements and Licenses. Included among the easements, rights and appurtenances referred to in Section 1.1 hereof are the recorded easements, rights and licenses affecting the Property set forth on Exhibit B attached hereto and made a part hereof.

Section 1.5. Defined Terms.

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

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

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

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

(c) "Architectural Review Committee" ("ARC") means a committee comprised of three (3) members appointed by the Executive Board, the purpose of which shall be to review and evaluate any alteration to, or change in appearance of, the exterior of a Unit proposed by the Unit Owner and to make a recommendation to the Executive Board whether to approve or disapprove, or condition the approval, of such proposed alteration. The ARC shall be the Declarant until the expiration of Declarant's control set forth in Article XI, or such earlier time as provided by the Declarant.

(d) "Association" means the Unit Owners' association of the Community, which shall be a Pennsylvania non-profit corporation known as "Millfording Preserve Homeowners' Association" and shall have all powers and duties designated by the Act.

(e) "Bylaws" means the Bylaws of Millfording Preserve Homeowners' Association providing for the governance of the Association pursuant to Section 5306 of the Act, as such document may be amended from time to time.

(f) "Common Elements" means Common Facilities or Controlled Facilities.

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

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

(i) "Community" means the Community described in Section 1.1 hereof.

(j) "Community Documents" include the Declaration, Plats and Plans, Bylaws and Rules and Regulations, if any.

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

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

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

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

(o) "Dwelling" means a single family detached house and related improvements situate within a Unit.

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

(q) "Executive Board" means the Executive Board of the Association.

(r) "First Settlement" means the date of the first closing whereby a Unit is conveyed to an Initial Third Party Purchaser.

(s) "Initial Third Party Purchaser" means an initial purchaser of a Unit, other than a Builder.

(t) "Limited Common Elements" means Limited Common Facilities or Limited Controlled Facilities.

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

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

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

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

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

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

(aa) "Property" means the Property described in Section 1.1 hereof.

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

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

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

(ee) "Subdivision Plan" means the Final Subdivision Plan for Millfording Preserve, prepared by Alpha Consulting Engineers, Inc., as approved by Silver Spring Township (the "Municipality"), as the same may be amended or modified by the Declarant from time to time in accordance with the Municipality's and other governmental requirements.

(ff) "Millfording Preserve" means those portions of the real estate described on Exhibit A attached hereto and which are developed pursuant to the provisions of this Declaration, or any subsequent declaration recorded pursuant to the provisions of the Act and which expressly state that they constitute a part of the "Millfording Preserve" community.

(gg) "Unit" means the land located within the lot lines of a lot shown on the Subdivision Plan and designated as a Lot on the Plats and Plans, and not otherwise excluded herein or on the Plats and Plans, or the land otherwise designated as a Unit/Lot on the Plats and Plans, whether improved or unimproved, together with any Dwelling and any other permanent improvements constructed thereon from time to time.

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

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

Section 1.6. Provisions of the Act. The provisions of the Act shall apply to and govern the operation and governance of the Community, except to the extent that contrary provisions, not prohibited by the Act, are contained in one or more of this Declaration, the Plats and Plans or the Bylaws.

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

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

2.1.1. Attached hereto as Exhibit C is a list of the first twenty-seven (27) Units being created by the Declarant that sets forth their identifying numbers and the Allocated Interest appurtenant to each such Unit, determined on the basis that all such Units shall have the same interest based on the number of Units created. Each Unit shall have one (1) vote as set forth in Exhibit C.

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

2.1.3. The Allocated Interest shall determine the share of Common Expense liability appurtenant to each Unit, subject to Section 9.2 hereof. A Unit's Allocated Interest shall always be appurtenant to that Unit, and any separate conveyance, encumbrance, judicial sale or other transfer of such Allocated Interest, whether voluntary or involuntary, shall be void unless the Unit to which the Allocated Interest is allocated is also transferred.

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

Section 2.3. Relocation of Boundaries Between Units. Unit Owners desiring to relocate the boundaries between adjoining Units shall submit an application to the Association in accordance with Section 5214 of the Act, and the Association shall have the powers and duties with respect to such application for relocation as set forth therein, subject to all required Township approvals, and at the Unit Owners expense.

### **ARTICLE III**

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

Section 3.1. Limited Common Elements. The following portions of the Property are hereby designated as Limited Common Elements:

3.1.1. Any portion of the Property designated as Limited Common Elements on the Plats and Plans.

3.1.2. Any portion of the Property designated as Limited Common Elements allocated by or pursuant to any amendment to this Declaration and shown on the accompanying amended Plats and Plans.

Section 3.2. Common Elements Not Previously Allocated. The Association shall have the power to allocate a Common Element not previously allocated as a Limited Common Element appurtenant to one or more, but fewer than all, Units in the Community, provided such allocation is effected in accordance with Section 5209(c) of the Act.

### **ARTICLE IV**

#### **ADDITIONS, ALTERATIONS AND IMPROVEMENTS**

Section 4.1. Additions, Alterations and Improvements by Unit Owners.

4.1.1. A Unit Owner:

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

(b) May not commence construction upon, or change the exterior appearance of a Unit or Dwelling or make alterations to the Limited Common Elements, if any, appurtenant to such Unit without the express written consent of the Executive Board;

4.1.2. Subject to the limitations of Subsections 4.1.5 and 4.1.6 hereof, a Unit Owner may submit a written request to the Executive Board for approval to do anything that he or she is forbidden to do under Subsection 4.1.1 (b) hereof. The Executive Board shall submit all such requests to the Architectural Review Committee for review and recommendation. The Executive Board shall consider, but shall not be bound by, the recommendation of the Architectural Review Committee in deciding whether to approve, disapprove or condition the approval of such requests. The Executive Board shall answer any written request for such approval within sixty (60) days after the request thereof. Failure to do so within such time shall not constitute a consent by the Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of the Community Documents.

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

4.1.4. All additions, alterations and improvements to the Units and Common Elements shall not, except pursuant to prior approval by the Executive Board, cause any increase in the premium of any insurance policies carried by the Association or by the owners of any Units other than those affected by such change.

4.1.5. The provisions of this Section 4.1 shall not apply to the Declarant in the exercise of any Special Declarant Right or the Declarant in the initial construction of a Dwelling and other improvements within a Unit.

Section 4.2. Additions, Alterations and Improvements by the Executive Board. Subject to the limitations of Sections 9.5 and 9.6 of this Declaration, the Executive Board may make any additions, alterations or improvements to the Common Elements which, in its judgment, it deems necessary or advisable.

## **ARTICLE V** **CONSTRUCTION, MAINTENANCE, REPAIR AND REPLACEMENT RESPONSIBILITIES**

Section 5.1. Construction Responsibilities. A Unit Owner, including a Builder, shall, within six (6) months from the time such owner accepts a deed from the Declarant for any Unit commence construction of the main dwelling house to be erected thereon. The Declarant shall have the option (not the obligation) to repurchase, and by acceptance of the deed to any Unit, each Unit Owner agrees, if directed by the Declarant, to resell to the Declarant, or its designee, any Unit where construction of the main dwelling house by the Unit Owner has not commenced within said nine (9) months. Settlement shall occur within thirty (30) days of the date of such notice, the purchase price shall be identical to the purchase price initially paid by the Unit Owner to Declarant, all transfer tax together with all other costs or expenses incurred in connection with the reconveyance, including, but not limited to, recording costs, costs of deed preparation, attorneys fees, title insurance and the like shall be paid by the Unit Owner, and the Unit Owner shall convey by special warranty deed good and marketable title to the Unit, free and clear of all liens, subject only to easements existing as of the date of the Unit was initially conveyed to the Unit Owner, unless otherwise agreed to by the Declarant.

Section 5.2. Maintenance Responsibilities. The Units and Common Elements shall be maintained and repaired by each Unit Owner and by the Association in accordance with the provisions of Section 5307 of the Act, except as expressly set forth to the contrary in the Community Documents.

Section 5.3. Common Elements. The Association shall maintain, repair and replace the Common Elements. Until such time as roads set forth on the Plats and Plans and any and all amenities that lie within the roads' right of ways are dedicated to the Township, such roads and amenities (including streetlights) within the right of way shall be a Common Facility. In the event of such dedication, the streetlights shall thereafter be deemed a Controlled Facility. At all times, the

maintenance, repair and replacement of the streetlights (after the initial placement by the Declarant) and the cost of the electricity serving the street lights shall be the responsibility of the Association.

Section 5.4. Units and Limited Common Elements. Each Unit Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit and the Limited Common Elements appurtenant thereto, if any, except the portions thereof to be maintained, repaired or replaced by the Association.

Section 5.5. Failure to Maintain Units and Common Elements. Each Unit Owner shall reimburse the Association for the reasonable cost of repair of any damage to the Common Elements caused by such Unit Owner's failure to properly maintain, repair or replace any portion of his or her Unit or the Limited Common Elements appurtenant thereto for which the Unit Owner, is responsible. The Association shall reimburse a Unit Owner for the reasonable cost of repair of any damage to his or her Unit caused by the Association's failure to properly maintain, repair or replace any portion of the Common Elements or any portion of a Unit or the Limited Common Elements appurtenant thereto which is to be maintained, repaired or replaced by the Association.

Section 5.6. Chart of Maintenance Responsibilities. The respective responsibilities of the Association and the Unit Owners with respect to maintenance, repair and replacement of the Units, Common Elements and Limited Common Elements are set forth in the Chart of Maintenance Responsibilities attached as Exhibit A to the Bylaws, as amended from time to time.

Section 5.7. Access. Any person authorized by the Executive Board shall have the right to enter upon the exterior portion of each Unit, at reasonable times and in a reasonable manner, without notice to the Unit Owner, for any proper purpose. For example, any authorized person shall have the right to enter upon the exterior portion of each Unit for the purpose of correcting any condition threatening a Unit or the Common Elements; for the purpose of performing installations, alterations or repairs; for the purpose of repairing or replacing utility meters and related pipes, valves, wires and equipment; and for any other purpose necessary for the Association to carry out its powers or responsibilities, including correction of any violation of Article VII hereof, provided that all requests for entry are made in advance and that any such entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no such request or notice is required and such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

Section 5.8 Storm Water Control.

Section 5.8.1. Maintenance Requirement. The Unit Owner and the Association, as applicable, shall comply with all provisions of the Subdivision Plan, including, but not limited to the Post-Construction Stormwater Management Plan Operation, Ownership and Maintenance Program. All drainage easements shall be subject to an easement in favor of the Millfording Preserve Homeowners' Association and Silver Spring Township for the purpose of entering upon each said easement for the purpose of inspection and, in the event that the Unit Owner fails to perform maintenance as required, for the purpose of performing necessary maintenance as provided in the Subdivision Plan. No building, shed, fence, or other structure of any kind shall be erected within any drainage easement. The grade within any drainage easement shall not be disturbed, nor shall any condition be created or permitted to exist which would impede the flow of water through such drainage easement. Notwithstanding the obligation of individual Unit Owners as provided herein,

the Association shall maintain, repair and replace, as necessary, any storm water management facilities not dedicated to, and accepted by Silver Spring Township and/or Conservation Organization, including underground pipes, manholes, trenches, basins, and other appurtenance installed within any drainage easement or basin.

Section 5.8.2. Rights of Silver Spring Township. In the event any of the Common Elements within the Community, including storm water management facilities, drainage easements or basins are not maintained as herein provided, Silver Spring Township shall have the right, but not the obligation, to maintain said Common Elements, including drainage easements and storm water management facilities, and the expense thereof shall be paid by the Association which shall be assessed to the Unit Owners by the Association or the individual responsible Unit Owner with regard to failure to maintain a drainage easement as provided herein or in the Subdivision Plan, or the Township may impose a municipal lien upon each Unit for its prorata share of said expense or the Township may collect the amount due from the Association or the prorata share of the amount due from each Owner.

Section 5.8.3. Additional Drainage Easements. The Declarant shall have the right to impose additional drainage easements across any Unit, as shall be reasonably necessary for compliance with any municipal ordinance or other requirement, or any state law or regulation, pertaining to storm water management.

## **ARTICLE VI** **EASEMENTS**

Section 6.1. Additional Easements. Each Unit Owner shall have a perpetual nonexclusive easement of use and enjoyment over, upon and through the Common Elements. In addition to such and in supplementation of the easements provided for and hereby created pursuant to Sections 5216, 5217, 5218 and 5302(a)(9) of the Act, the following additional easements are hereby created:

6.1.1. Declarant's Use for Sales Purposes. The Declarant shall have the right to maintain one or more sales offices and models throughout the Property and to maintain one or more directional, promotional and advertising signs on the Common Elements and on Units owned by the Declarant pursuant to Section 5217 of the Act, even if such Units are under contract with a Unit purchaser. The Declarant reserves the right to place models and sales offices on a Unit in such a manner, or such size and number and in such locations as the Declarant deems appropriate. The Declarant may from time to time relocate models and sales offices to different locations within the Property notwithstanding that the Community Documents may otherwise preclude such use in those locations. Pursuant to certain agreements between the Declarant and the Builder, the Declarant has granted to the Builder the right to maintain one or more sales offices and models throughout the Property and to maintain one or more directional, promotional and advertising signs on the Common Elements and on Units owned by the Builder.

6.1.2. Utility Easements. The Units and Common Elements shall be, and are hereby, made subject to easements in favor of the Declarant, and appropriate utility and service companies and governmental agencies or authorities designated by Declarant (including Silver Spring Township and any applicable municipal authorities) for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property. The easements created in this Subsection 6.1.2 shall include, without limitation, rights of the Declarant, or the providing utility or service company, or governmental agency or authority, to install, lay, maintain,

repair, relocate and replace gas lines (including, without limitation, propane gas lines), pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise), electric wires, conduits and equipment over, under, through, along and on the Units and Common Elements. Notwithstanding the foregoing provisions of this Subsection 6.1.2, unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Unit by the Declarant or as shown on an approved recorded plan, or so as not to materially interfere with the use or occupancy of the Unit by its occupants.

6.1.3. Declarant's Easement to Correct Drainage. The Declarant reserves an easement on, over and under those portions of the Common Elements and Units not improved with buildings for the purpose of constructing, maintaining, replacing and correcting drainage of surface water in order to maintain reasonable standards of health, safety and appearance, and further reserves the right to grant and/or assign such easements to appropriate persons, parties or entities. The easement created by this Subsection 6.1.3 expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil, or to take any other action reasonably necessary to achieve this purpose, following which the Declarant shall restore the affected property as closely to its original condition as practicable.

6.1.4. Declarant's Reservation of Right to Grant Easements. The Declarant reserves the right to grant, sell and convey easements for the purpose of benefiting any tract of land adjacent to or near the Property. Without limiting the generality of the preceding sentence, the Declarant may subject the Property to storm water and detention pond easements to be used by or jointly with adjoining properties.

6.1.5. Declarant's Easement for Development of Convertible and Withdrawable Real Estate. The Declarant reserves an easement on, over and under the Common Elements for all purposes relating to the construction, development, leasing, and sale of improvements on the Convertible and Withdrawable Real Estate. This easement shall include without limitation, the right of vehicular and pedestrian ingress and egress, the right to park motor vehicles and to engage in construction and marketing activities of any nature whatsoever, including the movement and storage of building materials and equipment, the conduct of sales, leasing and management activities, the maintenance of models and offices and the erection and maintenance of directional and promotional signs. The Declarant's easement hereunder shall remain in full force and effect on, over and under any portions of the Withdrawable Real Estate, even after said portion(s) have been withdrawn from the Community.

6.1.6. Temporary Easement for Construction. During such time as the Declarant is conducting construction activities within the Property, the Declarant reserves unto itself, its agents, employees and contractors, the right to enter onto the unimproved portions of any Unit within the Community as may reasonably be necessary to facilitate the Declarant's construction, repair or replacement activities, provided however that the Declarant shall take reasonable steps to minimize any interference with a Unit Owner's use of his or her Unit and shall promptly repair any damage to a Unit resulting from the Declarant's exercise of the rights it has pursuant to this Article.

6.1.7. Access Easement. Each Unit in the Community is subject to an easement permitting the Association or its designated agents to enter upon the exterior of the Unit for any or all of the purposes, and subject to the limitations, described in Section 5.6 hereof.

6.1.8. Signage and Landscape Easement. Units 10, 11 and 53 and Open Space OS-2 shall be, and are hereby, made subject to an easement in favor of the Declarant and the Association, for all purposes relating to the construction and maintenance of a Community entrance sign and landscape entrance area. This easement shall include without limitation, the right of the Declarant and the Association, including their approved contractors, to access the easement area for the construction and maintenance of a Community entrance sign and related landscaping. The Association shall be responsible for maintaining the signage and related landscape easement on Units 10, 11, 53 and Open Space OS-2 at its expense which shall be considered a Common Expense.

6.1.9. Fence Easement. Units 5 through 22 and Open Space OS-2 shall be, and are hereby, made subject to an easement in favor of the Declarant and the Association, for all purposes relating to the construction and maintenance of an ornamental white rail fence treatment. This easement shall include without limitation, the right of the Declarant and the Association, including their approved contractors, to access the easement area for the construction and maintenance of the fence. The Association shall be responsible for maintaining the fence along Units 5 through 22 and Open Space OS-2 at its expense which shall be considered a Common Expense.

## **ARTICLE VII** **USE RESTRICTIONS**

Section 7.1. Use and Occupancy of Units and Common Elements. Except as otherwise expressly set forth in the Community Documents, all Unit Owners, including the Declarant, shall have the same rights and duties that are appurtenant to each Unit. The occupancy and use of the Units and Common Elements shall be subject to the following restrictions:

7.1.1. Permitted Use. The Dwellings in the Community (with the exception of any Units during the time period when they are being used by the Declarant or the Builder as a sample, model or sales office) are restricted to residential use and may not be used for any other purpose by the Unit Owner or occupant. Notwithstanding the foregoing, Units may also be used for accessory uses that are customarily incidental to the foregoing use, including a professional office; provided that any such use conforms with the applicable zoning regulations of the Municipality in which the Dwelling is located, as the same may be amended from time to time, and further provided that the prior written consent of the Executive Board is obtained.

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

7.1.3. Preservation of Exterior of Units. The Declarant will approve the structural location, architectural style and exterior appearance of each Dwelling and other improvements that are constructed upon a Unit, including mailboxes, which it intends to have preserved for the maintenance of overall appearance and continuing value of the Units within the Community. To accomplish this intention, the following requirements are created and imposed:

(a) Except as otherwise approved by the Executive Board in accordance with Subsection 4.1.2 and Section 7.2 hereof, the exterior structural appearance and architectural style of all exposed portions (front, rear, sides) of all Dwelling Units shall not be altered

in any way that would result in the modification of appearance of such Dwelling Units as first constructed. The grade of any Unit shall not be altered above or below the grade established or to be established by the Declarant. All approved structures separate from the Dwelling shall be constructed with materials compatible with the construction of the Dwelling.

(b) Except as otherwise approved by Executive Board in accordance with Subsection 4.1.2 and Section 7.2 hereof, exterior masonry elements, aluminum or vinyl siding and trim, windows and doors, and concrete of all such exposed portions of all Dwelling Units shall remain as first constructed and shall not be painted, covered, enclosed or otherwise obstructed or modified in appearance. The outside finishes on all chimneys and flues shall be constructed of masonry material and be finished with bricks or stone.

(c) Except as otherwise approved by the Executive Board in accordance with Subsection 4.1.2 and Section 7.2 hereof: (i) the exterior colors of all such exposed portions, roofs and doorways of all Dwelling Units shall remain the same as originally installed, including, but not limited to the color of walls, roof shingles, trim materials, doors, windows, shutters, garage doors and driveway/parking surfaces; and (ii) all replacement materials, whether structural or covering, shall perpetuate the same colors as originally installed in order to provide a consistent color scheme.

(d) Square Feet of Living Area. No dwelling shall be erected which does not provide a minimum living floor space, exclusive of basements, attics, porches, breeze ways, garages and the like as follows:

(i) For a one-story Dwelling, a minimum of 1,600 square feet of livable floor area;

(ii) For a one-and-one-half story or two-story Dwelling, a minimum of 2,100 square feet of livable floor area;

(e) All Dwellings shall have at least a two-car attached or detached garage built.

(f) Minimum livable square feet requirements can be waived by the Architectural Review Committee, if, in its opinion, the dwelling is of the type that will, by certain architectural characteristics, enhance the general neighborhood irrespective of the minimum amount of livable square feet.

7.1.4. Condition. Each Unit Owner shall be solely responsible for maintaining the exterior of the Dwelling located upon his or her Unit in a clean, sanitary and attractive condition, except as may otherwise be provided in the allocation of responsibilities set forth in the "Chart of Maintenance Responsibilities" attached as Exhibit A to the Bylaws. Each Unit Owner shall maintain a mailbox and one exterior lamppost on their Unit, the design of which shall be approved by the Architectural Review Committee. The required hours of illumination of the lamppost may be established by the Executive Board.

7.1.5. Landscaping. Each Unit Owner shall be responsible for maintaining the exterior grounds of such Unit, including any landscaping, in a clean, sanitary and attractive condition. Each Unit Owner shall provide for the landscaping of their Unit upon completion of the

Dwelling in accordance with a landscaping plan submitted and approved by the ARC. Such landscaping shall be completed within sixty (60) days of the completion of the Dwelling, unless otherwise approved by the ARC.

7.1.6. Materials. Except as otherwise approved by the Executive Board in accordance with Subsection 4.1.2 hereof, all landscaping in front yards shall consist of natural materials, e.g., shrubs, trees, bushes, rocks, timbers, etc., and shall not include any artificial or man-made articles, e.g., statues, figures, birdbaths, windmills, etc. Nor shall any children's play sets or toys be maintained in the front or side yards.

7.1.7. Signs. No sign or billboard of any kind shall be displayed to the public view on any Unit, except for directional signs established by the Declarant or its designee, or signs used by the Declarant, its designee, their successors in title or assigns, to advertise Units for sale or rent, or a Community entrance sign on Units 10, 11 and 53 and Open Space OS-2. The Unit Owner of a particular Unit shall be permitted to place a sign upon the Unit for the purpose of advertising the Unit for sale or rent, subject to the provisions governing signs in the Rules and Regulations.

7.1.8. Temporary Structures. No structure of a temporary character, trailer, tent, shack, shed, garage, barn, or other out-building shall be constructed or used on any Unit at any time as a residence or storage facility, either temporarily or permanently. No motor home, truck (except for pickup trucks up to one and one half ton size), trailer, camper, boat or similar equipment shall be permitted to remain upon any street within the Community or upon any Unit unless placed or maintained within an enclosed garage, except as permitted by the Rules and Regulations. Notwithstanding the provisions of this Subsection 7.1.8, the Declarant and the owner of any Unimproved Unit (including, without limitation, any Builder) may construct and maintain on any Unit temporary buildings, structures and vehicles used for construction and administration purposes for use in connection with the initial construction of improvements on any portion of the Units. The Declarant and (pursuant to certain agreements between the Declarant and a Builder) a Builder may also construct, operate and maintain one or more model homes and may maintain sales or rental offices in any Dwellings owned by Declarant or the Builder.

7.1.9. Satellite Dishes; Antennas. Each Unit Owner may install and maintain on his or her Unit satellite dishes or other facilities for the receipt of radio or television broadcasts, subject to compliance with the following requirements:

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

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

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

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

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

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

(g) The Unit Owner must submit a plan showing the proposed location and size of the satellite dish or other facilities to the Executive Board at least thirty (30) days prior to the installation thereof for a determination by the Executive Board whether such installation would comply with the requirements of this Subsection 7.1.9 (subject, however, to the Executive Board's discretion pursuant to Subsection 4.1.2 and Section 7.2 hereof).

In the event that these provisions contradict any rulings of the Federal Communications Commission or any other agency having jurisdiction (the "FCC") in effect, the then current rulings of the FCC shall prevail.

**7.1.10. Fences.** Fences may be constructed by Unit Owners, subject to the written approval of the Executive Board in accordance with Subsection 4.1.2 and Section 7.2 hereof, and further provided that they conform to the architectural style of the Dwellings in the Community. No chain-link, stockade, solid, or similar fences shall be permitted.

**7.1.11. Animals.** No animals other than customary household pets shall be housed, maintained or otherwise permitted in any Unit with a maximum number of household pets of three (3). All permitted pets shall be regularly housed in a Dwelling, and no exterior housing of pets shall be permitted on any Unit at any time.

**7.1.12. Swimming Pools.** In-ground swimming pools, hot tubs and customary accessory structures may be installed by Unit Owners, subject to the written approval of the Executive Board in accordance with Subsection 4.1.2 and Section 7.2 hereof. Unit Owners shall be responsible for obtaining all necessary governmental permits and approvals, including any zoning approval required by the municipality in which the Unit is located. No above-ground swimming pools shall be permitted on any Unit.

**7.1.13. Storage Tanks.** No above-ground or underground tanks for storage of petroleum products, propane or any other substance shall be permitted on any Unit, except as approved by the Executive Board.

**7.1.14. Use of Streets.** All streets within the Community are intended only for vehicular transportation and pedestrian travel of the Unit Owners, occupants and their invitees. Streets are not to be used as playgrounds, or for skateboarding, basketball or other athletic or recreational purposes, and the use thereof is prohibited. Any facilities such as skating rinks or skate board ramps whether temporary or permanent are prohibited anywhere within the Community.

**7.1.15. Use of Common Elements.** There shall be no obstruction of the Common Elements. Nothing may be placed or stored on the Common Elements without the prior consent of the Executive Board. Nothing may be done on the Common Elements that would in any

way interfere with the use and enjoyment of any other Unit Owner or occupant within the Community. The Association may impose additional restrictions on the use of the Common Elements as it deems necessary or advisable.

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

7.1.17. Laws and Ordinances. Each Owner shall promptly comply with all laws, statutes, ordinances, rules and regulations of federal, state or municipal governments or authorities applicable to the use, occupancy, construction and maintenance of any Unit, including any Dwelling erected thereupon.

7.1.18. Drainage. Each Owner hereby covenants and agrees for himself, his heirs, assigns, vendees and successors in interest that he will refrain from interference with the established drainage pattern over his Unit from adjoining or other Units, and that he will make adequate provision for proper drainage from any such other Unit in the event the established drainage over his Unit is changed or altered. For the purpose hereof, "established drainage" is defined as the drainage which will occur at the time the overall grading of the lots, including the landscaping of each lot, is completed.

7.1.19. Subdivision. Subject to the provisions of Section 2.3 hereof, no Unit shall hereafter be subdivided or re-subdivided by any Unit Owner, nor shall any Unit Owner transfer or convey title to any part or portion of any Unit, except for a transfer or conveyance of title to the whole of said Unit. Any attempt to transfer or convey title to a part or portion of any Unit in violation of the provisions of this Subsection 7.1.19 shall be null and void and of no effect. Notwithstanding the foregoing, the Declarant may subdivide Units owned by the Declarant in accordance with Section 5215 of the Act.

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

Section 7.2. Waiver Requests. A Unit Owner may submit a written request to the Executive Board for approval to do anything that is forbidden under Section 7.1. The Executive Board shall submit all requests for waivers of the restrictions imposed by Subsections 7.1.3, 7.1.5, 7.1.6, 7.1.10 and 7.1.12 to the Architectural Review Committee for review and recommendation. The Executive Board shall consider, but shall not be bound by, the recommendation of the Architectural Review Committee in deciding whether to approve, disapprove or condition the approval of such requests. All other such requests may be decided by the Executive Board without prior submission of the request to the Architectural Review Committee. The Executive Board shall answer any written request for such approval, after Notice and Hearing, within sixty (60) days after the request thereof. Failure to do so within such time shall not constitute a consent by the Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of the Community Documents.

Section 7.3. Alterations and Improvements. Any applications to any department or to any governmental authority for a permit to make any addition, alteration or improvement in or to any Unit which shall have been approved by the Executive Board shall be the responsibility of and executed by the Unit Owner. Such execution will not, under any circumstances, create any liability on the part of the Association or any of its members to any contractor, subcontractor or materialman on account of such addition, alteration or improvement or to any person having any claim for injury to person or damage to property arising there from. All costs incurred for such additions, alterations and improvements to a Unit shall be the responsibility of the Unit Owner.

## **ARTICLE VIII** **LEASING**

Section 8.1. Leases. A Unit Owner may lease or sublease his Unit (but not less than his entire Unit) at any time and from time to time provided that:

8.1.1. All leases and rental agreements shall be in writing;

8.1.2. No lease or rental agreement shall be for a term of less than one (1) year.

8.1.3. All leases and rental agreements shall state that they are subject to the requirements of the Community Documents and the Association;

8.1.4. A Unit Owner shall deliver a copy of the Declaration, the Bylaws and Rules and Regulations to the Unit Owner's tenant at the time any lease or rental agreement is executed, and the tenant shall sign a receipt therefore. Copies of any amendments to the Declaration, the Bylaws and Rules and Regulations received by the Unit Owner during the term of the lease shall be forwarded to the tenant upon receipt if the amendment(s) affect the tenant's occupancy of the Unit;

8.1.5. The rights of any lessee of a Unit shall be subject to, and each lessee shall be bound by the Community Documents, and a default hereunder shall constitute a default under the lease;

8.1.6. Notwithstanding that a lease may require the lessee to be responsible for the payment of the Common Expense assessments during the term of the lease, any such provision shall not relieve the Unit Owner of his obligation for payment of same in the event that the lessee fails to do so;

8.1.7. A copy of such lease or rental agreement and a copy of the receipt referred to in Subsection 8.1.4 shall be furnished to the Executive Board within ten (10) days after execution of the lease;

8.1.8. A Unit Owner leasing his Unit shall provide his then current mailing address to the Executive Board, if at a location other than his Unit; and

8.1.9. No more than two (2) persons unrelated by blood or marriage shall occupy a leased Unit without the prior written consent of the Executive Board.

Section 8.2. Exceptions. Notwithstanding the foregoing, the provisions of this Article shall not apply to Units leased or subleased by the Declarant or any Builder.

## **ARTICLE IX** **ASSESSMENT AND COLLECTION OF COMMON EXPENSES**

Section 9.1. Definition of Common Expenses. Common Expenses shall include:

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

9.1.2. Expenses declared to be Common Expenses by the Community Documents or the Act, including but not limited to the maintenance costs associated with the Signage and Landscape Easement set forth in Section 6.1.8, and the fence maintenance expenses along the rear of Units 5 through 22 and Open Spaces OS-1 and OS-2, and certain Units as may hereinafter become a part of the Community, that shall be a Common Expense and the responsibility of the Association.

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

9.1.4. Such reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association, including, but not limited to, the signage and fencing referred to in Section 9.1.2 above.

Section 9.2. Apportionment of Common Expenses.

9.2.1. Subject to the terms of this Section 9.2, and except as provided in Section 9.3, all Common Expenses shall be assessed against all Units in accordance with their Allocated Interests determined in accordance with Section 2.1.

Section 9.3. Special Allocations of Expenses as Limited Common Expenses.

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

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

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

9.3.4. If any Common Expense is caused by the negligence or misconduct of a Unit Owner, the Association may, after Notice and Hearing, assess that expense exclusively against his or her Unit.

9.3.5. Fees, including attorneys' fees, late charges, recording fees, fines and interest charged against a Unit Owner pursuant to the Community Documents and the Act are enforceable as Limited Common Expense assessments.

Section 9.4. Lien.

9.4.1. The Association has a statutory lien on a Unit for (a) any assessment levied against that Unit, and (b) late fees or fines imposed against the Unit Owner, each from the time the assessment, late fee or fine becomes delinquent. Fees, including attorneys' fees, late charges, recording fees, fines and interest charged pursuant to the Act and the Community Documents are enforceable as assessments under this Section 9.4. If an assessment is payable in installments, and one or more installments are not paid when due, the entire outstanding balance of the assessment becomes effective as a lien from the due date of the delinquent installment.

9.4.2. Any lien for delinquent Common Expense assessments or other charges that the Association has on a Unit will be subordinate to a first mortgage on the Unit, if the mortgage was recorded before the due date of the assessment or the due date of the unpaid installment, if the assessment is payable in installments.

9.4.3. Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this Section 9.4 is required.

9.4.4. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the assessments become payable; provided, that if an Owner of a Unit subject to a lien under this Section 9.4 files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

9.4.5. This Section 9.4 does not (a) prohibit actions to recover sums for which Subsection 9.4.1 creates a lien or (b) prohibit the Association from taking a deed in lieu of foreclosure.

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

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

9.4.8. If a holder of a first or second Security Interest in a Unit forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid assessments against that Unit which became due before the sale, other than the assessments which are prior to that Security Interest in accordance with the provisions of the Act. Any unpaid assessments not

satisfied from the proceeds of sale become Common Expenses collectible from all of the Unit Owners, including the purchaser.

9.4.9. Any payments received by the Association in the discharge of a Unit Owner's obligation may, at the Association's discretion, be applied to reduce any portion of the oldest balance due.

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

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

Section 9.6. Adoption of Non-Budgeted Common Expense Assessments. If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 9.3 of this Declaration, the Executive Board shall immediately submit a copy or summary of such Common Expenses to the Unit Owners and such Common Expenses shall be subject to rejection in the same manner as a budget under Section 9.5 hereof. Notwithstanding the foregoing, the Unit Owners shall not have the power to reject the imposition of Common Expense assessments due to the actual cost of a budgeted item being in excess of the amount originally budgeted.

Section 9.7. Certificate of Payment of Common Expense Assessments. Upon receipt of a written request, the Association shall furnish to a Unit Owner a statement in recordable form setting forth the amount of unpaid assessments currently levied against the Unit as required by Section 5315(h) of the Act and any credits of surplus in favor of his or her Unit pursuant to Section 5313 of the Act. The statement, which shall be furnished within fifteen (15) business days after receipt of the request, shall be binding on the Association, the Executive Board and every Unit Owner.

Section 9.8. Frequency of Payment of Common Expenses. All Common Expenses and Limited Common Expenses assessed under Sections 9.2 and 9.3 shall be due and payable either on a monthly, quarterly or annual basis, as the Executive Board deems advisable. Special Assessments shall be due and payable in one or more installments and at such times determined by the Executive Board to be advisable.

Section 9.9. Acceleration of Common Expense Assessments. In the event of default for a period of ten (10) days by any Unit Owner in the payment of any Common Expense assessment levied against his or her Unit, the Executive Board shall have the right to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable.

Section 9.10. Commencement of Common Expense Assessments. Common Expense assessments shall begin as of the date of the First Settlement. Notwithstanding the foregoing, the Declarant may elect to delay the commencement of Common Expense assessments until a date, later than the First Settlement, provided that it shall be solely responsible for all Association expenses prior to such commencement.

Section 9.11. Personal Liability of Unit Owners. The Owner of a Unit at the time a Common Expense assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless he or she agrees to assume the obligation.

Section 9.12. No Waiver of Liability for Common Expenses. No Unit Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the assessments are made.

Section 9.13. Working Capital Fund. Commencing upon the First Settlement and thereafter at the closing with respect to each Initial Third Party Purchaser, the Association shall collect from each such Initial Third Party Purchaser the sum of Five Hundred Dollars (\$500.00) "Initial Fee", which amount shall be deposited and held in a separate account and used by the Association for proper Association purposes. No amount paid hereunder shall be considered an advance payment of regular Common Expense assessments. No Unit Owner is entitled to a refund of these monies from the Association upon the subsequent conveyance of his or her Unit or otherwise.

Section 9.14. Surplus Funds. Any excess amounts accumulated from Common Expense assessments, Limited Common Expense assessments or reserves, together with any income related thereto, which exceed the amounts required for each, shall be credited to each Unit in accordance with Section 5313 of the Act and shall be applied to subsequent assessments against each such Unit until exhausted.

Section 9.15. Association Records. During the period of the Declarant control, the Association shall keep detailed financial records, including, without limitation, a record of expenses paid by the Declarant until the commencement of Common Expense assessments by the Association under Section 5314(a) of the Act, and, for the period commencing on such date, a record for each Unit in the Community, including those owned by the Declarant or a Builder, of its Common Expense assessments and the payments thereof. The Association shall keep financial records sufficiently detailed to enable the Association to comply with Section 9.7 of the Declaration and Sections 5313, 5314, 5315, 5316, 5319(c) and 5407 of the Act. All financial and other records shall be made reasonably available for examination by any Unit Owner and his authorized agents.

**ARTICLE X**  
**(Reserved)**

**ARTICLE XI**  
**DECLARANT CONTROL AND SPECIAL DECLARANT RIGHTS**

Section 11.1. Control.

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

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

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

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

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

11.1.2. Upon the expiration of the period of Declarant control described in Subsection 11.1.1 above, all members of the Executive Board shall resign, and the Unit Owners (including the Declarant to the extent of Units owned by the Declarant) shall elect a new three (3) member Executive Board.

11.1.3. Notwithstanding the terms of Subsections 11.1.1 and 11.1.2 above, not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units to Unit Owners other than the Declarant, one (1) of the three (3) members of the Executive Board shall be elected by Unit Owners other than the Declarant.

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

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

Section 11.2. Special Declarant Rights. The Declarant reserves unto itself all Special Declarant Rights as defined in the Act. These Special Declarant Rights include, *inter alia*, the right to transfer any or all of the Declarant's Special Declarant Rights to one or more successors, provided that the transfer(s) shall be effected in accordance with the provisions of this Declaration and Section 5304 of the Act. Any successor to any Special Declarant Right shall have the liabilities and obligations set forth in Section 5304(e) of the Act.

**ARTICLE XII**  
**LIMITATION OF LIABILITY**

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

12.1.1. the Executive Board; or

12.1.2. the Executive Board of any master association with respect to any powers delegated by the Association to the Master Association pursuant to Section 5302(a)(18) of the Act, following such delegation.

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

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

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

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

12.2.4. Expenses Advanced. The Association shall advance expenses incurred by an Executive Board member or officer of the Association who is entitled to be indemnified pursuant to the provisions of this Section 12.2 in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined by a court of competent jurisdiction that such person is not entitled to be indemnified by the Association.

12.2.5. Indemnification of Other Persons. The Association may, at the discretion of, and to the extent and for such persons as determined by the Executive Board of the Association, (a) indemnify any person who neither is nor was an Executive Board member or officer

of the Association but who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (and whether brought by or in the right of the Association), by reason of the fact that the person is or was a representative of the Association, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by the person in connection with such threatened, pending or completed action, suitor proceeding, and (b) pay such expenses in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined by a court of competent jurisdiction that such person is not entitled to be indemnified by the Association.

### **ARTICLE XIII** **INSURANCE**

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

Section 13.2. Property Insurance. Subject to the provisions of Section 13.4 below, the Association shall obtain and maintain all property insurance required to be maintained by the Association by Section 5312 of the Act.

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

Section 13.4. Unit Owner Policies. Each Unit Owner shall be solely responsible for obtaining all property and liability insurance on his Unit in compliance with Section 5312 of the Act, including (1) property insurance on any Dwelling located upon the Unit insuring against all common risks of direct physical loss in an amount at least equal to the full replacement value of the Dwelling, exclusive of land, excavations, foundations and other items normally excluded from property policies, and (2) comprehensive general liability insurance covering all occurrences commonly insured against for death, bodily injury and property damage, arising out of or in connection with the use, ownership or maintenance of the Unit in an amount not less than One Million Dollars (\$1,000,000.00), or such other amount as may be reasonably determined from time to time by the Executive Board.

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

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

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

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

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

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

Section 13.6. Fidelity Bonds. The Association shall maintain a blanket fidelity bond or similar security for anyone who either handles or is responsible for funds held or administered by the Association, whether or not he receives compensation for his services. The bond shall name the Association as obligee and shall cover the maximum funds that will be in the custody of the Association or the manager at any time while the bond is in force, and in no event less than the sum of three months' Common Expense assessments and reserve funds on deposit. The bond shall include a provision that calls for thirty (30) days' written notice to the Association before the bond can be canceled or substantially modified for any reason. However, if cancellation is for nonpayment of premiums, only ten (10) days' notice shall be required.

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

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

Section 13.9. Other Insurance. The Association may carry other insurance that the Executive Board considers necessary or advisable to protect the Association or the Unit Owners.

Section 13.10. Premiums and Deductibles. Insurance premiums and deductibles for policies maintained by the Association shall be a Common Expense, unless the deductible may be charged against one or more Unit Owners pursuant to Section 5314(c)(4) of the Act.

#### **ARTICLE XIV** **DAMAGE TO OR DESTRUCTION OF PROPERTY**

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

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

14.2.1. Cost. The cost of repair or replacement in excess of insurance proceeds with respect to losses for which insurance is required to be maintained by the Association by Section 5312 of the Act or this Declaration shall be a Common Expense.

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

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

14.2.4. Insurance Proceeds. The insurance trustee, or if there is no insurance trustee, the Association, shall hold any proceeds from insurance maintained by the Association in trust for the Association, Unit Owners and lien holders as their interests may appear. Subject to the provisions of Section 5312(h)(1) of the Act, the proceeds shall be disbursed first for the repair or restoration of the damaged Property, and the Association, Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Community is terminated.

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

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

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

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

## **ARTICLE XV AMENDMENTS TO DECLARATION**

Section 15.1. Amendment Generally. Except in cases of amendments that may be executed by the Declarant in the exercise of its Special Declarant Rights, including those rights

described in Articles XIX and XX of this Declaration, or by the Association pursuant to Section 15.6 hereof, or as otherwise permitted or required by other provisions of this Declaration or the Act, this Declaration, including the Plats and Plans, may be amended only by vote or agreement of Unit Owners of Units to which at least sixty seven (67%) of the votes in the Association are allocated.

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

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

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

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

Section 15.6. Corrective Amendments. If any amendment is necessary in the judgment of the Executive Board to cure any ambiguity or to correct or supplement any provision of this Declaration, including the Plats and Plans, that is defective, missing or inconsistent with any other provisions contained therein or with the Act, or if such amendment is necessary to conform to the requirements of the Federal Housing Administration, Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or other agency or entity with national or regional standards for mortgage loans with respect to planned community projects, then at any time and from time to time the Executive Board may effect an appropriate corrective amendment without the approval of the Unit Owners or the holders of any Security Interest in all or any part of the Property, upon receipt by the Executive Board of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this Section 15.6.

## **ARTICLE XVI** **AMENDMENTS TO BYLAWS**

Section 16.1. Amendments to Bylaws. The Bylaws may be amended only by vote of two-thirds (2/3) of the members of the Executive Board, following Notice and Comment to all Unit Owners, at any meeting duly called for such purpose. Corrective amendments to the Bylaws may be effected in the same manner as amendments to the Declaration described in Section 15.6 hereof.

## **ARTICLE XVII** **RIGHTS TO NOTICE AND COMMENT; NOTICE AND HEARING**

Section 17.1. Right to Notice and Comment. Before the Executive Board amends the Bylaws or the Rules and Regulations, whenever the Community Documents require that an action be taken after "Notice and Comment", and at any other time the Executive Board determines, the

Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Unit Owner in writing and shall be delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or published in a newsletter or similar publication that is routinely circulated to all Unit Owners. The notice shall be given not less than five (5) days before the proposed action is to be taken.

Section 17.2. Right to Notice and Hearing. Whenever the Community Documents require that an action be taken after "Notice and Hearing", the following procedure shall be observed: The party proposing to take the action (e.g., the Executive Board, a committee, an officer, the manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

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

## **ARTICLE XVIII** **POWERS OF THE ASSOCIATION**

Section 18.1. Powers of the Association. Subject to the provisions of this Declaration, the Association shall have all of the powers designated in Section 5302 of the Act, including the right to assign its right to receive future income, including payments made on account of any assessment against any Unit for Common Expenses and Limited Common Expenses.

Section 18.2. Delegation of Powers to Master Association. Following the expiration or termination of the Special Declarant Rights described, in Subsection 18.2.1 hereof, the Association shall have the right to assign or delegate any of its powers listed in Section 5302 of the Act to a master association, provided that any such assignment or delegation is made subject to the provisions of Section 5222 of the Act. To the fullest extent permitted by Pennsylvania law, as now in effect and as modified from time to time, a member of the Executive Board of any master association shall not be personally liable for monetary damages for any action taken, or any failure to take any action, by the Executive Board of the said master association.

18.2.1. Reservation. The Declarant hereby explicitly reserves the Special Declarant Right, under Section 5205(13) of the Act, to assign or delegate any or all of the powers of the Association to a master association under Section 5222 thereof, without the consent of any Unit Owner or holder of any Security Interest in any Unit. This right shall continue until the seventh (7th) anniversary of the recording of this Declaration, unless terminated prior to such anniversary upon

the filing of an amendment to this Declaration by the Declarant. The Declarant expressly reserves the right to make such assignment(s) or delegation(s) at any time, at different times, in any order and without limitation. The Declarant shall also have the right to accept on behalf of the Association any assignment or delegation of powers from one or more planned community or condominium associations, provided such planned community or condominium is located within the boundaries of Millfording Preserve. There are no other limitations on this right to delegate powers of the Association to a master association.

Section 18.3. Conveyance or Encumbrance of the Common Elements. Provided that Unit Owners entitled to cast at least sixty seven percent (67%) of the votes in Association, at least sixty seven percent (67%) of which affirmative votes are allocated to Units not owned by the Declarant, agree, anyone or more portions of the Common Elements may be conveyed or subjected to a Security Interest by the Association. Any conveyance or encumbrance of the Common Elements by the Association shall be effected in strict accordance with Section 5318 of the Act.

Section 18.4. Judgments Against the Association. Any creditor of the Association pursuant to a Security Interest obtained under Section 18.3 hereof shall exercise its rights against the Common Elements before its judgment lien on any Unit may be enforced. Otherwise, as a general rule, any judgment for money against the Association, upon perfection as a lien on real property, shall not be a lien on the Common Elements, but shall constitute a lien against all of the Units in the Community at the time the judgment was entered. Any Unit Owner may have his or her Unit released from the lien of the judgment upon payment of that portion of the lien attributable to his Unit in accordance with Section 5319(c) of the Act. After payment, the Association may not assess or have a lien against that Unit Owner's Unit for any portion of the Common Expense incurred in connection with that lien. A judgment indexed against the Association must be indexed against the Community and the Association, and when so indexed, shall constitute notice of the lien against the Units.

## **ARTICLE XIX** **CONVERTIBLE REAL ESTATE**

Section 19.1. Reservation. The Declarant hereby explicitly reserves an option, until the seventh (7th) anniversary of the recording of this Declaration, to convert all or any portion of the Convertible Real Estate to Units, Limited Common Elements or any combination thereof from time to time in compliance with Section 5211 of the Act, without the consent of any Unit Owner or holder or insurer of any Security Interest in any Unit. This option to convert may be terminated prior to such anniversary only upon the filing of an amendment to this Declaration by the Declarant. The Declarant expressly reserves the right to convert any or all portions of the Convertible Real Estate at any time, at different times, in any order, without limitation and without any requirement that any other real estate be converted, added or withdrawn; provided, however, that the Convertible Real Estate shall not exceed the area(s) described as such on Exhibit E attached hereto. There are no other limitations on this option to convert Convertible Real Estate.

Section 19.2. Assurances. If the Convertible Real Estate is converted, the Units on the Convertible Real Estate are expected to be located approximately as shown on the Subdivision Plan, to the extent such Units are shown, as the same may be amended or modified by Declarant from time to time in accordance with all municipal and other governmental requirements. Notwithstanding the foregoing, no assurances are made regarding the actual Unit configuration, the description or location of any Dwellings or other improvements, Common Elements or Limited

Common Elements that may be created on the Convertible Real Estate. At such time as all of the Convertible Real Estate is completely converted, the maximum number of Units in the Community as an aggregate will be no more than One Hundred Thirty (130) Units. All Units that may be created within the Convertible Real Estate are restricted to residential use substantially to the same extent as all other Units. Any Dwellings to be constructed within the Convertible Real Estate and Units therein shall be compatible (but not necessarily the same) in quality of construction, materials and architectural style with the Dwellings and Units on other portions of the Property. All restrictions in this Declaration affecting use, occupancy and alienation of Units shall apply to Units created within the Convertible Real Estate. No assurances are made as to any other improvements and Limited Common Elements to be made or created in the Convertible Real Estate, nor to the proportion of Limited Common Elements to Units therein. The Allocated Interest appurtenant to each Unit created within the Convertible Real Estate and the other existing Units shall be recalculated as required by Sections 2.1 and 9.2 hereof.

## **ARTICLE XX** **WITHDRAWABLE REAL ESTATE**

Section 20.1. Reservation to Withdraw. The Declarant hereby explicitly reserves an option, until the seventh (7th) anniversary of the recording of this Declaration, to withdraw all or any portion of the Withdrawable Real Estate in compliance with Section 5212 of the Act, without the consent of any Unit Owner or holder or insurer of any Security Interest in any Unit. This option to withdraw may be terminated prior to such anniversary only upon the filing of an amendment to this Declaration by the Declarant. The Declarant expressly reserves the right to withdraw any or all portions of the Withdrawable Real Estate at any time, at different times, in any order, without limitation and without any requirement that any other real estate be converted, added or withdrawn; provided, however, that the Withdrawable Real Estate shall not exceed the area(s) described as such on Exhibit E attached hereto. There are no other limitations on this option to withdraw Withdrawable Real Estate. The Allocated Interest appurtenant to each Unit in the Community as of the date this Declaration or any amendments thereto are recorded will be unaffected by the withdrawal of all or any part of the Withdrawable Real Estate. In the event that the Declarant shall withdraw all or any portion of the Withdrawable Real Estate, the assurances, if any, contained in this Declaration shall not apply to the Withdrawable Real Estate withdrawn from the Community.

Section 20.2. Easements Regarding Withdrawable Real Estate. If and when Withdrawable Real Estate is withdrawn from the Property in accordance with the provisions of this Declaration, the following reciprocal easements shall be created and granted in favor of and against the Unit Owners and the Association, on the one hand, and the owners and occupants of the portion of the Withdrawable Real Estate withdrawn from the Property, on the other hand:

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

20.2.2. The right of access for the placement and maintenance of underground utility facilities to serve any owner of any portion of the Property, including, inter alia, electrical, gas (including without limitation propane gas), telephone, sewer and water lines provided that the exercise of said rights does not materially interfere with the existing utility facilities;

20.2.3. The right to use and gain access to existing utility facilities located on the Property, including, inter alia, the waterlines, sanitary sewer and storm sewer facilities, and to tie into said facilities, together with the right to install and maintain new utility facilities, provided that the exercise of such rights does not materially interfere with the existing utility facilities;

20.2.4. The right to enter upon the Property at reasonable times for the purpose of laying, constructing, inspecting, maintaining, repairing or removing said utility facilities. Prior to withdrawing Withdrawable Real Estate, the Declarant shall execute and record a Declaration of Reciprocal Easements creating the rights above, subject, inter alia, to the following conditions:

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

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

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

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

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

## **ARTICLE XXI** **TERMINATION OF THE COMMUNITY**

Section 21.1. Procedure for Termination. Except in the case of a taking of all of the Units in the Community by eminent domain, the Community may be terminated by agreement of Unit Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated, at least eighty percent (80%) of which affirmative votes shall be allocated to Units not owned by the Declarant or the Builder.

## **ARTICLE XXII** **INTERPRETATION**

Section 22.1. Interpretation. The provisions of this Declaration shall be liberally construed in order to effectuate the Declarant's desire to create a uniform plan for development and operation of the Community. The headings preceding the various paragraphs of this Declaration and the Table of Contents are intended solely for the convenience of readers of this Declaration.

**ARTICLE XXIII  
SEVERABILITY**

Section 23.1. Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof unless such deletion shall destroy the uniform plan for development and operation of the planned community which this Declaration is intended to create.

**ARTICLE XXIV  
EFFECTIVE DATE**

Section 24.1. Effective Date. This Declaration shall become effective on the date on which it is recorded (the "Effective Date").

**IN WITNESS WHEREOF**, the Declarant, equitable owner, is joined by Millfording Estates, LP, legal owner, and intending to be legally bound hereby has duly executed this Declaration, as of this 3<sup>rd</sup> day of September, 2014.

WITNESS:

  
\_\_\_\_\_

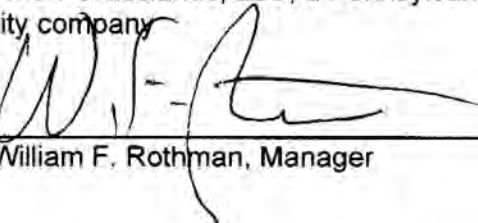
DECLARANT:

**AVIAN GRASSLANDS, LLC**, a Pennsylvania limited liability company

By:   
\_\_\_\_\_ Samuel L. Reed, Manager

**MILLFORDING ESTATES, LP**, a Pennsylvania limited partnership

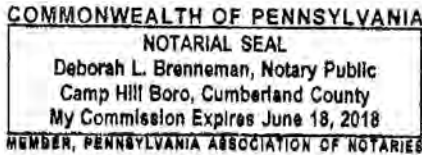
By: Avian Grasslands, LLC, a Pennsylvania limited liability company

By:   
\_\_\_\_\_ William F. Rothman, Manager

COMMONWEALTH OF PENNSYLVANIA :  
: SS:  
COUNTY OF CUMBERLAND :

On this, the 3<sup>rd</sup> day of September, 2014, before me, a Notary Public, the undersigned officer, personally appeared **Samuel L. Reed**, who acknowledged himself to be a Manager of **AVIAN GRASSLANDS, LLC**, a Pennsylvania limited liability company, and that he as such Manager, being authorized to do so, executed the foregoing instrument for the purposes therein contained as a Manager of the limited liability company.

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

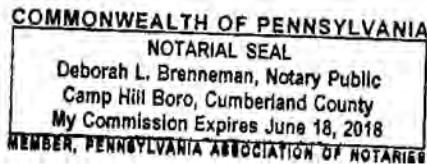


  
Notary Public

COMMONWEALTH OF PENNSYLVANIA :  
: SS:  
COUNTY OF CUMBERLAND :

On this, the 3<sup>rd</sup> day of September, 2014, before me, a Notary Public, the undersigned officer, personally appeared **William F. Rothman**, who acknowledged himself to be a Manager of **AVIAN GRASSLANDS, LLC**, a Pennsylvania limited liability company, and General Partner of **MILLFORDING ESTATES, LP**, a Pennsylvania limited partnership, and that he as such Manager, being authorized to do so, executed the foregoing instrument for the purposes therein contained as a Manager of the limited liability company, general partner of the limited partnership.

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



  
Notary Public

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE REAL ESTATE**  
**(Phase 1)**

**ALL THAT CERTAIN** tract or parcel of land, situated, lying and being in the Township of Silver Spring, County of Cumberland and Commonwealth of Pennsylvania, more particularly described as follows:

**BEGINNING** at a point along the eastern dedicated right-of-way of Sample Bridge Road, said point being located South 16 degrees 33 minutes 00 seconds East a distance of 54.78 feet from the common corner of Lots 11 and 12; thence along Phase 2 of Millfording Preserve the following four (4) courses and distances:

(1) by a curve to the left having a radius of 45.00 feet, an arc length of 75.31 feet, having a chord bearing of South 66 degrees 17 minutes 14 seconds East and a chord distance of 66.82 feet ;

(2) North 65 degrees 46 minutes 16 seconds East a distance of 82.77 feet;

(3) by a curve to the left having a radius of 25.00 feet, an arc length of 36.98 feet, having a chord bearing of North 23 degrees 23 minutes 37 seconds East and a chord distance of 33.70 feet;

(4) North 71 degrees 00 minutes 59 seconds East a distance of 50.00 feet; thence along Phase 2 and Phase 3 by a curve to the left having a radius of 475.00 feet, an arc length of 48.50 feet, having a chord bearing of South 21 degrees 54 minutes 31 seconds East and a chord distance of 48.48 feet; thence along Phase 3 the following thirteen (13) courses and distances:

(1) South 24 degrees 50 minutes 00 seconds East a distance of 71.29 feet;

(2) North 65 degrees 10 minutes 00 seconds East a distance of 121.80 feet;

(3) South 24 degrees 50 minutes 00 seconds East a distance of 195.00 feet;

(4) North 65 degrees 10 minutes 00 seconds East a distance of 29.04 feet;

(5) by a curve to the left having a radius of 25.00 feet, an arc length of 7.24 feet, having a chord bearing of North 45 degrees 31 minutes 04 seconds West and a chord distance of 7.22 feet;

(6) by a curve to the right having a radius of 50.00 feet, an arc length of 162.63 feet, having a chord bearing of North 39 degrees 22 minutes 00 seconds East and a chord distance of 99.85 feet;

(7) North 70 degrees 57 minutes 41 seconds East a distance of 74.27 feet;

(8) South 73 degrees 17 minutes 10 seconds East a distance of 95.87 feet;

(9) South 10 degrees 53 minutes 39 seconds West a distance of 348.38 feet;

(10) South 03 degrees 43 minutes 07 seconds West a distance of 276.16 feet;

(11) South 08 degrees 56 minutes 15 seconds West a distance of 91.08 feet;

(12) South 28 degrees 09 minutes 41 seconds West a distance of 82.84 feet;

(13) South 44 degrees 45 minutes 33 seconds West a distance of 145.77 feet to a point along the eastern dedicated right-of-way of Sample Bridge Road; thence along said eastern dedicated right-of-way the following two (2) courses and distances:

(1) North 24 degrees 50 minutes 00 seconds West a distance of 972.19 feet;

(2) by a curve to the right having a radius of 874.20 feet, an arc length of 99.00 feet, having a chord bearing of North 21 degrees 35 minutes 23 seconds West and a chord distance of 98.94 feet to a point, being the place of **BEGINNING**.

**CONTAINING 354,037 Square Feet (8.13 Acres)**

**EXHIBIT B**  
**RECORDED EASEMENTS AND LICENSES AFFECTING THE PROPERTY**

1. Subject to all easements, conditions, right of ways, etc. as set forth to Instrument #201306370.
2. Subject to all setback lines, notes, easements, etc. as set forth on Plan known as Millfording Preserve- Phase 1 as set forth to Instrument #201334008.
3. Subject to rights granted to PPL Electric Utilities Corp. as set forth to Instrument #201409720.
4. Subject to all setback lines, notes, easements, etc. as shown on Plan Books 44-96 & 59-135.
5. Subject to exceptions, conditions, easements, etc. as set forth in Deed Book L-30-587.
6. Subject to rights granted to Construction Company Associates as set forth in Misc. Book 393-739.
7. Subject to rights granted to Pa American Water Company as set forth in Misc. Book 444-648.
8. Subject to rights granted to Cornerstone Development Group, Inc. as set forth in Misc. Book 731-1573.
9. Subject to rights granted to PP&L Company as set forth in Misc. Books 179-187 & 187-536.
10. Subject to terms and conditions as set forth in Deed to County of Cumberland for relocation of county bridge as set forth in Deed Book I-17-203.
11. Subject to rights, exceptions etc. as set forth in Deed Book A-21-107.

**EXHIBIT C**  
**ALLOCATED INTERESTS APPURTENANT TO UNITS**

<b>Unit Identifying Number &amp; Phase</b>	<b>Percentage Interest</b>	<b>Number of Votes Per Unit</b>
1 Phase 1	3.7037	1
2 Phase 1	3.7037	1
3 Phase 1	3.7037	1
4 Phase 1	3.7037	1
6 Phase 1	3.7037	1
7 Phase 1	3.7037	1
8 Phase 1	3.7037	1
9 Phase 1	3.7037	1
10 Phase 1	3.7037	1
37 Phase 1	3.7037	1
38 Phase 1	3.7037	1
39 Phase 1	3.7037	1
40 Phase 1	3.7037	1
41 Phase 1	3.7037	1
42 Phase 1	3.7037	1
43 Phase 1	3.7037	1
44 Phase 1	3.7037	1
45 Phase 1	3.7037	1
46 Phase 1	3.7037	1
47 Phase 1	3.7037	1
48 Phase 1	3.7037	1
49 Phase 1	3.7037	1
50 Phase 1	3.7037	1
51 Phase 1	3.7037	1
52 Phase 1	3.7037	1
53 Phase 1	3.7037	1
<b>TOTAL</b>	<b>100.00%</b>	<b>27</b>

**EXHIBIT D  
PLATS AND PLANS**

The Plats and Plans for Millfording Preserve, a Planned Community, are filed in the Office of the Recorder of Deed in and for Cumberland County, Pennsylvania, as the Final Subdivision Plan – Phase 1 for Millfording Preserve in Instrument No. 201334008 and said Plats and Plans are hereby incorporated and made an integral part thereof by this reference hereto, with the specific exception of OS-1 which shall not be a part of the Plats and Plans.

All lands of Declarant set forth on said Plats and Plans not contained within Phase 1, and not otherwise excluded herein, and which shall consist of the areas designated as Phase 2 and Phase 3 shall be the Convertible/Withdrawable Real Estate. Any contemplated improvements shown within the boundaries of the Convertible Real Estate "NEED NOT BE BUILT".

The term "Lot" as referenced on said Plats and Plans shall also mean "Unit" with regard to the corresponding Unit Identifying Number as set forth in Exhibit C of the Declaration and for the purpose of defining the Unit.

**Certification:**

The undersigned, Rory L. Chapman, being a Professional Land Surveyor, (Pennsylvania license No.SU061142) independent of Avian Grasslands, LLC, the Declarant, hereby certifies that the Plats and Plans as recorded in Instrument No. 201334008, contains all information required by Section 5210 of the Pennsylvania Uniform Planned Community Act, as amended.

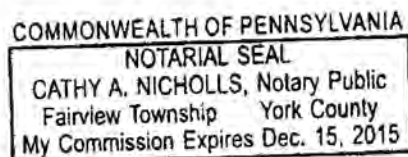
  
\_\_\_\_\_  
Rory L. Chapman, P.L.S.

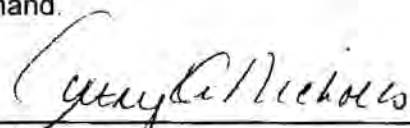


COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF York : SS:

On this, the 19<sup>th</sup> day of AUGUST, 2014, before me, a Notary Public, the undersigned officer, personally appeared RORY L CHAPMAN, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within certification and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand.



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

**EXHIBIT E**  
**LEGAL DESCRIPTION OF THE CONVERTIBLE/WITHDRAWABLE**  
**REAL ESTATE**  
**(Phase 2 and Phase 3)**

**PHASE 2:**

**ALL THAT CERTAIN** tract or parcel of land, situated, lying and being in the Township of Silver Spring, County of Cumberland and Commonwealth of Pennsylvania, more particularly described as follows:

**BEGINNING** at a point along the eastern dedicated right-of-way of Sample Bridge Road, said point being located South 16 degrees 33 minutes 00 seconds East a distance of 54.78 feet from the common corner of Lots 11 and 12; thence along said eastern dedicated right-of-way the following two (2) courses and distances:

(1) by a curve to the right having a radius of 874.20 feet, an arc length of 145.14 feet, having a chord bearing of North 13 degrees 35 minutes 21 seconds West and a chord distance of 144.97 feet;

(2) North 07 degrees 19 minutes 54 seconds West a distance of 398.82 feet to a point at Phase 3; thence along Phase 3 the following thirteen (13) courses and distances:

(1) North 74 degrees 31 minutes 12 seconds East a distance of 175.34 feet;

(2) North 15 degrees 28 minutes 48 seconds West a distance of 19.99 feet;

(3) North 74 degrees 31 minutes 12 seconds East a distance of 190.18 feet;

(4) South 08 degrees 14 minutes 57 seconds East a distance of 72.28 feet;

(5) South 01 degrees 15 minutes 56 seconds East a distance of 219.54 feet;

(6) North 88 degrees 44 minutes 04 seconds East a distance of 151.90 feet;

(7) South 01 degree 15 minutes 56 seconds East a distance of 18.68 feet;

(8) by a curve to the right having a radius of 175.00 feet, an arc length of 11.73 feet, having a chord bearing of South 00 degrees 39 minutes 19 seconds West and a chord distance of 11.73 feet;

(9) South 87 degrees 25 minutes 27 seconds East a distance of 180.80 feet;

(10) South 01 degrees 15 minutes 56 seconds East a distance of 133.44 feet;

(11) South 38 degrees 35 minutes 29 seconds West a distance of 133.48 feet;

(12) South 82 degrees 19 minutes 24 seconds West a distance of 251.55 feet;

(13) South 67 degrees 18 minutes 56 seconds West a distance of 78.16 feet to a point at Phase 1; thence along said Phase 1 the following five (5) courses and distances:

(1) by a curve to the right having a radius of 475.00 feet, an arc length of 30.68 feet, having a chord bearing of North 20 degrees 50 minutes 03 seconds West and a chord distance of 30.68 feet;

(2) South 71 degrees 00 minutes 59 seconds West a distance of 50.00 feet;

(3) by a curve to the right having a radius of 25.00 feet, an arc length of 36.98 feet, having a chord bearing of South 23 degrees 23 minutes 37 seconds West and a chord distance of 33.70 feet;

(4) South 65 degrees 46 minutes 16 seconds West a distance of 82.77 feet;

(5) by a curve to the right having a radius of 45.00 feet, an arc length of 75.31 feet, having a chord bearing of North 66 degrees 17 minutes 14 seconds West and a chord distance of 66.82 feet to a point along the eastern dedicated right-of-way of Sample Bridge Road, being the place of **BEGINNING**.

**CONTAINING** 278,514 Square Feet (6.39 Acres)

**PHASE 3:**

**ALL THAT CERTAIN** tract or parcel of land, situated, lying and being in the Township of Silver Spring, County of Cumberland and Commonwealth of Pennsylvania, more particularly described as follows:

**BEGINNING** at a point along the eastern dedicated right-of-way of Sample Bridge Road, said point being the common corner of Lots 18 and 19; thence along said eastern right-of-way North 07 degrees 19 minutes 54 seconds West a distance of 332.07 feet to a point at lands now or formerly of Sample Bridge Incorporated; thence along said lands now or formerly of Sample Bridge Incorporated North 44 degrees 05 minutes 17 seconds East a distance of 385.86 feet to a point along the southern right-of-way of Bridgeport Drive at lands now or formerly of Moyer and Pletcher Development Group, LLC; thence along said lands now or formerly of Moyer & Pletcher Development Group, LLC North 89 degrees 55 minutes 17 seconds East a distance of 430.00 feet to an iron pin found; thence along the same North 03 degrees 05 minutes 17 seconds East a distance of 90.00 feet to an iron pin found at lands now or formerly of Richard W. & Sheryl L. Osborne and lands now or formerly of the Township of Silver Spring; thence along said lands now or formerly of the Township of Silver Spring the following eight (8) courses and distances:

- (1) South 78 degrees 06 minutes 14 seconds East a distance of 144.61 feet;
- (2) South 02 degrees 08 minutes 54 seconds East a distance of 1316.63 feet;
- (3) South 24 degrees 52 minutes 16 seconds West a distance of 145.57 feet;
- (4) South 10 degrees 53 minutes 39 seconds West a distance of 197.99 feet;
- (5) South 03 degrees 43 minutes 07 seconds West a distance of 480.15 feet;
- (6) South 62 degrees 23 minutes 21 seconds East a distance of 75.26 feet;
- (7) South 01 degrees 59 minutes 34 seconds East a distance of 327.41 feet;
- (8) South 65 degrees 10 minutes 00 seconds West a distance of 117.12 feet to a point

along the eastern dedicated right-of-way of sample Bridge Road; thence along said eastern dedicated right-of-way North 24 degrees 50 minutes 00 seconds West a distance of 390.83 feet to a point at Phase 1 Millfording Preserve; thence along said Phase 1 the following fourteen (14) courses and distances:

- (1) North 44 degrees 45 minutes 33 seconds East a distance of 145.77 feet;
- (2) North 28 degrees 09 minutes 41 seconds East a distance of 82.84 feet;
- (3) North 08 degrees 56 minutes 15 seconds East a distance of 91.08 feet;
- (4) North 03 degrees 43 minutes 07 seconds East a distance of 276.16 feet;
- (5) North 10 degrees 53 minutes 39 seconds East a distance of 348.38 feet;
- (6) North 73 degrees 17 minutes 10 seconds West a distance of 95.87 feet;

- (7) South 70 degrees 57 minutes 41 seconds West a distance of 74.27 feet;
- (8) by a curve to the left having a radius of 50.00 feet, an arc length of 162.63 feet, having a chord bearing of South 39 degrees 22 minutes 00 seconds West, and a chord distance of 99.85 feet;
- (9) by a curve to the right having a radius of 25.00 feet, an arc length of 7.24 feet, having a chord bearing of South 45 degrees 31 minutes 04 seconds East, and a chord distance of 7.22 feet;
- (10) South 65 degrees 10 minutes 00 seconds West a distance of 29.04 feet;
- (11) North 24 degrees 50 minutes 00 seconds West a distance of 195.00 feet;
- (12) South 65 degrees 10 minutes 00 seconds West a distance of 121.80 feet;
- (13) North 24 degrees 50 minutes 00 seconds West a distance of 71.29 feet;
- (14) by a curve to the right having a radius of 475.00 feet, an arc length of 17.81 feet, having a chord bearing of North 23 degrees 45 minutes 32 seconds West, and a chord distance of 17.81 feet to a point at Phase 2 Millfording Preserve; thence along said Phase 1 Millfording Preserve the following thirteen (13) courses and distances:
- (1) North 67 degrees 18 minutes 56 seconds East a distance of 78.16 feet;
- (2) North 82 degrees 19 minutes 24 seconds East a distance of 251.55 feet;
- (3) North 38 degrees 35 minutes 29 seconds East a distance of 133.48 feet;
- (4) North 01 degrees 15 minutes 56 seconds West a distance of 133.44 feet;
- (5) North 87 degrees 25 minutes 27 seconds West a distance of 180.80 feet;
- (6) by a curve to the left having a radius of 175.00 feet, an arc length of 11.73 feet, having a chord bearing of North 00 degrees 39 minutes 19 seconds East, and a chord distance of 11.73 feet;
- (7) North 01 degrees 15 minutes 56 seconds West a distance of 18.68 feet;
- (8) South 88 degrees 44 minutes 04 seconds West a distance of 151.90 feet;
- (9) North 01 degree 15 minutes 56 seconds West a distance of 219.54 feet;
- (10) North 08 degrees 14 minutes 57 seconds West a distance of 72.28 feet;
- (11) South 74 degrees 31 minutes 12 seconds West a distance of 190.18 feet;
- (12) South 15 degrees 28 minutes 48 seconds East a distance of 19.99 feet;
- (13) South 74 degrees 31 minutes 12 seconds West a distance of 175.34 feet to a point along the eastern dedicated right-of-way of Sample Bridge Road, said point being the place of **BEGINNING**.

**CONTAINING 801,527 Square Feet (18.40 Acres)**

**TAMMY SHEARER  
RECORDER OF DEEDS  
CUMBERLAND COUNTY  
1 COURTHOUSE SQUARE  
CARLISLE, PA 17013  
717-240-6370**



**Instrument Number - 201420063**

**Recorded On 9/5/2014 At 3:06:06 PM**

**\* Total Pages - 41**

**\* Instrument Type - DECLARATION**

**Invoice Number - 167907      User ID - BMM**

**\* Grantor - MILLFORDING PRESERVE H O A**

**\* Grantee - AVIAN GRASSLANDS**

**\* Customer - REAGER**

**\* FEES**

STATE WRIT TAX	\$0.50
RECORDING FEES -	\$83.50
RECORDER OF DEEDS	
PARCEL CERTIFICATION	\$15.00
FEES	
COUNTY ARCHIVES FEE	\$2.00
ROD ARCHIVES FEE	\$3.00
TOTAL PAID	\$104.00

**Certification Page**

**DO NOT DETACH**

**This page is now part  
of this legal document.**

**I Certify this to be recorded  
in Cumberland County PA**



A handwritten signature in black ink, appearing to read 'T. Shearer'.

**RECORDER OF DEEDS**

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

00GNZY

