

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
WALNUT ACRES,
A RESIDENTIAL COMMUNITY

TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS.....	1
ARTICLE 2 - SUBMISSION TO DECLARATION; APPLICABLE LAW.....	2
2.1 Submission of Property.....	2
2.2 Applicable Law.....	2
ARTICLE 3 - DESCRIPTION OF COMMUNITY.....	2
3.1 The Community.....	2
3.2 Unit Boundaries.....	2
3.3 Common Facilities.....	2
3.4 Controlled Facilities.....	3
3.5 Limited Controlled Facilities.....	4
3.6 Dedicated Facilities.....	4
3.7 Conveyance of Common Elements.....	4
ARTICLE 4 - EASEMENTS.....	5
4.1 Grant of Easements.....	5
4.2 Owner Easements.....	5
4.3 Declarant Easements.....	5
4.4 Association Easements.....	7
4.5 Municipal Easements.....	7
4.6 Utility Easements.....	8
4.7 Recorded Easements.....	8
4.8 Option to Purchase Six (6) Acres of Lot 30.....	8
ARTICLE 5 - ASSOCIATION; MEMBERSHIP; ASSESSMENTS.....	9
5.1 Association.....	9
5.2 Association Membership; Voting.....	11
5.3 Executive Board.....	12
5.4 Assessment Obligations of Owners.....	13
5.5 Non-Refundable Contribution by First Purchasers.....	14
5.6 Time for Payment.....	14
5.7 Non-Payment; Lien.....	14
5.8 Collection.....	14
5.9 Collection Upon Sale of a Lot.....	15
5.10 Basis and Computation of Regular Assessments.....	15
5.11 Commencement of Assessments.....	16
5.12 Declarant Responsibilities.....	16

ARTICLE 6 - INSURANCE16

- 6.1 General Right and Duty to Purchase Insurance.16
- 6.2 Association Property Insurance.....17
- 6.3 Insurance Obligations of Lot Owners.17
- 6.4 Policy Provisions.....17
- 6.5 Other Insurance Coverages.18
- 6.6 Powers of Board of Directors.....18

ARTICLE 7 - BUILDING AND USE RESTRICTIONS18

- 7.1 Declarant Exemption.....18
- 7.2 Residential Purposes.18
- 7.3 No Nuisances.....19
- 7.4 Outside Installations.19
- 7.5 Animal Restrictions.....20
- 7.6 No Signs.20
- 7.7 Easements.....20
- 7.8 Sight Distances at Intersections.....21
- 7.9 Television and Radio Towers, Antennae and Satellite Dishes.....21
- 7.10 Parking and Vehicular Restrictions.....21
- 7.11 Stormwater Management Facilities.....22
- 7.12 Lots With Wetlands; No Disturbance of Wetlands.22
- 7.13 Insurance Rates.22
- 7.14 No Alteration of Common Facilities.....22
- 7.15 No Dumping.....23
- 7.16 Enforcement.....23
- 7.17 Additional Township Requirements.....23
- 7.18 No Hazardous Activities.23
- 7.19 Handicapped Use.....23
- 7.20 Miscellaneous.....23

ARTICLE 8 - RIGHTS AND OBLIGATIONS OF DECLARANT24

- 8.1 Rights Reserved to Declarant.24
- 8.2 Declarant’s Right to Dedicate Improvements and Easements.24

ARTICLE 9 - PROVISIONS BENEFITING TOWNSHIP24

- 9.1 Township’s Right to Enforce.24
- 9.2 Limit on Township’s Obligations.25

ARTICLE 10 - MISCELLANEOUS25

- 10.1 Declarant’s Rights.25
- 10.2 Limitation of Liability.25
- 10.3 Amendment.25
- 10.4 Approval of Amendments by Township.26
- 10.5 Conflict with the Act.26
- 10.6 Termination of Community.....26

10.7 Construction.....	26
10.8 Severability.....	27
10.9 Governing Law.....	27
10.10 Covenants and Easement Running with the Land.....	27
 INDEX OF DEFINED TERMS	 29
 EXHIBIT “A” – LEGAL DESCRIPTION OF PROPERTY	
EXHIBIT “B” – LEGAL DESCRIPTION OF OPEN SPACE	
EXHIBIT “C” – LEGAL DESCRIPTIONS OF EASEMENTS SHOWN ON PLAN	
EXHIBIT “D” – REDUCED COPY OF RECORD PLAN	

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WALNUT ACRES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made and executed as of the ____ day of _____ 2020, by Steven J. Skoloda and Marlene A. Skoloda (collectively, the "Declarant"), adult individuals and husband and wife having an address of 71 Walnut Road, Hamburg, Pennsylvania 19526.

BACKGROUND

A. Declarant is the owner of a certain parcel of land having a total area of 73.71 (gross) acres situate in the Township of Tilden, Berks County, Pennsylvania, as more fully described on Exhibit "A" which is attached hereto and made a part hereof (the "Property"). The Property has been subdivided pursuant to a certain plan entitled "Walnut Acres" prepared by The Crossroads Group, LLC dated November 16, 2015 (last revised March 10, 2020), and recorded in the Office of the Recorder of Deeds in and for Berks County, Pennsylvania on _____ at Plan Book ,

B. The Property has been subdivided into 30 lots (each a "Lot" and collectively the "Lots"), which will be in the Community. The Lots in the Community will be improved with single family detached residential Dwellings.

C. Declarant desires in accordance with this Declaration to provide for the preservation, use and occupancy of the Lots and the Property in a manner that will be beneficial to the Owners and occupants of the Lots and Dwellings thereon; to create, grant and reserve certain easements over and across the Property for the benefit of Declarant and the Owners of the Lots; and to create an Association of homeowners in the Community for the purpose of owning, maintaining, managing, administering, repairing and replacing certain Common Facilities, and to carry out certain other obligations and functions as are more fully set forth herein, all for the purpose of protecting the value and desirability of the Property and the Lots.

AGREEMENTS

NOW THEREFORE, the Declarant hereby declares and covenants for itself and its successors and assigns, that the Property described on Exhibit "A" and shown on the Plan is and shall be held, transferred, sold, conveyed, used and occupied under and subject to all the covenants, restrictions, easements and conditions hereinafter set forth in this Declaration, all of which shall run with title to the Property and to each of the Lots within the Property. The Declaration shall be binding upon all parties having or acquiring any interest in the Property or any of the Lots, for the term specified herein.

ARTICLE 1 - DEFINITIONS.

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

ARTICLE 2 - SUBMISSION TO DECLARATION; APPLICABLE LAW.

2.1 Submission of Property.

Declarant hereby submits the Property, together with the buildings and improvements erected, or to be constructed thereon, and all easements, rights and appurtenances belonging thereto, to the terms, conditions and provisions of this Declaration. This Declaration shall be applicable to the entire Community and to all of the Lots and all of the Common Facilities and Controlled Facilities. All present and future Lot Owners and the Lots, and their respective tenants, subtenants, family members, guests, invitees, permittees, agents, servants, employees and any other persons occupying or using any Lot or Dwelling shall be bound by all of the terms and conditions of this Declaration, the Bylaws and any Rules and Regulations as may be adopted by the Executive Board.

2.2 Applicable Law.

The Community contains Common Elements which contain only some or all of the following: Stormwater Management Facilities and related devices, real estate containing signage, landscaping, and/or open space. By operation of law, the Community is subject only to the certain sections of the Act. Any reference herein to the Act, or to rights and obligations set forth in the Act, or to Common Elements, is not intended to be a voluntary submission to the full provisions of the Act, nor shall it subject the Property or any part thereof to any additional requirements and/or provisions of the Act which are not already applicable to the Property.

ARTICLE 3 - DESCRIPTION OF COMMUNITY

3.1 The Community.

The name of the Community shall be Walnut Acres. The Community shall consist of the Dwellings constructed on the Lots within the Property as shown on Exhibit "A" attached hereto and made a part hereof, the Common Elements, and all easements, rights and appurtenances belonging thereto.

3.2 Unit Boundaries.

Each Unit will consist of the subdivided residential Lot as designated on the Plan with a constructed Dwelling. The boundaries of each Unit, including the Unit's identifying number, are shown on the Plan.

3.3 Common Facilities.

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

- (a) **Open Space:** The areas of Open Space as shown on the Plan, and as further described in Exhibit B hereto, shall be Common Facilities, and shall be owned and maintained by the Association. The Association shall be prohibited from developing, selling or conveying the Open Space, other than grants to the

Township, a municipal authority or utility or service provider in connection with utility improvements or easements. The Association shall give notice to the Township of any such grants given to a municipal authority or utility or service provider.

- (b) **Stormwater Management Facilities:** Except as may be otherwise provided herein, the Stormwater Management Facilities located in whole on Open Space shall be Common Facilities. All such facilities must be built in accordance with the Plan or approved revisions thereto.
- (c) **Sanitary Sewer Facilities:** Except as may be otherwise provided herein, the Sanitary Sewer Facilities located in whole on Open Space shall be Common Facilities. All such facilities must be built in accordance with the Plan or approved revisions thereto.
- (d) **Street Lights:** All street lights shown on the Plan shall be Common Facilities. All such street lights must be installed and maintained in accordance with the Plan or approved revisions thereto. Each street light shall be wired to an individual Lot and the Association shall reimburse each affected Lot Owner for the electricity required for the street light wired to his or her Lot.
- (e) **Recreation Facilities:** The Recreation Facilities shown on the Plan located in whole on Open Space shall be Common Facilities. All such facilities must be built in accordance with the Plan or approved revisions thereto.
- (f) **Entrance Signage/Landscaping/Lighting.** The entrance signage that may be installed by the Declarant and the landscaping and lighting as necessary to maintain each such area as an attractive entrance to the Community shall be Common Facilities (to be owned and maintained by the Association), whether located on Units, within easement areas, in Open Space, or in space that has been dedicated to the Township. All such signage, landscaping and lighting need not be built unless contained in the Plan or an approved revision thereto. All entrance signage, landscaping and lighting shall be in compliance with applicable Township Ordinances, unless waived by the Township Board of Supervisors or relief therefrom is granted by the Township Zoning Hearing Board.

3.4 **Controlled Facilities.**

The Controlled Facilities are facilities that are not owned by the Association but that are require to be maintained, improved, repaired, replaced, regulated, managed, insured or controlled by the Association. Certain duties and restrictions may be placed on Unit Owners with respect to the Controlled Facilities. The Association is not obligated to insure any of the facilities that are not owned by the Association. In each case, the Association will have the right to enforce the obligations of the Owner and the restrictions on use. If the party required to maintain or otherwise comply with obligations fails to do so, then the Association shall have the right to perform the work necessary to bring the Lot and facilities into compliance, and charge the cost of same to the Owners who failed to do so.

The Controlled Facilities in the Community shall consist of the following:

- (a) **Stormwater Management Facilities:** Any Stormwater Management Facilities located on a Lot shall be Controlled Facilities. All such Stormwater Management Facilities will be maintained, improved, repaired, replaced, regulated, managed, insured and controlled by the Association;
- (b) **Sanitary Sewer Facilities:** Sanitary Sewer Facilities, including laterals connecting a Unit to a sewer main located on any Lot shall be Controlled Facilities. The Association reserves the right to inspect same, to order such repairs as may be necessary for the health and welfare of the Community, and upon failure to do so by Owner, to make such repairs as may be necessary; and
- (c) **Portion of Open Space Behind Each Lot:** Each Owner shall be responsible to maintain that portion of the Open Space located directly behind each Owner's Lot. The Association shall maintain all other Open Space.

3.5 Limited Controlled Facilities.

Limited Controlled Facilities are a portion of the Controlled Facilities, other than Controlled Facilities which are themselves part of a Unit, allocated by or pursuant to the Declaration or By Laws for the exclusive use of one or more but fewer than all of the Units. All private yards, landscaping, driveways, the exterior of each Dwelling, including gutters, downspouts and all roofing elements, will be Limited Controlled Facilities. While each of these improvements will be owned by the Owner, and the Owner will have exclusive use of his or her own yard and Unit, the Association may establish standards governing the use and appearance of each item, and the replacement materials that must be used when maintaining and replacing same. If the Owner fails to do so, then the Association shall have the right (but not the obligation) to perform the necessary work. The costs thereof shall be Limited Common Expenses to be assessed and paid by the applicable Owners.

3.6 Dedicated Improvements.

The following improvements may be made by the Declarant, and upon completion shall be dedicated to the Township, a township authority, a utility company or some other third party as indicated below:

Dedicated Road. As required by the Plan, the Declarant will build Eva's Way within the Community, which will then be dedicated to the Township upon its completion and acceptance by the Township. Under the Plan, these are the only roads within the Community and there will be no private roads to be maintained by the Association.

Financial security, in an amount acceptable to the Township, has been posted in connection with the approval of the Plan and such financial security is sufficient to complete the construction of the Dedicated Improvements that shall be offered for dedication to the Township and the other third parties. The Declarant hereby reserves the right to designate or alter the Dedicated Improvements as may be required by the Township or the Commonwealth of Pennsylvania. Declarant may provide (and maintain at its expense) temporary lighting at the entrance to the Community in connection with its marketing efforts. This lighting is not intended to be permanent and need not be built.

3.7 Conveyance of Common Elements.

All Common Elements consisting of land not required by the Plan to be improved, graded or disturbed in any way from their natural state will become Common Elements upon the recording of this Declaration. All other Common Elements will become Common Elements upon substantial completion of any required improvement, grading or disturbance as required by the Plan and the Township. The Declarant will convey the Common Elements to the Association upon substantial completion of any improvements to all of the Common Elements, or at an earlier or later time, but not later than the date of the last conveyance by Declarant of a Unit included in the Community. This obligation to convey will be binding upon the Declarant and any successor in interest of the Declarant in the portion of the Community consisting of such Common Elements, whether or not the successor succeeds to any special declarant rights of Declarant. The Declarant will own the Common Facilities before such conveyance. Declarant shall convey the Common Elements to the Association by delivery of a fee simple deed of special warranty to the Association, which will be Recorded. No consideration shall be payable by the Association, other than the Association's acceptance of such deed or deeds. All liens shall be released as of the date of such conveyance.

ARTICLE 4 - EASEMENTS

4.1 Grant of Easements.

The Property and any portion, Lot or Dwelling therein, shall be owned, held, transferred, conveyed, assigned, sold, leased, occupied, used and enjoyed subject to the easements set forth in this Article and any and all other easements of record.

4.2 Owner Easements.

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

(a) **Access to Common Facilities:** Subject to the provisions of this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations and applicable law, a perpetual and non-exclusive easement for access to and enjoyment of the Common Facilities by the Owner, the Owner's family and guests, in common with other Owners and such other Owner's families, guests, tenants and lessees, for any purpose not prohibited by the aforementioned provisions; and

(b) **Use of Utilities:** A perpetual and non-exclusive easement to use any and all sewer, water, storm water, gas, electric, telephone, cable television and other utilities serving the Owner's Unit and Lot.

4.3 Declarant Easements.

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

(a) **Development Easements:** A blanket and non-exclusive easement in, upon, through, under, over and across the Property for the purpose of construction, installation, maintenance and repair of any improvements to the Property, for ingress and egress therefrom, for the use of all roadways and parking areas, and for the utilization of existing and future models for sales promotion and exhibition until the expiration of two (2) years from the date the last Lot is sold and conveyed in the normal course of business.

(b) **Entrance Improvements/Marketing Facilities:** Subject to all applicable Township ordinances regarding entrance improvements and marketing facilities, the Declarant reserves the right to erect and maintain one or more signs identifying the Community and monuments in which to mount such signs within and/or outside of the Lot lines of one or more Units within each phase in the Community, and to install electrical lines to such signs to illuminate them. Declarant reserves the right to construct and maintain any sales-related facility, including one or more sales trailers, and one or more construction trailers or other structure or structures within the Property for such period of time as the Declarant may determine in its discretion but in no case for longer than the time that the Declarant is actively selling and/or constructing Units. The Association will repair, replace, maintain and pay to illuminate each such sign.

(c) **Inspection, Service and Remedy:** In addition, the Declarant hereby reserves the irrevocable right to enter into, upon, over and under any Lot or Unit for such purposes as may be reasonably necessary for the Declarant or its agents to service such Lot or Unit, to inspect such Unit or Lot, to remedy any violation of law and to perform any operations required in connection with the maintenance, repair or replacement of the Common Facilities or any facilities or equipment affecting or serving the Common Facilities, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate whether the Owner is present at the time or not.

(d) **Drainage Easements:** The Declarant reserves a perpetual, blanket and non-exclusive easement in, upon, over, under, across and through the Property for surface water runoff and drainage caused by natural forces and elements, grading and/or the improvements located upon the Property. No individual Owner shall directly or indirectly interfere with or alter

the drainage and runoff patterns and systems within the Property. This easement shall be held by the Declarant so long as any Lot owned by the Declarant remains unsold. This easement shall then be held by the Association for so long as the Association is the record owner of lands designated as Common Facilities. For a period of seven (7) years from the date of conveyance of each Unit and the Common Facilities, the Declarant reserves an easement and right, but not the obligation, for the benefit of the Declarant, its agents, employees and contractors, on, over and under the ground within that Unit to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance or to address other concerns raised by the Township or other government agency having jurisdiction, such as the Pennsylvania Department of Environmental Protection or the Berks County Conservation District. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil and/or to take any other similar action reasonably necessary, following which the Declarant shall restore the affected Unit or the Common Area or cause the affected Unit to be restored, as nearly as practicable, to the condition in which it was found prior to the exercise of such right. The Declarant shall give timely notice of intent to take such action to the Owner of each Unit to be entered, unless, in the sole opinion of the Declarant, an emergency exists which precludes the ability to provide such notice.

(e) **Maintenance Period Easements:** The Declarant reserves to itself and to the Township and their respective successors and assigns, a perpetual, nonexclusive right and easement to enter upon each and every Lot and Common Area until the expiration of the statutory maintenance period following dedication of public improvements as set forth in Section 509 of the Pennsylvania Municipalities Planning Code, as amended, 53 P. S. 10509, for the purpose of completing any landscaping as required by the Township and further to make such modifications in grading and/or drainage on any Lot as may be necessary in the discretion of the Declarant, its successors or assigns, and/or the Township Engineer for satisfactory storm water management and compliance with conditions of Plan approval.

(f) **Declarant's Easements for Construction.** Declarant hereby reserves unto itself the right and privilege with respect to the construction of Units or Common Elements, or any other improvements, to go upon such portions of the Property as may be reasonably necessary: (i) for the purposes of construction, reconstruction, maintenance, repair, renovation, replacement or correction of a Unit or any other Common Elements; (ii) at any time with reasonable prior notice, to conduct grading activities and change the existing grade to match or tie in to the grading of the adjacent Lots; (iii) to correct any violations of ordinances or applicable regulations, including setback requirements or other construction related matters; and (iv) for the purpose of discharging the Declarant's obligations or exercising the Declarant's rights. This Section shall not be amended without the prior written consent of the Declarant.

4.4 Association Easements.

The Association shall have the following easements:

(a) **Maintenance of Common Facilities:** A perpetual and exclusive easement over the entire Property for the maintenance of the Common Facilities, including that which currently or may hereafter encroach upon a Lot; and

(b) **Inspection and Remedy:** The Executive Board or any manager or managing agent, or their respective agents or employees shall have the perpetual and non-exclusive right of access to each Lot and Unit (i) to inspect same, (ii) to remedy any violations of the provisions of this Declaration, the Bylaws or any Rules and Regulations of the Association, and (iii) to perform any work required in connection with the maintenance, repairs or replacements of or to the Common Facilities or any equipment, facilities or fixtures affecting or serving other Lot(s) or Unit(s) or Common Facilities; provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate, whether the Owner is present at the time or not.

4.5 Municipal Easements.

The Township and any applicable municipal authority shall have a blanket, perpetual and non-exclusive easement for ingress, egress and travel in, upon, over, across and through the Property shall exist for the benefit of the Township, its respective officers, agents and employees (but not the public in general) and all police, fire and emergency personnel engaged in the proper performance of their respective official duties (including, but not limited to, emergency or other necessary service or maintenance, repair and/or replacement to a Dwelling or Lot which the Owner has failed to perform and for emergency and other necessary maintenance, repair and/or replacement of the Common Facilities, including Controlled Facilities and Limited Controlled Facilities, which the Association has failed to perform). Except in the event of emergencies, the rights accompanying the easement provided for in this subparagraph shall be exercised only during reasonable daylight hours and then, whenever practicable, only after at least 48 hours advance notice to and with permission of the Board (for Common Facilities, Controlled Facilities, and Limited Controlled Facilities) and the Owner(s) (for any Dwelling or Lot) directly affected thereby.

4.6 Utility Easements.

Utility companies providing services to the Community shall have or may be granted by the Declarant or the Association the following easements:

(a) **Utility Occupancy and Access Easements:** Any utility company or entity furnishing utility service, including electric service, master and/or cable television service, open video systems, cable internet access, telephone service, emergency communication and security services, water service, storm water and sanitary sewage services, gas service and other utility services and the facilities and appurtenances necessary to the same, and its agents and employees, shall have a blanket, perpetual and non-exclusive easement to enter the Property, or any part thereof, to install utility facilities at locations to be agreed upon in specific easement agreements, and to thereafter have access to read meters, service or repair utility lines and equipment and do everything and anything else necessary to properly maintain and furnish utility service to the Property.

(b) **Drainage Easement:** A twenty (20) foot wide drainage easement is created on side property lines of Lots _____ shown on the Plan. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area and all improvements in it shall

be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

(c) **Sanitary Sewer Easement:** A twenty (20) foot wide sanitary sewer easement is created on side property lines of Lots _____ and within the Open Space shown on the Plan. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. The easement area and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

4.7 Recorded Easements.

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

4.8 Option to Purchase Six (6) Acres of Lot 30.

The Declarant hereby grants to the Association an option to purchase approximately six (6) acres of Lot 30 as shown on Exhibit "D" attached hereto for recreational purposes. The purchase shall be completed as an easement and does not require further subdivision. The Association has the right to exercise this option within five (5) years after final Plan approval to use the designed area as a recreational area for the benefit of the Owners. The exercise of this option shall require a one hundred percent (100%) percent affirmative vote of all Members of the Association. The Owner of Lot 30 shall receive the sum of \$3,000.00 from each of the Member of the Association and all Lot Owners shall be assessed for the proposed improvements for recreational purposes at that time. In the event that this option is not exercised within five (5) years after final Plan approval, the option shall expire and all rights thereunder shall be void. In addition, Lot 30 shall be subject to a conservation and open space easement in perpetuity that prevents any development other than a one (1) single family residence. This restriction shall be shown on the final Plan and in any deed of conveyance for this Lot.

ARTICLE 5 - ASSOCIATION; MEMBERSHIP; ASSESSMENTS

5.1 Association.

(a) **General Powers and Duties:** The Association shall be the governing body for and on behalf of all Lot Owners, and shall have all duties, rights, privileges and responsibilities as are set forth in this Declaration, in the Bylaws and in the Act. All rights, powers and duties that are granted to the Association pursuant to this Declaration, the Bylaws or the Act shall be exercised, carried out and performed by and through the Executive Board, except when any provision of this Declaration, the Bylaws or the Act requires that any such powers, rights, duties or privileges may be exercised or carried out only by Members.

(b) **Association's Obligation to Maintain.** The Association shall be responsible for the maintenance, repair, cleaning, mowing and general maintenance of all Common Facilities required or permitted to be constructed by Declarant pursuant to the Plan or applicable Township

ordinances and requirements; the regulation of the Controlled Facilities as provided herein; the maintenance, repair, cleaning, mowing and general maintenance of similar improvements, as may be necessary from time to time to ensure the proper functioning of the Common Facilities, or as otherwise may be required by the Township from time to time; and any and all obligations relating to the Common Facilities and Controlled Facilities established in connection with the approval of the Plan. The Association shall have an easement over and across any part of the Property, including any Lot on which such facilities are located, for the purpose of gaining access and doing all things necessary to maintain, repair, clean, or replace the same. The costs and expenses of maintenance, cleaning, repairing and replacing such facilities shall be deemed to be Common Expenses of the Association. In the event the Association fails to perform any maintenance, cleaning, repairing or replacing of such facilities and the Township is required to do so, the Lot Owners will be individually billed for their pro rata share of the Township's costs, and failure to pay such bill will result in a lien against the non-paying Lot Owner.

(c) **Controlled Facilities:** In exercising its obligations with respect to the Controlled Facilities, the Association shall have the right, from time to time, to come upon the Lot or Lots where the Controlled Facilities are located to inspect, maintain and repair the Controlled Facilities (if specifically obligated to do so under this Declaration) and to assess the cost thereof as a Common Expense of the Association. In the event the Association fails to perform any maintenance or repair of the Controlled Facilities and the Township is required to do so, the Lot Owners will be individually billed for their pro rata share of the Township's costs, and failure to pay such bill will result in a lien against the non-paying Lot Owner.

(d) **Assessments:** The Association shall also have the power and duty to levy and collect Assessments against all Lot Owners with the exception of the Owners of Lots 26, 29 and 30 for the purpose of paying the Common Expenses incurred or to be incurred by the Association from time to time, and to levy and collect special Assessments against all or fewer than all of the Lot Owners for the purposes set forth in this Declaration.

(e) **Delegation of Powers:** The Association shall have the right, subject to any limitation set forth in the Bylaws, to delegate one or more of its duties hereunder to a manager or agent or to other persons, firms or corporations, provided that any contracts with any such managers, agents or other firms shall be for a term of not more than one (1) year and shall be terminable without further liability on the part of the Association upon not more than ninety (90) days prior written notice given by the Association. All other terms and conditions of such agreement shall be as determined by the Executive Board.

(f) **Accept Common Facilities:** The Association shall have the right and obligation to accept conveyance to it of sole or common title to, or the right to use, the Common Facilities, and shall have the right and obligation to accept conveyance to it of any other real and personal property that the Association has the right or obligation to acquire or maintain pursuant to the terms of this Declaration. The Association shall have the right to acquire, own and maintain such other personal property as is necessary and appropriate in connection with the performance by the Association of its rights, duties, obligations and privileges hereunder.

(g) Other Rights and Powers: Without limiting the general grant of authority and duties provided in this Section, the Association, acting by and through the Executive Board, shall have the following rights, duties, obligations and privileges:

- (1) To maintain and manage the Common Facilities and Controlled Facilities;
- (2) To keep the Common Facilities in good condition and repair and to make any necessary repairs and replacements thereof or thereto;
- (3) To maintain, repair and replace the entrance signs and to install, maintain, repair and replace associated stone work, entrance gates, landscaping and shrubbery, at the entranceways to the Community;
- (4) To purchase any insurance coverages or fidelity bonds required or to be obtained for or on behalf of the Association hereunder;
- (5) To adopt operating and capital budgets of the Association with respect to the Common Facilities and Controlled Facilities, and to make amendments thereto, as from time to time necessary;
- (6) To compute, levy, assess and collect Assessments;
- (7) To enforce the collection of delinquent Assessments by any one or more methods set forth in this Declaration, and to impose late payment fees or charges, and after providing for notice and an opportunity to be heard, to levy reasonable fines for violations of this Declaration, the Bylaws or the Rules and Regulations;
- (8) To enter into contracts or agreements with third parties as may be necessary or appropriate from time to time in connection with the performance of the Association's rights, duties and obligations hereunder, and to pay for goods and services furnished to the Association pursuant to such contracts or agreements;
- (9) To adopt, amend and repeal, from time to time, the Bylaws and such Rules and Regulations as the Executive Board may deem necessary or appropriate for the regulation of the use and enjoyment of the Common Facilities;
- (10) To enforce by one or more remedies available at law or in equity any and all of the provisions of this Declaration;
- (11) To grant easements, with an 80% affirmative vote of all Members, to third parties over, across or under the Open Space (if, as and when acquired) or any portions thereof, as may be necessary from time to time for the benefit of the Association or any of its Members, including but not limited to easements in favor of public or private utility or service companies furnishing electric, gas, water, sanitary sewer, telephone, open video systems, cable internet access, or cable television services;
- (12) To prosecute or defend claims, suits, and causes of action by or against the Association and to litigate, arbitrate, settle, compromise and/or release any such claims;
- (13) To impose fees for the preparation and recording of amendments to the Declaration and a charge for resale certificates;
- (14) To provide for indemnification of the officers of the Association and members of the Executive Board and to maintain directors' and officers' liability insurance

(including the maintenance of directors' and officers' liability insurance for so long as a Director and/or Officer appointed by the Declarant remains on the Executive Board;

(15) To dedicate and convey, with an 80% affirmative vote of the Members, the Open Space or parts thereof (if, as and when acquired) to the Township;

(16) To cause additional improvements to be made as part of the Controlled Facilities; and

(17) To do all things necessary or expedient in order to carry out all the powers, rights, privileges, duties and functions of the Association as are set forth herein.

(h) **Legal Actions:** The Association shall not begin any judicial or administrative proceedings unless such action is first approved by Lot Owners entitled to cast at least sixty (60%) percent of the votes present at a duly constituted meeting of Members. This restriction shall not apply to actions brought by the Association to enforce the provisions of this Declaration, the imposition and collection of Assessments, proceedings involving challenges to real property taxes, the defense of any such suits or claims, or counterclaims brought by the Association in proceedings instituted against it, which may be pursued if approved by the Executive Board.

5.2 Association Membership; Voting.

(a) **Mandatory Membership:** Every Lot Owner, by acceptance of the deed to his Lot, shall become a Member of the Association and shall become liable to pay all Assessments that may be levied by the Association against him with respect to his Lot or Dwelling, and any costs and expenses for which the Lot Owner may become liable pursuant to this Declaration, the Bylaws or the Rules and Regulations. Membership in the Association shall not be severable from ownership of a Lot, and membership in the Association shall be transferred automatically upon the conveyance of title to a Lot. Membership in the Association shall, except as otherwise hereinafter provided, be limited to the Lot Owners.

(b) **Membership Rights and Obligations:** Every Lot Owner, as a Member of the Association, shall be entitled to enjoy all of the rights and shall be subject to all of the obligations of membership in the Association, subject to the right of the Executive Board to suspend any such rights or privileges, including voting rights, in the event any Member fails to pay Assessments levied against him, his Lot or Dwelling.

(c) **Voting:** Each Owner shall be entitled to one (1) vote for each Lot in the Community owned by him or it. In the event that a Lot is owned by more than one Person, such owners, taken together, shall have only one (1) vote with respect to such Lot. A Member shall be entitled to vote at any annual or special meeting of Members of the Association only if such Member shall have fully paid all Assessments made or levied against him or his Lot by the Association, as hereinafter set forth, together with all interest, costs of collection, attorneys' fees, penalties and other expenses, if any, properly chargeable to him or against his Lot, at least five (5) days prior to the date fixed for the annual or special meeting, as the case may be. In the event that any such Assessments are payable in installments, then all delinquent installments shall be paid at least five (5) days prior to the date fixed for such meeting.

(d) **No Tenant Voting:** In the event that any Dwelling is leased to a tenant, such tenant shall not be entitled to vote as a Member in the Association (unless given a proxy by the Lot Owner thereof).

(e) **Conflicts in Voting:** In the event that a Lot is owned by more than one owner, and if there is a conflict between the owners as to how such vote should be cast on any matter, such vote shall be counted for purposes of determining the presence of a quorum at any annual or special meeting of Members, but otherwise the conflicting votes of the owners of such Lot with respect to a particular matter on which the Members are entitled to vote shall be deemed to cancel each other and shall not be counted. The voting rights of a Member, where the Lot is owned by a corporation, partnership or other entity, shall be exercised by the individual designated from time to time by the Lot Owner in a written instrument provided to the Secretary of the Association, subject to the provisions of this Declaration and the Bylaws.

5.3 Executive Board.

(a) **Power and Authority:** Subject to the other provisions of this Declaration and of the Bylaws, the Executive Board shall have the full power and authority to act on behalf of the Association. The initial Executive Board shall consist of three (3) directors, who shall be appointed, removed and replaced from time to time by the Declarant without the necessity of obtaining resignations, and without the necessity of holding an actual meeting or vote to appoint such Board Members. Directors appointed by the Declarant shall be replaced with Directors elected by the Members in accordance with subparagraph (c) below.

(b) **Limitations on Authority:** The Executive Board may not act on behalf of the Association to amend this Declaration, terminate the Community, elect members of the Executive Board or determine the qualifications, powers and duties or terms of office of the Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term. The Executive Board shall deliver to all Lot Owners copies of each budget approved by the Executive Board and notice of any capital expenditure approved by the Executive Board promptly after such approval. The Lot Owners may, by an affirmative vote of a majority of the Members, reject any budget or capital expenditure approved by the Executive Board within thirty (30) days after approval in accordance with Section 5.10(d).

(c) **Declarant Control Period:** The period extending from the date of the first conveyance of a Lot to a person other than Declarant to the earlier of (i) five (5) years; or (ii) sixty (60) days after conveyance of seventy-five (75%) percent of the Lots to Owners other than Declarant; or (iii) two (2) years after Declarant has ceased to offer Lots for sale in the ordinary course of business, shall be referred to herein as the "Declarant Control Period". During the Declarant Control Period, the Declarant may appoint and remove officers and members of the Executive Board. Not later than sixty (60) days after the conveyance of twenty-five (25%) percent of the Lots to Lot Owners other than Declarant, at least one (1) member and not less than twenty-five (25%) percent of the members of the Executive Board shall be elected by Lot Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty (50%) percent of the Lots to Lot Owners other than Declarant, not less than thirty-three (33%) percent of the Members of the Executive Board shall be elected by Lot Owners other than Declarant. At the termination of the Declarant Control Period, the Lot

Owners shall elect an Executive Board of at least three (3) members of which at least a majority shall be Lot Owners. Notwithstanding any provision of this Declaration or Bylaws to the contrary, the Lot Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the Lot Owners at which a quorum is present, may remove any member of the Executive Board with or without cause, other than the members appointed by Declarant.

(d) **After Declarant Control Period:** After the expiration of the Declarant Control Period, all of the members of the Executive Board shall be elected by the Members at the annual meeting of Members next following the expiration of the Declarant Control Period. For purposes of this subparagraph, the percentage of Lots conveyed by the Declarant shall be based upon the total number of Lots within the Property.

5.4 Assessment Obligations of Owners.

(a) **Common Expense Liability:** Each Unit, other than Lots 26, 29 and 30, shall be liable for an equal share of all Common Expenses incurred for the benefit of the Community. For this purpose, the Common Expense liability shall be a fraction, the numerator of which is one, and the denominator of which is the total number of Units in the Community.

(b) **Assessments for Common Expenses:** Each Owner of a Lot shall pay to the Association all Assessments that may be levied by the Association against his Lot or against him with respect to his Lot, including, but not limited to, all regular Assessments made due and payable on a quarterly, yearly or other periodic basis as determined from time to time by the Executive Board based upon the budget of the Association, all special Assessments that may be levied and assessed from time to time in accordance with the terms of this Declaration and any interest charges, attorneys' fees, late fees, fines or penalties that may be levied by the Executive Board for non-payment of Assessments or for non-compliance with the terms and conditions of this Declaration, Bylaws and/or any Rules and Regulations adopted by the Board of Directors. The Association will not assess a fine or penalty without first giving the Lot Owner against whom such fine or penalty is to be assessed notice and an opportunity to be heard on the issue.

(c) **Lien for Assessment:** Any regular and special Assessments and supplemental Assessments, together with interest thereon, fines, late charges, costs of collection and attorneys' fees shall be a charge against the Lot, and shall be a continuing lien upon the Lot against which such Assessment is made, from time of Assessment (notwithstanding that such Assessment may be payable at a later time or in two or more installments) having such lien priorities and being subject to divestiture in such manner as is provided in the Act.

5.5 Non-Refundable Contribution by First Purchasers.

The Declarant shall assess to each purchaser of a Lot with constructed Dwelling purchased from the Declarant a one-time non-refundable Assessment of not less than \$250.00. The funds so collected shall be deposited into an account in the name of the Association, and may thereafter be used from time to time by the Association for any purposes deemed appropriate or desirable by the Executive Board. Such contributions shall be in addition to, and shall not be in lieu of or applied against the Assessments levied or assessed against such Lot or Dwelling, or any Assessments that have been levied or assessed against such Lot or Dwelling.

5.6 Time for Payment.

Except as otherwise provided in this Declaration, the Executive Board shall determine the time for payment of Assessments by each Lot Owner.

5.7 Non-Payment; Lien.

(a) **Delinquencies:** If any Lot Owner fails to pay any Assessment or installment thereof within fifteen (15) days after the due date thereof, interest thereon shall accrue from the due date at the rate to be set by the Executive Board (but not greater than fifteen (15%) percent per annum). The Executive Board shall have the right to levy the costs of collection (including attorneys' fees) against each Lot Owner who is delinquent in the payment of any Assessment or installment thereof. The Executive Board shall also have the right to charge a delinquency Assessment, as established from time to time, against any Lot Owner who is delinquent in the payment of Assessments for a period exceeding fifteen (15) days from the due date, such delinquency Assessment not to exceed ten (10%) percent of the overdue sum. In the event that an Owner shall be delinquent in the payment of any Assessments or installments thereof for more than thirty (30) days after the due date thereof, the Executive Board shall have the right to accelerate all future installments of such Assessments with respect to the delinquent Lot Owner.

(b) **Suspension of Rights:** If any Assessment or installment thereof is not paid within thirty (30) days after its due date, or in the event that all delinquencies are not satisfied at least five (5) days prior to any annual or special meeting of Members, the Executive Board shall have the right to suspend the rights of the delinquent Lot Owner to use and enjoy the Common Facilities and to suspend the voting rights and other privileges of such Member.

(c) **Statement of Amounts Due:** The Association shall, upon the written request of a Lot Owner, provide the Lot Owner with a recordable statement setting forth the amount of unpaid Assessments currently levied upon such Lot Owner's Unit, including any credits or surplus in favor of such Lot. The Association will deliver the statement within ten (10) business days after receiving the Lot Owner's request for such a statement.

5.8 Collection.

The Executive Board on behalf of the Association and/or the Lot Owners, may bring a lawsuit to recover any delinquent Assessments and other costs and expenses which may be payable by any Lot Owner. The lawsuit may be brought at law or in equity against the Lot Owner personally obligated to pay the same. The Association shall be entitled to seek and pursue any and all rights and remedies as may be available at law or in equity. The Association may recover from the delinquent Lot Owner all attorneys' fees and other costs of collection as well as late charges, interest and fines levied by the Association with respect to unpaid and delinquent Assessments, and the same shall become due on demand by the Association.

5.9 Collection Upon Sale of a Lot.

(a) **Proceeds:** In the event that title to a Lot is transferred in connection with a sale pursuant to execution on any lien against the Lot, the Executive Board may give notice in writing of any unpaid Assessments which have not been reduced to a lien, and such unpaid Assessments of which the Sheriff has notice shall be paid out of the proceeds of such sale after payment of other claims required by law to be paid first, but prior to any distribution of proceeds to the owner of such Lot. If an Eligible Mortgagee or other purchaser acquires title to a Lot pursuant to foreclosure of a first mortgage, or by deed in lieu of foreclosure, the transferee shall not be liable for unpaid Assessments accrued through the date of such transfer.

(b) **Information for Purchasers:** In the event of a resale of a Lot by a Lot Owner other than the Declarant, the Lot Owner shall furnish to a purchaser before execution of any contract for sale of a Lot, a copy of the Declaration, the Bylaws, the Rules and Regulations and a resale certificate as required under Section 5407 of the Act (the "Resale Certificate").

(c) **Resale Certificate:** The Lot Owner shall notify the Association of his intention to sell the Lot so that the Association may prepare the Resale Certificate. Within ten (10) days of the receipt of such notification, the Association shall prepare the Resale Certificate, which shall contain all of the information required under Section 5407 of the Act. The Association will mail the Resale Certificate to the place designated by the Lot Owner. No conveyance shall discharge the personal liability of the Lot Owner for unpaid Assessments of charges whether or not shown on such certificate, including any and all Township liens and Township assessments against the Lot Owner, such as taxes, or fines or penalties for ordinance violations. A reasonable fee shall be established by the Association from time to time for the cost of preparation of such certificate and shall be paid by the Lot Owner at the time of the request for such certificate. The Resale Certificate shall be signed by an officer of the Association or by an employee of the Association's management company. A properly executed Resale Certificate of the Association as to the status of Assessments on a Lot shall be binding upon the Association as to any purchaser or mortgagee relying thereon in good faith as of the date of its issuance, but shall not relieve the Lot Owner of personal liability for any unpaid Assessments.

5.10 Basis and Computation of Regular Assessments.

(a) **Annual Budget:** The Executive Board of the Association shall, at least sixty (60) days prior to each fiscal year of the Association, adopt a budget of the Association for such fiscal year setting forth estimated Common Expenses of the Association and other costs, expenses, liabilities and reserves which the Executive Board may deem appropriate. Assessments for the fiscal year to which such budget relates shall be computed based on the total Common Expenses anticipated for such fiscal year as set forth in the budget, in excess of any surplus resulting from the excess of Assessments levied from a prior year or years over Common Expenses actually incurred in such prior year or years.

(b) **Amending the Budget:** The budget of the Association may be changed from time to time by the vote of a majority of the Executive Board to reflect any substantial change in the Common Expenses incurred or expected to be incurred by the Association for such fiscal year. The Executive Board shall have the power to increase or decrease the Assessments based on such changes in the budget, such increase or decrease to be effective not earlier than thirty (30) days after notice thereof shall have been given by the treasurer to the Lot Owners.

(c) **Notice of Annual Assessments:** The Board of Directors shall levy Assessments at least annually and shall cause notice of annual Assessments due to be sent to all Lot Owners after the Assessment for any fiscal year has been determined or redetermined in accordance with this Declaration.

(d) **Vote on Budget:** Promptly after adoption of the budget for a fiscal year, the Executive Board shall cause notice of the Assessment and a copy of the budget to be mailed to each Lot Owner. Such budget shall become effective unless disapproved within thirty (30) days by majority vote of the Members of the Association at a duly called and constituted meeting of the Association. Unless the Members request a meeting, as provided in the Bylaws, the budget and Assessment shall take effect without a meeting of the Members, effective as of the first day of the fiscal year of the Association to which such budget relates. In the event that the budget is disapproved by the Members, or in the event that the Executive Board fails for any reason to adopt a budget for any fiscal year, then the regular Assessment for the immediately preceding fiscal year shall be deemed to continue in effect until a budget has been adopted by the Executive Board (and not disapproved by the Members) on the basis of which a new regular Assessment may be determined.

5.11 Commencement of Assessments.

The Assessments provided for herein shall commence as to each Lot on the first day of the first calendar month following the date of conveyance of the Lot by the Declarant, or the effective date of the first budget, whichever is later.

5.12 Declarant Responsibilities.

During the Declarant Control Period, once a budget has been adopted by the Association, the Declarant shall have no liability or obligation to the Association or any other party to pay regular and/or special Assessments and/or any supplemental Assessments for Lots owned by the Declarant. However, during the Declarant Control Period, the Declarant may voluntarily agree to defray or satisfy any deficiency in the expenses of the Association and the Community, excluding Assessments due and payable by Lot Owners other than the Declarant.

ARTICLE 6 - INSURANCE

6.1 General Right and Duty to Purchase Insurance.

The Executive Board shall obtain or cause to be obtained commercial general liability and casualty insurance covering liability or loss or injury (including death) to Persons and loss or damage to property, in such amounts and against such risks, and from insurance companies, as the Executive Board shall determine, provided that in no event shall such commercial general liability insurance be less than One Million Dollars (\$1,000,000.00) for bodily injury or death arising from a single occurrence. Such policies shall have such deductibles or co-payments as the Executive Board may determine, in its discretion. Such insurance shall protect the Owners and the Association against liability arising out of the use of, or the loss, damages or injuries occurring on the Common Facilities and any Controlled Facilities located on any Lots. The above referenced minimum insurance amount may be reduced to such amount as the Executive Board shall determine is appropriate in the absence of the Association having any rights or interests in the Common Facilities and/or Controlled Facilities, so long as such minimum insurance amount (or such increased amount as the Executive Board shall determine appropriate) is maintained in the event the Association does retain or acquire any rights and interests in the Common Facilities and/or Controlled Facilities.

6.2 Association Property Insurance.

The Executive Board shall obtain all risk hazard insurance policies covering damage to the Common Facilities, including, if applicable, flood insurance coverage, such insurance to cover any fixtures, improvements or equipment constructed or to be constructed on the Common Facilities. To the extent available, such insurance shall be with "replacement cost" coverage.

6.3 Insurance Obligations of Lot Owners.

Each Lot Owner shall be individually and solely responsible for maintaining hazard, fire, flood and liability insurance with respect to his Lot and Dwelling, and against losses, damages or injuries occurring on his Lot. The Executive Board shall have the right to adopt standards that shall be required to be met by each Lot Owner with respect to property and casualty and liability insurance coverages to be obtained with respect to the Dwellings to be located on the Lots. The Association shall have no insurance responsibility with respect to any Lot, Dwelling or other improvements located on any Lot (except for Common Facilities located on such Lots). Each Lot Owner shall carry blanket all-risk casualty insurance on the Dwelling and other structures located on his Lot, and each Lot Owner further covenants and agrees that in the event of the total destruction of his Dwelling, the Lot Owner shall proceed promptly to repair, replace or to reconstruct the damaged Dwelling in a manner consistent with the original construction thereof. Any portion of the Community for which insurance is required to be maintained by the Lot Owner by the Act or in the Declaration and which is damaged or destroyed shall be required to be repaired or replaced promptly by the Lot Owner unless:

- (1) the Community is terminated;
- (2) repair or replacement would be illegal under any State or local health or safety statute or ordinance; or

(3) Eighty (80%) percent of all of the Lot Owners, including any owner of a Lot that will not be rebuilt, vote to not rebuild.

The Lot Owner shall pay any costs of repair or reconstruction not covered by insurance proceeds.

6.4 Policy Provisions.

All policies purchased by the Association shall be for the benefit of the Association, and the costs and premiums thereof, and any deductibles or co-payments thereunder, shall be deemed to be Common Expenses of the Association. Such insurance shall be purchased for the benefit of the Association, the Executive Board, the Declarant, the Lot Owners and all Eligible Mortgagees, as their interests may appear, provided that it shall be sufficient if the named insured on such policies is the Association. Endorsements in favor of mortgagees holding mortgages on any Dwellings may be issued upon request, any expenses thereof to be borne by the Lot Owners requesting such endorsements. The Association shall maintain any insurance coverages that may be required under applicable law. The Executive Board shall have the right to increase insurance coverages and obtain additional insurance coverages not specifically stated herein as the Executive Board may from time to time determine, in its discretion, and the premiums for such additional or different insurance coverages shall be deemed to be Common Expenses of the Association. Policies of insurance shall be deposited with and shall be maintained by the Executive Board. Copies of the insurance policy for the Common Facilities shall be provided to the Township, which shall be notified in the event of cancellation of such policy.

6.5 Other Insurance Coverages.

The Executive Board shall also have the right to obtain other insurance coverages and endorsements which may be applicable to the Common Facilities, all premiums for which shall be Common Expenses, including, but not limited to, workers' compensation insurance, directors' and officers' liability insurance, fidelity bonds with respect to employees, agents or managers hired by the Association, and any and all other insurance coverages as the Executive Board may from time to time deem necessary or appropriate. The Executive Board shall maintain directors' and officers' liability insurance for so long as a Director and/or Officer appointed by the Declarant remains on the Executive Board.

6.6 Powers of Board of Directors.

The Executive Board shall have full and exclusive power and authority to negotiate, adjust and compromise all claims for insurance coverages, and to execute and deliver releases therefor upon payment of the agreed settlement for such claims.

ARTICLE 7 - BUILDING AND USE RESTRICTIONS

7.1 Declarant Exemption.

The provisions of this Article are intended to restrict certain uses that may be harmful or affect the ambience or aesthetic appeal of the Community to be constructed by Declarant. The restrictions are not intended to prohibit Declarant from performing such work as may be

necessary in the completion of the work contemplated by the Plan. The restrictions of this Article shall therefore not be binding upon Declarant in the performance of any of the work required by the Plan.

7.2 Residential Purposes.

With the exception of the six (6) acres referred to in Section 4.8 hereof, the Lots shall be used for residential purposes only (including other uses customarily incidental to residential uses and as otherwise permitted within the zoning district); provided however that the Declarant and any successor or assign holding title to a Lot for the purposes of home building shall have the right to maintain construction or sales offices, signs, specialty fencing, specialty lighting and other displays, and to otherwise use any Lot for the purposes of construction and sales of Lots in the Community, for so long as Declarant or its successors or assigns hold title to such Lots. No Lot or Open Space shall be further subdivided, once conveyed by the Declarant to an Owner or the Association.

7.3 No Nuisances.

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to any other Unit Owner. No trash, garbage, metal, scrap or other waste may be placed or stored upon a Lot, except in approved sanitary containers which may be placed outside only on scheduled collection days.

7.4 Outside Installations.

(a) **Landscaping at Curbside:** No landscaping, except grass and approved street trees, and no pillars, fences or other structures or improvements may be maintained between the curb and the ultimate street right-of-way boundary line.

(b) **Fences, Hedges, Walls and Mass Plantings:** Except with the written permission of the Declarant or the Association (as applicable), no fences, hedges, walls or mass plantings shall be erected higher than six (6) feet above grade level on any Lot. Such permitted fences, hedges, walls or mass plantings shall not in any case be extend into the front yard beyond the front wall line of the Dwelling. All fences must be constructed in the standard "picket", "shadow-box" or "post and rail" style. Fencing must be constructed of pressure treated wood, wrought iron, aluminum, or white PVC. Wooden fences shall not be painted with pigmented paint products in any manner (the application of environmentally safe, non-pigmented wood preservative products is permitted). Chain link fences and stockade fences shall not be permitted. The finished side of any fence shall face the outside of any lot. The purpose of this restriction is to ensure that all structures and improvements within the Property shall be compatible and aesthetically appealing. Each Lot Owner shall act to ensure that the Property and each Lot remain open to light and air. As an example, no stockade fence or similar fence that blocks one's view or any other structure that would in any way prohibit free view of the Property will be permitted.

(c) **Pools:** No outdoor, above-ground swimming pools (those which have side walls that extend above the ground surface) shall be permitted to be installed or exist on a Unit by any

person or entity, other than portable plastic above-grade swimming pools of more than twelve inches in depth (baby pools). In-ground swimming pools, however, shall be permitted provided they adhere to setbacks and such other safety requirements as mandated by the Township zoning ordinance, and receive all necessary approvals by the Township, and further provided that they are landscaped to ensure the privacy, use and enjoyment of adjoining properties. Installation of pools is subject to the approval of the Declarant or Association as elsewhere provided herein.

(d) **Overhead Wires:** None of the following shall be permitted to be installed or exist on a Unit by any person or entity:

- (i) active solar heating devices; and
- (ii) overhead wires, including, but not limited to, electrical, telephone and television cable wires.

Any exterior wires must be buried beneath the ground. The Declarant, however, retains the power for itself and any successor in interest to waive this restriction regarding overhead wires. Any such waiver must be in writing.

(e) **Tennis Courts/Sheds/Exterior Buildings:** No Owner shall erect or permit to be erected on any Lot any tennis court or other outdoor game court, storage shed or other exterior building, addition or improvement, without the prior written consent and design approval of Declarant, until such time as Declarant no longer owns a Lot in the Community; and thereafter without the prior written consent of the Board. The grading of any Lot shall not be changed in any manner that will cause an adverse effect on any adjacent Lots.

(f) **Play Equipment:** All play equipment shall be located to the rear of any Dwelling. In no event shall any play equipment be permitted in the front or side yard of any Unit.

(g) **Clotheslines, etc.:** No clothesline or any apparatus designed for the purpose of drying clothing may be placed, constructed or stored on a Lot at any time, either temporarily or permanently.

7.5 Animal Restrictions.

No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept on any Unit, except usual and ordinary dogs, cats, fish, birds and other household pets may be kept on Units, provided that they are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall mean more than two (2) dogs and/or cats per household. The Declarant or the Association shall have the right to prohibit the keeping of any animal that constitutes, in the opinion of the Declarant or the Association, a nuisance to any other Owner. Animals belonging to Owners, occupants or their tenants or invitees within the Community Property must be confined within an Owner's Unit or be under the direct control of a person capable of controlling the animal. Any Owner shall be absolutely liable to each and all other Owners, their families, guests, tenants, and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Community by an Owner or by members of his family, his tenants or his guests; and it shall be the absolute duty and responsibility of each Owner to clean up after such animals which have used any portion of the Open Space areas. No private doghouse, kennel or other structure to house animals shall be permitted on any Unit.

7.6 No Signs.

No signs of any kind shall be displayed to the public view on any Lot or inside the Dwelling, including but not limited to, real estate "For Sale" or "For Rent" signs. Notwithstanding the foregoing or any other terms of this Declaration, the restriction against "For Sale" or "For Rent" signs shall terminate upon the conveyance of the last Lot owned by Declarant in the Community.

7.7 Easements.

Easements for installation and maintenance of utilities and drainage facilities are reserved in Article 5. Within these easements, no plantings, buildings, structures or other material may be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may obstruct, redirect or retard the flow of water through the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Declarant shall have the right and privilege to enter upon the Property and any Lot at any time to (i) correct any violations of ordinances, including set back requirements or other construction-related matters, and (ii) change the grade of the ground to transition the grade to adjacent areas and/or install or change drainage control devices so as to alleviate any possible drainage or runoff problems, and (iii) to repair, maintain or replace any entrance monuments, community signage or associated landscaping.

7.8 Sight Distances at Intersections.

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

7.9 Television and Radio Towers, Antennae and Satellite Dishes.

Except as hereafter provided, no radio, television or tower, pole, antenna or similar structure shall be erected on any part of any Lot or Dwelling, including but not limited to radio or television mast antennas. The following types of devices shall be permitted in designated areas as provided below: devices for over the air reception of direct broadcast satellite service (e.g. satellite dishes) of less than one meter in size; multi-channel multi-point distribution service antennas less than one meter in size; and television broadcast service antennas of three feet or less. These devices may be located in the following areas of an Owner's Lot: at any location provided that no part of the satellite dish is visible from the street on which the house fronts (either due to location or screening or landscaping); in the back yard of the Lot; and with respect to a television broadcast antenna, on the roof or attached to any chimney. These devices may also be located on the roof, chimney, side yard or any other location, if the Owner is able to prove to the satisfaction of the Executive Board or designated committee that the installation in each of the specifically permitted areas would: (1) impair reception of an acceptable quality signal; (2) unreasonably prevent or delay installation, maintenance, or use of an antenna; or (3) unreasonably increase the cost of installing, maintaining or using an antenna. The Executive Board or designated committee may adopt and enforce reasonable architectural guidelines with respect to these devices that seek to minimize the visual effect on the Community.

7.10 Parking and Vehicular Restrictions.

No Unit Owner shall park, store, or keep on any Lot or other property or street (public or private) within the Community any commercial vehicle (car, truck or van bearing lettering or signage identifying a product or service, or large commercial type vehicle such as a dump truck, cement mixer truck, oil or gas truck, delivery truck, commercial van, etc.), trailer, boat, camper, all-terrain vehicles or any vehicles without visible current license plate or inspection sticker. However, those restricted items may be stored in a garage with the garage door closed. Only passenger automobiles (including minivans, SUV's and non-commercial pickup trucks and vans) may park on the street. No Owner shall conduct repairs or restorations of any motor vehicle, camper, boat, trailer, aircraft or other vehicle upon any portion of the Community, except in the Owner's garage with the garage door closed. Truck traffic on all roads in the Community may be restricted as provided in applicable Township ordinances or resolutions.

7.11 Stormwater Management Facilities.

No Unit Owner shall interfere with Stormwater Management Facilities established over any Unit within the Community Property, except to the extent that such Owner has maintenance obligations with respect to such facilities. No Unit shall be graded or re-graded so as to interfere with the any applicable erosion plan, or grading and utility plan or any other drainage plan or system for the Community, nor shall any Unit be graded or re-graded so as to create standing water or other water- related nuisance on an adjoining Unit or street. Each Owner of any Single Family Home on which a swale or detention basin which forms a part of the Stormwater Management Facilities is located has the duty and obligation, enforceable by the Township, the other Owners, the Association and/or Declarant, to maintain such swale or basin, keeping the grass mowed and the area clean and free from debris.

7.12 Lots with Wetland; No Disturbance of Wetland.

Portions of the following Lots are adjacent to delineated wetland as shown on the Plan: Lots ___ and ___. Owners of these Lots are prohibited from constructing any improvements within the limits of the delineated wetland on or adjacent to their respective Lots. Neither the Association nor any Owner shall use or erect or permit to be erected anything within any areas shown on the Plan as wetland, whether in Open Space or on a Lot, nor shall the Association or any Owner engage in any grading and/or filling or other disturbances of the wetland areas; except as may be permitted by the Pennsylvania Department of Environmental Protection under applicable law.

7.13 Insurance Rates.

Nothing shall be done or kept in the Community which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept in the Common Elements which would result in the cancellation of insurance on any portion of the Common Elements or improvements insured by the Association or which would be in violation of any law.

7.14 No Alteration of Common Facilities.

After the Declarant has completed the preparation of the Common Facilities and any Township owned areas, none of the following lands within the Property shall be altered in any way by (i) the planting of trees, shrubs or other natural vegetation; or (ii) being excavated, filled or graded; except upon the specific written approval of the Executive Board (and/or Township Board of Supervisors where applicable): lands not privately owned, lands dedicated for roadway purposes and/or lands subject to right-of-way agreements.

7.15 No Dumping.

No portion of the Property shall be used or maintained for the dumping of rubbish or debris. Trash, garbage and other waste shall be disposed of in closed containers at curbside for regular collection, or as otherwise directed by the Board or the Township, or their authorized agents. Owners shall comply with any and all recycling regulations that are promulgated by the Executive Board, the Township or other governmental entity with jurisdiction, and all recyclable materials shall be disposed of in containers designated as appropriate by the Board, the Township or other governmental entity with jurisdiction.

7.16 Enforcement.

The Association shall have the full power and authority to enforce the provisions of this Declaration. In addition, the Declarant shall have the right but not the obligation to enforce the provisions of this Declaration. Enforcement may be by proceedings at law or in equity against any person or persons violating or attempting to violate any provision hereof, either to restrain violations or to recover damages. In the event the Association or the Declarant incurs any costs in enforcing this Declaration, the party committing the violation shall reimburse the Association or the Declarant, as applicable, for the costs of such enforcement. The Declarant and the Association shall also have the right to enter upon any portion of the Property to enforce any provision or remedy any violation of this Declaration. The Township shall have the enforcement rights as provided in Article 9.

7.17 No Hazardous Activities.

No activities shall be conducted on the Property, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged on the Property, and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace. No hunting of any type shall be permitted on Common Facilities. No person shall permit anything to be done or kept upon the Property, which will result in the cancellation of insurance or the increase of premiums on any insurance maintained by the Association or other Owners. No fireworks shall be discharged on the Property: (i) without the approval of the Association; and (ii) in violation of Pennsylvania law.

7.18 Handicapped Use.

Nothing herein shall be deemed to prohibit the reasonable adaptation of any Lot or Dwelling for handicapped or special use, subject to regulations of the Township.

7.19 Miscellaneous.

(a) **Waiver:** No waiver by Declarant of any violation hereof by any Lot Owner shall be deemed a waiver of any subsequent violation by such Lot Owner or any other Lot Owner.

(b) **Severability:** Invalidation of any covenant or covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

ARTICLE 8 - RIGHTS AND OBLIGATIONS OF DECLARANT

8.1 Rights Reserved to Declarant.

Declarant hereby reserves the following rights, in addition to any other rights that Declarant may have by operation of law. The right to:

- (a) complete improvements indicated on the Plan;
- (b) convert a Unit into Common Facilities or Controlled Facilities;
- (c) maintain offices, signs and models in the Community;
- (d) use easements through the Common Facilities or Controlled Facilities for the purpose of making improvements in Community; and
- (e) appoint or remove an officer of the Association or any Executive Board member during the Declarant Control Period.

8.2 Declarant's Right to Dedicate Improvements and Easements.

Declarant hereby further reserves for itself, and its successors and assigns, the right to transfer and dedicate to the Township, all stormwater drainage and pond easements shown on the Plan, and with reference to all such stormwater management ponds or drainage easements, Declarant reserves the right to alter the location thereof in a manner that will reflect the actual as-built location of any facilities such as pipes, culverts or basins constructed or to be constructed within such easement areas, and to amend this Declaration, or record one or more other easement agreements, setting forth specific rights and obligations of the Owners of the Lots affected thereby and setting forth metes and bounds descriptions of such easement areas. If the Declarant requests, then the Association and/or the Owner of any Lot affected by any such pond or drainage easement shall join with Declarant in executing and delivering to the Township one or more documents dedicating to the Township such easements over and across such easement areas, including any Lot, as the Township may require from time to time.

ARTICLE 9 - PROVISIONS BENEFITING TOWNSHIP

9.1 Township's Right to Enforce.

The Township shall be a third-party beneficiary of the provisions of this Declaration requiring the Association to maintain the Common Facilities and the Controlled Facilities to the extent specifically required by the Township in connection with approval of the Plan. The Township shall have the right (but not the obligation) to compel the maintenance of the Common Facilities and Controlled Facilities in the event that the Association fails to do so, provided that the Township shall give prior written notice to the Association of such failure and provide the Association with opportunity to cure such failure. The Association shall have thirty (30) days from receipt of such notice to cure the existing default; provided that if the default is of such a nature that it may require longer than thirty (30) days to cure it, and the Association begins to cure the default within thirty (30) days and thereafter diligently proceeds to cure the default, then the grace period shall be extended for the time reasonably necessary to cure same. In the event of an emergency that may require immediate action for the public good, the Township will seek

to give the Association at least twenty-four (24) hours prior notice, but if the situation requires immediate action, then the notice and cure periods may be waived and the parties shall take such action as may be necessary to address the emergency situation. The amount of any expenses incurred by the Township and charged to the Association in connection therewith shall be a Common Expense and/or a Limited Common Expense of the Association.

9.2 Limit on Township’s Obligations.

No provisions of this Declaration that grant any rights to the Township shall be construed to impose any obligation of maintenance or repair of any of the Common Facilities and/or the Controlled Facilities on the Township, and nothing in this Declaration shall be construed as imposing any such obligation on the Township. In the event that under any provision of this Declaration, or otherwise, the Township has the right to enforce the provisions of this Declaration relating to the maintenance or repair of the Common Facilities and/or Controlled Facilities and if such rights of enforcement are exercised by the Township, the Township shall have the right to charge the costs and expenses thereof to the Association, and such costs and expenses as are charged by the Township to the Association shall be a Common Expense or a Limited Common Expense of the Association. The amounts that may become due to the Township may be enforced and collected in any other manner permitted by law, including an action under the Municipal Lien Law which may result in the billing of and the filing of liens against the Lot Owners by the Township if the Association fails to pay.

ARTICLE 10 - MISCELLANEOUS

10.1 Declarant’s Rights.

The rights of Declarant contained herein shall inure to its benefit and bind Declarant in its capacity as developer of the Property. All rights and easements reserved unto Declarant pursuant to this Declaration shall inure to the benefit of any successor developer of the Property who acquires the Property or a portion thereof from Declarant, provided that Declarant shall have executed a written assignment of its rights hereunder, specifically referring to this Declaration and specifically assigning its rights and easements as the Declarant hereunder to such successor.

10.2 Limitation of Liability.

Declarant shall not be liable for any property damage or personal injury, or the consequences thereof, as a result of the exercise by Declarant or its successors or assigns of any of the rights or easements reserved herein or on the Plan.

10.3 Amendment.

Subject to the other provisions of this Declaration, this Declaration may be amended in the following manner:

(a) **During Declarant Control Period.** During the Declarant Control Period, the Declarant may amend the Declaration in any manner, subject to the Township’s approval if required under Section 10.4.

(b) **Amendment Procedures.** After the Declarant Control Period has ended, any amendment to this Declaration may be proposed by the Executive Board, or by Members of the

Association entitled to cast at least ten percent (10%) of the votes of the Association. Except as otherwise specifically required by the Act (such as matters on which unanimous consent of the Members is required, relating to completion of Common Facilities, increase in the number of units, voting strength, change in boundary lines, etc.) or where an amendment is specifically authorized by the Act to be implemented by the Declarant and/or the Association, or certain Lot Owners, no proposed amendment to this Declaration shall be adopted unless approved by an affirmative vote of at least sixty-seven (67%) of the Members of the Association, and, if required hereunder, by the Township. The Members may adopt an amendment to this Declaration subject to approval thereof by the Township if required hereunder or if otherwise deemed necessary or advisable by the Executive Board. Notice of the proposed amendment shall be included in any notice of any special meeting of the Association at which such proposed amendment is to be considered. Such notice shall be served on all Members in the manner set forth in the Bylaws for service of notice of meetings of the Association.

(c) **Declarant Joinder.** No amendment to this Declaration shall make any change that would in any way alter, modify or affect any of the rights, easements or privileges of the Declarant hereunder, without the written joinder therein by the Declarant.

10.4 Approval of Amendments by Township.

Any amendment to this Declaration that would change or impair any right of the Township granted in this Declaration, shall be submitted in writing to the Township for its review and approval. Such approval shall be deemed to have been granted in the event that the Township does not respond to the Association's or the Declarant's request for such approval within sixty (60) days after such request for approval has been submitted to the Township. In the event that the Township disapproves of such amendment, then no such amendment shall be effective.

10.5 Conflict with the Act.

It is Declarant's intention that this Declaration comply in all respects with the applicable provisions of the Act. Declarant hereby reserves the right in the event of any conflict or inconsistency between the terms of this Declaration and the terms of the applicable provisions of the Act or any omission of any requirement of the Act, to amend this Declaration to conform to the specific requirements of the Act.

10.6 Termination of Community.

The Community may be terminated and the terms and provisions of this Declaration extinguished for all purposes by a vote of eighty percent (80%) of the Members. A termination of the Community must be reflected in a recordable instrument signed by at least eighty percent (80%) of the Members and recorded in the Office of the Recorder of Deeds in and for Berks County within one (1) year of the date it was executed and ratified by a Lot Owner. Notice of the termination shall be given to the Township accompanied by a plan for the continuity of the maintenance of the Common Facilities.

10.7 Construction.

All easements, rights and options created in favor of the Declarant and the Association hereunder or reserved by the Declarant pursuant to this Declaration and any amendments hereto shall be

liberally construed in favor of the Declarant and the Association in order to carry out the purpose and intent of such easements, rights and options. In case of inconsistencies in the governing documents of the Community, then the articles of incorporation of the Association shall have precedence over this Declaration; this Declaration in turn has precedence over the Bylaws of the Association; and the Bylaws have precedence over any rules and regulations adopted by the Association.

10.8 Severability.

In the event that any provisions of this Declaration are determined by a court to be invalid or unenforceable, such invalid or unenforceable provisions of this Declaration shall be deemed stricken and shall not affect the validity or enforceability of any other provisions of this Declaration. In the event that any provisions of this Declaration are unenforceable or invalid as written, but may be reformed so as to make the same valid and enforceable in accordance with the reasonable intent of the Declarant as specified herein, it is the intent of the Declarant that any court interpreting such provisions shall to the extent permitted by law reform the same so as to make the same valid and enforceable in accordance with the reasonable intent of the Declarant expressed therein.

10.9 Governing Law.

This Declaration shall be governed and construed in accordance with all applicable laws of the Commonwealth of Pennsylvania.

10.10 Covenants and Easement Running with the Land.

All of the covenants, easements and restrictions set forth herein, shall constitute covenants, easements and restrictions running with the Property, the Common Elements, and all of the Lots and Dwellings, in perpetuity, and all such covenants, easements and restrictions shall be binding upon and inure to the benefit of the Declarant, the Association and their respective heirs, executors, administrators, successors and assigns.

[SIGNATURE PAGE FOLLOWS]

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

WITNESS:

Steven J. Skoloda

Marlene A. Sko

COMMONWEALTH OF PENNSYLVANIA

:

: ss

COUNTY OF BERKS

:

On this _____ day of _____, 2020, before me, the undersigned officer, personally appeared Steven J. Skoloda and Marlene A. Skoloda, known to me or satisfactorily proven to be the individuals who signed the foregoing Declaration, who being first duly sworn, acknowledged that they executed the foregoing instrument for the purposes therein contained.

Notary Public

INDEX OF DEFINED TERMS

In addition to the terms defined in the Recitals of this Declaration and elsewhere in this Declaration, the following terms, when used herein, shall have the meanings ascribed to them as follows:

“Act” means the applicable provisions of the Pennsylvania Uniform Planned Community Act, 68 P.S. §5101, et seq., as amended by Act 37 of 1998, or otherwise from time to time.

“Assessments” means those levies, assessments or sums payable by one or more Lot Owners from time to time as levied or assessed by the Association, in accordance with this Declaration. The term Assessments shall also include any amounts that may become payable by any Lot Owner or that may be levied or assessed by the Association against any Lot, including but not limited to, costs of collection, attorneys’ fees, late charges, interest, fines and penalties.

“Association” means the Walnut Acres Homeowners Association, Inc., which has been or shall be organized as a Pennsylvania non-profit corporation for the association of all Lot Owners, and which shall have those duties, rights and privileges that are set forth in this Declaration, in the Bylaws and in the Act.

“Bylaws” means the rules and regulations, as from time to time in effect, for the governance of the Association and for the regulation of the organization of the Association. The Bylaws shall be binding upon the Association and all Lot Owners notwithstanding that such Bylaws or any amendments thereto are not recorded.

“Common Expense Liability” means the liability for Common Expenses allocated to each Lot Owner.

“Common Expenses” means and includes the actual and estimated expenses incurred by the Association from time to time for the general benefit of all Lot Owners, including but not limited to the actual and estimated costs and expenses of: (i) operating the Association; (ii) obtaining insurance coverages required or permitted hereunder; (iii) maintaining, operating and repairing the Common Facilities and the Controlled Facilities, and the establishment of reserves for future costs of maintenance, repair or replacement of any of the Common Facilities and the Controlled Facilities; (iv) settling or satisfying any claim made by any Person against the Association; and (v) all other costs, expenses and liabilities incurred or to be incurred by the Association in carrying out its rights, duties and privileges pursuant to this Declaration and the Bylaws.

“Common Facilities” means and includes all the real estate in the Community that is owned or leased by the Association. The specific Common Facilities are described in further detail in Section 3.3.

“Community” means the residential development known as Walnut Acres, and includes all of the Property and all of the Lots, the Common Facilities and Controlled Facilities.

“Controlled Facilities” means and includes all the real estate within the Community, that is not owned by the Association, but may be either maintained, improved, repaired, replaced, regulated, managed, insured or controlled by the Association. The specific Controlled Facilities are described in further detail in Section 3.4.

“Declarant” means the Declarant originally named in the introduction to this Declaration, and any successor developer of all or a part of the Property who succeeds to the rights of the Declarant hereunder in accordance with the terms hereof, including any successor developer or construction contractor who succeeds to the rights of the Declarant for the purposes of development, construction and build-out of the Lots and Dwellings or resale of the Community.

“Declaration” means this Declaration of Covenants, Conditions and Restrictions for Walnut Acres, as from time to time amended and supplemented. Words such as “herein”, “hereof”, “hereto” and similar words when used herein, shall be deemed to refer to this Declaration in its entirety, as amended from time to time, unless the context otherwise clearly requires.

“Dedicated Improvements” shall mean and refer to those improvements that may be made by the Declarant, and upon completion may be dedicated to the Township, a township authority, a utility company or some other third party as further described in Section 3.7.

“Dwelling” means a single family, detached, residential house. The term “Dwelling” shall also include all portions of the Lot on which such Dwelling is located and all other structures located on such Lot.

“Eligible Mortgagee” means the holder, insurer or guarantor of a first mortgage lien on one or more Lots, who shall have given notice to the Association of its name, address and the Lot against which it holds, insures or guarantees a first mortgage.

“Executive Board” means the governing body of the Association, consisting of those individuals elected from time to time to serve on the Executive Board of the Association pursuant to this Declaration and the Bylaws.

“Limited Common Expenses” means the actual expenses incurred from time to time in connection with the oversight and control of the operation of the Limited Controlled Facilities (if any), and any special allocation of expenses to less than all Units.

“Lot” means a separate and subdivided parcel of land as shown on the Plan, which has been approved for the construction of a Dwelling thereon, and such term shall be deemed to include any Dwelling now or hereafter located on such Lot.

“Lot Owner” means the Declarant or any record owner, whether one or more persons or entities, of the fee simple title to any Lot, except a person holding such title solely as security for an obligation. If more than one Person holds title to any Lot, all such Persons, taken together, shall be deemed to be a single Lot Owner for all purposes of this Declaration, and all obligations imposed on a Lot Owner pursuant to this Declaration shall be the joint and several obligations of all of the Persons holding title to the particular Lot.

“Member” means a Person entitled to membership in the Association.

“Open Space” means those portions of the Property designated as “Open Space” on the Plan, which shall be subject to such limitations and restrictions as may be imposed upon the Association and/or Lots in connection with the use thereof.

“Person” means a natural person, corporation, partnership, association, trust or other entity or combination thereof.

“Plan” means the final subdivision plan of the Property dated November 16, 2015 (last revised August 18, 2017) approved by the Township and recorded in the Office of Recorder of Deeds in and for Berks County, Pennsylvania, and all approved and recorded amendments or modifications thereof, and all accompanying land development and related plans. A reduced copy of the record plan portion of the Plan is attached as Exhibit “D” hereto. The full set of engineering drawings comprising the Plan is available for review from Declarant upon request.

“Property” means the entire real property bounded and described in Exhibit A hereto, which includes all Lots, together with the Common Facilities, the Controlled Facilities, and the Dedicated Improvements thereon as more fully depicted in the Plan.

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

“Recreation Facilities” shall mean the facilities designated on the Plan wholly within the Open Space provided for the use and enjoyment of the residents of Walnut Acres.

“Resale Certificate” has the meaning given in Section 5.9(b).

“Rules and Regulations” means those Rules and Regulations that may be adopted by the Executive Board from time to time governing the Lot Owners’ use and enjoyment of the Common Facilities and Controlled Facilities pursuant to the provisions of this Declaration. The Rules and Regulations may provide greater restrictions on the use and enjoyment of the Common Facilities and Controlled Facilities or any parts thereof than are provided in this Declaration, but such Rules and Regulations may not relax any restrictions on the Owners’ rights of use and enjoyment of the Common Facilities and Controlled Facilities that are set forth in this Declaration.

“Special Declarant Rights” means those rights reserved to Declarant in this Declaration or as otherwise permitted to be exercised by the Declarant pursuant to the provisions of the Act.

“Stormwater Management Easement” means each of the drainage and storm sewer easements as depicted on the Plan (and as may be granted in the future) for occupancy of Stormwater Management Facilities, and for access thereto for inspections, repairs, maintenance, replacements and renewals thereof by the Association, the Township and each Owner (if necessary).

“Stormwater Management Facilities” shall mean, as the context requires, any and all stormwater management or detention ponds or other containment structures, stormwater diversion and/or discharge structures, drainage systems, basins, and any other structures, devices, berms, swales, basins and other improvements, installed or to be installed or constructed in accordance with the Plan for the purpose of collection, transmission, containment, diversion and/or discharge of stormwater, including also any inlets, outlets, headwalls, endwalls, pipes or piping, and any and all other structures or facilities to be constructed or installed on any part of the Property or on any easements appurtenant thereto or on any Lot or Lots for the purpose of managing and/or controlling stormwater runoff, as the same may be modified, reconstructed, enlarged, altered or replaced from time to time.

“Township” means Township of Tilden, Berks County, Pennsylvania, or any successor municipality within which the Property is located.

“Utility Easements” means the easements as depicted on the Plan (and as may be granted in the future) for occupancy of utilities, and for access thereto for inspections, repairs, maintenance, replacements and renewals thereof by the Association, the Township and each Owner (if necessary).

EXHIBIT PAGE

Exhibit "A" – Legal Description of Property

Exhibit "B" – Legal Description of Open Space

Exhibit "C" – Legal Descriptions of Easements shown on Plan

Exhibit "D" – Reduced Copy of Record Plan

EXHIBIT "A" – LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "B" – LEGAL DESCRIPTION OF OPEN SPACE

EXHIBIT "C" – LEGAL DESCRIPTIONS OF EASEMENTS SHOWN ON PLAN

EXHIBIT "D" – REDUCED COPY OF RECORD PLAN