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Allegheny County
Jerry Tyskiewicz
Department of Real Estate
Pittsburgh, PA 15219

Instrument Number: 2017-34875

BK-DE VL-17006 PG-266

Recorded On: November 07, 2017 As-Deed Agreement

Parties: SWINDERMAN DEVELOP L L C

To SWINDERMAN DEVELOP L L C

of Pages: 35

Comment: DECL PLANNED COMMUNITY

***** THIS IS NOT A BILL *****

Deed Agreement 162.00
0
0
Total: 162.00

Realty Transfer Stamp

Department of Real Estate Stamp

Affidavit Attached-No	
NOT A DEED OF TRANSFER	
	EXEMPT
Value	0.00

Certified On/By-> 11-07-2017 / S B
NOT A DEED OF TRANSFER

I hereby certify that the within and foregoing was recorded in the Department of Real Estate in Allegheny County, PA

****DO NOT REMOVE-THIS PAGE IS PART OF THE RECORDED DOCUMENT****

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STEVEN KOEHLER
242 STATION ST
BRIDGEVILLE PA 15017



Jerry Tyskiewicz
Jerry Tyskiewicz, Director
Rich Fitzgerald, County Executive

31

DECLARATION OF PLANNED COMMUNITY

FOR

BROOKFIELD ESTATES

a Planned Community

STEVEN KOCHLER
242 STATION STREET
BROOKVILLE, PA 15017

BROOKFIELD ESTATES

DECLARATION OF PLANNED COMMUNITY

SWINDERMAN DEVELOPMENT, LLC, a Pennsylvania limited liability corporation, currently maintaining its principal place of business address at 242 Station Street Bridgeville, PA 15017 ("Declarant"), hereby makes this Declaration of Planned Community ("Declaration").

PREAMBLE

WHEREAS, Declarant is the owner of approximately 11.63 acres of real property located in Pine Township, Allegheny County, Pennsylvania, being designated as the Brookfield Estates – Revised Plan of Lots, as recorded on August 28, 2017 at Plan Book Volume 294 Page 8, in the Office of the Recorder of Deeds of Allegheny County, Pennsylvania (the "Plan"); and

WHEREAS, Declarant desires to create a planned community to be known as "**Brookfield Estates, a Planned Community**" (the "Planned Community"); and

WHEREAS, Declarant contemplates that the lots and open space depicted on the Plan shall be a part of the Planned Community; and

WHEREAS, it is contemplated that the Declarant will develop and construct the infrastructure of the Planned Community, including thirty-eight (38) buildable carriage lots and one (1) fifty-foot (50') road right-of-way to be known as Brookfield Estates Drive, utilities, and appurtenant open spaces and storm water management parcels;

WHEREAS, it is contemplated that dwellings upon the lots to be developed will be constructed by Approved Builders, as hereafter defined; and

WHEREAS, it is presently contemplated that upon completion, the Planned Community will consist of 38 carriage attached dwellings, four (4) open space parcels, and one (1) fifty-foot (50') road right-of-way, and shall include all easements, rights, and appurtenances thereunto belonging, and the buildings and improvements erected or to be erected thereon, **excluding coal, oil, gas, methane, and all mineral rights**; and

WHEREAS, Declarant hereby declares, that the Planned Community shall be held, improved, maintained, sold, and conveyed subject to the following covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of the Planned Community, which shall run as a covenant with the land as to all real property subject to this Declaration, which shall be binding on all parties having any right, title, or interest in the Planned Community or any part thereof, and their heirs, successors, and assigns, and which shall inure to the benefit of each Owner, as defined below, and Pine Township, Allegheny County, Pennsylvania.

NOW THEREFORE, Declarant hereby declares the following covenants, conditions, and restrictions shall be applicable to the Planned Community, with the intent to be legally bound hereby:

ARTICLE I
SUBMISSION

Declarant makes the Planned Community subject to the following covenants, conditions, reservations, and restrictions. It is the intent of the Declarant that the Planned Community subject to this Declaration shall constitute a "Planned Community," as that term is defined in the Pennsylvania Uniform Planned Community Act, 68 Pa.C.S. §§ 5101, et seq. ("Act").

ARTICLE II
DEFINITIONS

As used in this Declaration, the following terms shall have the meaning designated:

2.1 "Approved Builder" shall mean any person or entity improving the Planned Community as set forth in Section 10.2 of this Declaration or subsequent amendments to this Declaration.

2.2 "Association" shall mean **Brookfield Estates Homeowners' Association**, an unincorporated association, formed for the purposes of, but not limited to, ownership and operation of the Common Elements of the Planned Community.

2.3 "Common Elements" shall mean "Common Facilities" and "Controlled Facilities."

2.4 "Common Expenses" shall mean Expenditures made by or financial liabilities of the association, together with any allocations to reserves. The term includes general common expenses and limited common expenses.

2.5 "Common Facilities" shall mean any real estate within a planned community which is owned by the association or leased to the association. The term does not include a unit.

2.6 "Controlled Facilities" shall mean any real estate within a planned community, 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.

2.7 "Convertible/Withdrawable Real Estate" shall mean any portion of the Planned Community.

2.8 "Declarant" shall mean **Swinderman Development, LLC** a Pennsylvania limited partnership, and its heirs, successors, and assigns. The term "Declarant" does not include any other parties or entities unless Special Declarant Rights are transferred through a signed and recorded instrument pursuant to the requirements of § 5304 of the Act and as set forth in Article XI herein. The term "Declarant" shall not include any Approved Builder(s) unless such Approved Builder receives special declarant rights.

2.9 "Declaration" shall mean this Declaration of Planned Community for Brookfield Estates.

2.10 "Limited controlled facility." A portion of the controlled facilities, other than controlled facilities which are themselves part of a unit, allocated by or pursuant to the declaration or by operation of Section 5202(2) or (3) of the Act (relating to unit boundaries) for the exclusive use of one or more but fewer than all of the units.

2.11 "Lot" shall mean those Lots, as shown on the Plan, intended for individual separate ownership on which a dwelling is to be constructed, which may be added to the Planned Community in accordance with the terms hereof.

2.12 "Management Company" shall mean and refer to any third-party management company which the Declarant or Executive Board may elect to employ to act on its behalf in the performance of all duties other than policy-making duties, acquiring property, opening bank accounts and borrowing money.

2.13 "Member" shall have the meaning described in Section 7.1.

2.14 "Mortgage" shall mean and refer to a permanent or construction mortgage, including any collateral security documents executed in connection therewith, secured by a mortgage on the Planned Community or any part thereof.

2.15 "Mortgagees" shall mean and refer to a beneficiary or holder of a Mortgage.

2.16 "Owner" shall mean and refer to Declarant or such other person(s) or entity (ies) which holds title to one or more Lots in the Planned Community. The term does not include a person(s) or entity (ies) having an interest in a Lot solely as security for an obligation.

2.17 "The Planned Community" shall mean and refer to all real estate shown on the Plan, including Lots, the Common Elements and open spaces of Brookfield Estates.

Other capitalized terms used herein without definition shall have the meanings specified for such terms in the Act.

ARTICLE III **EASEMENTS**

3.1 Easements. Attached as Exhibit "B" is a copy of the recorded easements, liens, and encumbrances affecting the Property.

3.2 Reservation. Coal, oil, gas, methane, and all mineral rights have either been severed from the surface interest or are reserved to Declarant and are not included in the Planned Community.

3.3 Utility Easements. Declarant hereby reserves an easement over the Planned Community and all Lots created therein, in favor of the Declarant, appropriate utility and service companies, and governmental agencies and authorities for such private or public utility service lines and equipment as may be necessary or desirable to serve any portion of the Planned Community. The easements created in this Section shall include, without limitation rights of governmental agencies or authorities to install, lay, maintain, repair, relocate, and replace 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, equipment, ducts and vents, over, under, through, along, and on the Planned Community. Declarant grants any Approved Builder the right to use such easements as necessary for the construction of improvements on Lots.

No storm sewers, sanitary sewers, electrical lines, water lines, or other utilities may be installed or relocated in the Planned Community, except as may be approved by the Declarant. Declarant hereby approves the location of all of the foregoing as shown on the Plan and any such improvements constructed or installed by an Approved Builder.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Declarant shall have the right to grant such easement over the Plan without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Plan.

Declarant shall have the power to dedicate portions of the Common Elements to Pine Township, or to any other local, state, or federal governmental entity and/or any utility supplier at any time.

3.4 Declarant's Easement to Correct Drainage. Declarant reserves an easement on, over and under those portions of the Common Elements and all Lots for the purpose of maintaining and correcting drainage of surface water in order to maintain, modify or repair drainage devices, facilities, mechanisms, conveyances, pipes, swales, drains and any other drainage elements to a reasonable standard of health, safety, and appearance. The easement created by this Section expressly includes the right to (i) cut any trees, bushes, or shrubbery; (ii) grade the soil; or (iii) take any other action reasonably necessary to achieve this purpose, following which Declarant shall restore the affected Common Elements and Lots as closely to their original condition as possible. Declarant grants the foregoing easement to correct drainage to any Approved Builder with respect to Lots as required for maintaining and correcting drainage of surface water on Lots.

3.5 Declarant's Easement for Development of Planned Community. Declarant reserves an easement on, over, and under those portions of the Common Elements for all purposes relating to the construction, development, leasing, and sale of improvements in the Planned Community. This easement shall include, without limitation: (i) the right of vehicular and pedestrian ingress and egress; (ii) the right to park motor vehicles; (iii) the right to engage in construction and marketing activities of any nature whatsoever, including the movement and storage of building materials and equipment; and (iv) the right to conduct sales, leasing, and management activities, the maintenance of models and offices, and the erection and maintenance of directions and

promotional signs. Declarant grants any Approved Builder the right to use such easements as necessary for the construction of improvements on the Lots.

3.6 Easement for Use of Common Elements.

- (a) Grant of Easement. Each Owner and each person lawfully on the Planned Community is hereby granted a non-exclusive perpetual right and easement of access to and enjoyment in common with others of the Common Elements.
- (b) Extent of Easement. The rights and easements of access and enjoyment created hereby shall be subject to the right of the Association to adopt Rules and Regulations governing the use of the Common Elements.

3.7 Easement for Reconstruction, Improvement, Repair, or Maintenance of Common Elements, including Common Facilities, and Conditions Effecting Multiple Lots. (a) Easements to permit the doing of every necessary and proper act by the Declarant and/or the Association to properly maintain the Common Elements, including Common Facilities, are hereby granted and established. These acts shall include, but not be limited to, entry upon, over, and under the Lots or any part thereof, the right to use all necessary and usual equipment for the performance of such acts, the usual and common noise level associated with the use of such equipment, together will all the other common and usual activity associated with such activities. Declarant grants any Approved Builder the right to use such easements as necessary for the construction of improvements on Lots. (b) Easements to permit Declarant and/or the Association to perform any corrective work to remedy a condition which effects multiple Lots are also hereby granted and established. The grant of this easement shall not, however, obligate Declarant and/or the Association to undertake such corrective work. These acts shall include, but not be limited to, entry upon, over, and under the Lots or any part thereof, the right to use all necessary and usual equipment for the performance of such acts, the usual and common noise level associated with the use of such equipment, together will all the other common and usual activity associated with such activities.

3.8 Easement for Encroachments and Relocation of Boundaries between Lots. To the extent that any Common Element encroaches on any Lot, a valid easement for the encroachment exists. The Declarant is hereby released from liability for failure to strictly adhere to the Plan. The Declarant will be afforded the opportunity to file a correction to the Plan in order to properly reflect the location of Lots and Common Elements. Such amendment and correction may include the relocation of boundaries between adjoining Lots without the joinder of the Owners of such Lots or the joinder of the Association in the event such relocation of boundaries affects the Common Elements. The Declarant is hereby authorized to prepare and record plats or plans as necessary to show such altered boundaries between adjoining Lots and their dimensions and identifying numbers.

3.9 Easement for Landscaping Work and Maintenance. Declarant reserves an easement on, over and under those portions of the Common Elements and all Lots for the purpose of performing landscaping work and/or maintenance.

ARTICLE IV
MAINTENANCE AND RELATED EXPENSES RESPONSIBILITY

4.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Elements as required by the terms hereof.

- (a) Declarant does anticipate that lawn services, including but not limited to, grass cutting, fertilization, pruning and mulching will be provided by the Association. Declarant does anticipate that snow removal services for the driveways and sidewalks will be provided by the Association. The precise scope of lawn services and snow removal services shall be set by the Executive Board of the Association.
- (b) To the extent that community irrigation is installed, Declarant shall maintain, repair, and expand the community irrigation system. The operating costs and costs to repair shall be assessed as a Common Expense.
- (c) Should the Association elect to provide additional services, Lot Owners shall be responsible for said additional services, which shall be assessed as a Common Expense.
- (d) In the event that the Declarant elects to permit the construction of a recreational area upon any of the open spaces, the Association shall be responsible for maintenance, repair, and replacement of any such improvements.
- (e) Until such time as the streets are dedicated to, and accepted by, Pine Township for public ownership and maintenance, snow removal, maintenance, repair, and replacement of streets may be provided by the Association and charged as a Common Expense to all Owners. The driveway parallel to Swinderman Road shall remain a private drive in the ownership of the Association for the benefit of all Owners whereby the Association shall provide snow removal, maintenance, repair, and replacement charged as an expense to all Owners in the Planned Community.

4.2 Individual Owner's Responsibility. Except as otherwise set forth herein, the repair, maintenance, and replacement of all improvements located on the Lot shall be the responsibility of the Owner. This shall include the obligation of Owners with individual driveways to maintain, repair, and replace such driveways, and any repair or replacement necessitated by the removal of a driveway or portion thereof for purposes of repair or replacement of utility lines or facilities.

ARTICLE V
CONTROLLED FACILITIES AND LIMITED CONTROLLED FACILITIES

5.1 General Rules or Laws to Apply.

(a) The following are designated as Controlled Facilities:

(1) Unit Exteriors: The entire roof of attached Units, any and all roof structure support, and any and all appurtenances to such structures, including without limitation exterior finishes such as but not limited to the roof covering, structure support, any and all appurtenances to such structures, soffit, fascia, all doors and windows, hardiplank, garage doors, fences, retaining walls, decks, patios, cladding, building footprint, as well as drainage fixtures.

(b) The following are designated as Limited Controlled Facilities:

(1) "Retaining Walls": Each wall which is installed by Declarant or Approved Builder which holds back dirt and or water shall constitute a "Retaining Wall." It is expressly understood that Retaining Walls installed by Declarant or Approved Builder or are necessary for proper grading and surface water control.

(2) "Storm Sewers": All storm sewers outside of the street right of way, functioning as roof collector drains;

(3) "Sanitary Sewers": All sanitary sewers outside of the street right of way;

(4) "Landscaping": All trees, plants, shrubbery, flowers and grass installed on a Lot.

(5) "Driveway and Sidewalks" The paved surfaces installed and existing on each Lot to permit vehicular and pedestrian ingress and egress from each Unit, for the exclusive use of the Owner of that Unit.

(c) Each individual Unit owner shall hold title to that portion of a Controlled Facility and Limited Controlled Facility located within his or her Lot. Declarant shall regulate, manage and control the Controlled Facilities and Limited Controlled Facilities as set forth in this Article V.

5.2 "Affected Owners" the Unit Owners responsible for the repair and maintenance of each Controlled Facility or Limited Controlled Facility:

(a) As it relates to "Unit Exteriors," the Owners of a Unit of the Building to which exterior item is attached.

(b) As it relates to "Retaining Walls," the Owner(s) of a Unit of the Building to which a Retaining Wall touches or property on which the Retaining Wall sits.

(c) As it relates to "Storm Sewers," the individual Owner(s) of the attached Units from which the specific drain collects.

(d) As it relates to "Sanitary Sewers" the Owner(s) of the attached Units from which the specific sewer collects.

(e) As it relates to "Landscaping" the Owners of the Lot on which the landscaping is installed.

(f) As it relates to "Driveways and Sidewalks" the Owners of the Lot on which the paved surfaces are installed.

5.3 (a) Subject to the provisions of subsections (5.4) and (5.5) below, the Affected Owners from time to time shall make or cause to be made all repairs and maintenance to the Controlled Facility or Limited Controlled Facility, with the cost of such repairs or maintenance to be shared equally by the Affected Owners; provided, however, that if and to the extent that any such repairs or maintenance are necessitated by reason of the negligence or wrongful act of one Affected Owner or such Affected Owner's tenants, agents, employees, guests or invitees, then such repairs or maintenance shall be made and performed at the sole cost and expense of the Affected Owner whose (or whose tenant's, agent's, employee's, guest's or invitee's) negligence or wrongful act necessitated such repairs or maintenance.

5.4 Minor Repair and Maintenance. Affected Owners shall, at their own cost and expenses, shared equally, keep and maintain the Controlled Facilities and Limited Controlled Facilities. Any Affected Owner shall have the right to perform such repair and maintenance with the prior written consent of the other Affected Owner(s).

5.5 Substantial Repair and Alteration. No alteration may be made to any Controlled Facility or Limited Controlled Facility which affect the structural integrity of said facility or requires the installation of new materials without the written approval of Declarant. In such event, such repair or replacement shall be made according to an architectural plan and, if applicable, finish approved by Declarant.

5.6 Any and all repairs and maintenance which an Affected Owner or Affected Owners jointly shall be required to perform hereunder or shall elect to perform shall be done in a good and workmanlike manner and in full compliance with all laws, ordinances, statutes, rules and regulations of any federal, state, county or local government or governmental agency or authority. Any such repairs and maintenance, once commenced, shall thereafter be diligently prosecuted to completion. Each Affected Owner shall have a reciprocal easement across the other Affected Owner's Unit(s) to allow reasonable access for the purpose of making inspections and performing any maintenance or repairs. Such easement rights shall be exercised in such a manner as to avoid, to the extent reasonably practicable, unnecessary interference with the use and occupancy of the other Affected Owner's property.

5.7 Should there be a disagreement as to the necessity, time, manner or extent of maintaining, repairing or replacing any Controlled Facility or Limited Controlled Facility, the Board shall resolve the dispute and if any of the Affected Owner(s) shall fail or refuse to pay its share of such expense, the other Affected Owner(s) may have the work done and be entitled to a lien against the other Affected Owner's Unit.

5.8 Notwithstanding any provision in this Article 5, Declarant or Association by the vote of the Executive Board, shall have the right to perform any work necessary to maintain and repair any Controlled Facility or Limited Controlled Facility, and assess the costs of such work in reasonable accordance with the Paragraph 5.2 of this Article.

5.9 Notwithstanding any provision in this Article 5, for routine and reoccurring repair or maintenance, such as grass-cutting and snow removal, expenses incurred by Declarant or Association may be estimated on an annual basis and included in the annual budget of the Association, and assessed monthly to affected owners.

ARTICLE VI PARTY WALLS

6.1 General Rules or Laws to Apply. Each wall which is built as part of the original construction of the Units on the Property and placed along the common boundary between two Lots or Units shall constitute a "Party Wall" and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply hereto.

6.2 Subject to the provisions of subsections (6.5) and (6.6) below, the Owners of the attached Units from time to time shall, at their sole cost and expense, make all repairs and perform all maintenance required upon the surface and non-structural elements of the portion of the Party Wall which serves as an interior wall of the living unit owned by such Owner, provided, however, that if and to the extent that any such repairs or maintenance are necessitated by reason of the negligence or wrongful act of one Owner or such Owner's tenants, agents, employees, guests or invitees, then, subject to the provisions of subsection (6.6) below, such repairs or maintenance shall be made and performed at the sole cost and expense of the Owner whose (or whose tenant's, agent's, employee's, guest's, or invitee's) negligence or wrongful act necessitated such repairs or maintenance.

6.3 Subject to the provisions of subsections (6.5) and (6.6) below, the Owners of the attached Units from time to time shall make or cause to be made all repairs and maintenance to the structural elements of the Party Wall, with the cost of such repairs or maintenance to be paid one-half (1/2) by the Owner of each of those Units; provided, however, that if and to the extent that any such repairs or maintenance are necessitated by reason of the negligence or wrongful act of one Owner or such Owner's tenants, agents, employees, guests or invitees, then, subject to the provisions of subsection (6.6) below, such repairs or maintenance shall be made and performed at the sole cost and expense of the Owner whose (or whose tenant's, agent's, employee's, guest's or invitee's) negligence or wrongful act necessitated such repairs or maintenance.

6.4 Any and all repairs and maintenance which either Owner or both Owners jointly shall be required to perform hereunder or shall elect to perform shall be done in a good and workmanlike manner and in full compliance with all laws, ordinances, statutes, rules and regulations of any federal, state, county or local government or governmental agency or authority. Any such repairs and maintenance, once commenced, shall thereafter be diligently prosecuted to completion. Each Owner shall have a reciprocal easement across the other Owner's Unit to allow reasonable access for the purpose of making inspections and performing any maintenance or repairs. Such easement rights shall be exercised in such a manner as to avoid, to the extent reasonably practicable, unnecessary interference with the use and occupancy of the other Owner's Unit.

6.5 Each Owner shall keep and maintain insurance coverage with respect to the portion of the building owned by such Owner and with respect to the Party Wall, insuring the improvements against damage or destruction by fire, lightning, wind, hail, explosion, vandalism and other hazards generally covered in the area under standard extended coverage homeowner's insurance, in an amount equal to not less than full replacement cost. The Association shall be named as an additional insured on such insurance coverage and shall be provided, upon request, with a certificate of insurance evidencing such coverage. Such insurance shall contain provisions whereby the insurer consents to the mutual waiver of liability contained in subsection (6.6) below. In the event of any fire or other casualty with respect to the building or any portion thereof, the building or such portion shall be repaired or restored by the Owners according to a uniform architectural plan and finish approved by the Association. The cost of such repair and restoration shall be apportioned to each Owner according to the actual cost of repair and restoration of such Owner's Unit.

6.6 Notwithstanding anything to the contrary herein, each Owner of attached Units hereby releases the other Owner, its tenants, agents, employees, guests or invitees from all liability for damage due to any act or neglect of the other Owner, its tenants, agents, employees, guests or invitees (except as herein provided) occurring to the building which is or might be incident to or the result of a fire or any other casualty which is or would be covered by the casualty insurance policy described in subsection (6.5) above or which is covered by any other insurance actually maintained by the Owner or its tenants or other occupants; provided, however, that the releases herein contained shall not apply to any loss or damage occasioned by the willful act or omission of either Owner.

6.7 Neither Owner shall have the right, except with the prior written consent of the other Owner, to (a) make any alterations or additions to the Wall or any part thereof, except non-structural interior alterations made within the living unit in the building, or (b) take any action which will adversely affect the structural integrity or sound transmission prevention qualities of the Wall. To the extent any Owner shall make any alterations or additions to the Wall, (i) such Owner shall, at its sole cost and expense, keep and maintain such alterations or additions in good condition and repair, and (ii) in the event of any fire or other casualty, the restoration and repair of such alterations or additions shall be at the sole cost and expense of such Owner.

6.8 Should there be a disagreement as to the necessity, time, manner or extent of maintaining, repairing or replacing any Party Wall, the Board shall resolve the dispute and if any of Owners of a Unit sharing in the Party Wall shall fail or refuse to pay its share of such expense, the other Owner sharing in the Party Wall may have the work done and be entitled to a lien against the other Owner's Unit.

ARTICLE VII
BROOKFIELD ESTATES
HOMEOWNERS' ASSOCIATION

7.1 Membership. For the purpose of ownership and maintenance of the Common Elements and all common community services of every kind of nature required or desired within the Planned Community for the general use and benefit of all Lot Owners, each and every Owner, in accepting a deed or contract for a Lot in the Planned Community, agrees to and shall be subject to the obligations and duly enacted Bylaws and Rules and Regulations of the Association. The Members of the Association shall be the Declarant and all Owners. With respect to the affairs of the Association, the Owner of each Lot shall have one vote. In the event a Lot is owned by more than one owner, the vote may be cast as set forth in the Bylaws.

7.2 Succession. Upon the transfer of Declarant's control of the Association in accordance with Section 11.2(a), the Association shall succeed to the position of the Declarant with respect to the provisions of these covenants, conditions, reservations, and restrictions, and the term "Declarant" herein shall then mean the "Association."

7.3 Powers of the Association. The Association shall have the following powers:

- (a) To adopt and amend Bylaws and Rules and Regulations.
- (b) To adopt and amend budgets for revenues, expenditures and reserves and collect assessments for Common Expenses from the Members.
- (c) To hire and terminate managing agents and other employees, agents, and independent contractors.
- (d) To institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Members on matters affecting the Association or the Planned Community.
- (e) To make contracts or incur liabilities.
- (f) To regulate the use, maintenance, repair, replacement, and modification of the Common Elements.
- (g) To cause additional improvements to be made to the Common Elements.
- (h) To acquire, hold, encumber, and convey, in its own name, any right, title, or interest to real or personal property; provided, however, that the Common Elements may be conveyed or subjected to a security interest only in accordance with the provisions of § 5318 of the Act.

- (i) To grant easements, leases, licenses, and concessions through or over the Common Elements; provided, however, that any exercise of such power which would materially impair the quiet enjoyment of a Member shall require the prior written approval of the affected Member.
- (j) To impose and receive payments, fees, or charges for the use and/or operation of the Common Elements.
- (k) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of this Declaration, the Bylaws, and the Rules and Regulations of the Association.
- (l) To impose reasonable charges for the preparation and recording of amendments to this Declaration, and for resale certificates required by the Act.
- (m) To provide for the indemnification of its officers and Executive Board and to maintain directors' and officers' liability insurance.
- (n) To exercise any other powers conferred by the Act, this Declaration, or the Bylaws of the Association.
- (o) To exercise all other powers that may be exercised in the Commonwealth of Pennsylvania by legal entities of the same type as the Association.
- (p) To exercise any other powers necessary and proper for the governance and operation of the Association.

7.4 Executive Board. Not later than the termination of any period of Declarant control in accordance with Section 13.4(a), the Members shall elect an Executive Board of at least three (3) members. The Executive Board shall elect the officers of the Association. The members of the Executive Board and the officers shall take office upon election. The Executive Board shall not have power to determine the qualifications, powers and duties, or terms of office of the members of the Executive Board, but it may fill vacancies in its membership for the unexpired portion of any term. The Members, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the Members at which a quorum is present, may remove any member of the Executive Board with or without cause, other than a member appointed by the Declarant.

7.5 Bylaws. The Bylaws of the Association shall provide for all of the following:

- (a) The number of members of the Executive Board and the titles of the officers of the Association.
- (b) Election by the Executive Board of a President, Treasurer, Secretary, and any other officers of the Association the Bylaws specify.

- (c) The qualifications, powers and duties, terms of office, and manner of electing and removing members of the Executive Board and officers and filling vacancies.
- (d) Which, if any, of its powers the Executive Board or officers may delegate to other persons or to a managing agent.
- (e) Which of its officers may prepare, execute, certify, and record amendments to this Declaration on behalf of the Association.
- (f) The method of amending the Bylaws.

Subject to the provisions of this Declaration and the Act, the Bylaws may provide for any other matters that the Association deems necessary and appropriate.

ARTICLE VIII
BUDGETS; COMMON EXPENSES; ASSESSMENTS AND ENFORCEMENT

8.1 Budgets; Capital Expenditures. The Executive Board shall adopt an annual budget for revenues, expenditures, and reserves. The Executive Board shall deliver to all Members copies of each budget approved by the Executive Board and notice of any capital expenditure approved by the Executive Board promptly after such approval. The Members, by affirmative vote of sixty percent (60%) of all Members, pursuant to procedures applicable to voting by members of the Association, as set forth in the Bylaws of the Association, may reject any budget or capital expenditure approved by the Executive Board within thirty (30) days after approval.

8.2 Monthly Assessments.

- (a) Common Assessments. Except as provided in Subsection 8.2(b) below, all Common Expense assessments adopted by the Board made in order to meet the requirements of the Association's annual budget shall be deemed to be adopted and assessed on an annual basis payable in monthly installments, and shall be due and payable in advance on the first day of the month. Once a Lot is conveyed to an Owner other than the Declarant or an Approved Builder, the Owner shall be responsible for its pro rata share of the Common Expenses, in addition to the Limited Common Expenses and Special Assessments and reserves as hereinafter defined as same may relate to such Lot. The obligation to pay Common Expenses that benefit fewer than all of the Lots shall be assessed exclusively against the Lots benefited on an equal basis. The Declarant shall be responsible for all costs of the Association until such time as the Executive Board of the Association establishes an assessment against Lots.
- (b) Unoccupied Lots. A Lot which is either unimproved, unoccupied, or for which a certificate of occupancy has not been issued shall not be required to pay a full monthly assessment to the Association, but shall be required to pay an assessment which equals a percentage of that to be assessed against said Lot once occupied (as

set forth in the Association's Budget). For purposes of this calculation, the assessment shall not include a share of the cost of Common Expenses attributable to property damage insurance costs, any recreational area costs, or any item or amenity from which such unoccupied Lot has not yet obtained a benefit.

8.3 Assessments for Limited Common Expenses, Special Assessments and Supplemental Assessments. The Board may adopt assessments for Limited Common Expenses relating to the repair, maintenance, and replacement of Limited Common Elements which shall be due and payable in one or more monthly installments as determined by the Executive Board. Also, the Board may adopt Special Assessments relating to the repair, maintenance, and replacement of the Common Elements, which Special Assessments shall be due and payable in one or more monthly installments as determined by the Executive Board. Special Assessments may be subject to special allocation in accordance with the Act.

8.4 Lien for Assessments, Fines, and Interest. The Association shall have a lien against each Lot for any Common Expense and/or Limited Common Expense assessments levied against that Member or fines imposed against that Member from the time the assessment or fine becomes due. Fees, charges, late charges, fines, and interest charged and the reasonable the costs and expenses of the Association, including legal fees, incurred in connection with collection of any sums due to the Association by a Member or enforcement of the provisions of this Declaration or the Bylaws, Rules or Regulations of the Association against a Member are collectable as assessments under this Section.

8.5 Limitation on Expenditures. All expenses, charges, and costs of the maintenance, repair, or replacement of the Common Elements, and any other expenses, charges, or costs which the Association may incur or expend pursuant hereto, shall be approved by the Executive Board, and a written memorandum thereof prepared and signed by the Treasurer of the Association. There shall be no structural alterations, capital additions to, or capital improvements on the Common Elements (other than for purposes of repairing, replacing, and restoring portions of the Common Elements) requiring an expenditure in excess of Ten Thousand Dollars (\$10,000) without the prior approval of sixty percent (60%) of the Members.

8.6 Reserve. Each annual budget for monthly assessments of Common Expenses shall include an amount reasonably considered by the Executive Board to be sufficient as a reserve for replacements and contingencies. Extraordinary expenditures not originally included in the annual budget that may become necessary during the year may be charged first against such reserve, as the Executive Board shall determine. The Association shall have the right to segregate all or any portion of the reserve for any specific replacement or contingency upon such conditions as the Executive Board deems appropriate. The Association shall also have the right to apply any such reserve amounts to Common Expenses as the Executive Board deems appropriate; provided, however, that such maintenance or replacement assessments relating to specific Lots may not be reallocated to Lots that are not the subject of such specific maintenance and replacement accounts.

8.7 Capital Improvement Fees Collected upon Sale and Resale. Subject to the right of the Executive Board to determine otherwise, the Association shall collect from each Lot Owner, upon the purchase of a Lot (including the initial sale and purchase from an Approved Builder and

any subsequent resale), at the time of closing, a Capital Improvement Fee in the amount equal to 3 months of Monthly Assessments.

8.8 Association Records. A statement of revenues and expenses for the Association shall be produced. The Association shall keep financial records sufficiently detailed to enable the Association to comply with § 5407 of the Act. All financial and other records shall be made reasonably available for examination by any Member and authorized agents. Within one hundred and eighty (180) days after the close of its fiscal year, the Association shall prepare annual financial statements consisting of at least a balance sheet and a statement of revenues and expenses for the Association. The cost of preparing the financial statements shall be a Common Expense. Each Member shall be entitled to receive from the Association, within thirty (30) days after submitting a written request to the Association, a copy of the annual financial statements and, if such financial statements are audited, reviewed, or compiled by an independent certified public accountant or independent public accountant, a copy of the independent accountant's report on the financial statements. The Association may charge a fee not to exceed the cost of producing copies of records other than the financial statement.

8.9 Further Assessments. If any annual budget proves inadequate for any reason, including nonpayment of any Member's monthly assessments, or any nonrecurring Common Expense or any Common Expense not set forth in the annual budget as adopted, the Executive Board may at any time levy further monthly assessments, supplemental assessments or special assessments. Such further monthly assessments shall be payable over such period of time as the Executive Board may determine. The Executive Board shall serve notice of such further assessments on all Members by a statement in writing giving the amount and reasons therefore, and such further monthly assessments shall become effective as determined by the Executive Board.

8.10 Surplus. Any amounts accumulated from assessments for Common Expenses and income from the operation of the Common Elements in excess of the amount required for actual Common Expenses and reserves for future Common Expenses as allocated by the Executive Board shall be credited to each Member in proportion to the share of Common Expenses payable by each such Member and further based upon such Members contribution to such excess. These credits shall be applied to the next monthly assessments of Common Expenses due from each Member under the current fiscal year's budget, and thereafter, until exhausted.

8.11 Acceleration. If a Member is in default in the payment of the aforementioned charges or monthly assessments for sixty (60) days, the Executive Board may, in addition to all other remedies set forth in this Declaration, accelerate all other monthly assessments to become due for the fiscal year in which such default occurs.

8.12 Interest and Charges. All sums assessed by the Association against any Member that remain unpaid shall bear interest thereon at a rate determined by the Executive Board (but not more than fifteen percent (15%) per annum) from the thirtieth (30th) day following the due date for payment. Initially the interest rate on unpaid assessed amounts shall be eight percent (8%) per annum. Any delinquent Member shall also be obligated to reimburse: (i) all expenses of the Association, including reasonable attorney's fees, incurred in the collection of the delinquent

assessments by legal proceedings or otherwise; and (ii) any amounts paid by the Association for taxes or on account of superior liens or otherwise to protect its liens, which expenses and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessments and shall be collectible as such, subject to Section 6.2 above.

8.13 Independent Covenant. The obligation to pay assessments is a separate and independent covenant on the part of each Member. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or the Executive Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements or from any other action it takes.

8.14 Implementation. The Association shall adopt in its Bylaws such additional or other procedures and requirements as it deems necessary and desirable to implement the provisions of this Article VIII, and to otherwise provide for the efficient fiscal operation and management of the Common Elements.

8.15 Violations and Assessments. If a Member violates any of the terms of this Declaration, the Declarant and/or the Association shall have the right to undertake correction of the violation and the costs incurred by Declarant and/or the Association in correcting such violation so shall be immediately due and payable by the Member in the form of an assessment.

8.16 Subordination to the Lien of Mortgages. The lien of the assessment, provided for herein, shall be subordinate to any first lien mortgage placed upon a Lot, regardless of the date such assessment shall be imposed or become due. The sale or transfer of the Lot pursuant to or in lieu of mortgage foreclosure shall extinguish the lien of such assessment as to payment that became due prior to such sale or transfer. No such sale or transfer shall relieve such Owner from the obligation or liability for any assessments thereafter coming due or from the lien on any such subsequent assessments.

ARTICLE IX INSURANCE OF COMMON ELEMENTS

9.1 Coverages. Commencing no later than the time of the first conveyance of a Lot to a person other than Declarant, the Association's duly authorized agent shall have the authority to, and shall obtain and maintain, blanket, all-risk, casualty insurance, if reasonably available, for all insurable improvements comprising the Common Elements and Controlled Facilities. If blanket all-risk coverage is not reasonably available, then, at a minimum, an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Association shall also obtain a comprehensive public liability policy including medical payments insurance covering the Common Elements and the Members for all occurrences commonly insured against death, all damage or injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements caused by the

negligence of Association, or any of the Members or their agents. The public liability policy shall have at least a One Million and No/100 Dollars (\$1,000,000.00) minimum property damage limit.

9.2 Premiums. Premiums for all insurance on the Common Elements shall be paid by the Association. Such policies may contain a reasonable deductible, and in the case of casualty insurance, the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the Association.

9.3 Contracts. All insurance coverage obtained by the Association shall be written in the name of the Association as trustee for the respective benefited parties, as further identified in subsection (a) below. Such insurance shall be governed by the provision of Section 5312 of the Act, as amended, and to the extent not inconsistent with the Act, by the provisions hereinafter set forth:

- (a) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (b) All policies on the Common Elements shall be for the benefit of the Declarant, the Association, the Members, and Mortgagees, as their interest may appear, providing financing on the Common Elements.
- (c) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by the Members, occupants, or their Mortgagees.

9.4. Workers Compensation. In addition to the other insurance required by this Article, the Association shall obtain worker's compensation insurance, if and to the extent required by law.

ARTICLE X **USE RESTRICTIONS AND ARCHITECTURAL PROVISIONS**

10.1 No Lot shall be used for any purpose other than for single family residential use.

10.2 Approval of Building Plans and Builders:

- (a) All building plans for improvements shall be approved in writing by Declarant and Pine Township prior to commencement of any construction activities on a Lot.
- (b) Only builders who have been approved in writing by the Declarant ("Approved Builders") are permitted to construct dwellings or Lots or make other improvements on Lots or within the Planned Community.

10.3 Each and every Lot, or any improvement erected thereon, shall be maintained in a reasonable manner in accordance with the standard generally prevailing throughout the Plan. All laws, orders, rules, regulations, or requirements of any governmental agency having jurisdiction over any portion of the Plan shall be observed and complied with, by and at the expense of all Lot Owners.

10.4 No noxious or offensive activity shall be conducted upon any Lot, nor shall anything be done which may become an annoyance or nuisance to the Planned Community.

10.5 No garage or other structure other than the dwelling house for which the plans have been approved shall be used as a residence, temporarily or permanently.

10.6 Mailboxes shall be located in a location and will be of a design as approved by the Declarant and/or the Executive Board and/or the U.S. Postal Service.

10.7 Outside parking areas other than driveways shall not be permitted with the exception of designated areas within public streets. The location of all driveways within the Plan shall be approved by the Declarant. All driveways shall be constructed of concrete or asphalt or other materials as approved by the Declarant. Each driveway shall be of sufficient space to accommodate at least two parked vehicles.

10.8 No playhouse, treehouse, tool house, greenhouse, gazebo, or outbuilding or structure of any type detached from a dwelling, or children's play equipment or recreational equipment shall be constructed or placed on any Lot within the Plan without the approval of the Executive Board as to size, design, materials, and location. The Executive Board reserves the right to prohibit any of the same if, in the opinion of the Executive Board, it would constitute a nuisance to Owners of other Lots within the Plan. No such accessory structure shall be permitted in a front yard or side yard. Structures must conform to the dimensional setback requirements as set forth on the Plan and with applicable Pine Township ordinances.

10.9 No swimming pool shall be constructed or placed on any Lot within the Plan without the approval of the Executive Board as to size, design, materials, and location. The Executive Board reserves the right to prohibit construction if, in the opinion of the Executive Board, it would constitute a nuisance to Owners of other Lots within the Plan. No swimming pool shall be permitted in a front yard or side yard. Swimming pools must conform to the dimensional setback requirements set forth on the Plan and with applicable Pine Township ordinances.

10.10 No solar collector or any other device or equipment erected either on the exterior of a dwelling or detached therefrom and designed for the production of energy for heating or cooling or for any other purpose shall be permitted without approval from the Executive Board.

10.11 No signs of any character shall be erected, posted or displayed on any Lot, except: (i) marketing signs installed by Declarant or an Approved Builder while actively marketing Lots for sale; (ii) street and identification signs installed by the Association or Declarant; (iii) one temporary real estate sign not to exceed six (6) square feet in area advertising that such Lot is on the market; (iv) political signs in accordance with the Rules and Regulations established by the

Association; (v) low impact commercial signage as approved by the Declarant and/or the Executive Board and Pine Township.

10.12 No Lot Owner, guest, licensee, invitee or others shall discharge any toxic non-biodegradable substance into any storm water sewer(s) or open drain ways. Such substances shall include but shall not be limited to: paint, oil, gasoline, any and all petroleum products, kerosene, paint thinner, anti-freeze and the like and any and all substance as defined by and as same is commonly understood by the Environmental Protection Agency or any other agency or organization having jurisdiction over same.

10.13 Open burning is not permitted on any Lot, except that outdoor fireplaces, grills and chimneys may be used if equipped with fire screens to prevent discharge of embers or ashes.

10.14 No farm animals and no animals of any type except for household pets such as dogs and cats, shall be kept on the Lots. No external compound cages, kennels or hutches shall be permitted. Household pets shall be limited in number as to not cause a nuisance to the residents and guests and may not be located there for commercial purposes. Pets shall not be permitted on the Common Elements unless accompanied by someone who can control them and unless carried or leashed.

10.15 No fences shall be permitted on any Lot unless approved as to height, location, material and design by the Declarant and subsequently the Executive Board. All fences must comply with the current Rules and Regulations as adopted by the Association as well as all applicable Pine Township ordinances.

10.16 Except in connection with construction activities, trucks, trailers, and other large vehicles may be parked on a Lot only if in garages. No junk or derelict vehicle or other vehicles on which current registration plates are not displayed shall be kept upon any portion of a Lot. Vehicle repairs and storage of vehicles are permitted on a Lot only if in garages. Campers, recreational vehicles, and boats may be parked in driveway for a period not exceeding forty-eight (48) hours in any one (1) calendar month period for the purposes of cleaning, loading or unloading.

10.17 No clotheslines or drying yards shall be permitted unless concealed by hedges, lattice work or screening acceptable to the Executive Board. No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot in the area from the property line abutting any street and extending from said property line a distance of 50 feet from the rear of any structure constructed on the property. No refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Lot that will emit foul or obnoxious odors or that will cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding Lots. In the event that any Owner shall fail or refuse to keep his Lot free from weeds, underbrush or refuse piles or other unsightly growths or objects, the Declarant and subsequently the Executive Board may enter upon such lands and remove the same at the expense of the lot owner, which such entry shall not be deemed a trespass, and in the event of such

a removal a lien shall arise and be created in favor of the declarant and against such lot for the full amount chargeable to such lot, and such amount shall be due and payable within thirty days after demand is made therefor.

10.18 Dusk to dawn lamp posts which provide sufficient lighting shall be installed and maintained in front of each Lot.

10.19 The Declarant reserves to itself the right during the period Declarant controls the Board, to prepare and record further rules, regulations, covenants and restrictions without joinder of any Lot Owner which are not inconsistent herewith, as it may deem advisable for the maintenance, use, conservation and beautification of the Lots in the Planned Community and for the health, comfort, safety and general welfare of the Owners of said Lots. Any such amendment after the period of Declarant Control shall require the requisite action by the Executive Board or vote by the appropriate percentage of Owners who own Lots in the Plan as required by this Declaration and the Act.

10.20 Encroachment of decks and/or patios will not be permitted into the easements of storm and/or sanitary sewers.

ARTICLE XI **CONVERTIBLE AND WITHDRAWABLE REAL ESTATE**

11.1 Convertible/Withdrawable Real Estate. The Convertible/Withdrawable Real Estate shall consist of all or any and all Lots, Common Elements, Open Space Parcels, or residual area as shown on the Plan. Declarant reserves the right to convert the use of any real estate, withdraw any real estate, and/or increase or decrease the number of Lots, Common Elements, Limited Common Elements, open space parcels and/or residual areas within the Planned Community in accordance with the Act and the provisions hereof, provided however, that exercise of any such right shall not affect any Lot not owned by the Declarant without the Lot Owner's consent. With respect to the Convertible/Withdrawable Real Estate, the Declarant makes the following representations in accordance with the act:

- (a) The Declarant reserves the option to convert, withdraw, combine increase or decrease Lots, Common Elements, Limited Common Elements, open space parcels and/or residual areas.
- (b) The option reserved in subparagraph (a) above will expire ten (10) years after the recording of the Declaration. Except as otherwise set forth in the Act, there are no other circumstances that will terminate this option before the expiration of the time limit.
- (c) The only limitations on the option reserved under subparagraph (a) are the limitations created by or imposed by the Act; otherwise, there are no limitations.
- (d) The Percentage Interest in the Association appurtenant to each Lot, the relative voting strength in the Association appurtenant to each Lot, and the share of

Common Expense assessments appurtenant to each Lot in the Convertible/Withdrawable Real Estate is based upon a formula of "A" equals 100 divided by "B," with "A" equal to the interest in the Association, relative voting strength and/or share of Common Expense assessments appurtenant to each Lot and "B" equal to the number of total Lots created both originally and following any conversion involving the Convertible/Withdrawable Real Estate.

- (e) Any portion of the Convertible/Withdrawable Real Estate may be converted and/or withdrawn and there are no assurances with respect to order or portions that may be converted or withdrawn.
- (f) The maximum number of Lots that may be added as part of a conversion is 38.
- (g) All of the Lots within the Convertible/Withdrawable Real Estate when created will be restricted exclusively to single family use.
- (h) The maximum density of the Planned Community, including any Lots contemplated to be created as part of any conversion within the Convertible/Withdrawable Real Estate, is two (2.0) dwellings per acre.
- (i) Except as otherwise set forth herein, there are no assurances with respect to the compatibility of the Lots created in the Convertible/Withdrawable Real Estate or with respect to the architectural style, quality of construction, principal materials employed in construction, or size of Lots that may be created in the Convertible/Withdrawable Real Estate.
- (j) In the event Lots are created in the Convertible/Withdrawable Real Estate and added to the Planned Community, the same restrictions affecting the use, occupancy, and alienation of the Lots that apply to the Lots originally created will apply to those Lots created within the Convertible/Withdrawable Real Estate.
- (k) There are no assurances made with respect to the general description of the other improvements and Limited Common Elements that may be made or created within the Convertible/Withdrawable Real Estate.
- (l) There are no limitations as to the locations of any buildings or other improvements that may be made within the Convertible/Withdrawable Real Estate.
- (m) There are no assurances that any of the Limited Common Elements created within the Convertible/Withdrawable Real Estate will be of the same general types and sizes as those contained within other parts of the Planned Community.
- (n) There are no assurances that the proportion of the Limited Common Elements appurtenant to the Lots created within the Convertible/Withdrawable Real Estate will be approximately equal to the proportion existing in other parts of the Planned Community.

ARTICLE XII
GENERAL PROVISIONS

12.1 Amendments. Prior to the transfer of Declarant control to the Association, Declarant may amend this Declaration so long as the amendment, in the reasonable discretion of the Declarant, has no material adverse effect upon the development of the Planned Community. No amendment required by any state or local government authority or agency will be deemed to have a material adverse effect. After the transfer of Declarant control, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of sixty percent (60%) of the Members, unless unanimous consent of the Members is required by the Act. Any amendment to be effective must be recorded in the public records of Washington County, Pennsylvania. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege. No amendment may impair the validity or priority of the lien of any Mortgage held by a Mortgagee or impair the rights granted to Mortgagees herein without the prior written consent of such Mortgagees.

12.2 Limitation of Liability.

(a) In General; Warranties. The Declarant, its heirs, successors, administrators, executors, assigns, members, officers and employees shall not be liable for structural defects pursuant to 68 Pa.C.S. § 5411 within the Planned Community for any Lot, Common Element, Limited Common Element, or any other feature constructed, modified, altered or improved by or on behalf of any Approved Builder.

(b) After Transfer to Association. Except as otherwise provided by the Act, the Declarant, its heirs, successors, administrators, executors, assigns, members, officers and employees [(i) through (vi) below shall be effective only from and after the Declarant's transfer of control of the Association in accordance with Section 11.2(a)]:

(i) Shall not be liable for the failure of any service obtained or the failure to so obtain any service needed or for any injury or damage to persons or property, however and wheresoever caused, except for any injury or damage caused by the willful misconduct or gross negligence of the Declarant, its members, officers or employees;

(ii) Shall not be liable as a result of the performance of the Declarant for any mistake of judgment, negligence or otherwise except for the Declarant's willful misconduct or gross negligence;

(iii) Shall have no personal liability to any person for any loss or damage caused by theft of or damage to personal property in or on the Common Elements or other places within the Plan and shall have no liability arising out of the

use, misuse, or condition of the Common Elements, except for the Declarant's willful misconduct.

- (iv) The Declarant and its principals and officers shall be indemnified by the Association against all expenses and liabilities, including attorney's fees incurred by or imposed in connection with any proceedings, except for liability arising out of the willful misconduct or gross negligence of the Declarant;
- (v) The Declarant may obtain such insurance as it deems appropriate, where available and in such amounts and on such terms as the Declarant deems advisable, to satisfy the liability requirements of this Declaration.
- (vi) Shall not be liable with respect to common facilities and controlled facilities that are developed by an Approved Builder other than the Declarant.

12.3 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

12.4 Incorporation of Recitals. The recitals set forth in the Preamble section of this document are hereby incorporated herein as if fully set forth and repeated herein.

12.5 Conflicts with Pine Township Ordinances and the Declarant's Agreement. In the event that any of the provisions, terms, conditions, or covenants contained in this Declaration conflict with any provisions of the Ordinances of Pine Township, the applicable provisions, terms and conditions of the Township Requirements shall prevail for all matters involved in any conflicts.

12.6 Conflicts with the Uniform Planned Community Act. In the event that any of the provisions, terms, conditions or covenants contained in this Declaration conflict with any provisions of the Uniform Planned Community Act, the applicable provisions, terms, conditions, and provisions of the Uniform Planned Community Act shall prevail.

ARTICLE XIII **DECLARANT'S RIGHTS**

13.1 Any or all of the special rights and obligations of the Declarant may be transferred by the Declarant to other persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, that no such transfer shall be effective unless it is a written instrument signed by the Declarant and duly recorded in the public records of Washington County, Commonwealth of Pennsylvania.

13.2 Pursuant to the foregoing, Declarant hereby assigns and hereby accepts, the following Special Declarant Rights:

The Declarant (Swinderman Development, LLC), shall have the right to:

- (a) complete, or assign to Approved Builders the completion of, construction, repair and/or renovation of all dwellings within the Lot boundaries, and, in event of the Approved Builders default in its obligation, Declarant shall have the right but not the obligation to construct and complete all Common Facilities indicated on the plats and plans filed with the Declaration under Section 5210;
- (b) maintain offices, signs and models under Section 5217 (relating to Declarant offices, models and signs);
- (c) use easements through the Common Elements, Common Facilities or Controlled Facilities for the purpose of making improvements in the Planned Community or within any Convertible or Additional Real Estate (if applicable) under Section 5218 (relating to easement to facilitate completion, conversion and expansion); and

13.3 Pursuant to the exercise of the Special Declarant Rights outlined above, the Declarant will undertake the following obligations and duties:

- (a) The construction of all improvements as specified above in accordance with the approved Plan, the Act, the Declaration and all applicable laws, rules and regulations; and
- (b) The compliance with the provisions of Chapter 54 of the Act, including without limitation: the delivery of Public Offering Statements (to the extent required by law) and any amendments thereto to prospective purchasers of its Lots, the escrow or other treatment of deposits of Purchasers, providing releases of liens, providing the statutory warranties against structural defects in any Lots and Common Elements, Common Facilities, and/or Controlled Facilities, procuring a certificate of substantial completion for those improvements constructed by the Phase 1 Developer (to the extent required by law), and such other obligations as may be imposed by the Act on the entity that builds and sells the residential units. Declarant shall not be required to pay any capital contribution fees or assessments related to Lots.

Declarant retains and reserves for itself all Special Declarant Rights given by law and relating to all Portions of the Planned Community that it continues to own and all other Special Declarant Rights not assigned are reserved for the Declarant. Declarant shall also reserve for itself the right of the Declarant to cast the votes of each Lot with respect to Association matters during the period of Declarant Control, until such time as each such Lot is sold to an Owner who will own and occupy the dwelling. The Declarant shall be deemed to have a proxy coupled with an interest to vote on behalf of such Lots, regardless of whether title to the particular Lot is then held by the Declarant.

Any Owner who acquires title to a Lot or residence by accepting title to a Lot or residence,

acknowledges that its title is subject to the provisions of this Declaration and this Assignment, and covenants that Declarant shall have no liability for any act or omission, or for any breach of a contractual or warranty obligation arising from the exercise of any Special Declarant rights, or for any claims arising under the Act or under any contract made or asserted by a Purchaser of a Lot or residence.

13.4 Control.

- (a) Subject to Section (b) of this Section, for a period of seven (7) years from the date of the recording of this Declaration, the Declarant shall have sole power and authority to appoint and remove the officers and members of the Executive Board of the Association, unless the Declarant earlier voluntarily surrenders the right to appoint and remove the officers and members of the Executive Board. However, this period of Declarant's control will terminate no later than the earlier of: (i) Sixty (60) days after the conveyance of seventy-five percent (75%) of the Lots to Owners other than a Declarant; (ii) two (2) years after a Declarant has ceased to offer Lots for sale in the ordinary course of business; or (iii) two (2) years after any development right to add new Lots in additional phases of development was last exercised.
- (b) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots (including Lots created in the Additional Real Estate) to Members, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by the Members. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots to Members, not less than thirty-three percent (33%) of the members of the Executive Board shall be elected by the Members.

13.5 Conveyance of Common Elements to Association. Upon transfer of Declarant's control of the Association, the Declarant shall grant and convey to the Association title to the Common Elements by special warranty deed for no consideration. All costs of deed preparation and recording shall be borne by the Declarant. Notwithstanding the foregoing, Declarant shall not convey the Common Elements to the Association until all improvements to the Common Elements as may be required by Pine Township pursuant to any development approvals have been completed by Declarant. This obligation to convey title to the Common Elements shall be binding upon any successor in interest to the rights of the Declarant hereunder.

ARTICLE XIV
MASTER ASSOCIATION AND CONSOLIDATION

14.1 Pursuant to § 5222 of the Act, for a period of 10 years, Declarant reserves the right to place the Planned Community under and subject to a Master Association and to delegate any of the powers set forth in § 5302 of the Act or Article 5 of this Declaration, to the Master Association.

14.2 Pursuant to § 5223 of the Act, for a period of 10 years, Declarant reserves the special declarant right to merge or consolidate the Planned Community. All representations as

stated in Article IX of this Declaration shall apply to any consolidation as required by § 5205(14) of the Act.

ARTICLE XV TERMINATION

15.1 Means of Termination. The Planned Community may be terminated in the following manner:

- (a) By Statute. As provided by the Act.
- (b) Destruction. In the event there is substantial destruction of all of the Buildings and eighty percent (80%) of the Owners directly affected by said destruction and by Eligible Mortgagees who represent fifty-one percent (51%) of the votes of the Lots that are subject to Eligible Mortgages, voting as in all other instances, shall duly resolve not to proceed with repair or restoration, then and in that event, the Planned Community form of ownership will be thereby terminated. The determination not to reconstruct after casualty shall be evidenced by a certificate of the Executive Board executed by the President and Secretary certifying as to the facts effecting the termination, which certificate shall become effective upon being recorded in the public records of Washington County, Pennsylvania.
- (c) General Provisions. The termination of the Planned Community shall be evidenced by a certificate of the Executive Board executed by its President and Secretary certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the public records of Washington County, Pennsylvania. When the Property has been removed from the provisions of the Act, the former Lot Owners shall, at the time such removal becomes effective, become tenants in common of the Property, and the holders of mortgages, judgments and other liens against the Lot or Lots formerly owned by such Lot Owners shall have mortgages, judgments and liens upon the respective undivided common interests of the Lot Owners in the entire Property. The undivided interest in the Property owned in common which shall appertain to each Lot Owner following such removal shall be in the same proportion of the fair market value of such Lot Owner's interest to the fair market value of the interest of all Lot Owners determined in accordance with § 5220 of the Act. All funds held by the Executive Board and all insurance proceeds, if any, shall be and continue to be held for the Lot Owners in proportion to the amount of their respective Percentage Interests determined as aforesaid in accordance with § 5220 of the Act. The costs incurred in connection with such termination shall be a Common Expense.
- (d) Removal from Act. If the Property shall be removed from the provisions of the Act, then the Property may be subject to an action for partition by any Lot Owner or lien holder as if owned in common in which event the net proceeds of sale shall be divided among all the Lot Owners in proportion to the fair market value of their respective Interests determined in accordance with § 5220 of the Act; provided,

however, that no payment shall be made to a Lot Owner until there has first been paid from his share of such net proceeds all liens or charges on his Lot. Such removal of the Property from the provisions of the Act shall not preclude its subsequent submissions to the provisions thereof in accordance with the terms of the Act.

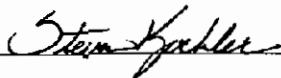
- (e) Exhibits. The following exhibits are attached:
- A. Legal Description of the Planned Community
 - B. List of Easements and Licenses
 - C. Percentage Interest Table Assuming 38 Lots

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of this 3rd day of November, 2017.

DECLARANT:

ATTEST:

SWINDERMAN DEVELOPMENT, LLC
a Pennsylvania limited liability corporation




_____ Matthew Moritz – Manager

ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF ALLEGHENY) SS:

On this 3rd day of November 2017, before me, a Notary Public, the undersigned officer, personally appeared **Matthew Moritz**, who acknowledged himself to be a Manager of **SWINDERMAN DEVELOPMENT, LLC**, a Pennsylvania corporation, and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as such officer.

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

My Commission Expires: April 11, 2021

Amy Gregory
Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
AMY GREGORY, NOTARY PUBLIC
BRIDGEVILLE BOROUGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES APRIL 11, 2021

EXHIBIT "A"

Legal Description of the Planned Community

All that real property, located in Pine Township, Allegheny County, Pennsylvania, as shown on that Plan known as Brookfield Estates Plan of Lots- as recorded on November 25, 2016 at Plan Book Volume 290, Page 122, in the Office of the Recorder of Deeds of Allegheny County, Pennsylvania and Brookfield Estates – Revised Plan of Lots, as recorded on August 28, 2017 at Plan Book Volume 294 Page 8, in the Office of the Recorder of Deeds of Allegheny County, Pennsylvania;

Containing approximately 11.63 acres.

Tax Parcel Nos. attached.

EXHIBIT "B"

List of Easements and Licenses

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the Effective Date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Rights or claims by parties in possession or under the terms of any unrecorded lease or agreement(s) of sale.
3. Any variation in location of lines or dimensions or other matters which an accurate survey would disclose.
4. Easements, or claims of easements, not shown by the Public Records.
5. Any lien or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
6. Possible additional tax assessments, not yet due and payable.
7. Accuracy of area content not insured.
8. Title to that part of the premises lying in the bed and right of way of all roads, driveways and alleyways is subject to public and private rights therein.
9. Coal and mining rights and all rights related thereto.

NOTICE: THIS DOCUMENT DOES NOT INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (See 52 P.S. 1551)

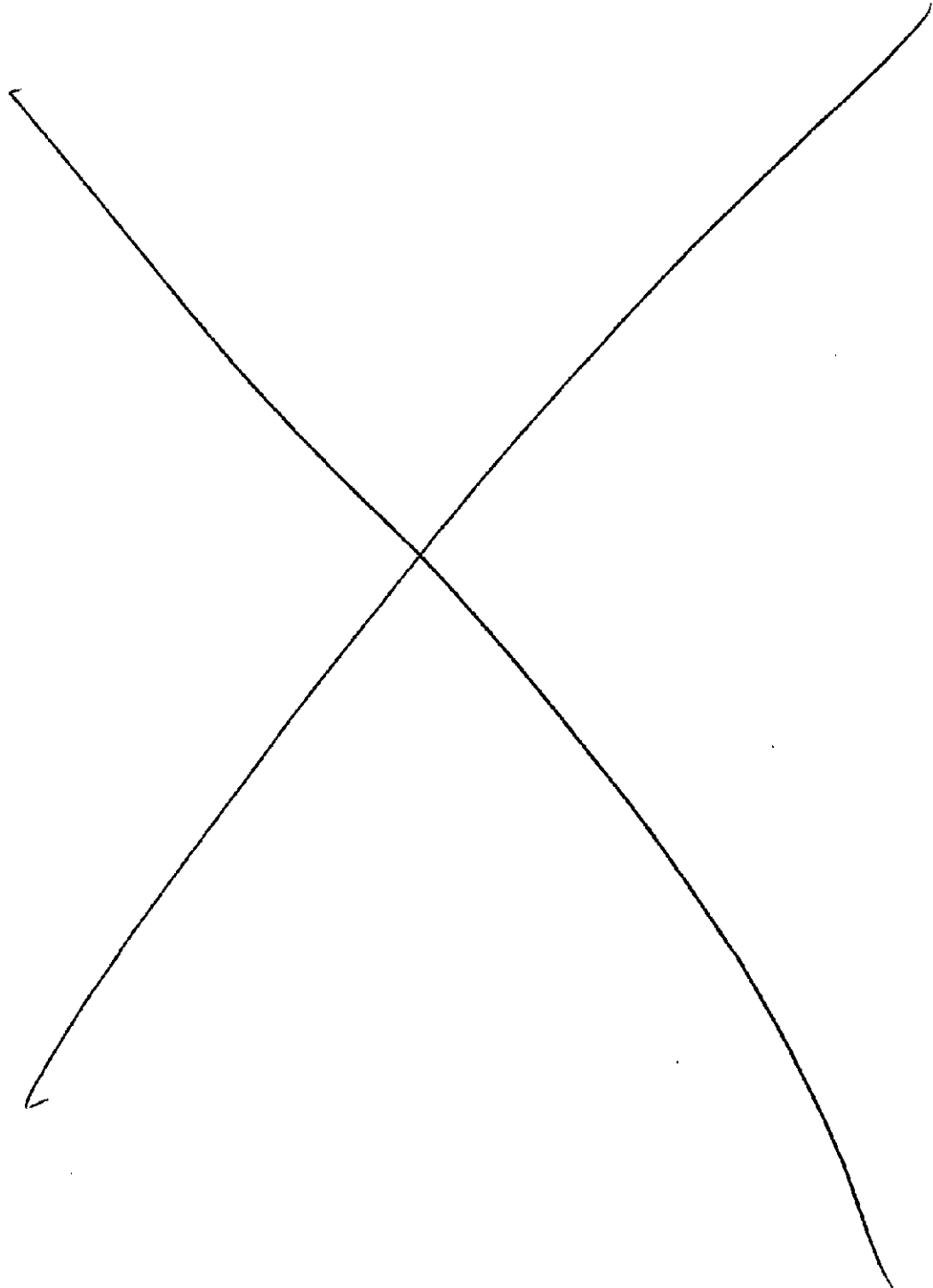
10. Oil, gas, or other mineral interests and all rights incident thereto now or previously conveyed, transferred, leased, excepted or reserved.
11. Subject to all roads public or private affecting the premises and rights of others therein.
12. Oil and Gas Lease from Anthony Gaugler, Sr. et al. to United Natural Gas Co. dated October 31, 1891, recorded Oil and Gas Book 15, page 550.
13. Right of way from David Schwendenman to South West Pennsylvania Pipe Lines, dated April 19, 1912, and recorded at Oil and Gas Book 21, page 345.
14. Right of way from David Schwendenman to Central District and Printing Telegraph Company of Pennsylvania, dated February 7, 1906, recorded at Deed Book Volume 1557, page 417.
15. Oil and Gas Lease from David Schwendenman to Mellon-Pollock Oil Company, dated February 21, 1922, recorded at Deed Book Volume 2124, page 368.
16. Right of way from Henry Swinderman to Susquehanna Pipe Line Co., dated August 6, 1930, recorded at Deed Book Volume 2430, page 276.
17. Right of way from Henry P. Schwenderman, et al. to Pennsylvania Power Company, dated May 21, 1931, recorded at Deed Book Volume 2451, page 700.

18. Right of way from Henry P. Swinderman, et ux. to Pennsylvania Power Company, dated April 30, 1952, recorded at Deed Book Volume 3305, page 55.
19. Right of way from Henry P. Swinderman, et ux. to Pennsylvania Power Company, dated July 21, 1953, recorded at Deed Book Volume 3448, page 697.
20. Right of way from Henry P. Schwenderman, et ux. to Warrendale Oil & Gas Co., et al. dated March 10, 1947, recorded at Deed Book Volume 2956, page 19.
21. All matters shown on the Miller Estate Plan of Property recorded at Plan Book Volume 212, pages 48-51.
22. All matters shown on the Revised Miller Estate Plan recorded at Plan Book Volume 250, page 125.
23. Old Perry Highway (Swinderman Road) and rights of others therein as description calls to points therein.
24. Right of way granted by H. P. Schwenderman to Warrendale Oil & Gas Co. and J. D. Fowler & Co. dated March 10, 1947, recorded at Deed Book 2956, page 19, which has since been assigned to Manufacturers Light & Heat Company, for a two-inch pipe line.
25. Oil and Gas Lease from Anthony Gaugler, Sr. et al. to United Natural Gas Co. dated October 31, 1891, recorded at Oil and Gas Book 15, page 550.
26. Right of way from David Schwendenman to South West Pennsylvania Pipe Lines. dated April 19, 1912, recorded at Oil and Gas Book 21, page 345.
27. Right of way from David Schwendenman to Central District and Printing Telegraph Company of Pennsylvania, dated February 7, 1906, recorded at Deed Book Volume 1557, page 417.
28. Oil and Gas Lease from David Schwendenman to Mellon-Pollock Oil Company, dated February 21, 1922, recorded at Deed Book Volume 2124, page 368.
29. Right of way from Henry Swinderman to Susquehanna Pipe Line Co., dated August 6, 1930, recorded at Deed Book Volume 2430, page 276.
30. Right of way from Henry P. Schwenderman, et al. to Pennsylvania Power Company, dated May 21, 1931, recorded at Deed Book Volume 2451, page 700.
31. Right of way from Henry P. Swinderman, et ux. to Pennsylvania Power Company, dated April 30, 1952, recorded at Deed Book Volume 3305, page 55.
32. Right of way from Henry P. Swinderman, et ux. to Pennsylvania Power Company, dated July 21, 1953, recorded at Deed Book Volume 3448, page 697.

EXHIBIT "C"

Percentage Interest Appurtenant to Each Lot

Each of 38 Lots in the Planned Community shall have a 2.63157% interest in relative voting strength and share of common expenses. If Lots are converted or withdrawn, the Percentage Interest of the Lots in the Planned Community may increase or decrease.



Brookfield Estates Lot Data Table

P.B.V. 290 Pg. 122

Lot No.	Tax Parcel ID No.	Area (S F)	Area (Acres)
1	1658-B-10	7,429	0.17
2	1658-B-12	5,746	0.13
3	1658-B-14	7,160	0.16
4	1658-B-16	7,160	0.16
5	1658-B-18	6,804	0.16
6	1658-B-20	7,836	0.18
7	1658-B-22	9,799	0.22
8	1658-B-24	7,304	0.17
9	1658-B-26	4,530	0.10
10	1658-B-28	5,326	0.12
11	1656-B-30	7,650	0.18
12	1658-B-32	7,177	0.16
13	1658-B-34	5,326	0.12
14	1658-B-36	5,326	0.12
15	1658-B-38	5,326	0.12
16	1658-B-40	5,645	0.13
17	1658-B-42	5,861	0.13
18	1658-B-44	5,053	0.12
19	1658-B-50	5,999	0.14
20	1658-B-52	5,389	0.12
21	1658-B-54	6,216	0.14
22	1658-B-56	6,522	0.15

Lot No.	Tax Parcel ID No.	Area (S F)	Area /Acres)
23	1658-B-58	5,267	0.12
24	1658-B-60	5,267	0.12
25	1658-B-62	5,267	0.12
26	1658-B-64	5,271	0.12
27	1658-B-66	6,710	0.15
28	1658-B-68	7,452	0.17
29	1825-P-42	7,341	0.17
30	1825-P-44	6,035	0.14
31	1825-P-46	5,456	0.13
32	1825-P-48	5,386	0.12
33	1825-P-50	5,317	0.12
34	1825-P-52	5,248	0.12
35	1825-P-54	6,633	0.15
36	1825-P-56	5,895	0.14
37	1825-P-58	5,368	0.12
38	1825-P-60	5,617	0.13
Parcel A	1658-B-46	127,195	2.92
Parcel B	1658-B-23	51,836	1.19
Parcel C	1825-P-40	20,909	0.48
Parcel D	1658-B-48	3,920	0.09
R.O.W. Areas	1825-P-26	68,825	1.58
	1658-B-47	2,241	0.05
Total Plan Area		506,602	11.63