

Please index as follows:

in Grantor Index under: Valley Creek Estates, a Planned Community  
Countywide Development, Inc.  
Dan Ryan Builders, Inc.  
in Grantee Index under: Valley Creek Estates, a Planned Community

18151

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

VALLEY CREEK ESTATES, A PLANNED COMMUNITY

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VOL 2521 PG 573

Exhibit "A"

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR**

**VALLEY CREEK ESTATES, A PLANNED COMMUNITY**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 28<sup>th</sup> day of July, 2004, by Countywide Development, Inc., a Pennsylvania corporation (the "Declarant").

**PART ONE: INTRODUCTION TO VALLEY CREEK ESTATES**

*Countywide Development, Inc., as the developer of Valley Creek Estates, has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance and preservation of Valley Creek Estates as a planned community.*

**Article I      Creation of the Community**

1.1.    Purpose and Intent.

The Declarant, as the owner of the real property located in Montgomery Township, Franklin County, Pennsylvania, and described on Exhibit "A," intends by the recording of this Declaration to create a flexible planned community pursuant to the provisions of the Pennsylvania Uniform Planned Community Act, 68 Pa. C.S.A. §5101, et seq., as it may be amended (the "Act"). The name of the community shall be Valley Creek Estates, a Planned Community, and it shall be comprised of the real property described on Exhibit "A" and such additional real property as is added to the Community in the future pursuant to the terms of this Declaration and the Act (the "Community"), as shown on the plat attached hereto as Exhibit "F".

This Declaration is intended to provide for the overall development, administration, maintenance and preservation of the Community. An integral part of the development plan is the creation of Valley Creek Estates Homeowners Association, Inc., an association comprised of all owners of real property in the Community, to own, operate and/or maintain various properties and facilities and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

This document does not and is not intended to create a condominium within the meaning of Pennsylvania Condominium Act, 68 Pa. C.S.A. §3101, et seq.

1.2.    Declarant's Undertakings.

(a)    The Units hereunder shall initially consist of unimproved subdivided lots ("Unimproved Units"). The Declarant shall construct or provide for the construction of certain Common Facility improvements, such as sewage facility lines and a sewage treatment plant,

drainage facilities, and other 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.

(b) The construction of improvements to be built upon the portion of the Properties outside the Unit title lines (i.e., the Common Facilities) shall be performed in accordance with Section 5414(a) of the Act.

(c) The Declarant shall be responsible for the preparation of a public offering statement required under Section 5401 of the Act (the "Public Offering Statement").

#### 1.3. Builder's Undertakings: Consent of Builder.

(a) Dan Ryan Builders, Inc., a Maryland corporation company (the "Builder"), is the equitable owner of the Units under this Declaration, pursuant to certain agreements with the Declarant. The Builder shall be deemed to be a successor Declarant as to any Unimproved Units upon which it undertakes to construct a Dwelling or other improvements ("Improved Units"), and thereafter as to Improved Units. As such, the Builder shall be responsible, inter alia, for the delivery of the Public Offering Statement to Dwelling Unit purchasers and shall warrant against structural defects in Dwellings and other structures constructed on Improved Units as required under Section 5411 of the Act.

(b) 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 the 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 the Builder or any party other than the Declarant.

(c) Each Dwelling Unit purchaser acknowledges and agrees by the acceptance of the deed to the Unit that the Builder has neither liability under Section 5411 of the Act, or otherwise, with respect to structural or other defects in the construction of improvements upon the Common Facilities by any party other than the Builder, nor liability under Section 5414 of the Act, or otherwise, with respect to substantial completion, repair and restoration of any improvements to the Common Facilities constructed by any party other than the Builder.

#### 1.4. Binding Effect.

All real property described on Exhibit "A" and any additional property which is made a part of the Community in the future (together, the "Properties"), shall be owned, conveyed, occupied and used subject to all of the provisions of this Declaration, which shall run with the title to the Properties and shall be binding upon all Persons having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns. This Declaration is intended to have perpetual duration, subject to the rights of amendment and termination set forth in Article XVIII and the Act.



1.5. Governing Documents.

The Governing Documents create a general plan of development for the Community.

If any provision of the Governing Documents is determined by judgment or court order to be invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications.

Every owner and occupant of any portion of the Properties, and their respective tenants, guests and invitees, shall comply with all applicable provisions of the Governing Documents. The Governing Documents shall be enforceable by the Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, by any means available at law or in equity, subject to the provisions of Article XIII, if applicable.

**Article II Concepts and Definitions**

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions or the definitions provided in the Act, unless otherwise specified. Capitalized terms shall be defined as set forth below.

“Act”: The Pennsylvania Uniform Planned Community Act, 68 Pa. C.S.A. §5101, et seq., as it may be amended.

“Additional Property”: The real property described on Exhibit “B” to this Declaration.

“Articles of Incorporation” or “Articles”: The Articles of Incorporation of Valley Creek Estates Homeowners Association, Inc., as filed with the Department of State of the Commonwealth of Pennsylvania.

“Association”: Valley Creek Estates Homeowners Association, Inc., a Pennsylvania nonprofit corporation, its successors or assigns.

“Base Assessment”: Assessments levied on all Units subject to assessment under Article IX to fund Common Expenses for the general benefit of all Units, as determined in accordance with Section 9.1.

“Board of Directors” or “Board”: The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Pennsylvania corporate law and as the “executive board” as referenced in the Act.

“By-Laws”: The By-Laws of Valley Creek Estates Homeowners Association, Inc., adopted by the Board, as they may be amended from time to time.

“Builder”: Any Person who purchases one or more Units for the purpose of constructing

improvements thereon for sale to consumers in the ordinary course of such Person's business.

"Class "A" Members": All Owners of Units other than the Class "B" Member, if any.

"Class "B" Member": The Declarant or its transferee or designee, for so long as the Class "B" Membership exists, as described in Section 7.2.

"Common Elements": Common Facilities or Controlled Facilities.

"Common Facilities": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including the real property described on Exhibit "C" to this Declaration.

"Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Declarant Control Period for initial development, original construction or installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members representing a majority of the total Class "A" votes of the Association.

"Community": Valley Creek Estates, a planned community comprised of the Properties.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Community. Such standard shall be established initially by the Declarant and may be more specifically defined in the Design Guidelines, the Restrictions and Rules, and in Board resolutions.

"Controlled Facilities": The Common Facilities, together with such other portions of the Community, if any, which the Association has authority or responsibility to maintain, improve, repair, replace, regulate, manage, operate, insure or control, pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contracts, or agreements identifying the Controlled Facilities and describing the Association's rights and obligations with respect to the same. The Controlled Facilities may include, without limitation, any public easements or rights-of-way within or adjacent to the Properties.

"Declaration": This Declaration of Covenants, Conditions and Restrictions for Valley Creek Estates, a Planned Community, together with the attached exhibits, which are incorporated herein by reference, and the recorded plats and plans relating to the Units and required by the Act, as any of the foregoing may be amended and supplemented by any Supplemental Declarations and other amendments recorded pursuant to this Declaration and the Act.

"Declarant": One or more of the Declarants described in Section 1.1 hereof, and all successors to any Special Declarant Rights.

“Declarant Control Period”: The period of time during which the Declarant, as the sole Class “B” Member, is entitled to appoint a majority of the members of the Board pursuant to the By-Laws. The Declarant Control Period shall terminate upon the first to occur of the following:

- (a) 60 days after the Declarant has conveyed 75% of the maximum number of Units permitted for the Properties, any Convertible Property and the Additional Property under Section 10.1;
- (b) two years after the Declarant has ceased to offer Units for sale in the ordinary course of business;
- (c) two years after recording of the most recent Supplemental Declaration to add any portion of the Additional Property to the Community; or
- (d) seven years after the first conveyance of a Unit by the Declarant.

“Design Guidelines”: The architectural design guidelines and review procedures adopted pursuant to Article V, as they may be amended.

“Dwelling”: the housing unit and related improvements situate within a Unit.

“Governing Documents”: A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Design Guidelines, and the Restrictions and Rules. as they may be amended.

“Member”: A Person subject to membership in the Association pursuant to Section 7.2.

“Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit. A “Mortgagee” shall refer to a beneficiary or holder of a Mortgage.

“Optional Service Charges”: Charges levied against Units receiving benefits, items or services provided upon request of the Owner, which benefits, items or services are not provided to all Owners or all Units within the Properties, as more particularly described in Section 9.5 of this Declaration.

“Owner”: One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

“Person”: A natural person, a corporation, a partnership, an association, a trust or any other legal entity.

“Properties”: The real property described on Exhibit “A,” together with such additional property as is made subject to this Declaration in accordance with Article X and the Act.

"Public Records": The public records of Franklin County, Pennsylvania.

"Restrictions and Rules": The initial Restrictions and Rules set forth on Exhibit "D," as they may be supplemented, modified and repealed pursuant to Article IV.

- "Valley Creek Estates": The residential community comprised of real property now or hereafter made subject to this Declaration.

"Special Assessment": Assessments levied in accordance with Section 9.3.

"Specific Assessment": Assessments levied in accordance with Section 9.4.

"Supplemental Declaration": An instrument, other than a declaration of condominium, executed by Declarant which (i) amends this Declaration to submit all or any portion of the Additional Property to the terms of this Declaration pursuant to Article X and the Act, and/or (ii) imposes, expressly or by reference, any additional covenants, easements, restrictions and obligations on the land described in such instrument pursuant to the rights reserved in Section 11.1.

"Unit": A portion of the Properties, other than Common Facilities, which may be independently owned and which is identified as a lot on a recorded plat or plans whether improved or unimproved, together with any Dwelling and any other permanent improvements constructed thereon from time to time. The vertical boundaries of each Unit shall be the plane formed by the boundaries shown on the recorded plat. The horizontal boundaries of an Improved Unit shall be determined at such time as the Builder submits specific building plans for a Unit.

### **Article III    Composition of Community**

#### **3.1.    Components.**

The Community shall be comprised of the Units, the Common Facilities and any other Controlled Facilities.

#### **3.2.    Allocation of Votes and Liability for Assessments.**

Each Unit shall be allocated votes in the Association and liability for Common Expenses in accordance with the following formula:

(a)    Each Unit shall be allocated one equal vote.

(b)    Each Unit shall be allocated a percentage liability for Common Expenses of the Association calculated by dividing the number of votes allocated to such Unit by the total number of votes allocated to all Units subject to assessment for a share of the Common Expenses being allocated. Each unimproved Unit shall be allocated a percentage liability for Common Expenses which is 20% of the percentage liability allocated to a Unit containing a Dwelling.

## PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

*The standards for occupancy, use and conduct, maintenance, and architecture within the Community are what give the community its identity and make it a desirable place to live. Yet those standards must be more than a static recitation of prohibitions. This Declaration establishes procedures which allow such standards to evolve as the community develops and as technology, lifestyles, public perception and applicable law change.*

### Article IV Use and Conduct

#### 4.1. Framework for Regulation.

Initial Restrictions and Rules governing use, conduct and activities within the Community are set forth on Exhibit "D." The Governing Documents establish, as part of the general plan of development for the Properties, a framework of affirmative and negative covenants, easements and restrictions which govern the Properties. However, within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends and technology which inevitably will affect the Community, its Owners and residents. Toward that end, this Article establishes procedures for adopting rules which interpret, further define and expand the initial Restrictions and Rules set forth on Exhibit "D" and which implement the authority granted to the Association under the Governing Documents.

#### 4.2. Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which interpret, further define, and expand the initial Restrictions and Rules set forth on Exhibit "D" and which implement the authority granted to the Association under the Governing Documents. The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. The Owners shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective, after compliance with subsection (c) below, unless disapproved at a meeting by persons entitled to cast more than 50% of the total Class "A" votes in the Association and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the membership to consider disapproval except upon receipt of a petition of the Members as required for special meetings in the By-Laws. Upon such petition of the Members prior to the effective date of any Board action under this Section 4.2(a), the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, the Members, at an Association meeting duly called for such purpose, may adopt rules which interpret, further define, and expand the initial Restrictions and

Rules set forth on Exhibit "D" and which implement the authority granted to the Association under the Governing Documents, by a vote of persons entitled to cast more than 50% of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the new rule or explanation of any changes to the Restrictions and Rules to each Owner and Class "B" Member specifying the effective date. The Association shall provide, without cost, a copy of the Restrictions and Rules then in effect to any requesting Member or Mortgagee.

(d) Nothing in this Article shall authorize the Board or the Members to modify, repeal or expand the Design Guidelines. In the event of a conflict between the Design Guidelines and the Restrictions and Rules, the Design Guidelines shall control.

#### 4.3. Owners' Acknowledgment and Notice to Purchasers.

All Owners are given notice that use of their Units and the Common Facilities is limited by the Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Restrictions and Rules may change from time to time. All purchasers of Units are on notice that changes may have been adopted by the Association. Copies of the current Restrictions and Rules may be obtained from the Association.

#### 4.4. Protection of Owners and Others.

No rule shall be adopted in violation of the following provisions, except as may be specifically set forth in this Declaration (either initially or by amendment) or in the initial Restrictions and Rules set forth on Exhibit "D":

(a) Similar Treatment. Similarly situated Owners shall be treated similarly.

(b) Displays. The rights of Owners to display religious and holiday signs, symbols and decorations inside structures on their Units of the kinds normally displayed in dwellings located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place and manner restrictions with respect to displays visible from outside the dwelling.

No rules shall regulate the content of political signs; however, rules may regulate the time, place and manner of posting such signs (including design criteria).

(c) Household Composition. No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each dwelling on the basis of the size and facilities of the dwelling and its fair use of the Common Facilities.

(d) Activities Within Structures on Units. No rule shall interfere with the activities carried on within the confines of structures on Units, except that the Association may prohibit activities not normally associated with property restricted to residential and recreational use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other dwellings, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(e) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Facilities to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Facilities available, from adopting generally applicable rules for use of Common Facilities, or from denying use privileges to those who abuse the Common Facilities or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article IX.

(f) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association of administering that lease or transfer, and any such fees shall be subject to the limitations set forth in the Act.

(g) Abiding Existing Rights. If any rule would otherwise require Owners to dispose of personal property which they maintained on their Units in compliance with this Declaration and all rules in force prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, such rule shall not apply to any such Owners without their written consent.

(h) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede the Declarant's right to develop the Community in accordance with the rights reserved to the Declarant in this Declaration and the Act.

The limitations in subsections (a) through (h) of this Section 4.4 shall only limit rule-making authority exercised under Section 4.2; they shall not apply to amendments to this Declaration adopted in accordance with Article XVIII and the Act.

## **Article V     Architecture and Landscaping**

### **5.1.     General.**

No structure or thing shall be placed, erected, installed or posted on the Properties and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall

take place within the Properties, except in compliance with this Article and the Design Guidelines.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of the dwelling on his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a dwelling visible from outside the dwelling shall be subject to approval.

This Article shall not apply to the activities of the Declarant nor to activities of the Association during the Declarant Control Period. Nothing in this Article shall restrict the Declarant's right to annex property which is already improved, nor shall it require modifications to any such property.

#### 5.2. Architectural Review.

(a) By Declarant. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties, acknowledges that, as the developer of the Properties and as an Owner of portions of the Properties, Declarant has a substantial interest in ensuring that the improvements within the Properties enhance the Declarant's reputation as a community developer and do not impair the Declarant's ability to market, sell or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article ("Work") shall be commenced on such Owner's Unit unless and until the Declarant or its designee has given its prior written approval for such Work, which approval may be granted or withheld in the sole discretion of Declarant or its designee.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in the interest of the Declarant and shall owe no duty to any other Person. The rights reserved to Declarant under this Article shall continue so long as Declarant owns any portion of the Properties or any real property adjacent to the Properties, unless earlier terminated in a written instrument executed by Declarant and recorded in the Public Records.

The Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf (a "Reviewer" or "Reviewers") in reviewing applications hereunder.

The Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to (i) an architectural review committee appointed by the Association's Board of Directors (the "ARC"), or (ii) a committee comprised of architects, engineers or other persons who may or may not be Members of the Association. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (i) the right of Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) the right of Declarant to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as the Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as are specifically delegated to it by the Declarant.



(b) Architectural Review Committee. Upon delegation by Declarant or upon expiration or termination of the Declarant's rights under this Article, the Association, acting through the ARC, shall assume jurisdiction over architectural matters hereunder. The ARC, when appointed, shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. The members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the ARC or the Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) The Declarant and the Association may employ architects, engineers or other persons as deemed necessary to perform the review. The compensation of any such professional retained by the Association shall be included in the Association's annual operating budget as a Common Expense.

### 5.3. Guidelines and Procedures.

(a) Design Guidelines. The Declarant may prepare the initial Design Guidelines. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Design Guidelines does not guarantee approval of any application.

The Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any portion of the Properties or has a right to expand the Properties pursuant to Section 10.1, notwithstanding a delegation of reviewing authority to the ARC, unless the Declarant also delegates the power to amend to the ARC. Upon termination or delegation of the Declarant's right to amend, the ARC shall have the authority to amend the Design Guidelines with the consent of the Board. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties. In the Declarant's discretion, such Design Guidelines may be recorded in the Public Records, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. Prior to commencing any Work within the scope of this Article, an Owner shall submit to the appropriate Reviewer an application for approval of the proposed Work in such form as the Design Guidelines or the Reviewer may specify. Such application shall include plans and specifications ("Plans") showing site layout, structural design, exterior

elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation and other features of proposed construction, as applicable. The Design Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application. Unless otherwise agreed by the Reviewer in its sole discretion, all plans and specifications shall be prepared by a licensed architect.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall make a determination on each application within 30 days after receipt of a completed application and all required information. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

Until expiration of the Declarant's rights under this Article, the ARC shall notify the Declarant in writing within three business days after the ARC has approved any application relating to proposed Work within the scope of matters delegated to the ARC by the Declarant. The notice shall be accompanied by a copy of the application and any additional information which the Declarant may require. The Declarant shall have 10 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC.

The ARC shall notify the applicant in writing of the final determination on any application within five days after the ARC's initial disapproval of such application, or, as to any application initially approved by the ARC, within five days after the earlier of (i) receipt of notice of Declarant's veto or waiver thereof, or (ii) expiration of the 10-day period for veto by Declarant. In the event of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

In the event that the Reviewer fails to respond in a timely manner, approval shall be deemed to have been given, subject to the Declarant's right to veto such approval within 10 days after written notice from the applicant to the Declarant of the ARC's failure to respond in a timely manner. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted pursuant to Section 5.5. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

If construction does not commence on a project for which Plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing the proposed Work. Once construction is commenced, it shall be diligently pursued to completion. All Work shall be completed within one year of commencement unless otherwise specified in the notice of

approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved Work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, the Declarant or any aggrieved Owner.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

#### 5.4. No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the reviewer may refuse to approve similar proposals in the future. Approval of applications or Plans for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans or other matters subsequently or additionally submitted for approval.

#### 5.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of any financing shall not be considered a hardship warranting a variance.

#### 5.6. Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community but shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwelling are of comparable quality, value or size or of similar design. Neither the Declarant, the Association, the Board, any committee or member of any of the foregoing shall be held liable for soil conditions, drainage or other general site work, nor for any defects in plans revised or approved hereunder, nor for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the ARC and all

persons comprising the ARC shall be defended and indemnified by the Association as provided in Section 8.6.

5.7. Certificate of Compliance.

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

**Article VI Maintenance and Repair**

6.1. Maintenance of Units.

Each Owner shall maintain his Unit, and all landscaping and improvements thereon, in a neat, clean and attractive condition, and in a manner consistent with the Community-Wide Standard and the Governing Documents.

6.2. Repair and Replacement; Insurance.

Responsibility for maintenance shall include responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

By virtue of taking title to a Unit, each Owner covenants and agrees, with all other Owners and with the Association, to carry blanket "all-risk" property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. Each Owner shall provide a copy of the certificate of insurance to the Association as proof that such insurance has been obtained.

In the event of damage to or destruction of structures on a Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article V. Alternatively, the Owner shall clear the Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

**PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION**

*The success of the community is dependent upon the support and participation of the owners in its governance and administration. The Declaration establishes Valley Creek Estates Homeowners Association, Inc. as the mechanism by which the owners are able to provide that support and participation. While many powers and responsibilities are vested in the Association's board of directors, some decisions are reserved for the Association's membership - the owners of property in Valley Creek Estates.*

## Article VII The Association and its Members

### 7.1. Function of Association.

The Association shall be the entity responsible for management, maintenance, operation and control of the Controlled Facilities. The Association also shall be the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Pennsylvania law.

### 7.2. Membership.

Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 7.3, in the By-Laws, and in the Act, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any person named in a certificate executed by the Owner and filed with the secretary of the Association.

The Association initially shall have two classes of membership: Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners of Units other than the Class "B" Member, if any.

(b) Class "B". The sole Class "B" Member shall be the Builder, to which the special declarant right to appoint or remove officers of the Association or members of the Board of Directors (the "Special Declarant Right") is hereby transferred and assigned pursuant to §5304(a) of the Act. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Declarant Control Period, as specified in Section 3.3 of the By-Laws. Additional rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" membership shall terminate upon expiration of the Declarant Control Period, unless earlier terminated voluntarily by Declarant in a recorded instrument referencing this Declaration.

### 7.3. Exercise of Voting Rights.

On any matter requiring a vote of the Members or a particular class or classes of Members under the Governing Documents or the Act, the Members shall have such votes as are allocated to their respective Units under Section 3.2. In the event that there is more than one Owner of any Unit, the vote for such Unit may be exercised by the natural person named in a certificate signed by all co-Owners and filed with the Secretary of the Association, or in the absence of such person, or failure to file such a certificate, by any co-Owner. If more than one co-Owner seeks to exercise the Unit's vote, the vote shall be suspended. Any person who could exercise the Unit's vote at a meeting shall be entitled to execute a proxy, cast a written ballot or

mail-in vote, or approve or disapprove any action which the members are entitled to approve or disapprove under the Governing Documents.

## **Article VIII Association Powers and Responsibilities**

### **8.1. Acceptance and Control of Association Property.**

(a) The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property.

(b) So long as the Declarant owns any property described on Exhibits "A" or "B," the Declarant and its designees may convey to the Association personal property and fee title, leasehold or other property interests in any real property, improved or unimproved, described on Exhibits "A" or "B", including the real estate comprising the Common Facilities described on Exhibit "C". The Association shall accept and maintain such property at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

### **8.2. Maintenance of Common Facilities.**

(a) The Association shall maintain, in accordance with the Community-Wide Standard, the Common Facilities, which shall include, but need not be limited to:

(i) all portions of and structures situated upon the Common Facilities, including the sewage treatment plant; and

(ii) all landscaping and other flora, lighting and signage, if any, situated upon the Common Facilities.

The Association may maintain other property which it does not own, including, without limitation, landscaping within public rights-of-way and utility easements located in or abutting the Properties and other property dedicated to the public, to the extent permitted by the entity holding or controlling the same, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

If the Association fails to perform its maintenance responsibility as required herein and in any additional covenants, the Declarant may perform it and shall be entitled to recover the costs of performing such service from the Association.

The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

(b) The Association shall maintain the facilities and equipment within the Common Facilities in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Common Facilities shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described on Exhibits "A" or "B" of this Declaration.

(c) The costs associated with maintenance, repair and replacement of the Common Facilities shall be a general Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Common Facilities pursuant to this Declaration, other recorded covenants or agreements with the owner(s) thereof.

### 8.3. Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect such insurance coverages and in such amounts and with such terms as are required by the Act and such additional coverages as required by this Section, to the extent reasonably available at reasonable cost:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Facilities for which the Association has maintenance responsibility. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Common Facilities, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its business judgment, determines advisable.

Premiums for all insurance on the Common Facilities shall be Common Expenses.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Franklin County, Pennsylvania area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 8.3(a). In the event of an insured loss, the deductible shall be a Common Expense; provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.24 of the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

All insurance coverage obtained by the Board shall:

- (i) be written with a company authorized to do business in the Commonwealth of Pennsylvania;
- (ii) be written in the name of the Association for the benefit of the Association and its Members;
- (iii) not be brought into contribution with policies of insurance purchased by Owners, their Mortgagees, or occupants of dwellings on Units individually;
- (iv) contain an inflation guard endorsement;
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause;
- (vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area or membership in the Association;



(vii) provide a waiver of subrogation under the policy against any Owner or household member of a Owner;

(viii) include an endorsement precluding cancellation, invalidation, suspension or non-renewal by the insurer on account of any one or more Owners, or on account of any curable defect or violation, without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation or condition to recovery under the policy on account of any act or omission of any one or more Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees and its manager, the Owners and their tenants, servants, agents and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification or non-renewal;

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Facilities or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes. The Association shall proceed with due diligence to repair or reconstruct all damaged improvements, except as otherwise permitted by the Act. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition

consistent with the Community-Wide Standard.

Except as otherwise required by the Act, any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall.

#### 8.4. Compliance and Enforcement.

Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after notice and a hearing in accordance with the procedures set forth in Section 3.24 of the By-Laws. Such sanctions may include, without limitation:

(a) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit. (In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(b) suspending an Owner's right to vote;

(c) suspending any Person's right to use any recreational facilities within the Common Facilities; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(d) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(e) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(f) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of Article V and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(g) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article V and the Design Guidelines from continuing or performing any further activities in the

Valley Creek Estates; and

(h) levying Specific Assessments to cover costs incurred by the Association to bring a Unit, or the improvements or landscaping thereon, into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in Section 3.24 of the By-Laws:

(a) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); and/or

(b) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibilities, the Association may record a notice of violation in the Public Records or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take enforcement action if the Board reasonably determines that, under the particular circumstances, (i) the Association's legal position is not strong enough to justify taking action, (ii) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources. Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce applicable state and local laws and ordinances, and shall permit governmental bodies to enforce their respective laws and ordinances within the Properties for the benefit of the Association and its Members.

#### 8.5. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote

of the membership.

8.6. Indemnification of Officers, Directors and Others.

The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Pennsylvania law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

8.7. Security.

Each Owner, every occupant of a dwelling in Valley Creek Estates, and each person entering Valley Creek Estates, shall be responsible for their own safety and the security of their own property within Valley Creek Estates. The Association may, but shall not be obligated to, maintain or support certain activities within Valley Creek Estates designed to add to or enhance such safety and security. However, neither the Association, the Declarant, its affiliates nor any successor Declarant shall in any way be considered insurers or guarantors of safety or security within Valley Creek Estates, nor shall any of them be held liable for any injury, loss or damage by reason of failure to provide adequate security, or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Properties, can not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of any dwelling on its Unit that the Association, its Board and committees, and the Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including structures on Units and the personal property maintained on the Units, resulting from acts of third parties.

8.8. Provision of Services.

The Association may provide, or provide for, services and facilities for the Members and

their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided at the option of an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Base Assessment if made available or provided to all Units. By way of example, such services and facilities might include landscape maintenance; pest control service; cable, digital, satellite or similar television service; security; caretaker; transportation; fire protection; utilities; and other services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

## **Article IX Association Finances**

### **9.1. General.**

Until the Association first levies assessments, the Declarant shall be responsible for all Common Expenses. Thereafter, assessments for Common Expenses shall be levied at least annually, based upon a budget or budgets adopted at least annually in accordance with this Article, which budget(s) shall segregate general Common Expenses from expenses relating to optional services provided pursuant to Section 9.4.

### **9.2. Budgeting and Allocating General Common Expenses.**

At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated general Common Expenses for the coming year. The budget shall include a contribution to a reserve fund for capital repairs and replacements to Common Facilities which the Association maintains as a general Common Expense, in such amount as the Board deems appropriate after taking into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The budget shall reflect the sources and estimated amounts of funds to cover such expenses and reserve contributions, which may include any surplus to be applied from prior years, any anticipated capital improvement fees pursuant to Section 9.10, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units, as authorized in Section 9.6.

The Association is hereby authorized to levy Base Assessments against all Units subject to assessment under Section 9.6 to fund the Common Expenses, in accordance with the allocation of liability for Common Expenses set forth in Section 3.2. In determining the Base Assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year. The Declarant may, but shall not be obligated to, provide a subsidy to

reduce the amount of Common Expenses which would otherwise be allocated among the Units subject to assessment hereunder; provided, any such subsidy and the amount thereof in any year shall be conspicuously disclosed in the Association's operating budget for that year. Payment of any such subsidy in one year shall not obligate the Declarant to continue such subsidy in future years.

The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner at least 30 days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved at a meeting by Members representing at least a majority of the total Class "A" and votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect, plus a 10% increase in the Base Assessment and estimated expenses of the Association, shall constitute the budget for the current year until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

Any amounts accumulated from assessments for general Common Expenses in excess of the amount actually required for such Common Expenses and reserves for future Common Expenses shall be credited to each Unit assessed for a share of such Common Expenses in proportion to the share so assessed, such credits to be applied to the next annual Base Assessment against that Unit and thereafter until exhausted, unless the Board determines that calculation and application of such credit on a more frequent basis is preferable.

### 9.3. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. The Board may levy Special Assessments without Member approval so long as the total amount of such Special Assessments chargeable to any Unit in any fiscal year does not exceed \$250. Any Special Assessment which causes the cumulative amount of Special Assessment to exceed this limitation in any one fiscal year shall be effective only if approved by the affirmative vote or written consent of Members representing more than 50% of the total Class "A" votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

### 9.4. Specific Assessments.

The Association shall have the power to levy Specific Assessments against any Owner separately and against such Owner's Unit to cover:

(a) costs incurred in bringing the Unit, or the improvements or landscaping thereon, into compliance with the Governing Documents, or

(b) costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees or guests;

provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with Section 3.24 of the By-Laws, before levying any Specific Assessment under this Section.

#### 9.5. Optional Service Charges.

The Board shall have the power specifically to assess Units receiving benefits, items or services not provided to all Units within the Properties. Expenses of the Association that are incurred upon the request of the Owner of a Unit for specific items or services relating to the Owner, the Unit or its occupants shall be specifically assessed against the Unit or Units in the amount of the cost of the benefit received or according to a method of equitably assessing the Units for such services as may be established by the Board. The cost of the benefit may include, at the Board's option, a reasonable administrative charge.

#### 9.6. Authority to Assess Owners; Time of Payment.

The Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be paid in quarterly installments. Each Owner, by acceptance of a deed to his or her Unit, acknowledge that all Base Assessments levied pursuant to this Article are due and payable in advance on the first day of the fiscal year; provided, however, the Board may permit any assessment to be paid in installments.

If any Owner is delinquent in paying any assessments or other charges levied on a Unit, the Board may revoke the privilege of paying in installments, accelerate the amount due for a

one year period from the date of delinquency, and require payment in full immediately. The amount of the assessments in the succeeding fiscal year which are declared due because of the acceleration shall be equal to the current fiscal year's assessments plus 10% of the current fiscal year's assessments.

9.7. Obligation for Assessments.

Each Owner, by accepting a deed or entering into a recorded contract of sale for any Unit, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Pennsylvania law), late charges as determined by Board resolution, costs and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments at the same rates as during the last year for which an assessment was levied, if any, until a new assessment is levied, at which time the Association may retroactively assess any Common Expenses in excess of such assessments.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Unit or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or 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.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee not to exceed \$50.00 for the issuance of such certificate.

9.8. Lien for Assessments.

The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Pennsylvania law), and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment and judicial or nonjudicial foreclosure.



The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the same. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under this Article, including such acquirer, its successors and assigns.

9.9. Exempt Property.

The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) All Common Facilities; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

9.10. Capital Improvement Fee Payable upon Transfer.

Upon the initial transfer of record title to a Unit to any Person other than the Declarant, an affiliate of the Declarant or a Builder, a capital improvement fee shall be paid to the Association by or on behalf of the new Owner in such amount as the Board may establish from time to time. The initial amount of such capital improvement fee shall be \$400.00.

Payments due pursuant to this Section shall be in addition to, not in lieu of, payment of any other assessment levied on the Unit and shall not be considered an advance payment of any portion thereof. However, all such payments shall be secured by a lien and collectible in the same manner as any other assessment due under this Article IX.

**PART FOUR: COMMUNITY DEVELOPMENT**

*The Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of Valley Creek Estates and to accommodate changes in the master plan.*

**Article X Right to Add Real Estate**

10.1. Reservation of Right.

The Declarant expressly reserves the option to amend this Declaration to expand the Community by submitting all or any portion of the Additional Property to the terms of this Declaration.

Such option shall terminate seven (7) years after the date this Declaration is recorded in the Public Records. There shall be no other limitations on such option, except as set forth in Section 10.3, and such limitations may be created or imposed by operation of law. The Declarant may transfer or assign this right, in whole or in part, to any Person who is the developer of at least a portion of the Properties or the Additional Property. Any such transfer shall be memorialized in a written, recorded instrument executed by Declarant.

10.2. Effect on Association and Individual Interests.

Upon addition of Additional Property containing Units, the percentage votes and share of liability for Common Expenses of all Units shall be reallocated in accordance with the formula described in Section 3.2. The effect of creation of additional Units will be to decrease the relative voting strength and liability for assessments of each Unit in existence prior to the date on which such additional Units were created.

10.3. Timing and Limitations of Exercise of Option.

(a) Portions of any Additional Property may be added at different times. No assurances are made as to the boundaries of such portions or the order in which they may be added. Addition of any portion of the Additional Property shall in no way obligate the Declarant to add any other portion, or any other real estate.

(b) A maximum total of 49 Units may be created within the Properties and the Additional Property, if submitted to this Declaration. A maximum of 1 Unit per .92 acre, on average, may be created within the Properties; provided, such average may be exceeded as to any portion of the Properties and from time to time during the period of the option reserved in Section 10.1, subject to applicable governmental approvals, so long as the average number of Units per acre is within such limitation at the time such option terminates. For purposes of the preceding sentence, the average number of Units per acre is calculated by dividing the total acreage of the Properties by the total number of Units.

(c) The Units within the Properties and within any Additional Property made subject to this Declaration are restricted exclusively to residential use. For purposes of this provision, "residential use" shall mean residences for single families and such accessory structures as may be approved pursuant to Article V, and utilities to serve such residences or adjacent residential properties.

(d) No assurances are made that the structures erected upon each portion of the Additional Property will be compatible with the structures on Units in the Community in terms of architectural style, quality of construction, principal materials employed in construction, or size.

(e) The restrictions set forth in this Declaration affecting use, occupancy and alienation of Units will apply to all Units created within any Additional Property.

(f) No assurances are made regarding the location, nature, type, size or description of any buildings or other improvements that may be made or created upon or within any portion of the Additional Property.

(g) The provisions of this Section 10.3 shall not apply to any portion of the Additional Property which is not added to the Community pursuant to this Declaration and the Act.

#### 10.4. Manner of Exercise.

(a) The Declarant may expand the Community to include any or all of the Additional Property by filing a Supplemental Declaration in the Public Records describing the portion of the Additional Property to be added and the intent that it be submitted to the terms of this Declaration. A Supplemental Declaration filed pursuant to this Section shall not require the consent of any Person except the owner of the property being added, if other than Declarant.

(b) Upon the addition of Units, the votes and Common Expense liabilities of the Units shall be reallocated among all Units in accordance with the formula described Section 3.2.

### **Article XI Additional Rights Reserved to Declarant**

#### 11.1. Creation of Additional Covenants and Easements.

(a) The Declarant may subject any portion of the Properties which the Declarant owns or, with the consent of the owner(s) thereof, any other portion of the Properties, to additional covenants and easements. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration.

(b) The Declarant reserves the right to subject any portion of the Properties which it owns to easements or licenses in favor of real estate which is not included in the Community or in favor of Persons who are not Owners or occupants of Units for purposes of access, ingress, egress, drainage, stormwater runoff, utilities and similar purposes in connection with the development and use of any portion of the Additional Property which is not made subject to this Declaration or any property adjacent to the Community. To the extent that the granting of any

such easement or license imposes a greater burden on the Common Facilities than would otherwise exist or increases the Common Expenses, such easement or license shall obligate the owner of the property benefited by such easement or license to share in the Common Expenses so affected in accordance with a reasonable formula set forth in the easement or license.

11.2. Right to Designate Common Facilities.

(a) Declarant reserves the right to designate as a Common Facility any portion of the Properties which it owns, whether improved or unimproved. Such designation shall be made on the recorded plat depicting the portion of the Properties in which such Common Facility is located or in the deed or other instrument conveying or leasing such portion of the Properties to the Association. Such right shall expire on the later of (i) the date upon which the Declarant conveys the last Unit which the Declarant has reserved the right to include in the Community or (ii) the date of expiration of the option reserved under Section 10.1 of this Declaration. To the extent that any portion of the properties is designated as a Common Facility on a recorded plat, the Declarant (or any successor declarant, whether or not it succeeds to any declarant rights hereunder) shall be obligated to convey or lease such property to the Association no later than the date of expiration of the right reserved in this Section.

(b) The Declarant shall be responsible for preparing, executing and recording the deed or other instrument conveying or leasing any portion of the Common Facilities to the Association. Declarant shall provide a copy of the recorded instrument to the Association.

(c) Any Common Facility conveyed to the Association by Declarant pursuant to this reserved right shall be conveyed or leased for no consideration other than the Association's acceptance of such conveyance or lease. Upon the designation and conveyance or lease to the Association of any Common Facility pursuant to this Section, the Association shall accept such conveyance or lease and shall thereafter maintain the Common Facility as a Common Expense. Each Owner acknowledges that such designation and conveyance or lease may increase the total Common Expenses and the share thereof applicable to such Owner's Unit.

(d) No conveyance or lease to the Association of any portion of the Properties shall occur until all construction or improvements thereon have been completed, unless a third party guarantee, bond, escrow, letter of credit or other mechanism assuring completion has been provided by the Declarant, in addition to the Declarant's own guarantee of completion, for the benefit of the Association. Such third-party assurances and the Declarant's guarantee shall not expire until completion of such construction or improvements.

(e) Until any proposed Common Facility improvement or facility is completed, Declarant shall be solely responsible for real estate taxes assessed against or allocable to the improvement or facility and for all other expenses in connection with the improvement or facility. The Declarant shall not be required to provide any third-party guarantee, bond, escrow, letter of credit or other mechanism, other than the Declarant's own guarantee, to assure completion of any proposed improvements or facilities on property which has not yet been conveyed or leased to the Association.

11.3. Marketing and Sales Activities.

The Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Facilities and Units which the Declarant owns, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient or incidental to the construction, management, sale and leasing of Units which it owns, including, but not limited to, business offices, signs, model units and sales or leasing offices. There shall be no restrictions on the number, size, location or relocation of any such facilities. The Declarant and authorized Builders shall have easements for access to and use of such facilities. At such time as Declarant ceases to be an Owner or ceases use of or relocates any such facilities, Declarant shall be entitled to remove any personal property and fixtures located therein.

11.4. Right to Develop.

The Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Facilities for the purpose of making, constructing and installing such improvements to the Common Facilities as it deems appropriate in its sole discretion.

11.5. Right to Approve Additional Covenants.

No Person shall record any declaration of covenants, conditions and restrictions or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

11.6. Right to Approve Changes in Community Standards.

No amendment to or modification of any Restrictions and Rules or Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 10.1.

11.7. Right to Transfer or Assign Declarant Rights.

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

11.8. Exclusive Rights to Use Name of Development.

No Person shall use the name "Valley Creek Estates" or any derivative of such name in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the name "Valley Creek Estates" in printed or promotional matter where such term is used solely to specify that particular property is located within Valley Creek Estates and the Association shall be entitled to use the words "Valley Creek Estates" in its name.

11.9. Termination of Rights.

Except where a shorter period is specified in this Declaration or the Act, the rights contained in this Article shall not terminate until the earlier of (a) 15 years from the date this Declaration is recorded in the Public Records, or (b) recording by Declarant of a written statement that all sales activity within or planned for the Community has ceased.

**PART FIVE: PROPERTY RIGHTS WITHIN VALLEY CREEK ESTATES**

*The nature of living in a planned community requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, the developer, the Association and others within or adjacent to the community.*

**Article XII Easements**

12.1. Easements in Common Facilities.

The Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Facilities, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules regulating guest use of the Common Area;
- (d) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Facilities, subject to such approval requirements as may be set forth in this Declaration;
- (e) The right of the Board to permit use of Common Facilities by persons other than Owners, their families, lessees and guests upon such terms and conditions as the Board may establish; and
- (f) The right of the Association, acting through the Board, to mortgage, pledge or

hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

12.2. Easements of Encroachment.

The Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent portion of the Common Facilities and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to reckless or willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

12.3. Easements for Utilities, Etc.

(a) The Declarant reserves for itself and its affiliates, so long as the Declarant or an affiliate owns any property described on Exhibit "A" or "B" of this Declaration, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve the Properties, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on recorded plats;

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in Section 12.3(a)(i); and

(iii) access to read utility meters

(b) Declarant also reserves for itself the non-exclusive right and power to grant and record in the Public Records such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" and "B."

(c) All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work,

the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

12.4. Easements to Serve Additional Property.

The Declarant hereby reserves for itself and its duly authorized agents, successors, assigns and mortgagees, a perpetual, nonexclusive easement over all roadways within the Properties and over the Common Facilities, for the purposes of enjoyment, use, ingress, egress and access to and from, and development of the Additional Property or any portion thereof, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Facilities for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the property burdened by this easement as a result of the exercise of this easement for the purpose of development of any property described in clauses (a) or (b) above. Declarant further agrees that if the easement is exercised for permanent access to any portion of such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association or impose covenants on such property (or portion thereof) obligating the owners thereof, or an association of such owners, to share the cost of maintaining, repairing, replacing and operating such roadways, any landscaping and directional signage within the rights-of-way thereof or landscaping easements adjacent thereto as shown on the recorded plat depicting such roadways, and any gates, booths and entry features controlling access, ingress and egress over such roadways, including the cost associated with staffing any gate houses, booths or other facilities for controlling access over such roadways.

12.5. Easements for Maintenance, Emergency and Enforcement.

The Declarant grants to the Association easements over the Properties as necessary to enable the Association to fulfill its maintenance responsibilities under Section 8.2. The Association shall also have the right, but not the obligation, to enter upon any Unit (but not into a dwelling) for emergency, security and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

12.6. Easement for Access and Parking.

The Declarant hereby grants to each Owner a perpetual, non-exclusive easement for access, ingress and egress over all of the roadways within the Properties. Such easement may be exercised by the Owner and occupants of the Owner's Unit, their guests and invitees. Such



easement shall be subject to the right of the Declarant or its successors, assigns or successors-in-title to such roadways, to regulate access over such roadways by gating or otherwise restricting entry and requiring use of identification, access control cards, coded entry mechanisms or similar means designed to restrict access to authorized persons.

12.7. Easements for Perimeter Walls and Fencing.

There are hereby reserved to Declarant (so long as the Declarant or any affiliate of Declarant owns any property described on Exhibits "A" or "B" to this Declaration), the Association and the designees of each, perpetual, non-exclusive easements for installation, maintenance, repair, removal and replacement of perimeter walls or fencing, trees, shrubs and other landscaping buffers, over those portions of the Properties lying within 15 feet of the perimeter boundaries of the Properties, as such boundaries may exist and change from time to time (the "perimeter easement area"), and for ingress and egress over the Units and Common Facilities as reasonably necessary to obtain access to the perimeter easement area for such purposes. Such easement shall include the right to disturb existing landscaping within the perimeter easement area, to dig holes, and to temporarily pile dirt and plant material upon the perimeter easement area, provided the area is restored to a neat and attractive condition, to the extent practical, as soon as reasonably possible after completion of the activities authorized hereunder. Nothing herein shall obligate the Declarant or the Association to install any perimeter fencing, walls or landscaping in any perimeter easement area.

12.8. Other Recorded Easements and Licenses.

The recording data for any recorded easements and licenses appurtenant to or included in the Properties, or to which any portion of the Properties is or may become subject, is set forth on Exhibit "E".

**PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

*The growth and success of the Community as a place in which people enjoy living, working and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with our neighbors, and protection of the rights of others who have an interest in the community.*

**Article XIII Dispute Resolution and Limitation on Litigation**

13.1. Consensus for Association Litigation.

The Association shall not commence a judicial or administrative proceeding without the approval at least 75% of the total Association vote, except that no such approval shall be required for actions brought by the Association (a) to enforce the Governing Documents; (b) to collect delinquent assessments (including, without limitation, the foreclosure of liens securing the same); (c) to challenge ad valorem taxation; or (d) as a counterclaim in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings.

13.2. Alternative Method for Resolving Disputes.

(a) Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 13.3 in a good faith effort to resolve such Claim.

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

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Article IV, which shall not be subject to review;

except that, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 13.3:

(i) any suit by the Association against any Bound Party to enforce the provisions of Article X (relating to assessments);

(ii) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article IV (Use and Conduct) and Article V (Architecture and Landscaping);

(iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 13.3(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 13.3.

13.3. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

1. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
2. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
3. Claimant's proposed remedy; and
4. that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

2. If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of an independent agency providing dispute resolution services in the York County area upon which the Parties can agree, or if they cannot agree, a similar agency designated by the closest chapter of the Community Associations Institute.

3. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

4. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated. The Claimant shall

thereafter be entitled to sue in any court of competent jurisdiction or to initiate proceedings before any appropriate administrative tribunal on the Claim. Each Party shall bear its own costs of the mediation, including attorneys fees, and each Party shall share equally all charges rendered by the mediator.

5. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 13.3 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 13.3. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

#### **Article XIV Mortgagee Provisions**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

##### 14.1. Notices of Action.

An institutional holder, insurer or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or Occupant which is not cured within 60 days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

##### 14.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of

distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

14.3. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

14.4. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

14.5. Construction of Article XIV.

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws or Pennsylvania law for any of the acts set out in this Article.

**PART SEVEN: CHANGES IN THE COMMUNITY**

*Communities such as Valley Creek Estates are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. Valley Creek Estates and its governing documents must be able to adapt to these changes while protecting the things that make it special*

**Article XV Changes in Units and Ownership of Units**

15.1. Changes in Ownership.

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

15.2. Subdivision, Conversion and Combining of Units.

(a) No Unit may be subdivided into two or more Units except that any Unit owned by the Declarant may be subdivided into two or more Units, or converted to a combination of Units and Common Facilities.

If the taking or conveyance does not involve any improvements on the Common Facilities, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be apportioned as provided in the Act.

16.2. Dedication of Common Facilities.

Upon 2/3 vote of the Board of Directors, the Association may dedicate portions of the Common Facilities to any other local, state or federal governmental entity.

**Article XVII Amendment of Declaration**

17.1. Corrective Amendments.

The Board may amend this Declaration without the consent of Owners or Mortgagees, if, in its reasonable judgment, such amendment is necessary to (a) cure an ambiguity; (b) correct or supplement any provision of the Declaration that is defective, missing or inconsistent with any other provision of the Declaration or the Act; or (c) conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust on Units, such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, provided that the Association first obtains an opinion from independent legal counsel that the proposed amendment is permitted by the terms of this Section 17.1.

17.2. Other Amendments.

(a) Except in the case of amendments which the Act permits to be effected by the Declarant, the Association or a Unit Owner without a vote of the membership, and except as provided in subsection (b) below, any amendment to this Declaration shall require the affirmative vote of persons entitled to cast at 67% of the total votes in the Association and the consent of the Class "B" Member, if any.

(b) Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Except to the extent expressly permitted or required by the Act, no amendment pursuant to this Section 17.2 may create or increase special declarant rights, as defined in the Act, alter the terms or provisions of this Declaration governing completion, leasing or conveyance of Common Areas, increase the number of Units, or change the boundaries of any Unit, the common expense liability or votes allocated to any Unit, or the uses to which any Unit is restricted, without the consent of all Owners affected by such amendment. No amendment which would have the effect of removing, revoking or modifying any right or privilege of the Declarant or Class "B" Member, shall be valid without the express written joinder of the Declarant or the Class "B" Member (or the assignee of such right or privilege). In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

17.3. Validity and Effective Date.

(a) If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

(b) Any amendment recorded by the Association shall be certified by an officer of the Association designated for that purpose, or in the absence of other designation, by the President of the Association, and shall become effective upon recording in the Public Records.

(c) Nothing in this Article shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

COUNTYWIDE DEVELOPMENT, INC.,  
a Pennsylvania corporation

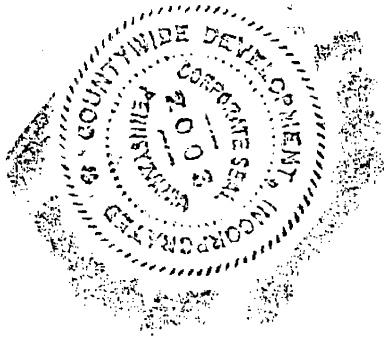
By: \_\_\_\_\_

*John D. Helman*  
John D. Helman,  
Its President

Attest: \_\_\_\_\_

*Carrie Dietrich*

[CORPORATE SEAL]



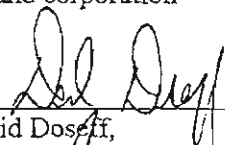
**CONSENT**

On this 28<sup>th</sup> day of July, 2004, Dan Ryan Builders, Inc., a Maryland corporation (the "Builder"), has executed this Consent to the Declaration of Covenants, Conditions and Restrictions for Valley Creek Estates, a Planned Community (the "Declaration"), to which this Consent is appended, to acknowledge, agree with and consent to, the terms and provisions of Section 1.3 of the Declaration, and all other provisions expressly set forth in the Declaration which apply to the Builder as a consenting party to the Declaration and a successor Declarant, and as a purchaser of Units, and to accept the transfer and assignment of the Special Declarant Right referred to in Section 7.2 of the Declaration.

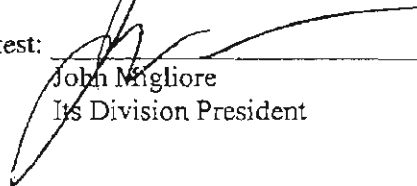
IN WITNESS WHEREOF, the Builder, intending to be legally bound hereby, has caused this Consent to be duly executed as of the day and year first set forth above.

DAN RYAN BUILDERS, INC.,  
a Maryland corporation

By: \_\_\_\_\_

  
David Doseff,  
Its Executive Vice President

Attest: \_\_\_\_\_

  
John Migliore  
Its Division President

[CORPORATE SEAL]



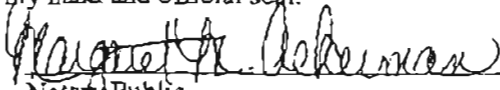
COMMONWEALTH OF PENNSYLVANIA:

: ss.

COUNTY OF FRANKLIN :

On this, the 19<sup>th</sup> day of July, 2004, before me, a Notary Public, the undersigned officer, personally appeared John D. Helman, who acknowledged himself to be the President of Countywide Development, Inc., a Pennsylvania corporation, and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

In Witness Whereof, I hereunto set my hand and official seal.

  
Notary Public

My Commission expires:

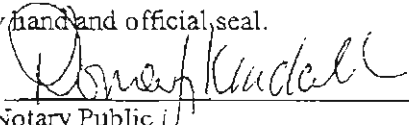


NOTARIAL SEAL MARGARET M. ACKERMAN, Notary Public Waynesboro Boro, Franklin County My Commission Expires Oct. 12, 2007
---

STATE OF MARYLAND :  
: ss.  
COUNTY OF FREDERICK :

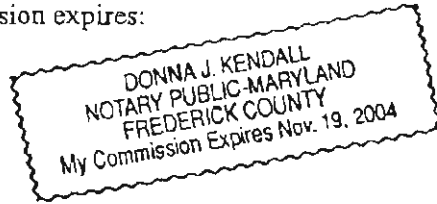
On this, the <sup>20th</sup> 20 day of July, 2004, before me, a Notary Public, the undersigned officer, personally appeared David Doseff, who acknowledged himself to be the Executive Vice President of Dan Ryan Builders, Inc., a Maryland corporation, and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

In Witness Whereof, I hereunto set my hand and official seal.

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

My Commission expires:

(SEAL)



**EXHIBIT "A"**

**Land Initially Submitted**

All of the following real estate situate in Montgomery Township, Franklin County, Pennsylvania:

Lots 1, 13, 15, 16, 17 and 18 as shown on that certain Final Plat prepared by Shelly & Witter, Inc., dated February, 1996, revised May, 2003, approved by the Montgomery Township Board of Supervisors on August 4, 2003, and recorded in Franklin County Plat Book 288I, Page 364 (the "Final Plat").

Being the same lots conveyed to Countywide Development, Inc. by deed of John D. Helman, Edwin D. Martin, David H. Martin and Jeryl L. Martin, dated July 19, 2004 and recorded in Franklin County Volume 2517 Page 445.

**EXHIBIT "B"**

**Land Subject to Annexation**

All of the following real estate situate in Montgomery Township, Franklin County, Pennsylvania:

Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 and 49 as shown on the Final Plat.

Being part of the same real estate conveyed to John D. Helman, Edwin D. Martin, David H. Martin and Jeryl L. Martin by deed of Charles E. Carlson and May Ann Carlson, dated October 6, 2003 and recorded in Franklin County Volume 2281, Page 137.

## EXHIBIT "C"

### Land Comprising the Common Facilities

All of the following described real estate situate in Montgomery Township, Franklin County, Pennsylvania, bounded and described as follows:

BEGINNING at a point on line of lands now or formerly of William C. Forbes and at Lot 21 on the hereinafter referred to Final Plat; thence with Lot 21 North 16 degrees 19 minutes 44 seconds East 74.49 feet to a point in a stream of water known as Licking Creek; thence in Licking Creek and with Lots 21, 22, 23, 24, 25, 26, 27, 28 and 29 the following courses and distances: North 22 degrees 30 minutes 00 seconds West 68.63 feet to a point; thence North 22 degrees 24 minutes 02 seconds East 52.09 feet to a point; thence North 81 degrees 33 minutes 42 seconds East 27.33 feet to a point; thence North 58 degrees 09 minutes 28 seconds East 52.38 feet to a point; thence South 80 degrees 24 minutes 07 seconds East 46.74 feet to a point; thence South 71 degrees 52 minutes 38 seconds East 53.96 feet to a point; thence North 76 degrees 23 minutes 54 seconds East 102.23 feet to a point; thence North 64 degrees 30 minutes 09 seconds East 78.65 feet to a point; thence South 88 degrees 58 minutes 19 seconds East 43.60 feet to a point; thence South 88 degrees 58 minutes 19 seconds East 57.83 feet to a point; thence South 75 degrees 17 minutes 02 seconds East 44.42 feet to a point; thence South 76 degrees 59 minutes 32 seconds East 100.23 feet to a point; thence South 43 degrees 15 minutes 01 second East 95.00 feet to a point; thence South 04 degrees 05 minutes 32 seconds East 49.01 feet to a point; thence South 07 degrees 14 minutes 56 seconds East 34.46 feet to a point; thence South 28 degrees 50 minutes 37 seconds West 48.17 feet to a point; thence South 32 degrees 24 minutes 17 seconds East 84.04 feet to a point; thence North 84 degrees 02 minutes 05 seconds East 34.83 feet to a point; thence North 84 degrees 02 minutes 05 seconds East 108.55 feet to a point; thence North 84 degrees 02 minutes 05 seconds East 15.03 feet to a point; thence South 78 degrees 32 minutes 25 seconds East 97.52 feet to a point; thence North 82 degrees 15 minutes 40 seconds East 52.07 feet to a point; and thence North 56 degrees 28 minutes 30 seconds East 42.92 feet to a point; thence leaving said Licking Creek and with Lot 29 North 16 degrees 55 minutes 29 seconds East 257.89 feet to a point at Lot 31; thence with Lot 31 North 79 degrees 25 minutes 29 seconds East 225.00 feet to a point in the centerline of Pittman Road (T.R. 313); thence in the centerline of Pittman Road and with Lots 45, 46, 47, 48 and 49, the following courses and distances: South 10 degrees 34 minutes 31 seconds East 14.32 feet to a point; thence along a curve to the left having a radius of 100.00 feet and an arc length of 126.47 feet, along a chord bearing South 46 degrees 48 minutes 20 seconds East 118.21 feet to a point; thence along a curve to the left having a radius of 540.00 feet and an arc length of 251.44 feet, along a chord bearing North 83 degrees 37 minutes 29 seconds East 249.17 feet to a point; thence North 70 degrees 17 minutes 08 seconds East 58.78 feet to a point; thence North 67 degrees 03 minutes 52 seconds East 76.62 feet to a point; and thence North 67 degrees 03 minutes 52 seconds East 134.79 feet to a point at Lot 6-B; thence leaving Pittman Road and with Lot 6-B South 11 degrees 11 minutes 01 second East 313.87 feet to a point in Licking Creek, at lands now or formerly of George E. Pine; thence leaving said Licking Creek and with said lands of Pine South 79 degrees 14 minutes 52 seconds West 1,024.74 feet to a point; thence with same and with lands now or formerly of J. Merle Carbaugh North 83 degrees 39 minutes 49 seconds West 989.81 feet to a point; thence with same and with lands now or formerly of William C. Forbes North 70 degrees 41 minutes 38 seconds West 129.38 feet to a point at Lot 21, the place of beginning. CONTAINING 11.831 acres (erroneously stated as 1.4177 acres in the Lot Area Chart on the Final Plat hereinafter referred to) and Being Outlot "A" on a Final Plat, Lots 1-49, Licking Creek Estates as prepared by Shelly & Witter, Inc., dated February, 1996, revised May, 2003 and recorded in Franklin County Plat Book 288I, Page 364.

## EXHIBIT "D"

### Initial Restrictions and Rules

The following restrictions and rules may be expanded, clarified or further defined by rules adopted pursuant to Article IV of the Declaration.

#### 1. Restrictions on Use.

(a) Units shall be used only for single family residential purposes, and no business, trade, auction, garage or yard sale, moving sale, rummage sale, flea market or similar activity shall be conducted on any Unit, except that an Owner or occupant residing in the dwelling on a Unit may conduct business activities ancillary to a primary residential use within the dwelling so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the dwelling; (ii) the business activity conforms to all applicable zoning requirements; (iii) the business activity does not involve door-to-door solicitation of residents of the Community; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked within the Community significantly greater than that typical of dwellings in which no business activity is being conducted; (v) the business activity is consistent with the residential character of the neighborhood and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board; and (vi) the business activity does not increase the liability or property insurance obligation or premium of the Association.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

The leasing of a dwelling shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties.

(b) No Unit or dwelling shall be made subject to or used for a timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Unit or dwelling rotates among participants in the program on a fixed or floating time schedule over any period of time.

2. Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Parking of any vehicles on streets, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages (except temporarily during loading and unloading); provided, temporary guest parking shall be permitted subject to such rules as the Board may adopt and provided, further, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area;

(b) Use of motorcycles, mopeds, motorized bicycles, motorized tricycles, go-carts, miniature cars or similar motorized vehicles other than those granted special permits by the Board. This subsection (b) does not restrict the use of motorized scooters or wheelchairs;

(c) Raising, breeding or keeping of animals, livestock or poultry of any kind, except that up to two dogs, cats or other usual and common household pets may be permitted in the dwelling on a Unit, and no more than four horses may be kept on Lot No. 21; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other dwellings shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law;

(d) Any activity which emits foul or obnoxious odors detectable from outside the Unit boundaries or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of dwellings on other Units;

(e) Any activity which violates local, state or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(f) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Unit;

(g) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance or nuisance to persons using the Common Area or to the occupants of dwellings on other Units;

(h) Outside burning of trash, leaves, debris or other materials, except during the normal course of constructing a dwelling on a Unit;

(i) Use or discharge of any radio, loudspeaker, horn, whistle, bell or other sound device so as to be audible to occupants of dwellings on other Units, except alarm devices used exclusively for security purposes;

(j) Use and discharge of firecrackers and other fireworks;

(k) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond or lake, or elsewhere within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site;

(l) Accumulation of rubbish, trash or garbage except between regular garbage pick ups, and then only in approved containers;

(m) Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers or storm drains, except that the Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;

(n) Discharge of firearms, including "B-B" guns, pellet guns and other firearms of all types, regardless of size (however, the Board shall have no obligation to take action to prevent or stop such discharge);

(o) On-site storage of gasoline, heating or other fuels, except up to five gallons of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment. This provision shall not apply to any underground fuel tank approved pursuant to Article V;

(p) Capturing, trapping or killing of wildlife within the Properties, except in circumstances posing an imminent threat to the safety of persons using the Properties;

(q) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands or air quality within the Properties or which result in unreasonable levels of sound or light pollution;

(r) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area of the dwelling on any Unit without prior approval pursuant to Article V;

(s) Operation of motorized vehicles, other than wheelchairs and motorized scooters, on pathways or trails maintained by the Association, except that golf carts may be operated on cart paths intended for such purposes; and

(t) Any construction, erection or placement of any thing, permanently or temporarily, outside of enclosed structures on the Unit, except in strict compliance with the provisions of Article V of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers and similar structures; hedges, walls, dog runs, animal pens or fences of any kind (other than invisible fences); and satellite dishes and antennas, except that:



(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter;

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "Permitted Antennas") shall be permitted on Units, subject to such reasonable requirements as to location and screening as the reviewer may impose, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property.

3. Prohibited Conditions. The following shall be prohibited within the Properties:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Properties;

(b) Structures, equipment or other items visible outside of enclosed structures on the Unit which have become rusty, dilapidated or otherwise fallen into disrepair; and

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands or other ground or surface waters, except that Declarant and the Association shall have the right to draw water from such sources. This subsection shall may not be amended without the prior written consent of the Class "B" Member, if such exists.

4. Leasing of Units.

(a) "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity or emolument. All leases shall be in writing and shall provide that the lessee and all occupants of the leased Unit are bound by the terms of the Governing Documents.

(b) Units may be leased only in their entirety; no fraction or portion consisting of less than the entire Unit may be leased. All leases shall be for an initial term of no less than six months, except with the prior written consent of the Board. Units may be leased only once during each calendar year unless otherwise approved by the Board. There shall be no subleasing of Units or assignment of leases unless prior written approval is obtained from the Board of Directors. The Board may adopt reasonable rules regulating leasing and subleasing.

(c) All leases shall be in writing and shall provide that the lessee and all occupants of the leased Unit are bound by the terms of the Governing Documents. Notice of any lease,

together with such additional information as may be required by the Board, shall be given to the Board by the Owner within 10 days of execution of the lease. The Board, in its discretion, may require a security deposit from the Owner or lessee of the Unit. The Owner must make available to the lessee copies of the Declaration, By-Laws and the Restrictions and Rules.

## EXHIBIT "E"

### Recorded Easements and Licenses

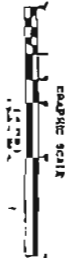
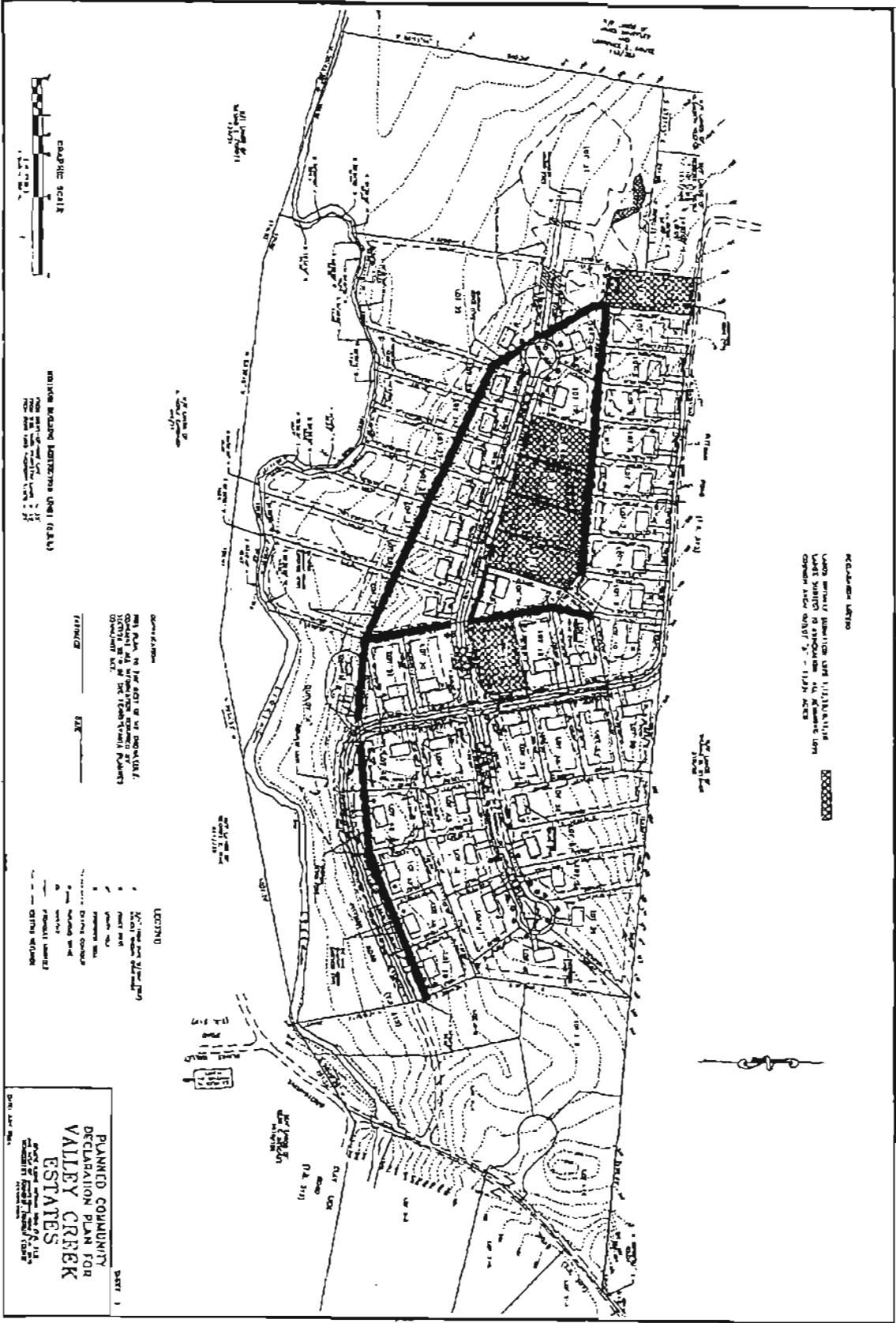
In addition to the easements and covenants set forth in this Declaration, all or portions of the Community may be subject to easements and licenses contained in the following:

1. Right-of-way from Clifford Secrist to Mercersburg, Lehmasters and Markes Electric Co., dated July 13, 1946 and recorded in Franklin County Deed book 355, Page 670.
2. Right-of-way from Clifford E. Secrist and Blanche Secrist to The United Telephone Company of Pennsylvania, dated July 26, 1960 and recorded in Franklin County Deed Book 535, Page 343.
3. Right-of-way from Faith E. Carbaugh to West Penn Power Company, dated April 24, 1990 and recorded in Franklin County Deed Book 1082, Page 262.
4. Right-of-way from Faith E. Carbaugh et al to West Penn Power Company, dated May 17, 1990 and recorded in Franklin County Deed Book 1085, Page 237.
5. Easements for sanitary sewer lines and easements for streets as shown on Final Plat, Lots 1-49, Licking Creek Estates as prepared by Shelly & Witter, Inc., dated February, 1996, revised May, 2003 and recorded in Franklin County Plat Book 288I, Page 364.

**EXHIBIT "F"**

**Plat**

Planned Community Declaration Plan for Valley Creek Estates as prepared by Shelly & Witter, Inc., dated July 2004 and recorded in Franklin County Plat Book 288I, Page 724, a copy of which is attached hereto.



RELATIVE BUILDING FOOTPRINTS ONLY (S.A.S.)  
 FROM THE PLANNED COMMUNITY  
 DECLARATION PLAN FOR VALLEY CREEK  
 ESTATES

GENERAL NOTES:  
 1. THIS PLAN IS THE BASIS OF THE DEVELOPER'S  
 OBLIGATION TO THE HOMEOWNERS ASSOCIATION  
 OF VALLEY CREEK ESTATES.  
 2. THE HOMEOWNERS ASSOCIATION SHALL  
 BE RESPONSIBLE FOR THE MAINTENANCE OF  
 THE COMMON AREAS.

LEGEND:  
 1. 1/4" CONCRETED DRIVE (SEE PLAN)  
 2. DRIVE PAVEMENT  
 3. DRIVE CURB  
 4. DRIVE SIDEWALK  
 5. DRIVE SIDEWALK

PLANNED COMMUNITY  
 DECLARATION PLAN FOR  
 VALLEY CREEK  
 ESTATES  
 SHEET 1  
 DATE: JAN. 1981

REVISIONS LIST:  
 1. 1/11/81 - 1/11/81  
 2. 1/11/81 - 1/11/81  
 3. 1/11/81 - 1/11/81