

**Record and mail to:  
Anthony Faranda-Diedrich  
Charter Homes and Neighborhoods  
1190 Dillerville Rd.  
Lancaster, PA 17601**

**Parcel Identification: 421-K-105**

Pursuant to the provisions of 68 Pa.C.S. Section 5201  
this Declaration shall be recorded  
in the Department of Real Estate  
of Allegheny County, Pennsylvania  
and is to be indexed in the same records  
as are notarized for the recording of a deed and shall identify  
**Charter Homes at Elmhurst, Inc.**, (Declarant)  
as the **grantor**, and  
**Elmhurst, a Planned Community** (Name of Planned Community)  
as the **grantee**.

with the consent and agreement of Titleholder  
**Sewickley Elmhurst Partners, LLC**

All of the real property made subject to this Declaration  
is located in **Sewickley Borough**  
**Allegheny County**  
**Pennsylvania**

**DECLARATION  
OF COVENANTS, RESTRICTIONS, EASEMENTS  
AND ESTABLISHMENT OF HOMEOWNERS ASSOCIATION  
FOR ELMHURST, A PLANNED COMMUNITY  
IN SEWICKLEY BOROUGH, ALLEGHENY COUNTY, PENNSYLVANIA**

AS AMENDED BY

**FIRST AMENDMENT TO  
DECLARATION  
OF COVENANTS, RESTRICTIONS, EASEMENTS  
AND ESTABLISHMENT OF HOMEOWNERS ASSOCIATION  
FOR ELMHURST, A PLANNED COMMUNITY  
IN SEWICKLEY BOROUGH, ALLEGHENY COUNTY, PENNSYLVANIA**

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DECLARATION  
OF COVENANTS, RESTRICTIONS, EASEMENTS  
AND ESTABLISHMENT OF HOMEOWNERS ASSOCIATION  
FOR ELMHURST, A PLANNED COMMUNITY  
IN SEWICKLEY BOROUGH, ALLEGHENY COUNTY, PENNSYLVANIA

This Declaration is made this \_\_\_\_ day of \_\_\_\_\_ 2015 by Charter Homes at Elmhurst, Inc., a Pennsylvania corporation (herein referred to as "Declarant").

PREAMBLE

WHEREAS, Declarant is the equitable owner of all of the real property described in Exhibit "A" attached to and made a part of this Declaration (referred to herein as the "Subject Property" and sometimes referred to herein as the "Community" or the "Community of Elmhurst"); and

WHEREAS, the Subject Property has been approved for development and improvement pursuant to the requirements of all governmental entities having jurisdiction, including, without limitation, as shown on the Initial Development Plan as defined in Section 1.25.1 of this Declaration; and

WHEREAS, Declarant desires to develop and improve the Subject Property, including but not limited to, in accordance with the Development Plan(s), and to, within the Subject Property, in accordance with the provisions of the Pennsylvania Uniform Planned Community Act, 68 Pa.C.S. § 5101, *et seq.*, (referred to herein as the "Act"), create a Planned Community comprised of individual land Units upon which Dwellings may be constructed and Common Facilities comprised of open space land areas, vehicular and pedestrian access, and infrastructure improvements (including without limitation, stormwater management facilities); and

WHEREAS, for the purposes of providing for the preservation and enhancement of the property values, amenities, and opportunities in the Subject Property contributing to the personal and general health, safety and welfare of owners and residents, and to make provision for the maintenance and administration of the Common Elements, the performance of all other obligations of the Association of Unit Owners, the enforcement of covenants and restrictions set forth in this Declaration or in any document or plan referred to in this Declaration, and the method by which assessments and charges shall be made and enforced against each parcel of real property which has been made subject to this Declaration and against the Owner(s) thereof for the aforesaid purposes, and to subject the Subject Property to the covenants, restrictions, easements, charges and liens set forth in this Declaration, each and all of which is and are for the benefit of the Subject Property and for each Owner, tenant, or occupant of a part thereof; and

WHEREAS, to provide a means for meeting the purposes and intents set forth in this Declaration, the Act, and the requirements of the Borough of Sewickley, Allegheny County, Pennsylvania, the Declarant has incorporated, under the laws of the Commonwealth of Pennsylvania, the "Elmhurst Neighborhood Association, Inc.," a non-profit corporation in which each Unit Owner in the Subject Property shall be a Member and which such Membership shall run with and be inseparable from ownership of a Unit in the Subject Property;

NOW, THEREFORE, Declarant hereby declares that the Subject Property, and each part of, or Unit in, the Subject Property (excepting any part thereof, if any, Conveyed or to be Conveyed to Governmental/Public Service Entities) is and shall be held, transferred, sold, conveyed and occupied subject to the easements, covenants, conditions, restrictions, charges and liens set forth in this Declaration;

AND FURTHER, the Subject Property is, by this Declaration, made a Planned Community (as such term is defined by the Act) in accordance with the provisions of the Act;

AND FURTHER, Declarant hereby delegates and assigns to the Elmhurst Neighborhood Association, Inc. the power and duty of maintaining and administering the Common Elements; except as specifically set forth herein, administering and enforcing the covenants and restrictions set forth in this Declaration, collecting and disbursing the assessments and charges hereinafter set forth in this Declaration; and promoting the recreation, health, safety, and welfare of the residents of the Community of Elmhurst.

PREAMBLE TO FIRST AMENDMENT

WHEREAS, the Subject Property (as such term is defined in Section 1.48 of this Declaration) has been made subject to the terms and conditions of this Declaration by that certain *Declaration of Covenants, Restrictions, Easements and Establishment of Homeowners Association for Elmhurst, a Planned Community in Sewickley Borough, Allegheny County, Pennsylvania* ("Declaration") of record in the Department of Real Estate of Allegheny County, Pennsylvania in Deed Book Volume 15926, Page 1; and

WHEREAS, as set forth in Section 2.5 of this Declaration, there are Twenty Six (26) Units in the Subject Property; and

WHEREAS, the Owners of not less than eighteen (18) of the Units (being not less than sixty seven percent (67%) of the Units within the Subject Property) desire to amend this Declaration in accordance with the terms of Section 9.3 of this Declaration; and

WHEREAS, this Declaration is, by this First Amendment, amended during the Development Period (as such Development Period is defined in Section 1.24 of this Declaration), pursuant to the terms of Section 9.3 of this Declaration, Declarant joins in this First Amendment; and

WHEREAS, as of the date of this First Amendment, there are no Eligible Mortgage Holders (as such term is defined in Section 8.2.5 of this Declaration); and

WHEREAS, this First Amendment contains no amendments to provisions pursuant to which any special Declarant rights have been reserved to a Declarant and this First Amendment is not subject to the express written joinder of the Declarant therefor.

WHEREAS, this Amendment contains no provisions impairing or affecting the rights priorities, remedies, or interests of Sewickley Borough, Allegheny County, Pennsylvania and the prior written consent of Sewickley Borough is not required for adoption.

NOW, THEREFORE, this Declaration is amended as follows:

## ARTICLE I

### DEFINITIONS

In addition to the terms set forth in this Article I, words and terms in this Declaration shall be defined pursuant to the provisions of the Act unless inconsistent therewith, in which case this Declaration shall control.

- 1.1. "Act" shall mean and refer to the Pennsylvania Uniform Planned Community Act, 68 Pa.C.S. § 5101, *et seq.*
- 1.2. "Allocated Interest." See "Association Interest."
- 1.3. "Approved Development" shall mean and refer to the development and improvement of the Subject Property pursuant to and in accordance with:
  - 1.3.1. the Development Plan(s), as the same may be modified, as approved by Sewickley Borough, Allegheny County, Pennsylvania;
  - 1.3.2. the Official Zoning Ordinance of the Borough of Sewickley; and
  - 1.3.3. the Borough of Sewickley Subdivision and Land Development Ordinance.
- 1.4. "Architecturally Controlled Improvement" shall have the meaning set forth in Section 6.2.1 of this Declaration
- 1.5. "Assignee Declarant." See "Declarant."
- 1.6. "Assessment Liability" shall mean and refer to Common Expense Liability and to Other Assessment Liability.
  - 1.6.1. "Common Expense Liability" shall mean and refer to the liability levied against each Unit and to the liability of the Owner(s) thereof for the General Common Expenses pursuant to Section 5.4 of this Declaration. The Common Expense Liability appurtenant to each Unit each year is the product of the Association Interest of such Unit and the annual General Common Expense Budget.
  - 1.6.2. "Other Assessment Liability." shall mean and refer to the liability levied against each Unit and to the liability of the Owner(s) thereof for such Unit's share of Special Allocation Expenses, together with Special Assessments for Capital Improvements, if any; Assessment to repair damage caused by the Owner or others for whom the Owner is responsible, if any; and Emergency Assessments, if any, levied against such Unit, all as duly adopted pursuant to the provisions of Sections 5.4, 5.5, 5.6, and 5.7 of this Declaration.



- 1.7. "Association" shall mean and refer to the Elmhurst Neighborhood Association, Inc., a Pennsylvania non-profit corporation, its successors and assigns as organized pursuant to the provisions of the Act and with, except as specifically granted or limited as set forth in this Declaration, all powers described in the Act.
- 1.8. "Association Interest" shall mean and refer to the Allocated Interest as defined in the Act and shall mean and refer to the relative liability, expressed as a percentage, of each Unit for the General Common Expenses of the Association. The Association Interest of each Unit shall be the quotient of one (1) divided by the number of Units in the Community, expressed as a decimal number. (By way of example, if there are 26 Units in the Community, the Association Interest of each Unit shall be 1/26 or 3.846%.)
- 1.9. "Association Obligations" shall mean and refer to the requirements of the Association to comply with and to perform all obligations and duties:
  - 1.9.1. pursuant to all provisions of this Declaration and of the Governing Documents, including but not limited to the obligations set forth in Section 4.3 of this Declaration and all other obligations herein and therein; and
  - 1.9.2. pursuant to all provisions of all conditions, covenants and restrictions of record applicable to the Subject Property.
- 1.10. "Attached Dwelling." See "Dwelling."
- 1.11. "Borough" and "Municipality" are synonymous and each shall mean and refer to the Borough of Sewickley, Allegheny County, Pennsylvania, duly and properly constituted as a political subdivision of the Commonwealth of Pennsylvania.
- 1.12. "Common Elements" shall mean and refer to the Common Facilities and the Controlled Facilities.
  - 1.12.1. "Common Facilities" shall mean all real property interest (including all of the Improvements thereto whether heretofore or hereafter completed) of all of the Subject Property not designated as Units, excepting thereout and therefrom any and all thereof Conveyed or to be Conveyed to any Governmental/Public Service Entity and shall mean and refer to the General Common Facilities and the Limited Common Facilities.
    - 1.12.1.1. "General Common Facilities" shall mean and refer to all of the Common Facilities which are not Limited Common Facilities. General Common Facilities are set forth in Section 2.7.1 of this Declaration.
    - 1.12.1.2. "Limited Common Facilities" shall mean and refer to Common Facilities allocated for the exclusive use (subject to enjoyment, access, and use easements as set forth in Section 3.3.2 of this Declaration) appurtenant to one or more but fewer than all of the Units. Limited Common Facilities are set forth in Section 2.7.2 of this Declaration.

- 1.12.2. "Controlled Facilities" shall mean and refer to those portions of the Subject Property whether or not a part of a Unit, which are not Common Facilities but are maintained, improved, repaired and replaced by the Association and shall mean and refer to the General Controlled Facilities and the Limited Controlled Facilities.
- 1.12.2.1. "General Controlled Facilities" shall mean and refer to all of the Controlled Facilities which are not Limited Controlled Facilities. General Controlled Facilities are set forth in Section 2.7.3 of this Declaration.
- 1.12.2.2. "Limited Controlled Facilities" shall mean and refer to Controlled Facilities allocated for the exclusive use appurtenant to one or more but fewer than all of the Units. Limited Controlled Facilities are set forth in Section 2.7.4 of this Declaration.
- 1.13. "Common Expense Liability." See "Assessment Liability."
- 1.14. "Common Facilities." See "Common Elements."
- 1.15. "Community" or "Community of Elmhurst" shall mean and refer to the Subject Property, made subject to the terms and conditions of this Declaration, as developed in accordance with the Approved Development.
- 1.16. "Community Improvements" shall mean and refer to all those changes, items and facilities which shall be made to, constructed on, or placed within the Subject Property (1) shown and set forth on the Development Plan(s) and/or (2) caused to be made to the Subject Property by the Declarant pursuant to the provisions of Section 2.9 of this Declaration, subject however that Community Improvements shall not, with the exception of Facilities and Amenities (as such are defined in Section 1.28 of this Declaration), include any structures, Dwellings, appurtenances thereto, or improvements as are constructed on, or made to, a Unit.
- 1.17. "Controlled Facilities." See "Common Elements."
- 1.18. "Convey" or "Conveyance" shall mean and refer to the act of conveyance, dedication, lease, grant of easement or license, or any other similar grant of an interest in real property, together with the acceptance thereof by the grantee.
- 1.19. "Declarant" shall mean and refer to Charter Homes at Elmhurst, Inc., a Pennsylvania corporation, its successors and assigns for the purpose of development which shall have common authority and responsibility for development of the Subject Property. Declarant may assign the rights and delegate the duties of Declarant herein in whole or in part to one or more assignees, who shall thereafter have such common authority and responsibility for development of the Subject Property as (an) Assignee Declarant(s). There is no limit to the number of persons or entities who may become Assignee Declarants.

- 1.20. "Declarant Transition Period" shall mean and refer to the time period commencing on the date of the first conveyance of a Unit to a person other than a Declarant or Assignee Declarant and continuing until the earliest of the following events:
- 1.20.1. Sixty days after conveyance by Declarant to persons other than a Declarant of Twenty Seven (27) Units (being 75% of the Units which may be created pursuant to the terms of this Declaration), or
  - 1.20.2. Five (5) years from the date of the first conveyance of a Unit to a person other than a Declarant or Assignee Declarant, or
  - 1.20.3. Two (2) years after all Declarant(s) and/or Assignee Declarant(s) have ceased to offer Units for sale in the ordinary course of business; or
  - 1.20.4. The date designated, by notice in writing, from the Declarant to the Executive Board of the Association as the date of termination of the Declarant Transition Period.
- 1.21. "Declaration" shall mean and refer to the terms, easements, covenants, conditions, restrictions, charges and liens set forth in this Declaration and all other provisions set forth in this entire document, as they may be duly amended from time to time.
- 1.22. "De minimis Variations" shall mean and refer to any and all changes, deviations, modifications, alterations, variances, and similar differences in the improvement and development of the Subject Property, including but not limited to, in the construction, placement, and/or installation of Community Improvements, by, or for, the Declarant which such De minimis Variations (a) do not require approval by any governmental entity having jurisdiction, and, (b) in the aggregate for the entire Subject Property, do not result in a greater than ten percent (10%) increase or decrease in the annual General Common Expenses Budget of the Association as initially established in accordance with the provisions of Section 5.4 of this Declaration.
- 1.23. "Detached Dwelling." See "Dwelling."
- 1.24. "Development Period" shall mean and refer to the time period commencing on the date of the recording this Declaration in the Department of Real Estate of Allegheny County, Pennsylvania and continuing until one hundred and eighty (180) days after the Conveyance of all of the Units in the Subject Property to Owners of Units for which a Use and Occupancy Certificate for a dwelling constructed on such Unit shall have been issued by Sewickley Borough or other governmental entity having jurisdiction thereof.
- 1.25. "Development Plan(s)" shall mean and refer to such plans of development and improvement of the Subject Property as are approved by all government entities having jurisdiction including without limitation, approved by Sewickley Borough pursuant to the the Official Zoning Ordinance of the Borough of Sewickley and the Borough of Sewickley Subdivision and Land Development Ordinance and shall include the Initial Development Plan.

In the event that any Development Plan is revised or modified and approved by all government entities having jurisdiction as revised or modified, such revised or modified and approved Development Plan shall replace and supersede any and all previous Development Plan(s) to the extent of any and all differences between Development Plans.

- 1.25.1. "Initial Development Plan" shall mean and refer to that certain set of plans collectively



identified as *Elmhurst Site Development Plan*, prepared by The Gateway Engineers, Inc., dated December, 2014, as approved by, and on file with, Sewickley Borough, Allegheny County, Pennsylvania; a portion of which such Initial Development Plan is of record in the Department of Real Estate of Allegheny County, Pennsylvania in Plan Book Volume 285, Page 10, together with the Errata to Development Plan(s) set forth in Exhibit "D" to this Declaration.

- 1.26. "Dwelling" shall mean and refer to the principal structure and all appurtenances thereto erected or constructed on, and within the boundaries of, a Unit, used or to be used as the residence of natural persons, and shall mean and refer to "Attached Dwelling" and "Detached Dwelling."
  - 1.26.1. "Attached Dwelling" shall mean and refer to any Dwelling erected or constructed such that at least one wall of the structure is a common structural wall with another Dwelling.
  - 1.26.2. "Detached Dwelling" shall mean and refer to any Dwelling erected or constructed such that no part of the structure is a common structural wall with another Dwelling.
- 1.27. "Executive Board" shall mean and refer to the body of persons, duly elected or appointed pursuant to the provisions of Section 4.6 of this Declaration and the Bylaws of this Association, designated and empowered by this Declaration as set forth herein to act on behalf of the Association and which shall, as set forth herein, manage the business and affairs of the Association in compliance with, and subject to, the provisions of the Act and the Governing Documents.
- 1.28. "Facilities and Amenities" shall mean and refer to:
  - 1.28.1. Controlled Facilities; and
  - 1.28.2. Storm Water Facilities; and
  - 1.28.3. utility and service systems, equipment, facilities, and components serving more than one Unit or serving any portion of the Common Facilities including without limitation conduits, lines, pipes, fixtures, and hardware providing water, sanitary sewer, electric, telephone, gas, television cable, communication or any other such service.
- 1.29. "Financing Agencies" shall mean and refer to those federal, state, local and private agencies and entities which regulate, participate, or otherwise have an interest in the financing, whether the primary or secondary mortgage market, security, title, or conveyancing or real property interests in the Community including but not limited to the Department of Housing and Urban Development, Federal Housing Administration, Federal Home Administration, Veterans Administration, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association and other similar entities.
- 1.30. "Front Yard" shall mean and refer to that portion of a Unit between (a) the Unit boundary(ies) on the south side of Units 1 through 4 inclusive; (b) the north side of Units 5 through 7 inclusive and Units 11, 15, 19, and 23; (c) the east side of Units 7 through 10 inclusive, Units 15 through 18 inclusive, and Units 23 through 26 inclusive; and (d) the west side of Units 11 through 14 inclusive and Units 19 through 22 inclusive; and the nearest substantially parallel wall(s) of the Dwelling on the Unit.
- 1.31. "General Common Expenses." See "Assessment Liability."



- 1.32. "Governing Documents" shall mean and refer to this Declaration, the Articles of Incorporation of the Association, the Association Bylaws, and Rules and Regulations adopted by the Executive Board from time to time as all may be duly amended from time to time.
- 1.33. "Governmental/Public Service Entity" shall mean and refer to the public, any governmental or quasi-governmental entity, public corporation, agency or authority, public or private utility, or similar entity acting on behalf of, or in service to, the public.
- 1.34. "Institutional Lender" and "Secured Lender" are synonymous and each shall mean and refer to one or more lenders regularly engaged in financing the purchase, construction, or improvement of real estate including but not limited to commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including but not limited to real estate investment trusts; or any assignee of loans made by such lenders; or any governmental or private institution which insures the loans of such lenders; or any combination of the foregoing entities.
- 1.35. "Landscape Plantings" shall mean and refer to natural growing biological materials planted upon and within the ground and shall include non-grass ground cover, flowers, bushes, shrubs, trees, and similar plantings and shall not mean and refer to any man-made materials placed on the ground, sometimes referred to as "hardscape" materials, such as patios, walks, planting bed edging, Retaining Walls, curbs, fences, and similar items.
- 1.36. "Lawns" shall mean and refer to areas of ground on which natural biological grass plants are grown in a dense contiguous arrangement and the growing grasses are, by mowing, fertilization, and weed control maintained so as to be of substantially uniform height and with a substantially unadulterated appearance.
- 1.37. "Member" or "Membership" shall mean and refer to members of the Association. The owner, or owners collectively if more than one, of each individual Unit shall constitute one Member of the Association. Each Member shall hold such number of Memberships in the Association as is equal to the number of Unit(s) owned by such Member. The Association shall have twenty six (26) Memberships.
- 1.38. "Municipality." See "Borough"
- 1.39. "Other Expense Liability." See "Assessment Liability."
- 1.40. "Owner" and "Unit Owner," are synonymous and each shall mean and refer to the record owner, whether one or more persons or entities, of any Unit which is a part of the Subject Property, excluding those having such interest, however described, merely as security for the performance of an obligation. Provided, however, a mortgagee in possession shall be deemed an Owner during the time of possession.
- 1.41. "Plats and Plans." shall mean and refer to the aggregate of (a) Development Plan(s), and (b) the Errata to such Development Plan(s) as set forth in Exhibit "D" to this Declaration, depicting and identifying the location and dimensions of the Subject Property, Unit Designations, the location and dimensions of Unit boundaries, the location and dimensions of Limited Common Elements, if any, and other matters customarily shown on land surveys. See Section 2.4 of this Declaration.

- 1.42. "Registered Mortgagee" shall mean and refer to any Institutional Lender that holds a bona fide first mortgage encumbering a Unit as security for the performance of an obligation and has registered with the Association and provided current contact information.
- 1.43. "Retaining Walls" shall mean and refer to all those certain structures, Landscape Plantings, grading, and similar placement of natural and man-made materials placed, installed, or erected and maintained for the purpose of maintaining the physical location of soils and the prevention or inhibition of erosion, dislocation, subsidence or similar movement of soils after the establishment of the final grading thereof as shown as such on the Development Plan(s).
- 1.44. "Secured Lender." See "Institutional Lender."
- 1.45. "Special Allocation Expenses." See "Assessment Liability."
- 1.46. "Storm Water System" shall mean and refer to the Storm Water Facilities and the Storm Water Facilities Easement and shall mean and refer to all best management practices ("BMPs"), plans, facilities, measures, activities, procedures, and similar rights and obligations in, and improvements to, *inter alia*, the Subject Property designed for, occurring within, incorporated into, and implemented for the Subject Property for the purpose of storm water control within and from the Subject Property, including but not limited to effecting and affecting storm water volume, rate, and direction; treatment, detention, and retention; quality maintenance, reclamation, and restoration; absorption, drainage, and discharge; all in accordance with all requirements of all governmental entities having jurisdiction.
- 1.46.1. "Storm Water Facilities" shall mean and refer to any and all conditions of, and improvements to, the Subject Property and/or located outside the boundaries of the Subject Property on easements for such purpose including, but not limited to, basins and other grading, vegetation, pipes, swales, inlets, outfalls, dissipaters, spreaders, infiltrators, systems and other components and facilities appurtenant thereto which are for the purpose of the maintenance and operation of the Storm Water System
- 1.46.2. "Storm Water Facilities Easement" shall mean and refer to the perpetual easement rights and privilege of access for ingress, egress, and regress on, over, through, under and within all of the Subject Property for the purpose of, as required from time to time, installing, operating, inspecting, replacing, adding to, removing, maintaining, repairing, and replacing the Storm Water Facilities.
- 1.47. "Streets and Driveways" shall mean and refer to all of the Community Improvements designed, constructed, or placed within the Subject Property for the purpose of driving of vehicles thereon including all pavement, curbs, and other components and facilities appurtenant thereto, not within any structure, as are constructed within the Subject Property for the purpose of access for ingress, egress, of vehicular access to Units and other portions of the Subject Property
- 1.48. "Subject Property" shall mean and refer to the property described in Exhibit "A" attached to and made a part hereof.

- 1.49. "Unit" shall mean and refer to each and every one of those certain physical portions of the Subject Property designated for separate ownership or occupancy, the boundaries of which are described pursuant to Section 2.5 of this Declaration. The term "Unit" shall not be construed to include any Common Facility or lands Conveyed or to be Conveyed to Governmental/Public Service Entities.
- 1.50. "Unit Designation" means the number, letter or combination thereof designating a Unit on the Plats and Plans.
- 1.51. "Unit Owner." See "Owner."
- 1.52. "Walkways" shall mean and refer to all facilities typically identified as "walks," "walkways," and "sidewalks" within, and/or improvements to, the Subject Property designed, constructed, or placed within the Subject Property for the purpose of access by pedestrians to Units and to other portions of the Subject Property including all components thereof such as, but not limited to, ramps, steps, stairs, landings, and railings, but specifically excluding stoops, porches, terraces, and decks appurtenant to a Dwelling constructed on a Unit. Notwithstanding the foregoing, Walkways shall not include any Streets and Driveways as such term is defined in Section 1.47 of this Declaration.
- 1.53. "Yards" shall mean and refer to all portions of a Unit excepting either (1) the area of the Unit on which a Dwelling (as such term is defined in Section 1.26 of this Declaration) has been constructed, or, (2) if no Dwelling has been constructed on the Unit, the "Permissible Dwelling Construction Area" as shown by diamond-shaped cross-hatching on Sheet C102 of the Initial Development Plan.



## ARTICLE II

### DESCRIPTIONS

#### 2.1. Declarant's Right to Modify

All of the descriptions set forth in this Article II are subject to the right of the Declarant to modify the descriptions pursuant to the provisions of this Section 2.1.

- 2.1.1. Subject to the applicable provisions of the Act, if any:
  - 2.1.1.1. the Declarant may alter the dimensions of the community to be developed pursuant to the terms of this Declaration; and
  - 2.1.1.2. the Declarant may alter the boundaries, scope, locations, and dimensions of Units, Common Elements, and Community Improvements, including Streets and Driveways and Walkways; and
  - 2.1.1.3. the Declarant may, in accordance with the provisions of Section 2.9 of this Declaration, alter the location, specifications, and extent of Community Improvements as such term is defined in Section 1.16 of this Declaration.
  - 2.1.1.4. the Declarant, or an Assignee Declarant to whom the right is assigned, may subdivide a Unit into two or more Units, Common Elements or a combination of Units and Common Elements; and portions of such Common Elements may be allocated as Limited Common Elements.
- 2.1.2. The foregoing rights of Declarant (or of an Assignee Declarant to whom the right is assigned) to modify the descriptions as set forth in this Declaration is subject to the following limitations:
  - 2.1.2.1. Any alteration of the dimensions of the community to be developed pursuant to the terms of this Declaration and/or any alteration to the boundaries, locations, and dimensions of Common Facilities or Community Improvements:
    - 2.1.2.1.1. shall be in accordance with all applicable laws, and to the extent required by law shall have been approved by all governmental entities having jurisdiction of a plan or plans of development and/or subdivision which supersede and replace, in whole or in part, the Development Plan(s) as such Development Plan(s) are defined in Section 1.25 of this Declaration; and
    - 2.1.2.1.2. an Amendment to this Declaration setting forth the alterations to the dimensions of the community to be developed pursuant to the terms of this Declaration and/or to the boundaries, locations, and dimensions of Common Facilities or Community Improvements, and/or to any Limited Common Facilities, including but not limited to the allocation to which Unit or Units each Limited Common Facility is allocated shall have been executed by the Declarant and recorded pursuant to the provisions of § 5219(c) of the Act; and



- 2.1.2.2. If any alteration permitted by this Section 2.1 of this Declaration shall result in any relocation of boundaries between Units, an Amendment to this Declaration identifying the Units involved, stating the reallocations, executed by the Unit Owners, containing words of conveyance between them and plats or plans necessary to show the altered boundaries between adjoining Units and their dimensions and identifying numbers shall be prepared and recorded pursuant to § 5214 of the Act; and
- 2.1.2.3. If any alteration permitted by this Section 2.1 of this Declaration shall result in any subdivision of a Unit into two or more Units or into a combination of Units and Common Elements, an Amendment to this Declaration, including Plats and Plans, subdividing that Unit shall be prepared and recorded pursuant to § 5215 of the Act; and
- 2.1.2.4. A maximum of ten (10) Units may be created by the subdivision of Units owned by a Declarant.
- 2.1.2.5. If any alteration permitted by this Section 2.1 of this Declaration shall result in any portion of the Common Elements being allocated as Limited Common Elements, an Amendment to this Declaration setting forth the portions of Common Elements so allocated as Limited Common Elements shall have been executed by the Declarant pursuant to § 5209(c) of the Act; and
- 2.1.2.6. Any alteration to any Limited Common Elements, including but not limited to the allocation to which Unit or Units each Limited Common Element is allocated, shall require the consent of the Unit Owner and/or Unit Owners whose Unit or Units are affected.

2.2. Property Subject to this Declaration

The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is the Subject Property as described in Exhibit "A" attached hereto and made a part hereof.

There is no real estate in which the Unit owners will own only an estate for years, and there are no noncontiguous parcels of real estate comprising the Community.

2.3. Name, location, and dimensions of Community

The name of the community to be developed pursuant to the terms of this Declaration is "Elmhurst, a Planned Community." The location and dimensions of the community to be developed pursuant to the terms of this Declaration are shown and depicted on the Development Plan(s).

2.4. Plats and Plans

Pursuant to the provisions of § 5210(i) of the Act, the Development Plan(s), having been filed with, and approved by, the Borough as "Final Plans," and the Development Plan(s) having been recorded, all as set forth in Section 1.25 of this Declaration, the Development Plan(s), together with the Errata to such Development Plan(s) as set forth in Exhibit "D" to this Declaration, shall be the plats and plans as required by § 5210 of the Act, and the Development Plan(s) and Errata thereof are hereby incorporated herein and made a part hereof.

The Certification required by §5210(i)(3) of the Act is attached hereto as Exhibit "C."

There are no existing improvements to the Subject Property. All Community Improvements (as such term is defined in Section 1.16 of this Declaration) shown on the Development Plan(s) MUST BE BUILT and the intended location and dimensions of Community Improvements (the location and dimensions of which are capable of being shown on a plan) are shown on the Development Plan(s).

## 2.5. Units

Each Unit is defined and described as being a separate and distinct parcel of real property, the location and dimensions of the vertical boundaries of which are shown, depicted and delineated on the Development Plan(s) and the horizontal unit boundaries of which are coextensive with the horizontal boundaries of the Subject Property, on which one or more Dwelling(s) are or may be erected, excepting therefrom (a) any Common Facilities and (b) real property Conveyed or to be Conveyed to Governmental/Public Service Entities. The identifying number of each Unit is shown on the Development Plan(s).

Any and all improvements to a Unit including without limitation structure(s), Dwelling(s), any and all appurtenances thereto such as fences, walls, patios, decks, and stoops; mechanical or electrical lines, conduits, and systems; driveways, Walkways; Lawns, Landscape Plantings; Retaining Walls and all similar improvements shall be appurtenant to and indivisible from the real estate of which the Unit is a part but the Unit shall be comprised solely of the unimproved land

If any mechanical or electrical components, including without limitation wires, switches, outlets, jacks and other interconnects, conduits, pipes, fixtures, or hardware, serving only one Unit lies partially or completely outside the designated boundaries of a Unit, any portion thereof serving only that Unit shall be a part of the Unit.

The conveyance and ownership of any Unit on which a Dwelling has been constructed shall include the conveyance and ownership of the entire Dwelling as defined in Section 1.26 of this Declaration and, to the extent that any portion of the Dwelling shall, at any time and for any reason including but not limited to, resulting from construction, reconstruction, shifting, settlement, or movement of any kind, not be within the boundaries of the Unit as shown, depicted and delineated on the Development Plan(s), the Common Facilities and all other Units are hereby made subject to a perpetual and exclusive easement appurtenant to such Unit for the existence and maintenance on, over, across, under and through the Common Facilities and on, over, across, under and through any and all other Units to the extent of, and for the existence and maintenance of, all portion(s) of the Dwelling not within the boundaries of the Unit as shown, depicted and delineated on the Plats and Plans.

There are no buildings that contain or comprise all or part of any Unit nor located within nor must be built within any portion of the Subject Property.

There are Twenty Six (26) Units in the Subject Property.

2.6. Party Walls

Each wall, the centerline of which is a boundary line between two Units is a Party Wall. To the extent not inconsistent with the Governing Documents, the general rules of law regarding Party Walls and liability for damage due to negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the Party Wall in proportion to such use. If a Party Wall is damaged or destroyed by fire or other casualty, any Owner who has used the Party Wall may restore it, and if thereafter the other Owner(s) make use of the Party Wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of the restoring Owner to a larger contribution under any rule of law regarding liability for negligent or willful acts or omissions. An Owner who through negligent or willful act causes the Party Wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements. The right of any Owner to contribution from any other Owner under the provisions of this section shall be appurtenant to the land and shall pass to each Owner's successors in title.

2.7. Common Elements

The Common Elements are comprised of both Common Facilities and Controlled Facilities.

By this Declaration and pursuant to the provisions of the Act, the ownership, in fee, of all of the Common Facilities, as defined in Section 1.12.1 of this Declaration, within the Subject Property is vested in the Association.

The Common Facilities do not include any real property Conveyed to Governmental/Public Service Entities.

The description of the obligations of the Association for the maintenance, improvement, repair, replacement, regulation, management and control of the Common Facilities is set forth in Section 4.3.2 of this Declaration.

The Controlled Facilities are comprised of both General Controlled Facilities and Limited Controlled Facilities.

The description of the obligations of the Association for the maintenance, improvement, repair, replacement, regulation, management and control of the Controlled Facilities, together with the limitations thereof, are set forth in Section 4.3.2 of this Declaration.



2.7.1. General Common Facilities

The General Common Facilities are defined in Section 1.12.1.1 of this Declaration and include:

- 2.7.1.1. Community Improvements within the Common Facilities whether heretofore or hereafter completed including but not limited to the following:
  - 2.7.1.1.1. All Streets and Driveways to the extent not accepted for dedication by Sewickley Borough or by any other governmental entity;
  - 2.7.1.1.2. Walkways, as defined in Section 1.52 of this Declaration;
  - 2.7.1.1.3. signs being entrance and identification signs (including lighting thereof, if any), direction and information signs, and traffic control signs;
  - 2.7.1.1.4. fences and fencing;
  - 2.7.1.1.5. Lawns as defined in Section 1.36 of this Declaration;
  - 2.7.1.1.6. Landscape Plantings, as defined in Section 1.35 of this Declaration; and
  - 2.7.1.1.7. Retaining Walls.
- 2.7.1.2. The Storm Water Facilities to the extent not accepted for dedication by Sewickley Borough or by any other governmental entity.
- 2.7.1.3. Utility and service conduits, lines and systems within the Subject Property and not owned by the providers of services or by any other Governmental/Public Service Entity including, but not limited to, those providing water, including without limitation potable (drinking) water and water to and for interior fire-suppression sprinkler systems, sewage conveyance, electric, telephone, gas, television cable, communication or any other such service, all excluding (a) the portions of such as are parts of Units as set forth in Section 2.5 of this Declaration, and (b) such as are Conveyed or to be Conveyed to any Governmental/Public Service Entity

2.7.2. Limited Common Facilities

The Limited Common Facilities are defined in Section 1.12.1.2 of this Declaration. Limited Common Facilities and the Units to which such Limited Common Facilities are allocated include:

- 2.7.2.1. Streets and Driveways within the Common Facilities to the extent designed, constructed, or placed to serve only a single Unit shall be Limited Common Facilities allocated exclusively to that Unit.
- 2.7.2.2. Walkways within the Common Facilities which are not part of the Dwelling as defined in this Declaration which are designed, constructed, or placed to serve only a single Unit shall be Limited Common Facilities allocated exclusively to that Unit.



2.7.3. General Controlled Facilities

The General Controlled Facilities are defined in Section 1.12.2.1 of this Declaration and include:

- 2.7.3.1. To the extent not accepted for dedication by Sewickley Borough or any other governmental entity:
  - 2.7.3.1.1. All those portions of the Storm Water Facilities that are not located within Common Facilities;
  - 2.7.3.1.2. Streets and Driveways located within the boundaries of Unit(s), excepting Streets and Driveways designed, constructed, or placed to serve only a single Unit;
  - 2.7.3.1.3. Walkways adjacent to the Subject Property that are not located within Common Facilities.
- 2.7.3.2. Signs not located within the Common Facilities being entrance and identification signs (including lighting thereof, if any), direction and information signs, and traffic control signs but excluding marketing and advertising signs such as but not limited to signs advertising that the Unit is "For Sale" and "For Rent."

2.7.4. Limited Controlled Facilities

The Limited Controlled Facilities are defined in Section 1.12.2.2 of this Declaration and include the following, each of which is a Limited Controlled Facility appurtenant to the Unit on which it is located and which such Limited Controlled Facility (1) was installed by or for Declarant as part of the improvement of the Subject Property, (2) was installed prior to, or in connection with, the first Certificate of Occupancy issued for occupancy of a Dwelling on the Unit, or (3) is an Architecturally Controlled Improvement designated as a Controlled Facility when approved in accordance with the terms of Section 6.2 of this Declaration, including, but not limited to:

- 2.7.4.1. Streets and Driveways located within the boundaries of any Unit to the extent designed, constructed, or placed to serve only a single Unit.
- 2.7.4.2. Walkway(s) to the extent located within the boundaries of the Front Yard of any Unit which such Walkway(s) are not part of the Dwelling as defined in this Declaration
- 2.7.4.3. All Lawns (as such term is defined in Section 1.36 of this Declaration) to the extent located within the boundaries of a Unit, which such Lawns are located within the accessible areas of the Unit. Lawns within enclosing fences and/or structures shall be deemed not to be accessible.

2.7.4.4. All Landscape Plantings (as such term is defined in Section 1.35 of this Declaration) to the extent located within the boundaries of a Unit and to the extent that such Landscape Plantings are located within the accessible areas of the Unit. Landscape Plantings within enclosing fences and/or structures shall be deemed not to be accessible.

2.7.4.5. Retaining Wall(s) to the extent located within the boundaries of any Unit.

2.8. Time Share Estates

There are no time-share estates created by the provisions of this Declaration.

2.9. Community Improvements

All of the Subject Property shall be developed and all Community Improvements shall be completed according to the Approved Development, under Declarant's common authority and responsibility. Declarant may assign the rights and delegate the duties of common authority and control herein to an assignee.

In the improvement and development of the Subject Property, Declarant, or assignee, may make De Minimis Variations as set forth in Section 1.22 of this Declaration.

Until each improvement to the Subject Property and Common Elements shall be completed, the Declarant shall be solely responsible for real estate taxes assessed against or allocable to such improvement to the Subject Property or the Common Elements and for all other expenses in connection with such improvement to the Subject Property or Common Elements.

The Association shall have responsibility for completed Common Elements and for all other expenses in connection with completed Common Elements.

2.9.1. Completion

All Community Improvements to the Subject Property and all Common Elements shall be completed by the end of the Development Period as such Development Period is defined in Section 1.24 of this Declaration.

2.9.2. Certification of Completion

Any theretofore incomplete portion of the community, improvement to the Subject or Common Element will be deemed to be completed upon the recording of a certificate executed by an independent registered surveyor, architect or professional engineer stating that the portion of the community, improvement to the Subject Property, or Common Element is substantially completed in accordance with the descriptions set forth in this Declaration, the Plats and Plans, and the public offering statement and so as to permit the use of such portion of the community, improvement to the Subject Property, or Common Element for its intended use.

2.9.3. Financial Security for Completion

2.9.3.1. For the Benefit of the Association

Declarant, by this Declaration, guarantees to the Association that all Community Improvements to the Subject and the Common Elements shall be completed. No third-party guarantee, bond, escrow, letter of credit or other mechanism is provided by the Declarant to the Association to assure, for the benefit of the Association, completion of the Community Improvements and the Common Elements. Only the Declarant's own guarantee is provided to the Association to assure completion of the Community Improvements and the Common Elements.

2.9.3.2. For the Benefit of Sewickley Borough

Declarant has posted, with Sewickley Borough and/or with other governmental entities having jurisdiction, one or more third-party bond(s) and/or letter(s) of credit ("Financial Security"), in addition to the Declarant's own guarantee of completion, to assure, for the benefit of Sewickley Borough and/or other governmental entities having jurisdiction, completion of certain improvements to the Subject Property and Common Elements, in accordance with the provisions of the Pennsylvania Municipalities Planning Code (53 P.S. §10101, *et seq.*). Financial Security posted with Sewickley Borough and/or with other governmental entities having jurisdiction either has no time limit of the term thereof and/or contains provision(s) that the Financial Security will be automatically extended for an indefinite number of periods until notice to the beneficiary borough.



## ARTICLE III

### PROPERTY RIGHTS AND RESPONSIBILITIES

#### 3.1. Insurance and Liability

Each Owner of a Unit shall, at all times, maintain at the owner's sole cost, property insurance in an amount not less than an amount sufficient to replace and rebuild any and all structures on the Unit, and any and all improvements and betterments thereto.

If requested by the Association, an Owner shall provide evidence of such insurance to the Association.

Each Owner shall be liable to the Association for any and all damage to the Association for all damage to any Common Elements resulting from any act, omission, or negligence of the Owner or the Owner's family, guests, employees, agents, lessees and/or licensees, to the extent not covered by the proceeds of any insurance; provided, however, this provision is by way of supplement to and not in derogation of the assessment and enforcement powers of the Association pursuant to the terms of the Governing Documents.

#### 3.2. Maintenance Obligations of all Unit Owners

Except as set forth in Section 4.3.2 of this Declaration, the maintenance, repair and replacement as and when required of any and all parts of a Unit (including without limitation as such is defined in Section 2.5 of this Declaration), and including without limitation any and all portions of any and all structure(s) located thereon, shall be the sole responsibility of the owner or owners of such Unit. Each and every Grantee of an ownership interest of any portion of the Subject Property, by the acceptance of such ownership interest, whether or not it shall be so expressed in the deed conveying an ownership interest, and including without limitation any purchaser at judicial sale or heir or devisee of a deceased Owner, by the acceptance of ownership to a portion of the Subject Property, obligates and binds such Grantee or Owner, and the heirs, successors and assigns of such Grantee or Owner, and such Grantee or Owner is deemed to covenant as a covenant running with the land, that the Grantee or Owner of the Unit will at all times:

- 3.2.1. make adequate provision for the maintenance, repair and replacement of, and maintain, repair or replace as and when required in a manner which complies with all applicable Borough, County, State and Federal laws and retains the functional condition thereof, any and all improvements to the Unit (including without limitation structure(s) and all components thereof including attachments thereto such as, but not limited to, decks, patios, stoops, appurtenant structure(s), together with Landscape Plantings within inaccessible portions of the Unit, and further in such a manner that lack of maintenance, repair or replacement shall not impair the structural integrity of any structure of which the improvement is a part, excepting only the repair and replacement of Limited Controlled Facilities to the extent of the obligation of the Association to maintain, repair and replace in accordance with the terms of Section 4.3.2 of this Declaration; and



- 3.2.2. maintain, repair and replace in a manner which preserves, keeps functional, complies with all applicable Borough, County, State and Federal laws and retains the functional condition thereof, any and all Walkways located on the Unit and not located within the Front Yard of the Unit; and
- 3.2.3. be solely responsible for the removal of snow and the treatment and/or removal of ice accumulation on any and all Walkways not located within the Front Yard of the Unit, and all appurtenances to the Dwelling on the Unit including without limitation all porches, entrance ways, stairs, landings and/or stoops.

3.3. Common Facilities

All of the Subject Property which is neither a part of any Unit, nor Conveyed nor to be Conveyed to a Governmental/Public Service Entity, is a Common Facility.

3.3.1. Disposition of Common Facilities

The Association may not be dissolved nor, except for the dedication of Streets and Driveways, Walkways, and/or Storm Water Facilities to Sewickley Borough or to another Governmental/Public Service Entity, in whole or in part, dispose of the Common Facilities, nor any portion thereof, by sale or otherwise, except upon Conveyance of the Common Facilities to a Governmental/Public Service Entity or other organization which such other organization has been organized for, or has adopted the purpose of, ownership of the Common Facilities and/or performance of the duties and obligations of the Association as set forth in the Governing Documents, subject to the provisions of § 5318 of the Act.

Utility and service conduits, lines and systems not owned by the providers of services or by any other Governmental/Public Service Entity including, but not limited to, those providing water, sewer service, electric, telephone, gas, television cable, communication or any other such service, may be dedicated or Conveyed, without the requirement of consideration therefor, to any Governmental/Public Service Entity.

3.3.2. Use of General Common Facilities

The General Common Facilities shall remain in perpetuity reserved and restricted to use for Streets and Driveways, Storm Water Facilities, as open space, undeveloped land and/or space for recreational facilities, accessways, utility and other easements and servitudes and such other uses as are consistent with the Governing Documents. Unless and until any Common Facilities are used for recreational facilities, Streets and Driveways, or Storm Water Facilities, such Common Facilities, whether subject to easement or other servitude or unencumbered, shall be designated as "Undeveloped Common Land". Such Undeveloped Common Land shall be graded and landscaped or shall be left in its natural state where appropriate such as where such Undeveloped Common Land is wetlands or woods, tree stands or other vegetation which serves as a visual barrier, nature preserve or other beneficial function.

3.3.3. Owner's Easement of Enjoyment

Every Owner shall have an unrestricted right of ingress and egress to the Owner's Unit over and on all Streets and Driveways and a right and easement of enjoyment in and to the Common Facilities which are not Limited Common Facilities appurtenant to other Units, which shall be appurtenant to and shall pass with the title to and be unseverable from each Unit.

3.3.4. Delegation by Owner

Every Owner shall have the right to delegate, in accordance with the Governing Documents, his or her right of enjoyment in and use of the Common Facilities to the members of his, her, or their family, guests, tenants, or contract purchasers who reside in the Subject Property.

3.4. Easements Rights and Privileges

The easements, rights and privileges granted by this Declaration shall be for the benefit of and be restricted solely to the Declarant and to Owners from time to time of all or any portion of the Subject Property, and such Owners may grant the benefit of such easements, rights and privileges to such Owner's tenants for the period of such tenancy, but the same is not intended to create, and shall not be construed as creating any rights in and for the benefit of the general public.

3.5. Lease Requirements

Any conveyance of a leasehold estate in a Unit must be in writing (by written lease or written rental agreement) which must provide that the conveyance and tenancy are subject to all of the provisions of the Governing Documents.

3.6. Easements and Licenses

3.6.1. Vehicle Access Easement

All of the Common Facilities and all Yards portions of all Units are and shall be subject to a non-exclusive easement, right-of-way, and privilege in perpetuity upon, over, through, across, and within all of the Common Facilities and structure-free portions of all Units for the placement and maintenance of Streets and Roadways.

3.6.2. Easement for Snow Removal and Stockpiling

All of the Common Facilities and all Yards portions of all Units are and shall be subject to a non-exclusive easement and right-of-way in perpetuity upon, over, through and across all of the Common Facilities and structure-portions of all Units for the placement and maintenance of snow plowed and/or moved from Streets and Driveways and Walkways within the Community.

3.6.3. Stormwater Facilities Easement

The Stormwater Facilities Easement as defined in Section 1.46.2 of this Declaration is hereby granted to the Association as an easement in gross and further hereby made subject to a continuing and irrevocable offer of dedication to Sewickley Borough which such offer may be accepted by a resolution of the Borough Council of Sewickley Borough.

3.6.4. Easements to which Units are Subject

- 3.6.4.1. Each Unit is subject to an easement and right on, over, under and through the ground thereof for the establishment, correction and/or maintenance of proper drainage of surface water within the Subject Property, which such easement and right shall include, but not be limited to, the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health, safety or to comply with governmental requirements.
- 3.6.4.2. Each Owner shall afford to the Association and to its agents or employees access through the Unit reasonably necessary for the purposes of maintenance, repair and replacement of the Common Elements.
- 3.6.4.3. Each Unit is subject to all of the conditions, covenants, restrictions, licenses and easements of all documents of record and as set forth herein including access easements for the free and uninterrupted right of entry, ingress, egress and regress upon, over, under, through and across the Unit for access for the installation, placement, maintenance, repair, replacement, modification, or any other grading, construction, reconstruction or removal of one or more walls, fences, landscaping, and similar structures and uses and for conduits, lines and systems, being or providing conveyance of utility services, including but not limited to electrical service, together with such service equipment, facilities and components thereof as shall be necessary therefor.
- 3.6.4.4. Each Unit is subject to covenants and negative easements running with the land prohibiting any use of, or conditions to be created or maintained on, the Unit interfering with the use and purpose of the access easements and rights-of-way set forth in this Section 3.6.4.
- 3.6.4.5. Upon any use of the access easements and rights-of-way set forth in this Section 3.6.4 for the purposes of such access easements and rights-of-way, upon the completion of any work performed, including, but not limited to, the construction, repair, rebuilding, relocation, or removing of all, or any portion, of any utility service line installed pursuant to the easements, such user shall, at user's sole cost and expense, restore any part of the Unit disturbed by such work, solely including regrading as necessary to approximately the same grades as existed before the work commenced, and planting appropriate vegetative ground cover on all areas of vegetative ground cover disturbed by the work; such user shall expressly not be required to restore any other conditions such as, but not limited to, tree(s), shrub(s), ornamental planting(s), specialty ground cover, fencing, paving, walkway(s), or any Architecturally Controlled Improvement.



### 3.6.5. Easements for Utilities

There is hereby reserved, and the Association and any Governmental/Public Service Entity are hereby granted the right to use, an easement and a right-of-way in perpetuity for free and uninterrupted right of entry, ingress, egress and regress upon, over, under, through and across the all of the Subject Property, for the placing and maintaining of utility service equipment, facilities and components, whether for the purpose of serving the Subject Property or any other property or properties, and for access for the installation, removal, maintenance, repair or replacement of any utility or service conduits, lines and systems, including, but not limited to, those providing water, sanitary sewer, storm water management (including but not limited to storm water treatment, drainage swales, culverts, piping, discharge outlets, basins and similar improvements), electric, telephone, gas, television cable, communication or any other such service, subject to the condition that upon any use of the Easements or Right-of-Way reserved by this Section 3.6.5 for the purposes of such Easements or Right-of-Way, upon the completion of any work performed, including, but not limited to, the construction, repair, rebuilding, relocation, or removing of all, or any portion, of any of the aforesaid service components pursuant to the Easements hereby granted, the user shall, at user's sole cost and expense, restore any part of the land disturbed by such work to approximately the same condition as existed prior to the commencement of work.

### 3.6.6. Declarant Easement

There is hereby reserved to Declarant, which Declarant may assign to designee(s) of Declarant, an unlimited blanket easement and a right-of-way during the Development Period for free and uninterrupted right of entry, ingress, egress and regress upon, over, under, through and across the entire Subject Property for the purposes of (1) Declarant's improvement and development of the Subject Property including without limitation storage, movement and use of building and construction materials, equipment and personnel, construction and modification of structures and Community Facilities including Storm Water Facilities, vehicle and pedestrian areas and utility services, and grading and regrading, including removal of existing vegetation including trees, all to the extent Declarant shall, in Declarant's sole judgment, deem appropriate or necessary in the development of the Subject Property; (2) Declarant's exercise of the rights of Declarant as set forth in this Declaration, and (3) any and all sales, marketing, promotional, and/or public relations activities or events including without limitation erection and maintenance of directional and promotional signs, conduct of sales activities including maintenance of office and model homes, and public or private showings, gatherings, and/or presentations, all to the extent Declarant shall, in Declarant's sole judgment, deem appropriate or necessary in the marketing of the Subject Property.

3.6.7. Association Easement

Each Unit is hereby made subject to a the perpetual and nonexclusive right of access to the Association to each Unit (i) to inspect same, (ii) to remedy any violations of the provisions of this Declaration, the Bylaws or any Rules and Regulations of the Association, and/or (iii) to perform any work required in connection with the maintenance, repairs or replacements of or to the Common Elements or any equipment, facilities or fixtures affecting or serving other Unit(s) or Common Elements; provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Owner, in case of an emergency, such right of entry shall be immediate, whether the Owner is present at the time or not.

3.7. Subject to Easements, Restrictions, Licenses, Covenants and Conditions

Some or all of the Subject Property is subject to easements, restrictions, licenses and conditions. As of the date of this Declaration, the Subject Property is subject to all easements, restrictions, licenses and conditions as recorded in the Department of Real Estate of Allegheny County, Pennsylvania, including without limitation, those set forth on Exhibit "B" attached hereto, or otherwise applicable to the Subject Property.

3.8. Right to Subject Property to Easements

There is hereby explicitly reserved to the Declarant, during and only during the Development Period as such Development Period is defined in Section 1.24 of this Declaration, the unrestricted option to subject the Subject Property to easements or licenses in favor of the Declarant, the Association, and/or Governmental/Public Service Entities as are required for the provision of public utilities to and through the Subject Property and/or as are reasonably required for the construction of improvements to the Subject Property in accordance with all laws, ordinances and regulations of all governmental entities having jurisdiction thereof. The grant by the Declarant of such easements and/or licenses shall affect the Association not greater than (a) the effects of the easements and licenses set forth in Exhibit "B" to this Declaration together with (b) the effects of development and improvement of the Subject Property in accordance with the Approved Development. Further, the grant by the Declarant of such easements and/or licenses shall not, individually, result in an increase in the annual General Common Expenses Budget of the Association in an amount greater than ten percent (10%).

## ARTICLE IV

### **ELMHURST NEIGHBORHOOD ASSOCIATION**

#### 4.1. The Association

The Association is a non-profit, non-stock corporation organized and existing under the laws of the Commonwealth of Pennsylvania and charged with the duties and vested with the powers prescribed by the Act, all other applicable laws, and set forth in the Governing Documents, as such may be amended from time to time, provided no other Governing Documents other than this Declaration shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

##### 4.1.1. Powers and Duties of the Association

The Association shall have all powers necessary to enjoy the rights of the Association and to perform the duties of the Association all as set forth in this Declaration and as set forth in the Act, including, but not limited to, the power, right, and duty to:

- 4.1.1.1. Adopt and amend bylaws and rules and regulations.
- 4.1.1.2. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from Unit Owners.
- 4.1.1.3. Hire and terminate managing agents and other employees, agents and independent contractors.
- 4.1.1.4. Transfer or convey to Sewickley Borough such storm water management and/or access maintenance easement(s) as shall be reasonably required by Sewickley Borough for the purpose of the maintenance, repair and replacement of Storm Water Facilities.
- 4.1.1.5. Transfer or convey to Sewickley Borough or any governmental entity such Streets and Driveways as shall be accepted for dedication by Sewickley Borough or other governmental entity as for the public use as road rights-of-way.
- 4.1.1.6. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Community.
- 4.1.1.7. Make contracts and incur liabilities.
- 4.1.1.8. Regulate the use, maintenance, repair, replacement and modification of Common Elements.
- 4.1.1.9. Cause additional improvements to be made as a part of the Common Facilities and, to the extent permitted by this Declaration, the Controlled Facilities subject to the provisions of Section 5.5 of this Declaration.



- 4.1.1.10. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, but Common Facilities may be conveyed or subjected to a security interest only pursuant to the provisions of the Act and to the provisions of the Governing Documents.
- 4.1.1.11. Grant easements, leases, licenses and concessions through or over the Common Facilities and, only to the extent permitted by this Declaration, the Controlled Facilities.
- 4.1.1.12. Impose and receive payments, fees or charges for the use of the Common Facilities.
- 4.1.1.13. Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of this Declaration, the Bylaws, and the rules and regulations of the Association.
- 4.1.1.14. Impose reasonable charges for the preparation and recording of amendments to this Declaration, resale certificates required by § 5407 of the Act (relating to resales of units), and statements of unpaid assessments required by § 5315(h) of the Act.
- 4.1.1.15. Provide for the indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance.
- 4.1.1.16. Exercise any other powers conferred by the Act, this Declaration or the Bylaws.
- 4.1.1.17. Exercise all other powers that may be exercised in this Commonwealth by legal entities of the same type as the Association.
- 4.1.1.18. Exercise any other powers necessary and proper for the governance and operation of the Association.
- 4.1.1.19. Assign its right to future income, including the right to receive common expense assessments, without limitation.
- 4.1.1.20. Have current copies of the Declaration, Articles of Incorporation, Bylaws of the Association, Rules and Regulations adopted by the Association, and the books, records, and financial statements of the Association available for inspection by Unit Owners and/or by Institutional Lenders during normal business hours at the office of the managing agent (if hired by the Association pursuant to Section 4.1.1.3 of this Declaration) or, in the absence of a managing agent, upon reasonable notice at the residence or, if within sixty (60) miles of the Subject Property, at the business location of the President of the Association.

4.1.2. Approval Required

Any exercise of a power under the above Sections 4.1.1.9, 4.1.1.10, or 4.1.1.11 which would materially impair quiet enjoyment of a Unit shall require the prior written approval of the Owner of such Unit.

#### 4.2. Additional Powers

Nothing in this Declaration shall prohibit, and the Association may, but shall not be obligated to, unless otherwise set forth in this Declaration, provide any of the services or engage in any the activities set forth in this Section 4.2, subject that the Association shall not provide any service or engage in any activity which shall be prohibited by any governmental entity having jurisdiction and any provision of activity shall, at all times, be in strict accordance with the requirements of all governmental entities having jurisdiction thereof:

- 4.2.1. provide or distribute utility services within the Subject Property or any portion thereof, including but not limited to security, electricity, cable television, telephone, or other communication lines, water, sewer, drainage, or other utility services including but not limited to garbage and trash collection and disposal;
- 4.2.2. in addition to any of the same as are required to be performed by the Association, provide insect and pest control; improvement of vegetation and wildlife conditions; forestry management, pollution and erosion controls; and
- 4.2.3. provide transportation; day care and/or child care services; recreation, sports, craft and cultural programs.

The Executive Board may, by majority vote, initiate or terminate any of the above services or activities, which such action shall take effect sixty (60) days after notice to the Members, except in an emergency. As determined by the Executive Board, depending upon the nature of the service or activity, the costs of such additional services or activities may be part of the General Common Expenses of the Association, may be assessed as Special Allocated Expenses, or may be provided on a fee-for-service or other reasonable basis, subject that, if requested by petitions signed by, or on behalf of, not less than ten percent (10%) of the Memberships, a Special Purpose Meeting or Voting shall be held pursuant to Section 4.5.3. of this Declaration, at which the Executive Board's action to initiate or terminate an additional service or activity in accordance with this Section 4.2 may be repealed by majority vote. If repealed, the Executive Board may not reinstitute or terminate the service or activity for three (3) years unless approved by majority vote the Memberships at or by a Special Purpose Meeting or Voting.

#### 4.3. Maintenance Responsibilities of the Association

##### 4.3.1. Association Responsibilities and Authority for Damages or Loss

Subject to the provisions of § 5312 (h) of the Act, in the event of any damage to or loss of Common Facilities, the Association shall cause the Common Facility to be repaired, rebuilt, and/or replaced to substantially the same condition as existed before the damage or loss.

Each and every Grantee of an ownership interest of any portion of the Subject Property, by the acceptance of such ownership interest, whether or not it shall be so expressed in the deed conveying an ownership interest, and including without limitation any purchaser at judicial sale or heir or devisee of a deceased Owner, by the acceptance of ownership to a portion of the Subject Property, obligates and binds such Grantee or owner, and the heirs, successors and assigns of such Grantee or Owner, and such Grantee or Owner is deemed to covenant as a covenant running with the land, that the Grantee or Owner of the portion of the Subject Property at all times shall, and shall be deemed to, grant an irrevocable Power of attorney, coupled with an interest, to the fullest extent permitted by applicable law, to the Association



pursuant to which the Association shall be such Owner's attorney-in-fact for, and only for, the purpose of representing the Owner in any proceedings, negotiations, settlements, or agreements relating to

- 4.3.1.1. claims under any insurance policies maintained by the Association pursuant to the provisions of Section 4.4 of this Declaration, subject to the provisions of § 5312 (h) of the Act;
- 4.3.1.2. disposition of the Common Facilities pursuant to the provisions of Section 3.3.1 of this Declaration; and
- 4.3.1.3. with the exception of awards to Unit Owners pursuant to § 5107 of the Act (relating to acquisition of Units or parts of Units by eminent domain), termination of the legal status of the Subject Property as subject to the provisions of the Act, subject to § 5220 of the Act.

4.3.2. Common Elements

The Association shall have the obligation to make adequate provision for the maintenance, repair, and replacement of, and to maintain, repair, or replace as and when in the sole judgment of the Executive Board required, in a manner which preserves, keeps functional, complies with all applicable Borough, County, State and Federal regulations, ordinances and laws and retains the functional condition thereof all of the Common Facilities as defined in Section 1.12.1 and set forth in Sections 2.7.1 and 2.7.2, and all of the Controlled Facilities as defined in Section 1.12.2 and set forth in Sections 2.7.3 and 2.7.4 of this Declaration.

4.3.2.1. Operation and Maintenance of Storm Water System

The Association shall have the continuous obligation to maintain and operate the Storm Water System, as such is defined in Section 1.46 of this Declaration, in compliance with the requirements of all governmental entities having jurisdiction thereof including, without limitation, in accordance with any and all modifications of and/or amendments to such requirements as adopted, promulgated, or implemented from time to time.

The aforesaid obligation to maintain and operate the Storm Water System shall include, without limitation, the obligation to maintain, repair and replace, as and when required, in a manner which preserves, keeps functional, complies with all applicable Borough, County, State and Federal regulations, ordinances, and laws and retains the functional condition of the Storm Water System including, but not limited to, in accordance with the Stormwater Management System Maintenance Schedule on Sheet C701, Post Construction Stormwater Management Plan and Details, of the Development Plan.

By the incorporation of the above stated Storm Water System operation and maintenance obligations in this Declaration, the Association shall be irrevocably deemed to have agreed to, and to be bound by, all terms, conditions, and covenants contained within or incorporated therein by attachment or reference, any and all documents evidencing the agreement of, concurrence with, and commitment of the Association to the Storm Water System operation and maintenance obligations herein above stated.



4.3.2.2. Maintenance of Walkways and Streets and Driveways

The Association shall have the obligation to make adequate provision for the maintenance, repair and replacement of, and to repair and replace, as and when in the sole judgment of the Executive Board required to maintain in a manner which retains the functional condition thereof, all Common Element Streets and Driveways (excepting only any of such as are dedicated to and accepted by Sewickley Borough or Conveyed to a Governmental/Public Service Entity) and Common Element Walkways (including General Common Facility Walkways, Limited Common Facility Walkways, General Controlled Facility Walkways, and Limited Controlled Facility Walkways) including without limitation the reasonably practical removal of snow therefrom and the reasonably practical treatment for ice accumulation thereon as limited by the provisions of Section 4.3.2.3 of this Declaration.

4.3.2.3. Limit of Responsibility for Reasonably Practical Removal of Snow and Reasonably Practical Treatment for Ice Accumulation

Notwithstanding anything in this Declaration to the contrary, the responsibility of the Association for the removal of snow and for treatment for ice accumulation shall be limited to the reasonably practical removal of snow exceeding a nominal amount and the reasonably practical removal or other treatment of ice at reasonably practical intervals during snowfalls and/or freezing conditions. The Executive Board shall have the authority to determine the amount of snow which shall be deemed to be nominal and the intervals for snow and/or ice removal and/or treatment deemed to be reasonably practical.

4.3.2.4. Maintenance of Utility Service Facilities Not Owned by Service Providers

The Association shall have the obligation to make adequate provision for the maintenance, repair and replacement of, and to maintain, repair or replace as and when in the sole judgment of the Executive Board required, in a manner which preserves, keeps functional, complies with all applicable Borough, County, State and Federal regulations, ordinances and laws and retains the functional condition thereof all of the utility and service conduits, lines and systems within the Subject Property not owned by the providers of services or by any other Governmental/Public Service Entity including, but not limited to, those providing water, including but not limited to potable (drinking) water and water to and for interior fire-suppression sprinkler systems, sewer pipes within the Subject Property for collecting, conveying, and processing sewage from the Units to public sewer facilities, electric, telephone, gas, television cable, communication or any other such service,.

4.4. Insurance to be carried by Association

4.4.1. The Association shall maintain such insurances as are required by, and such insurance coverage shall be maintained and administered in accordance with, the provisions of § 5312 of the Act and shall include (to the extent reasonably available):

4.4.1.1. comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Executive Board but not less than in the amount of One Million Dollars (\$1,000,000.00) for bodily injury and property damage per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, covering all occurrences commonly insured against for death, bodily injury covering all occurrences commonly insured against for property damage, arising out of or in connection with the use, ownership or maintenance of the Common Elements, including without limitation arising out of or in connection with the use or maintenance of the Controlled Facilities, which such insurance may contain deductible provision(s) in such amount(s) as are determined by the Executive Board; and

4.4.1.2. property insurance on the Common Facilities in such amount that the total amount of insurance after application of any deductibles (which such deductibles shall not be greater than the lesser of \$10,000 or 1% of the policy face amount) shall be not less than 100% of the insurable replacement cost of the insured property exclusive of land, excavations, foundations and other items normally excluded from property policies; and

4.4.1.3. any other insurance deemed appropriate by the Executive Board to protect the Association or the Unit Owners.

4.4.2. Insurance policies maintained by the Association pursuant to this Declaration and the Act must provide that:

4.4.2.1. Each Unit Owner is an insured person under the policy with respect to liability arising out of his, her or its Membership in the association; and

4.4.2.2. The insurer waives its right to subrogation under the policy against any Unit Owner or member of the Owner's household; and

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

4.4.2.4. If at the time of a loss under the policy there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy is primary insurance not contributing with the other insurance.

4.5. Membership, Meetings, Votes, and Association Interest of Unit Owners

4.5.1. Membership

The conditions of membership in the Association are such that the Members shall be those Owners and only those Owners from time to time of Units in the Subject Property.

Membership in the Association is coextensive with, and indivisible from, ownership of a Unit in the Subject Property. Each and every Owner of a Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of a Unit in the Subject Property.

The Owner, or owners collectively if more than one, of each individual Unit shall constitute one Member of the Association. Each Member shall hold such number of Memberships in the Association as is equal to the number of Unit(s) owned by such Member. The Association shall have twenty six (26) Memberships.

4.5.2. Votes

Each Membership shall have one vote in the Association. The total number of votes in the Association shall be equal to the total number of Units within the Subject Property.

4.5.2.1. Classes and Class Voting

The Association shall have the following Membership and Voting Classes:

4.5.2.1.1. Attached Dwelling Unit Class

The Attached Dwelling Unit Class shall be comprised of and limited to Memberships appurtenant to Units on which one or more Attached Dwellings are or may be constructed in accordance with the Approved Development.

4.5.2.1.2. Detached Dwelling Unit Class

The Detached Dwelling Unit Class shall be comprised of and limited to Memberships appurtenant to Solely Residential Dwelling Lot Units on which a Detached Dwelling is or shall be constructed.

If any issue shall solely affect the Units and/or the Owners of Units, the Memberships of which appurtenant thereto are within a Voting Class, and such issue shall not affect Units and/or the Owners of Units, the Memberships appurtenant thereto of which are not within the Voting Class, such issue shall be decided by vote of only the Memberships of such Voting Class.

If any issue shall, in whole or in part, affect the Units and/or the Owners of Units, the Memberships of which appurtenant thereto are within a Voting Class, such issue shall not be decided unless the vote of only the Memberships of such Voting Class shall concur with and be in agreement with such decision.



The vote of the Membership of the Association shall, unless otherwise set forth in this Declaration, be the vote of a majority of the Members of the Association and the vote of a Voting Class shall, unless otherwise set forth in this Declaration, be the vote of a majority of the Members of the Voting Class.

4.5.2.2. Exercise of Vote

If any Membership is comprised of two or more persons (that is, if any individual Unit is owned by two or more persons), all such persons shall be entitled to the benefits of, and be responsible jointly and severally for the obligations of, membership in the Association. The vote for such Membership shall be cast as such owners shall decide amongst themselves and the vote may be exercised by any one of them, unless any objection or protest by any other of them is made prior to the completion of a vote, in which case the vote for such Membership shall be cast in accordance with the majority vote of such owners and if no majority vote of such owners shall be attainable, the vote of such Membership shall be cast as an abstention. In no event, however, shall more than one vote be cast with respect to any Membership.

Cumulative voting shall be permitted only for the purpose of electing members of the Executive Board. Cumulative voting shall not be permitted for any other purpose.

4.5.3. Special Purpose Meetings or Written Consent in Lieu

4.5.3.1. Meetings

Written notice of any Special Purpose Meeting called pursuant to a provision of this Declaration shall be sent to all Memberships not less than ten (10) days nor more than sixty (60) days in advance of the meeting, which such notice shall prominently contain a disclosure of the percentage of the votes which shall constitute a quorum, and the percentage of the quorum which shall be required for action on the subject matter.

At the first such meeting called, the presence of Memberships or of proxies entitled to cast not less than fifty (50%) percent of the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called for a date not later than sixty (60) days following the preceding meeting, subject to the same notice requirement, and the required quorum at such subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting.

4.5.3.2. Written Consent in Lieu

Any action which may be taken at any Special Purpose Meeting may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the number of Memberships that would be necessary to authorize or take such action at a meeting at which all Memberships entitled to vote thereon were present and voted.

#### 4.6. Executive Board

The affairs of this Association shall be managed by an Executive Board, the members of which shall be elected by the Members in accordance with the Bylaws of this Association. The Executive Board shall be constituted and organized, and shall operate, in accordance with the Bylaws of this Association.

##### 4.6.1. Powers and Duties of the Executive Board

The Executive Board shall have the powers to do all things necessary or appropriate to carry out the duties and obligations imposed upon it by the Governing Documents or otherwise by law and such powers shall include that the Executive Board may act in all instances on behalf of the Association.

##### 4.6.2. Right and Limitation of Declarant to appoint Members of the Executive Board

During and only during the Declarant Transition Period as such Declarant Transition Period is defined in Section 1.20 of this Declaration, Declarant shall have the right to appoint and to remove at will, and, in the event of removal, resignation, death, termination, absenteeism or other event resulting in vacancy, to reappoint, at will, replacements for, no fewer than such number of members of the Executive Board as shall comprise a majority of the number of members of the Executive Board. Subject to the right of the Declarant, in Declarant's sole judgment, at will, to remove and replace such Declarant appointed members, with or without cause, the terms of such appointed members of the Executive Board shall be for the period from appointment until the termination of the Declarant Transition Period.

Notwithstanding the right of Declarant to appoint members of the Executive Board pursuant to this Section 4.6.2 of this Declaration:

- 4.6.2.1. not later than sixty (60) days after conveyance by Declarant to persons other than a Declarant or Assignee Declarant of nine (9) (being 25% of the Units which may be created pursuant to the terms of this Declaration), the greater of one (1) or such number of members of the Executive Board as shall comprise a minimum of 25% of the number of members comprising the whole Executive Board shall be elected by Unit Owners other than the Declarant; and
- 4.6.2.2. not later than sixty (60) days after conveyance by Declarant to persons other than a Declarant or Assignee Declarant of eighteen (18) Units (being 50% of the Units which may be created pursuant to the terms of this Declaration), the greater of one (1) or such number of members of the Executive Board as shall comprise a minimum of 33% of the number of members comprising the whole Executive Board shall be elected by Unit Owners other than the Declarant.

4.6.3. Indemnification of Officers, Executive Board and Committee Members

The Association shall indemnify every Executive Board member, officer and committee member, his or her heirs, executors and administrators, against all loss, cost and expenses, including attorneys' fees, reasonably incurred by him or her in connection with any action, suit or proceeding to which he or she may be made a party by reason of his or her being, or having been, an Executive Board member, officer or committee member, except as to matters as to which he or she shall be finally adjudged in such action, suit or proceeding, to be liable for gross negligence or willful misconduct. All liability, loss, damage, cost and expense incurred or suffered by the Association by reason, or arising out of or in connection with, this indemnification provision shall be treated by the Association as General Common Expenses.



## ARTICLE V

### ASSESSMENTS

#### 5.1. Creation of the Lien and Personal Obligation of Assessments

The Grantee of an ownership interest in a Unit, by the acceptance of such ownership interest, whether or not it shall be so expressed in the deed conveying an ownership interest, and including without limitation any purchaser at judicial sale or heir or devisee of a deceased Owner, by the acceptance of ownership to a Unit obligates and binds such Grantee or Owner, and the heirs, successors and assigns of such Grantee or Owner, to become a Member of the Association and to be bound by all of its rules and regulations and to be subject to all of the duties and obligations imposed by ownership of, and membership in, said Association and is deemed to covenant and agree to pay to the Association an annual assessment equal to the Common Expense Liability allocated to such Unit, and, subject to the provisions of § 5314 of the Act, such assessments shall be established and collected as hereinafter provided.

Subject to the provisions of § 5315 of the Act, all assessments, together with, except as set forth in Section 8.2.1 of this Declaration, late fees, interest, costs of collection when delinquent, including reasonable attorney's fees whether or not suit is brought, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with late fees, interest, costs of collection when delinquent, including reasonable attorney's fees whether or not suit is brought, shall also be the personal obligation of each person who was the Owner of such property at the time when the assessment or installment thereof became due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them, but nothing herein contained, except as set forth in Section 8.2.1 of this Declaration, shall be deemed to discharge the lien of the assessment upon the real property, the subject thereof. No Owner may waive or otherwise escape liability for the assessments provided for herein by non use of the Common Facilities nor by abandonment of the Unit owned.

Any amounts received by the Association from the payment of General Common Expenses assessments and in excess of the amount required for actual General Common Expenses and reserves for future General Common Expenses shall be credited to Units in accordance with § 5313 of the Act, and shall be taken into account when establishing the budget for the next succeeding fiscal year, but need not be refunded or applied (until exhausted) to subsequent assessments.

Any amounts received by the Association from the payment of Special Allocation Expenses assessments in excess of the amount required for actual Special Allocation Expenses and reserves for future Special Allocation Expenses intended to be paid from the Special Allocation Expenses assessments shall be credited to Units in accordance with § 5313 of the Act, and shall be taken into account when establishing the budget for the next succeeding fiscal year, but need not be refunded or applied (until exhausted) to subsequent assessments.

5.2. Estoppel Certificate

Within ten (10) days of the request therefor, the Executive Board of the Association shall cause to be provided an Estoppel Certificate which shall set forth any assessments and charges, or installments thereof, due upon such Unit as of the date of issuance and shall certify as to whether or not there are violations of the Governing Documents remaining within the Unit known to the Association as of the date of issuance. A reasonable fee may be established from time to time for the cost of preparation of such certificate and shall be paid at the time of request for such certificate. A properly executed certificate of the Association as to the status of assessments or installments thereof on a Unit is binding upon the Association as of the date of its issuance as to any purchaser or mortgagee relying thereon in good faith, but shall not relieve the Owner of personal liability.

5.3. Purpose of Assessments

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Subject Property and for the operation, improvement and maintenance, repair and replacement of the Common Elements and for the performance of the obligations of the Association. In addition, the assessments may be used for the creation, maintenance and enhancement of reserves, and the maintenance of appropriate policies of insurance, and for the payment of all obligations required of the Association created by its own acts or imposed upon it by law or by the terms of the Governing Documents.

5.4. Annual Assessments

On or before thirty (30) days prior to the end of each Fiscal Year of the Association, the Executive Board shall adopt Annual General Common Expenses and Special Allocation Expenses Budgets in amounts deemed appropriate, in the sole judgment of the Executive Board, for the purposes set forth in the Governing Documents. Notwithstanding the foregoing, the General Common Expenses and Special Allocation Expenses Budgets shall include such amounts as are reasonably necessary to establish and maintain an adequate reserve fund a) for the replacement, when required, of the Common Elements (including without limitation improvements to the Common Elements including Limited Common Elements), and b) to cover insurance deductible amounts pursuant to the provisions of Section 4.4 of this Declaration.

The Executive Board shall, at least thirty (30) days in advance of each annual assessment period, fix

- 5.4.1. an annual assessment against each Unit for such Unit's General Common Expense Liability in an amount equal to the amount of the annual General Common Expenses Budget multiplied by such Unit's Association Interest; and
- 5.4.2. annual special allocation assessments against each Unit in an amount proportionate to the benefit to such Unit of the Special Allocation Expenses Budgets which Special Allocation Expenses Budgets shall include, but not be limited to:
  - 5.4.2.1. costs associated with the maintenance, repair or replacement of any and all Limited Common Elements which shall be assessed in equal shares against the Units to which such Limited Common Elements were appurtenant at the time the cost was incurred; and



- 5.4.2.2. the costs of utility services to Units paid by the Association, if any, which shall be, if separately metered to each Unit, assessed in proportion to usage or, if not separately metered to each Unit, assessed in equal amounts to all Units to which such utility services are provided.

Written notice of the adopted budgets and Annual Assessments against each Unit shall be sent to every Unit Owner subject thereto. Unless objection to any Budget or Annual Assessment is made by the Owners of not less than fifty-one (51%) percent of the Units subject to such Assessments within thirty (30) days after the date of mailing of such notice, the same shall be deemed adopted and shall be binding on all Members of the Association as provided in this Declaration.

In the event that the Executive Board shall fail to fix any annual assessments for any fiscal year, then each assessment established for the prior fiscal year shall be continued until such time as the Executive Board shall act.

5.5. Special Assessments for Capital Improvements

In addition to the annual assessments authorized in the Governing Documents, the Executive Board may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of a part of the Common Elements including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of Members voting at a Special Purpose Meeting duly called for such purpose in accordance with the provisions of Section 4.5.3. of this Declaration. Any Special Assessment for Capital Improvements shall be assessed against all Units in accordance with the common expense liability allocated to each Unit in the case of General Common Expenses.

5.6. Assessment to repair damage caused by Owner or others for whom Owner is responsible

The Executive Board may levy an assessment against any Unit for the Association's cost of repair, replacement (and expenses relating thereto) of any Common Element damaged as the result of the negligence or intentional conduct of any of such Unit's Owners, residents, tenants, occupants, or guests, employees, agents, or invitee or licensee of any thereof.

5.7. Emergency Assessment

The Executive Board may, by a vote of not less than two-thirds (2/3) vote of the members of the Executive Board, impose a Special Assessment for any unusual, unanticipated or emergency maintenance, repair or other expense required pursuant to the terms of this Declaration or required pursuant to any law to be paid by the Association (including, after depletion of reserves, any unexpected expenditures not provided by the budget or unanticipated increases in the amounts budgeted).

Any Emergency Assessment shall be assessed against all Units in accordance with the common expense liability allocated to each Unit in the case of General Common Expenses.



5.8. Initial Assessment

At the time of the first Conveyance of each Unit to an Owner who is not a Declarant or Assignee Declarant, the acquiring Owner shall pay an Initial Assessment to the Association in the amount of four hundred and no/100 Dollars (\$400.00).

The initial assessment shall constitute a non-refundable payment to the Association, to be used by the Association to pay start-up expenses, to prepay certain expenses, such as insurance premiums, and to provide an initial reserve against future expenses and shall not be credited as an advance payment of annual or special assessments.

5.9. Capital Improvement Fee on Resale or Transfer

Subject to the provisions of the Act and specifically subject to the limitations of § 5302(a)(12) of the Act, the Grantee of an ownership interest in a Unit, by the acceptance of such ownership interest, including without limitation any purchaser at judicial sale or heir or devisee of a deceased Owner, by the acceptance of ownership to a Unit obligates and binds such Grantee or Owner, and the heirs, successors and assigns of such Grantee or Owner, to, upon the conveyance of the interest in the Unit, other than any Conveyance(s) in which the Grantor is a Declarant or Assignee Declarant, pay a Capital Improvement Fee in an amount as established by the Board from time to time in an amount which shall not exceed the annual assessment against the Unit for such Unit's General Common Expense Liability for the most recently completed fiscal year of the Association.

5.10. Payments of Assessments

The Executive Board may authorize, in its discretion, any assessment to be paid in installments thereof on an annual, quarterly or monthly basis.

The obligation to pay Assessments shall not be subject to deduction or set-off or otherwise be diminished, discharged, suspended or abated because of, (i) any claim which such Owner(s) may have against the Association; (ii) the failure or purported failure of the Association to provide services required of it; (iii) the fact that there is no Dwelling or other structure on such Owner's Unit or that the Dwelling or other structure thereon has been demolished, destroyed or removed, in whole or in part, or is unoccupied or uninhabitable for any reason; or (iv) the default or delinquency of any other Owner(s).

The obligation of an Owner to pay Assessments shall not be affected by leasing of the Unit, or any part thereof, and the Owner shall remain personally liable therefor. If a lease imposes the obligation to pay Assessments or any part thereof on the tenant, the Association shall conclusively be deemed to be a third party beneficiary of such covenant and shall have the right (but not the obligation) to enforce such obligation directly against the tenant.

Each Owner shall reimburse, defend and indemnify the Association upon demand for any losses, expenses, costs, or damages incurred by the Association as a result of any claims, damage to Common Elements, caused by or resulting from any act, omission or negligence of the Owner or the Owner's family, guests, employees, agents, lessees, licensees, contractors or subcontractors. Such damages may be assessed and collected as a Special Assessment against such Owner.

In connection with the collection of delinquent Assessments, the Executive Board shall have the power, in its discretion, to waive the obligation of an Owner to pay Assessments in arrears (in whole or in part) and attendant interest, late charges and costs of collection; and to compromise or settle the Association's claims against an Owner. No indulgence, waiver or compromise in any one instance shall require that the Board grant any similar indulgence, waiver or compromise in any other instance to the same Owner or to any other Owner(s).

5.11. Effect of Non Payment of Assessments: Remedies of the Association

Any assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of fifteen (15%) per cent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien of such assessment or installment thereof against the Unit.

The Grantee of an ownership interest in a Unit, by the acceptance of such ownership interest, whether or not it shall be so expressed in the deed conveying an ownership interest, and including without limitation any purchaser at judicial sale or heir or devisee of a deceased Owner, by the acceptance of ownership to a Unit obligates and binds such Grantee or Owner, and the heirs, successors and assigns of such Grantee or Owner, as a covenant running with the land, that the Grantee or Owner of the Unit will at all times agree to the enforcement of all assessments in the manner specified in this Declaration and in the Act. Each Owner agrees to pay reasonable attorney's fees as established from time to time by the Executive Board and costs incurred in the collection of any assessment against such Owner and/or such Owner's Unit, whether by suit or otherwise, or in enforcing compliance with or specific performance of the terms and conditions of the Governing Documents as against such Owner and/or such Owner's Unit.

Any assessment or installment thereof not paid within fifteen (15) days after the due date shall be delinquent. Thereupon the Association may exercise any one or more of the following remedies, after notice of such delinquency to the Unit Owner, which are all declared to be cumulative and not exclusive. The selection of a single remedy or multiple remedies shall not be deemed an election thereby excluding any other remedies, but the Association may exercise any and all remedies singularly, consecutively, or concurrently: (a) declare the entire balance of such annual or special assessment due and payable in full; and (b) charge a late fee in the amount to be set by the Executive Board; and (c) upon notice to the Owner suspend the right of such Owner to vote and/or to use the Common Elements until the assessment and accrued charges are paid in full; and (d) employ any other remedies available at law or in equity which, without limitations of the foregoing, shall include either of the following procedures:

5.11.1. Enforcement by Suit

The Association may commence and maintain a suit by law against any Owner or Owners for such delinquent assessments as to which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of fifteen (15%) per cent per annum from the due date, costs of collection, court costs, and reasonable attorney's fees. Suit to recover any money judgment for any unpaid assessments shall be maintainable without foreclosing or waiving the lien hereinafter provided for.

5.11.2. Enforcement by Lien

The Association may foreclose the lien imposed by § 5315 of the Act and perfected by the recordation of this Declaration in accordance with, and subject to, the provisions of § 5315 of the Act.

5.12. Exempt Property

All property Conveyed to any Governmental/Public Service Entity shall be exempt from assessments pursuant to this Declaration.

5.13. Rights of Municipality

If the Association shall fail to maintain those portions of the Common Elements (including Controlled Facilities, as applicable) for which it is responsible, in safe order and condition, including but not limited to, any storm water management facilities, easement areas, and Common Facilities, the Municipality may serve written notice upon the Association, setting forth the details of any such deficiencies. The notice shall require that such deficiencies in maintenance be cured within sixty (60) calendar days and shall state the date and place of a hearing thereon which shall be held within fourteen (14) calendar days of the notice.

At such hearing, the Municipality may modify the terms of the original notice and may give an extension of time within which the deficiencies shall be cured. If the deficiencies, as finally described, shall not have been cured within said sixty (60) calendar day period, or any extension thereof, the Municipality, in order to preserve the taxable values of the Community and to prevent the Common Elements from becoming a public nuisance, may enter upon such Common Elements and maintain the same for a period of one (1) year. Said entry and maintenance by the Municipality shall not vest the public with any rights to use the Common Elements.



Prior to the expiration of the one (1) year period, the Municipality shall, upon its initiative or upon the request of the Association, call a public hearing with notice to the Association, at which hearing the Association shall show cause why such maintenance by the Municipality, at the election of the Municipality, should not continue for an additional year. If the Municipality shall determine that the Association shall resume the maintenance responsibilities for the Common Elements, then the Municipality shall cease its maintenance activities at the end of the initial year. If the Municipality shall determine that the Association shall not resume the maintenance of the Common Elements, then, at the Municipality's discretion, the Municipality may continue its maintenance activities during the next succeeding year, and, subject to a similar hearing, a determination for each year thereafter shall be made. The decision of the Municipality in each such case shall constitute a final administrative decision subject to judicial review.

**This Section 5.13 may not be amended without the prior consent of the Municipality.**

5.14. Cost of Municipality's Maintenance Activities

If the Municipality shall assume maintenance activities for all or any portion of the Common Elements in accordance with Section 5.13 above, the Municipality shall have the right to impose a Municipal Lien (see, 53 P.S. §7106, as amended) against the Association and/or the Unit Owners for the costs incurred by the Municipality, together with any other amounts collectible by the Municipality under the Pennsylvania Municipal Lien Law, as amended from time to time.

**This Section 5.14 may not be amended without the prior consent of the Municipality.**

## ARTICLE VI

### RESTRICTIVE COVENANTS

#### 6.1. Enforcement

The Grantee of an ownership interest in a Unit, by the acceptance of such ownership interest, whether or not it shall be so expressed in the deed conveying an ownership interest, and including without limitation any purchaser at judicial sale or heir or devisee of a deceased Owner, by the acceptance of ownership to a Unit, acknowledges and agrees that any use of the Unit Owner's property in violation of the provisions of this Article VI, including without limitation any Architecturally Controlled Improvement constructed, installed, placed or maintained within said Unit Owner's Unit without approval of the Executive Board as set forth in Section 6.2.2 of this Declaration, ("Non-conforming Modification"), shall be removed or corrected in its entirety, within Fifteen (15) days of notice to said Unit Owner of such Non-conforming Modification, (which such notice shall be by the mailing thereof by certified mail, return receipt requested to the resident of the Unit, or by hand delivery to an adult resident of said Unit). Such removal shall be at the expense of said Unit Owner, and each and every Grantee of an ownership interest in a Unit, by the acceptance of such ownership interest, whether or not it shall be so expressed in the deed conveying an ownership interest, and including without limitation any purchaser at judicial sale or heir or devisee of a deceased Owner, by the acceptance of ownership to a Unit, hereby grants to the Executive Board an easement, license, and the authority to cause such Non-conforming Modification to be removed at said Unit Owner's expense if not removed within fifteen (15) days after notice as aforesaid. Notwithstanding any provision of this Declaration to the contrary, no summary abatement of any Non-conforming Modification (including without limitation the grant to the Executive Board of an easement, license, and the authority to cause such Non-conforming Modification to be removed at said Unit Owner's expense if not removed within fifteen (15) days after notice) which would result in the alteration or demolition of any item of construction shall commence unless and until judicial proceedings to restrain violation or to recover damages, of violations or attempts to violate any restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Governing Documents shall have been instituted.

#### 6.2. Architectural Control and Appearance

##### 6.2.1. Architecturally Controlled Improvements

"Architecturally Controlled Improvement" shall mean and refer to each and every one of the following (excepting, as to each Unit, any of such of which is prior to, or in connection with, the first Certificate of Occupancy issued for occupancy of a structure on such Unit), subject that inclusion of an item in the following list of items shall not imply that such item is or shall be permitted:

- 6.2.1.1. construction of any improvement on any Unit within the Subject Property which such construction shall require a permit therefor from any governmental entity having jurisdiction thereof; and
- 6.2.1.2. any addition to any structure; and
- 6.2.1.3. any Walkway, any Street, any Driveway, and any Landscape Plantings; and
- 6.2.1.4. construction or placement of any structure, improvement, fixture, device or item on a Unit attached to or appurtenant to the principal structure on the Unit including, but not limited to, any greenhouse, playhouse or play structure, solar panel, fireplace, grill, or other cooking or food preparation facility (excepting such of which as are portable and, when not in use, are stored within a structure); and
- 6.2.1.5. any alteration, modification or change in or to any of the exterior components, fixtures, materials, colors, and/or appearance of any building, fence, wall or other structure or any portion thereof (including without limitation, any painting thereof) on a Unit; and
- 6.2.1.6. any addition to and/or demolition or removal of any building, fence, wall or other structure or any portion thereof on a Unit; and
- 6.2.1.7. installation of lighting fixtures, illuminating devices or illumination sources, including but not limited to lamppost lights, anywhere on a Unit excepting only such lighting fixtures, illuminating devices or illumination sources installed wholly within a building on a Unit; and
- 6.2.1.8. fencing, privacy wall or gate, together with landscaping adjacent or in proximity thereto on a Unit; and
- 6.2.1.9. erection and/or maintenance of any antenna or exposed electrical or electronic wires or lines on the outside of any structure, including without limiting the generality thereof, any television receiving antenna, satellite receiving antenna, radio receiving antenna or radio or television transmitting antenna; and
- 6.2.1.10. anything hung, painted, displayed, relocated or extended on or affixed or placed upon the outside surfaces of doors, the outside of the windows (or inside, if visible from the outside), the exterior walls, or roofs of any structure on a Unit or any part thereof.

Anything in this Declaration to the contrary notwithstanding, except for such improvements or work as are the substantially similar replacement of improvements and/or work previously approved pursuant to the provisions of this Section 6.2 or substantially similar replacement of improvements and/or work done prior to, or in connection with, the first Certificate of Occupancy issued for occupancy of a structure on a Unit, no Architecturally Controlled Improvement shall be permitted to commence or remain unless and until such improvement or work shall have been approved pursuant to the provisions of Section 6.2.2 of this Declaration.



6.2.2. Architecturally Controlled Improvements Review and Approval

Any Unit Owner desiring to construct or cause to be constructed, or work to be performed of, an Architecturally Controlled Improvement shall submit to the Executive Board for approval:

(1) plans, construction documents and drawings for such improvement or work, which plans, documents and drawings shall clearly show the scope of the work and/or the proposed architectural design, and describe all exterior materials and colors to be used in the construction or implementation of the proposed improvement; and (2) the proposed lines and grades and site plans; and (3) landscape plans (hereinafter collectively referred to as "Proposed Work/Construction Documents").

The Proposed Work/Construction Documents shall be deemed received by the Executive Board when, and only when, the person or entity submitting same shall have received written acknowledgments evidencing the receipt of the Proposed Work/Construction Documents signed by no less than such number of members of the Executive Board as shall constitute a majority thereof.

The Executive Board shall consider the compliance of the proposed work with all applicable local ordinances and laws, the suitability of the proposed work and/or improvement, including the extent of the work and, if applicable, the materials and colors to be utilized, the siting and landscaping thereof, if any, the harmony thereof with surroundings, including dwellings and/or other structures within the Subject Property, and the effect on, and view from, roadways, adjacent and neighboring properties. The Executive Board shall, by a vote of the majority thereof, have the right, in its sole discretion, to approve or disapprove any proposed Architecturally Controlled Improvement.

If any proposed work shall, if approved, result in the creation of any Common Elements, the Executive Board shall consider the effect of the proposed work on the Association Obligations (as such term is defined in Section 1.9 of this Declaration).

The Executive Board shall render its decision in writing, with regard to the proposed improvements within forty five (45) days after receipt of the Proposed Work/Construction Documents. If additional information regarding the Proposed Work/Construction Documents is required, the aforesaid forty five (45) day period shall be extended for the period of time between the date of such request for additional information and the date such additional information is submitted by the applicant, plus fifteen (15) days. If the Proposed Work/Construction Documents are not approved, the reasons for disapproval shall be set forth in the written decision. If a written decision is not mailed within the aforesaid forty five (45) day period (as the same may be extended as aforesaid), then the Proposed Work/Construction Documents shall be deemed to have been approved as submitted, but no change to the Proposed Work/Construction Documents submitted may be made without submission of such changes for approval in accordance with the procedures set forth herein. The disapproval of Proposed Work/Construction Documents shall be without prejudice to the right of the applicant to resubmit an application for approval in which the reasons for disapproval have been addressed by the applicant. Approval may be granted subject to conditions specified in the written decision granting conditional approval, in which event the Proposed Work/Construction Documents shall be deemed to have been approved subject to the applicant's compliance with such conditions.

All Proposed Work/Construction Documents submitted to the Executive Board for review may be retained by the Executive Board regardless of whether the proposed Architecturally Controlled Improvement has been approved or disapproved

In any approval of any Architecturally Controlled Improvement which will result in the creation of any Common Element(s), the Executive Board shall separately state, in writing, that the whole thereof, or if less than the whole thereof, which applicable part(s) of the Architecturally Controlled Improvement, is or are General Common Facilities, Limited Common Facilities, General Controlled Facilities, or Limited Controlled Facilities.

The Executive Board may promulgate rules and regulations establishing procedures to be followed with respect to matters requiring the approval of the Executive Board, and may also adopt a schedule of reasonable fees that may be charged for review of proposals submitted by Owners that are subject to approval pursuant to this Section 6.2.2.

The Executive Board may promulgate regulations and architectural policies setting forth general architectural and aesthetic standards or policies to be met for all or specified types of improvements.

In rendering its decision, the Executive Board shall have the power to interpret this Declaration and the Executive Board's regulations and policies relating to architectural and aesthetic standards and to grant reasonable variances from specific requirements of this Declaration or the rules and regulations if, in the Executive Board's opinion (i) the particular requirement to be varied poses unreasonable hardship on the applicant as a result of the peculiar features of the applicant's Unit or Dwelling or other existing improvements or features on the Unit, (ii) the particular requirement to be varied would not render the proposed improvements aesthetically incompatible or inconsistent with other existing improvements on the applicant's Unit or existing structures on neighboring or nearby Units, or (iii) the particular requirement, as applied to the proposed improvements, is impractical or would increase the cost of the proposed improvement by an unreasonable amount. The granting of such variances shall be within the sole and absolute discretion of the Executive Board, and no variance granted in any one instance shall create any obligation on the Executive Board to grant a variance in any other instance. Such variances may be granted subject to such conditions as the Executive Board may require in its sole discretion.

### 6.2.3. Liability for Approval or Disapproval

Neither the Association, the Executive Board (nor any committee thereof), nor any officer or agent thereof shall be liable, in damages or otherwise, to anyone in connection with the approval or disapproval of any Proposed Work/Construction Documents or for the consequences of such approval or disapproval. Neither the Association, the Executive Board (nor any committee thereof), nor any officer or agent thereof shall be responsible for determining the safety or structural soundness of any Architecturally Controlled Improvement or its compliance with applicable laws, ordinances, regulations, or building codes. The establishment of a mechanism for the approval of Proposed Work/Construction Documents for Architecturally Controlled Improvements is for the sole purpose of protecting certain aesthetic standards within the Community for the benefit of the Owners and is not intended for the protection of the health or safety of Owners, occupants, or any other person or entity.



6.3. Restrictions on Parking of Vehicles on Common Facilities including on Streets and Driveways

All vehicles of any kind which are owned by, leased or rented by, or in the control or under the direction of any Owner, must be parked at all times only completely on the Owner's Unit and/or completely within the garage portion of the Owner's Dwelling; parking of any such vehicles on the outside of the garage portion of the Owner's Dwelling in any manner including without limitation parallel to the garage door is prohibited.

No vehicle of any kind which is owned by, leased or rented by, or in the control or under the direction of any Owner, may be parked on any portion of any the Common Facilities including without limitation on any Streets or Driveways except for such time as is necessary to load or unload same, or pickup or discharge passengers therefrom.

Only vehicles owned by, leased or rented by, or in the control or under the direction of a guest of an Owner, or visitor to the Owner's Residence, may be parked on any Street or Driveway, subject that such parking shall only be in spaces designated for such parking and such parking shall not exceed an aggregate time of twelve hours in any 24-hour period.

6.4. Restrictions Applicable to Units

Each Unit in the Subject Property is and shall be held, transferred, sold, conveyed and occupied subject to the following conditions, covenants, and restrictions, which shall be covenants running with the land each and all of which is and are for the benefit of the Subject Property and for each Owner of a part thereof:

6.4.1. Repair or Replacement of Damaged Structures

If any structure or other improvement on a Unit is damaged or destroyed by fire or other casualty, the Owner of such Unit shall a) as soon as is practicably possible cause work to commence to secure any damaged structure, protect any damaged structure or other improvement from further damage, and clean all debris on and without the Unit resulting therefrom; and b) within thirty days, cause work to commence and thereafter to be diligently pursued until completion, to rebuild, repair and restore the damaged or destroyed structure and/or improvement(s) to the condition existing immediately prior to such damage or destruction, or to such other condition as is approved as Architecturally Controlled Improvement pursuant to the terms of Section 6.2.2 of this Declaration (collectively, "Casualty Remediation Work"). If, after a casualty, a Unit Owner fails to cause Casualty Remediation Work to be commenced and thereafter pursued diligently until completion as set forth in this Section 6.4.1, such failure shall be deemed a Non-conforming Modification subject to the provisions of Section 6.1 of this Declaration.

6.4.2. Nuisances

No nuisance, or noxious, offensive, or dangerous activity or thing shall be created, permitted or conducted on or about any Unit. All garbage, trash, and other refuse shall be placed in tight, enclosed containers which shall be kept within the interior of the Unit except as such may be placed for collection within 24 hours of refuse and trash collection.



No storage, depositing, dumping, burial, burning or abandonment of any solid waste, debris, trash or refuse of any nature shall be permitted on or about the Units or Common Facilities, except trash or debris left at curbside for trash collection purposes. Trash or refuse placed outside for collection shall, to the extent possible, be kept in enclosed containers or approved recycling bins. Such containers shall be removed promptly after the contents thereof have been collected.

6.4.3. Hazardous Activities

No activities shall be conducted anywhere on the Subject Property which are or might reasonably be unsafe or hazardous to any person or to property. Without limiting the generality of the foregoing, no firearms shall be discharged on the Subject Property, and no open fires shall be lighted or permitted on the Subject Property. No hunting of any type shall be permitted on the Subject Property. No person shall permit anything to be done or kept upon the Subject Property which will result in the cancellation of insurance or increase of premiums for any insurance maintained by the Association or other Owner(s).

Use of an exterior balcony and/or exterior patio for any cooking activity of any kind shall be deemed to be a hazardous activity and fire hazard *per se* and is absolutely prohibited.

6.4.4. Temporary Facilities

No temporary structure, trailer, garage, tent or other similar facility shall be used on any portion of the Subject Property at any time for residential purposes.

6.4.5. Laundry

No laundry shall be hung or exposed on the exterior of any Dwelling, Unit, or other structure.

6.4.6. Fences and Hedges

No fence or hedges or mass groupings of shrubs, trees or other plantings which could be a visual barrier comparable to a fence shall be erected, installed, or maintained on any Unit unless and until such fence, hedge, or other plantings, together with the landscaping to be installed adjacent or in proximity thereto, shall have been approved as an Architecturally Controlled Improvement pursuant to the provisions of Section 6.2 of this Declaration.

6.4.7. Use Restriction

Unless otherwise hereinafter expressly provided, each Dwelling shall be used solely for residential purposes.

6.4.8. Business Use

No trade, business or profession, except customary home occupations clearly incidental to the residential use of the Unit and subject to compliance with and approval of all governmental agencies having jurisdiction thereof, shall be regularly conducted or pursued on any Unit or within or without any Structure on any Unit.

No vehicle, equipment, or structure shall be placed, maintained, constructed or operated, temporarily or permanently, on any Unit for any trade, business, or other commercial purpose.

6.4.9. Animals

Except for animals commonly recognized as domestic house pets, no animals of any kind, whether mammal, bird, reptile or other, shall be at any time kept on any Unit.

No animals may be raised or kept on any Unit or in any Structure on any Unit for commercial breeding or for any other commercial purpose.

Pets shall be maintained and controlled at all times so as not to offend or disturb other Unit owners or occupants by noise, elimination, odor, intrusion, destruction of property or otherwise.

6.4.10. Signs

No signs, billboards, notices, advertising, displays, or other attention attracting devices shall be erected or maintained on any Unit or within any Dwelling if such is viewable from outside the Dwelling excepting:

6.4.10.1. signs identifying the address of the Unit to the extent required by governmental entities having jurisdiction thereof;

6.4.10.2. small signs not exceeding one (1) square foot in size identifying the occupant, and home occupation, if applicable; and

6.4.11. No more than one Dwelling, together with appurtenant structure(s) thereto shall be constructed, placed or maintained on each Unit, and the Dwelling shall be occupied by no more than one family as such term is defined in the Zoning Ordinance of Sewickley Borough, Allegheny County, Pennsylvania.

6.5. Compliance with Laws

No building, appurtenant structure or other improvement shall be constructed, placed or maintained on any Unit other than is permissible, with, if required, variance sought and granted, except pursuant to all statutes, laws, ordinances, rules and regulations of all governmental entities having jurisdiction thereof.

All construction, and all parts and phases thereof including, but not limited to, electrical work and plumbing, shall be performed in accordance with all applicable building codes and regulations.

6.6. Handicapped Use

Nothing in the Governing Documents shall be deemed to prohibit the reasonable adaptation of any Unit, Dwelling, or other structure for handicapped or special use, subject to regulations of the Borough.

## ARTICLE VII

### SPECIAL DECLARANT RIGHTS

#### 7.1. Right to subject Property to Easements

Declarant shall have the full power and authority to exercise Declarant's right to subject the Subject Property to Easements pursuant to the provisions of Section 3.8 of this Declaration.

#### 7.2. Exercise of Rights

Declarant shall have the full power and authority to exercise Declarant's right to modify pursuant to the provisions of Section 2.1 of this Declaration.

Declarant shall have the full power and authority to exercise Declarant's right to appoint members of the Executive Board pursuant to the provisions of Section 4.6.2 of this Declaration.

#### 7.3. Right to Use of Easements

Declarant shall not be denied the use of, and Declarant shall have the full, continuous, and uninterrupted right of use of Easements as set forth in this Declaration, including but not limited to such as set forth in Section 3.6.6 of this Declaration.

#### 7.4. Exception for Development and Sales

Notwithstanding anything in this Declaration to the contrary, nothing herein shall prohibit the use of any portion of the Subject Property, including without limitation any Units or any other portion of the Subject Property, for the development, construction, and sales of the Units, with or without Dwellings thereon, and/or the sale of or contracting for construction of Dwellings and appurtenant structures.

No prohibition against business use, prohibition against signage, or prohibition against other uses of the Units or other portions of the Subject Property shall prohibit the seller of Units and/or Dwellings thereon from placing, constructing, installing and maintaining such sales offices, signs, temporary structures and facilities, business activities and similar things and activities as such seller shall deem appropriate for the purposes of such sales, construction and related activities.



## ARTICLE VIII

### SECURED LENDERS

#### 8.1. Rights of Secured Lenders

In order to induce Secured Lenders to make loans secured by liens upon Units or lands within the Community of Elmhurst, subject to the provisions of § 5221 of the Act, the Association shall not, without the prior written consent of at least whatever percent of first mortgagees of individual Units as is required by Financing Agencies having jurisdiction thereof and two-thirds (2/3) of Owners other than the Declarant:

- 8.1.1. by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any of the Community Facilities owned directly or indirectly excepting, however, Conveyances to Governmental/Public Service Entities consistent with common property use are excepted;
- 8.1.2. change the method of determining the obligation, assessments, dues or other charges which may be levied against an Owner;
- 8.1.3. by act or omission, change, waive or abandon regulations or enforcement pertaining to restrictive covenants, the maintenance of the Common Elements, or the upkeep of lawns and plantings;
- 8.1.4. fail to maintain fire and extended coverage on insurable property on a basis as required by Financing Agencies; and
- 8.1.5. use hazard insurance proceeds for losses to Community Facilities for other than the repayment for, replacement or reconstruction of such Community Facilities.

#### 8.2. Obligations of Association to Secured Lenders

As further inducement to Secured Lenders, subject to the provisions of the Act, the Association shall:

- 8.2.1. not make liable any mortgagee who obtains title to a Unit, pursuant to the remedies provided in the mortgage, for any fees or charges, including but not limited to interest, costs and reasonable attorney's fees, related to the collection of such Unit's unpaid assessments which accrue prior to the acquisition of title to such Unit by the mortgagee;
- 8.2.2. allow mortgagees of Units to, jointly or singly, pay taxes or other charges against the Common Elements and pay overdue premiums on hazard insurance policies, or secure new hazard insurance policies on the lapse of a policy for such Common Elements, and mortgagees making such payment shall be owed immediately reimbursement therefor from the Association;

- 8.2.3. give written notification, upon written request, to any first mortgagee, at the address designated in the request, of any default in the performance by any individual Unit mortgagor or such individual Unit mortgagor's obligations pursuant to the terms of the Governing Documents;
- 8.2.4. limit any agreement for professional management or any contract providing for services from or by the Declarant to that required by any federal agencies having jurisdiction thereof and provide for termination in accord with standards of federal agencies. Any management agreement shall remain consistent with the Governing Documents.
- 8.2.5. give written notification, upon written request, to any Secured Lender, at the address designated in the request, of any proposed amendment of this Declaration. Any Secured Lender providing such written request shall thereafter, for the period of time that such Secured Lender shall have and hold a valid first mortgage lien against a Unit, be an Eligible Mortgage Holder;
- 8.2.6. if the Association does not have an audited statement of the Association's finances prepared at the expense of the Association and available within 120 days of the Association's fiscal year-end, permit any Secured Lender to have an audited statement prepared at its own expense;
- 8.2.7. give written notification, upon written request, to any mortgagee, at the address designated in the request, of:
  - 8.2.7.1. any condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage;
  - 8.2.7.2. a lapse, cancellation, or material modification of any insurance policy maintained by the Association;
  - 8.2.7.3. any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

8.3. Exercise of Special Declarant Rights

Nothing in this Article VIII or in Article IX shall be construed to require the consent of any Secured Lender or Unit Owner prior to the Declarant exercising any of its Special Declarant Rights pursuant to this Declaration and the Act, including without limitation those set forth in Article VII, or to amend this Declaration pursuant to a Corrective Amendment pursuant to Section 9.3 hereof.

## ARTICLE IX

### GENERAL PROVISIONS

#### 9.1. Enforcement

The Association, the Sewickley Borough Council, the Declarant, or any Owner shall have the right to enforce, by any proceedings at law or in equity, either to restrain violation or to recover damages, all violations or attempts to violate any restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Governing Documents.

Failure to enforce any restrictions, covenants or agreements contained in the Governing Documents shall in no event be deemed a waiver of the rights to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto.

#### 9.2. Severability

Invalidation of any one of the conditions, covenants or restrictions of this Declaration by judgment or court order shall not affect any other provisions, all of which shall remain in full force and effect.

#### 9.3. Amendment

Subject to the provisions of § 5219 of the Act, the conditions, covenants and restrictions of this Declaration shall run with and bind the land in perpetuity and may be changed, altered, modified or extinguished in whole or in part, at any time, by an instrument, in writing, signed by not less than the record owners of sixty seven percent (67%) of the Units within the Subject Property, which such Amendment shall be recorded in the Department of Real Estate of Allegheny County, Pennsylvania.

Notwithstanding the foregoing provision in this Section 9.3 of this Declaration permitting this Declaration to be amended by an instrument, in writing, signed by not less than the record owners of sixty seven percent (67%) of the Unit/Lots within the Subject Property, (a) this Declaration may not be amended during the Development Period (as such Development Period is defined in Section 1.24 of this Declaration) without the express written joinder of the Declarant in such amendment and (b) no provisions of this Declaration pursuant to which any special Declarant rights have been reserved to a Declarant shall be amended without the express written joinder of the Declarant in such amendment.

This Declaration contains provisions concerning various rights and interests of Sewickley Borough, Allegheny County, Pennsylvania. Such provisions in this Declaration are to be construed as covenants for the protection of Sewickley Borough. Accordingly, no amendment or modification of this Declaration impairing or affecting such rights, priorities, remedies or interests of Sewickley Borough shall be adopted without the prior written consent of Sewickley Borough.



9.4. Conflict

In the event of irreconcilable conflict among the Governing Documents, ordinances, statutes, rules and regulations, the conflict shall be resolved in favor of the requirements of the respective documents in order of their hereinafter stated priority, to wit:

- (1) The Act
- (2) Development Plan(s);
- (3) This Declaration;
- (4) Articles of Incorporation of the Association;
- (5) Bylaws of the Association;
- (6) Book of Resolutions of the Association.

Anything above to the contrary notwithstanding, in all cases the requirements of all regulatory statutes shall control.

9.5. Provisions not in derogation of Constitutional or Statutory Rights

No term, condition, provision, or grant of right(s) set forth in this Declaration is intended to deny, restrict, inhibit, or infringe, nor shall any term, condition, provision, or grant of right(s) set forth in this Declaration be so interpreted so as to deny, restrict, inhibit, or infringe any right of any Owner which is guaranteed by the Constitution of the United States of America or the Constitution of the Commonwealth of Pennsylvania, as each of them may be amended, or any and all rights of an Owner established by law, statute, rule or regulation of any governmental entity having jurisdiction. Any term, condition, provision, or grant of right(s) set forth in this Declaration which, in any way, denies, restricts, inhibits, or infringes any of such rights of an Owner shall be given no force nor effect.

9.6. Interpretation

Unless the context otherwise requires the use herein, the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including without limitation." The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.



Exhibit "A"

Description of Subject Property

ALL that certain lot or piece of ground situate in the Third Ward of the Borough of Sewickley, County of Allegheny and Commonwealth of Pennsylvania, being bounded and described as follows, to-wit:

BEGINNING at a point at the intersection of the Southwesterly side of Thorn Street and the Northwesterly side of Boundary Street; thence along said side of Boundary Street, South 30 degrees 36' 30" West, 451.37 feet to a point on the Northeasterly side of Ohio River Boulevard, North 54 degrees 59' 50" West, 416.42 feet to a point on line of land now or late of Sewickley Manor; thence by said land and by land now or late of G. V. Cochran, North 35 degrees East, 380.22 feet to a point on line of land now or late of S. C. Clipson; thence by said land and by land now or late of V. A. Ericson, South 43 degrees 52' East, 95.81 feet to a point on the Northwesterly side of a right of way 12 feet wide, as described in deed from James Renwick Smith to Malinda McKinnie, dated June 28, 1895, recorded in Deed Book Volume 910, page 78; thence along said side of the right of way, South 35 degrees West, 10.19 feet to a point at the end of said right of way; thence along the end of said right of way, South 43 degrees 52' East, 12.22 feet to a point on the Southeasterly side of said right of way; thence along said Southeasterly side of the right of way, North 35 degrees East, 10.19 feet to a point on line of land now or late of F. M. Tiernan; thence by said land of Tiernan and by land now or late of G. F. Walker, Sr., South 43 degrees 52' East, 95.81 feet to a point; thence continuing by said land of Walker, North 35 degrees East, 145 feet to a point on the Southwesterly side of Thorn Street; and thence along said side of Thorn Street, South 43 degrees 52' East, 185.36 feet to the place of beginning.



Exhibit "B"

Easements, Restrictions, Licenses, and Conditions of Record

1. Subject to rights granted to Duquesne Light Company as set forth in Deed Book Volume 8316, Page 534; and Deed Book Volume 5113, Page 601.
2. Subject to rights granted to The Borough of Sewickley Water Authority as set forth in Deed Book Volume 8103, Page 560.
3. Subject to twelve (12) foot right-of-way as set forth in Deed Book Volume 910, Page 78.
4. Subject to Notices in the Deed as set forth in Deed Book Volume 15893, Page 495 regarding title to subsurface coal and right of support.
5. Subject to the legal operation and effect of the set-back lines, plan notes, easements, conditions and encumbrances as shown on the Initial Development Plan as such is defined in Section 1.25.1 of this Declaration.
6. Subject to this Declaration of Covenants, Restrictions, Easements and Establishment of Homeowners Association for Elmhurst, a Planned Community in Sewickley Borough, Allegheny County, Pennsylvania.

EXHIBIT "C"

CERTIFICATION

I, Patrick T. Cooper, hereby certify that:

1. I am an independent Pennsylvania registered Engineer (42416-E) and an independent Pennsylvania registered Surveyor (40392-E).
2. I am aware of the requirements of Section 5210 of the Pennsylvania Uniform Planned Community Act, 68 Pa.C.S. §5101, et seq. (the "Act"), relating to the contents of plats and/or plans.
3. The *Declaration of Covenants, Restrictions, Easements and Establishment of Homeowners Association for Elmhurst, a Planned Community in Sewickley Borough, Allegheny County, Pennsylvania* ("Declaration"), together with the portion of the *Elmhurst Site Development Plan* ("Development Plan") which has been recorded in the Department of Real Estate of Allegheny County, Pennsylvania in Plan Book Volume 285, Page 10 in accordance with Section 2.4 of the Declaration contain all information required by § 5210 of the Act for the Subject Property of the Declaration.

Dated this 19<sup>th</sup> day of March, 2015.



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EXHIBIT "D"

ERRATA TO DEVELOPMENT PLAN(S)

The bearing meridian depicted on the Initial Development Plan as such is defined in Section 1.25.1 of this Declaration does not match the deed meridian as set forth in Exhibit "A", Description of Subject Property.



**Joinder and Consent by entity having an interest in the Subject Property**

Sewickley Elmhurst Partners, LLC, a Pennsylvania limited liability company, ("Titleholder") hereby states that it is the owner of record of the Subject Property of this *Declaration of Covenants, Restrictions, Easements and Establishment of Homeowners Association for Elmhurst, a Planned Community in Sewickley Borough, Allegheny County, Pennsylvania* ("Declaration")

Declarant, Charter Homes at Elmhurst, Inc., a Pennsylvania corporation, is the equitable owner of the Subject Property of the Declaration pursuant to an unrecorded Agreement of Sale.

Titleholder joins in this Declaration solely for the purpose of subjecting its interest in the Subject Property to all of the terms and conditions of this Declaration.

The said Titleholder hereby agrees and consents that the Subject Property be, and hereby is, made subject to all of the covenants, restrictions, easements, terms and conditions of this Declaration.

Sewickley Elmhurst Partners, LLC  
a Pennsylvania limited liability company

By: \_\_\_\_\_  
Name: Thomas DiOrio  
Title: Co-Manager

By: \_\_\_\_\_  
Name: John L. Golembiewski  
Title: Co-Manager

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS.  
\_\_\_\_\_ COUNTY )

BE IT REMEMBERED that on this \_\_\_\_ day of \_\_\_\_\_, 2015 appeared before me, the Subscriber, a Notary Public for the Commonwealth of Pennsylvania, Thomas DiOrio and John L. Golembiewski, Co-Managers of Sewickley Elmhurst Partners, LLC, a Pennsylvania limited liability company, existing under the laws of the Commonwealth of Pennsylvania, known to me personally (or satisfactorily proven) to be such, and acknowledged that they executed the aforesaid Joinder and Consent as Co-Managers of Sewickley Elmhurst Partners, LLC, for the purposes set forth therein.

GIVEN under my hand and seal of office, the day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission expires: