

THE GARDENS HOMEOWNERS ASSOCIATION

DECLARATION OF COVENANTS, RESTRICTIONS
AND EASEMENTS FOR THE GARDENS

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS is made and executed this 7th day of October, 1994, by JOHN C. LEO and ANNE C. LEO (collectively the "Leos") husband and wife, having a mailing address of P.O. Box 337, Toughkenamon, Pennsylvania 19374 and WILKINSON LAUREL, INC. ("Declarant"), a Pennsylvania corporation, having a mailing address of P.O. Box 185, R.D. #1, Landenberg, Pennsylvania 19350. The Leos have joined in this Declaration in their capacity as the current record owners of the Property as more fully described in Section 2.02(c) below.

B A C K G R O U N D

A. The Leos are the owner of a certain parcel of land situate in New Garden Township, Chester County, Pennsylvania, more fully described on Exhibit "A" which is attached hereto and made a part hereof (the "Property"), and which has been subdivided pursuant to a certain plan of subdivision of "The Garden - Phase I" prepared for Declarant by Hillcrest Associates, Inc. dated May 24, 1993, and recorded in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania as Plan No. 12216.

B. Wilkinson has entered into an Agreement of Sale dated February 9, 1994 to purchase the Property and has joined in this Declaration as equitable owner of the Project. A Memorandum of Agreement of Sale was recorded in Chester County on May 12, 1994, as Record Book 3755, Page 734.

C. The Property has been subdivided into twenty-nine (29) residential building lots for the construction of single family detached residential dwellings thereon. 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 to be constructed 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. This Declaration does not and is not intended to create a condominium within the meaning of the Pennsylvania Uniform Condominium Act.

NOW, THEREFORE, the Declarant hereby declares and covenants for themselves and their heirs, 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 be easements, covenants, restrictions and conditions running with the Property and each of the Lots within the Property, and which 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 I - DEFINITIONS

1.01 In addition to the terms defined in the Recitals to this Declaration and elsewhere in this Declaration, the following terms, when used herein, shall have the meanings ascribed to them in this Article I.

(a) "Adjoining Property" means the real property designated as "Phase II" on the Plan which consists of parts of the bed of Daniel Drive from the phase dividing line between "Phase I" and "Phase II" eastwardly to Newark Road and the lands shown on the Plan, exclusive of the Property, as a 14.2637 acre parcel and an 8.7525 acre parcel identified "to be retained by owner". The Adjoining Property is more fully bounded and described on Exhibit "B" attached hereto.

(b) "Assessments" means those levies, assessments or sums payable by one or more Owners from time to time as levied or assessed by the Association, as provided in this Declaration, including Regular Assessments and Special Assessments. The term "Assessments" shall also include any other amounts that may become payable by any Owner or that may be levied or assessed by the Association on any Dwelling or Lot, including but not limited to costs of collection, attorneys' fees, late charges, interest, fines and penalties.

(c) "Association" means "The Gardens Homeowners Association, Inc.", which has been or shall be organized as a

Pennsylvania non-profit corporation, and which is an association among all Owners, and which shall have those duties, rights and privileges that are set forth in this Declaration and in the By-laws.

(d) "Board of Directors" or "Board" means the governing body of the Association, consisting of those individuals elected from time to time to serve on the Board of Directors of the Association pursuant to this Declaration and the By-laws.

(e) "By-laws" means the rules and regulations for the governance of the Association and for the regulation of the organization of the Association, as from time to time in effect. The By-laws shall be binding upon the Association and all Owners notwithstanding that such By-laws or any amendments thereto are not recorded.

(f) "Common Expenses" means and includes the actual and estimated expenses incurred by the Association from time to time for the general benefit of all 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 and repairing the Community Facilities, and the establishment of reserves for future costs of maintenance, repair or replacement of any of the Community Facilities, settling or satisfying any claim made by any Person against the Association, and (iv) 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 By-laws. Common Expenses shall also include, until any roads located within the Property have been accepted for dedication by the Township, all actual and estimated costs and expenses of maintaining and repairing such roads and clearing snow (but not ice) therefrom.

(g) "Community" means the residential development known as "The Gardens" and includes all of the Property and all of the Lots and the Community Facilities.

(h) "Community Facilities" means all stormwater drainage facilities, including surface or subsurface basins, pipes, culverts and related facilities and components, located on any Lot, the entrance sign to be erected on or near Lot 33; and any and all other real or personal property that may be conveyed to or acquired by the Association for the common use, enjoyment or benefit of some or all of the Owners. The Community Facilities shall also include such rights, benefits and obligations as may be assumed by or imposed upon the Association with respect to any Open Space created subsequent to the recordation of this Declaration in the area between the eastern boundary of the Property and western boundary of the Daniel Drive street right-of-way in connection with the development of the Adjoining Property.

(i) "Dwelling" means a single family, detached, residential dwelling house constructed or to be constructed on any Lot. The term shall also include all portions of the Lot on which such Dwelling is constructed and all other structures located on such Lot.

(j) "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.

(k) "Declaration" means this Declaration of Covenants, Restrictions and Easements for The Gardens in its entirety, 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.

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

(m) "Lot" means a separate and subdivided parcel of land as shown on the final subdivision plan of the Property approved by the Township, which has been approved for the construction of a Dwelling thereon, and such term shall be deemed to include any Dwelling now or hereafter constructed on such Lot.

(n) "Member" means a Person entitled to membership in the Association, as provided herein, and includes the Class A Members and the Class B Members.

(o) "Open Space" means those portions of the Adjoining Property, if any, lying between the eastern boundary of the Property and the western boundary of the Daniel Drive street right-

of-way as may be designated as "Open Space" on any finally approved subdivision plan of the Adjoining Property. All references herein to Open Space shall pertain to such subsequently identified areas and shall be subject to such limitations and restrictions as may be imposed upon the Association and/or Owners of Lots in connection with the use thereof.

(p) "Owner" means the 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 Owner for all purposes of this Declaration, and all obligations imposed on an Owner pursuant to this Declaration shall be the joint and several obligations of all of the Persons holding title to the particular Lot or Dwelling.

(q) "Person" means a person, a corporation, a partnership, a trust or other legal entity.

(r) "Plan" means the final subdivision plan of the Property approved by the Township and recorded in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania, as Plan No. 12216, and all approved and recorded amendments or modifications thereof, and all accompanying land development and related plans.

(s) "Property" means the real property described according to metes and bounds on Exhibit "A" which is attached hereto and made a part hereof, that has been subdivided and is

being developed by Wilkinson pursuant to the Plan. It is noted for purposes of clarification that the Property does not contain any Open Space and that any Open Space that may ultimately become available and accessible to the Association and the Owners of Lots shall occur in connection with the development of the Adjoining Property.

(t) "Regular Assessments" means those Assessments levied and assessed by the Association from time to time to pay the Common Expenses of the Association.

(u) "Rules and Regulations" means those Rules and Regulations that may be promulgated by the Board of Directors of the Association from time to time governing the Owners' use and enjoyment of the Community Facilities pursuant to the provisions of this Declaration. The Rules and Regulations may provide greater restrictions on the use and enjoyment of the Community 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 Community Facilities that are set forth in this Declaration.

(v) "Special Assessments" means those levies and Assessments, other than Regular Assessments and Supplemental Assessments, that are levied and assessed by the Association from time to time against one or more Owners as provided in this Declaration.

(w) "Township" means the Township of New Garden, Chester County, Pennsylvania, or any successor municipality within which the Property is located.

ARTICLE II - APPLICABILITY OF DECLARATION;
CONSTRUCTION AND INTERPRETATION

2.01 Applicability of Declaration. This Declaration shall be applicable to the entire Property and to all of the Lots and all of the Community Facilities. All present and future Owners of the Dwellings and the Lots, and their respective tenants, subtenants, family members, guests, invitees, permittees, agents, servants, employees and any other persons occupying or using any Lots or Dwelling, or any other persons permitted to use or enjoy any of the Common Facilities shall be bound by all the terms and conditions of this Declaration, the By-laws and any Rules and Regulations which may be promulgated by the Board of Directors with respect to the use and enjoyment of the Community Facilities. Ownership, rental, occupancy or use of any Lot or Dwelling, or of the Community Facilities, shall constitute a Person's agreement to be bound by all the terms and conditions of this Declaration, the By-laws and such Rules and Regulations. Any Owner may assign his or her right of enjoyment of the Community Facilities to a member of his or her family, tenants, guests and social invitees, as applicable, subject to such Rules and Regulations as may be promulgated by the Board. An Owner who leases his or her Dwelling shall be deemed to have assigned all such rights to the lessee of such Dwelling, except as otherwise provided in the governing lease. Each Owner shall be responsible for ensuring compliance with the terms and conditions

of this Declaration, the By-laws and the Rules and Regulations by his or her tenants, family members, guests, invitees, agents, servants, employees and contractors.

2.02) Adjoining Property.

(a) This Declaration does not apply to or affect the use, occupancy or development of the Adjoining Property except, and only to the extent, provided in Section 2.02(b) below. Otherwise, neither the Adjoining Property, nor any separate parcels or lots resulting from the subdivision or partition thereof, nor any dwellings or units that may hereafter be constructed thereon, shall be burdened or benefitted by any of the restrictions, covenants, easements or other provisions of this Declaration, nor shall any of the restrictions, covenants or easements set forth herein be deemed to apply, by implication or inference, to any use or development of the Adjoining Property that may hereafter be undertaken by or on behalf of the Declarant, the Leos, or their respective heirs, executors, administrators, successors or assigns. The owner or owners, from time to time, of the Adjoining Property, shall have the right to use the Adjoining Property for any and all lawful purpose or purposes and to develop or refrain from developing the Adjoining Property in any manner that they may deem appropriate, in their sole, absolute and unfettered discretion. In the event of any future development of the Adjoining Property, any such development may be undertaken with or without the imposition of restrictions, covenants or easements similar to those created herein with respect to the Property, or under and subject to

restrictions, covenants and easements different from or inconsistent with those set forth herein.

(b) In the event that any open space area or areas are created upon the Adjoining Property in connection with any future development and/or subdivision thereof ("Open Space"), the owner or owners of the Adjoining Property may, in connection with the development of the Adjoining Property, create or establish such easements and/or related rights that may be necessary or convenient and grant to the Association and its members, certain rights of use and enjoyment with respect to the Open Space, provided that the Association and its members agree to share equally in the cost of maintenance and repair of such Open Space. Nothing herein contained shall be construed, however, as a requirement or covenant that any such Open Space, if created on the Adjoining Property, shall be available to the Association or its members for their use and/or enjoyment, and the creation of such rights of use and/or enjoyment shall be solely within the absolute and unfettered discretion of the Leos, or, if applicable, any successor owner or developer of the Adjoining Property. In order to facilitate the granting of such rights and use or enjoyment to the Association, if such rights are hereafter granted, the Declarant hereby specifically reserves the right to amend this Declaration in such a manner as the Declarant, in the Declarant's sole and absolute discretion, deemed necessary to enable the Association to obtain such rights of use and enjoyment and to cause the Association to share with any homeowners association or similar organization that

may hereafter be created for the benefit of lots or units comprising the Adjoining Property to maintain and repair the Open Space. The rights, benefits and obligations of the Owners of Lots in the Property, and the Association, with respect to the Open Space shall be subject to such limitations or requirements as may be imposed by the Township.

2.03 Limitation of Liability. The Leos have executed this Declaration solely in their capacity as the record legal owners of the Property and solely for the purpose of subjecting the Property (but not the Adjoining Property) to this Declaration. The Leos shall not be deemed to be or constitute the Declarant for any purposes of this Declaration, and the Leos shall not be under any obligation to perform any covenants, duties or obligations imposed upon or assumed by the Declarant hereunder. The Leos shall not be liable to the Association or to any Owners, in damages or otherwise, as a result of any failure of the Declarant to perform any of its duties or obligations hereunder. Unless and until the Declarant assigns to the Leos its rights hereunder, or the Leos otherwise acquire such rights from the Declarant, the sole obligation of the Leos hereunder shall be to join with the Declarant in conveying to the Association any right, title or interest they may have in the Community Facilities and to join with the Declarant and/or the Association in granting or dedicating any easements that the Declarant and/or the Association may have the right and/or the obligation to grant and convey to the Township or to third parties. The Leos shall have no liability to the

Association or to the Owners under any expressed or implied warranty given by the Declarant with respect to the Community Facilities, the Lots, the Dwellings or any improvements to be dedicated to the Township. In the event that the Leos acquire any of the rights of the Declarant herein, then the Leos shall not be liable to the Owners or the Association for any act, omission, breach of covenant, breach of warranty or other matter or thing done or omitted to be done by the Declarant prior to the date on which the Leos have assumed the obligations of the Declarant hereunder.

2.04 Deemed Ownership by Declarant. For purposes of this Declaration, the Declarant shall, by virtue of its equitable ownership of the Property pursuant to the Agreement of Sale between the Declarant and the Leos, be deemed to own any portion of the Property, the Lots and the Community Facilities that may be owned of record by the Leos and that have not been conveyed to Owners, the Association or the Township, as long as Declarant is the equitable owner thereof. Where any provision of this Declaration grants or creates any rights to the benefit of the Declarant or imposes any obligation on the Declarant with respect to any Lots or other parts of the Property owned by the Declarant, the Declarant shall have all such rights and obligations notwithstanding the fact that legal title thereto may be held by the Leos, so long as the Declarant is the equitable owner thereof. In all other respects, this Declaration shall be construed and interpreted as though the Declarant were the record owner of the Property, the Lots and the

Community Facilities, as the case may be, as long as the Declarant is the equitable owner thereof. Where any provision of this Declaration refers to any part of the Property or any Lot or dwelling being conveyed by the Declarant, it shall be deemed to have been conveyed by the Declarant if it is conveyed by the Declarant or if it is conveyed by the Leos directly to the grantee at the request and/or direction of this Declaration.

2.05 Construction and Interpretation. In the event of any conflict or inconsistency between the terms and conditions of this Declaration and the By-laws, this Declaration shall be controlling except to the extent contrary to applicable law. The By-laws may contain provisions that are in addition to the provisions of this Declaration and which specify the manner of carrying out the terms and conditions of this Declaration, provided that such provisions of the By-laws shall not contradict or be inconsistent with the terms of this Declaration.

ARTICLE III - ASSOCIATION; MEMBERSHIP; ASSESSMENTS

3.01 Association.

(a) The Association shall be the governing body for and on behalf of all Owners, and shall have all duties, rights, privileges and responsibilities as are set forth in this Declaration and in the By-laws. All rights, powers and duties that are granted to the Association pursuant to the Declaration or the By-laws shall be exercised, carried out and performed by and through the Board of Directors, except when any provision of this Declaration or the By-laws requires that any such powers, rights,

duties or privileges may be exercised or carried out only by Members. The Association shall be responsible for the maintenance, repair, replacement, management, operation and administration of the Community Facilities, any additions or changes to the Community Facilities and such other duties and obligations as the Association may from time to time assume or undertake to perform with respect to the Community, including but not limited to snow removal, trash removal or similar duties. The Association shall also have the power and duty to levy Regular Assessments against all Owners for the purpose of paying the Common Expenses incurred or to be incurred by the Association from time to time and to levy Special Assessments against all or fewer than all Owners for the purposes set forth in this Declaration. The Association shall have the right to operate, maintain and repair property that is not owned by the Association. Pending final dedication to the Township of any roads or other improvements within the Property that are required or that may be dedicated to the Township, the Association shall maintain and repair such roads and other improvements and may contract on behalf of all Owners for the removal of snow (but not ice) therefrom.

(b) The Association shall have the right, subject to any limitation set forth in the By-laws, 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 Board of Directors.

(c) In addition to the other responsibilities and duties of the Association, the Association shall be responsible for such maintenance and upkeep obligations as may be established in connection with Open Space designated after the date hereof, and any recreational facilities from time to time constructed therein. The Board of Directors shall have authority from time to time to erect or construct on the Open Space certain recreational facilities or equipment as the Board of Directors from time to time deems appropriate and the costs and expenses thereof shall be a Common Expense.

(d) 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 Open Space and any and all improvements or facilities constructed thereon by the Declarant, 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.

(e) Without limiting the general grants of authority and duties provided in this Section 3.01, the Association shall, acting by and through the Board of Directors, have the following rights, duties, obligations and privileges:

(1) To maintain and manage the Community Facilities;

(2) To keep the Community Facilities in good condition and repair and to make any necessary repairs and replacements thereof or thereto;

(3) To purchase any insurance coverages or fidelity bonds required or to be obtained for or on behalf of the Association hereunder;

(4) To adopt operating and capital budgets of the Association with respect to the Community Facilities and to make amendments thereto, as from time to time necessary;

(5) To compute, levy, assess and collect Regular Assessments and Special Assessments;

(6) To enforce the collection of delinquent Regular Assessments and Special Assessments by any one or more methods set forth in this Declaration;

(7) 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;

(8) To adopt, amend and repeal, from time to time, such Rules and Regulations as the Board may deem necessary or appropriate for the regulation of the use and enjoyment of the Community Facilities;

(9) To enforce by one or more remedies available at law or in equity any and all of the provisions of this Declaration;

(10) To grant easements 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 or cable television services;

(11) To prosecute or defend claims, suits, causes of action by or against the Association and to litigate, arbitrate, settle, compromise and/or release any such claims; and

(12) 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.

(f) The Association shall, acting by and through its Board of Directors, have the right, but not the obligation, to do any of the following:

(1) To contract on behalf of all Owners for the collection, removal and disposal of residential trash and recyclable materials;

(2) To contract on behalf of all Owners for basic cable television service for the benefit of Owners of the Lots;

(3) To dedicate and convey the Open Space (if, as and when acquired) to the Township as provided in Article XIII hereof;

(4) To undertake to perform such other services for the common benefit of all Owners that the Board of Directors may deem advisable from time to time; and

(5) To purchase any insurance coverages in addition to those required to be obtained by the Association hereunder, and to do any and all other acts that the Association may be permitted to do pursuant to the terms and conditions of this Declaration.

(g) No judicial or administrative proceedings shall be commenced or prosecuted by the Association unless approved by Members entitled to cast at least sixty (60%) percent of the votes cast at a duly constituted meeting of Members. The foregoing 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, or counterclaims brought by the Association in proceedings instituted against it, which may be pursued if approved by the Board of Directors of the Association.

3.02 Association Membership; Voting.

(a) Every 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 Owner may become liable pursuant to this Declaration, the By-laws or the Rules and Regulations. Membership in the Association shall not be severable from ownership of a Lot or Dwelling, 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 Owners of Lots or Dwellings subject to this Declaration, and the Declarant. No Owner shall be relieved of his obligations to pay Assessments or any other obligations arising hereunder by any purported waiver of the right to use or enjoy the Community Facilities or by any waiver of any other benefits of membership in the Association.

(b) Every 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 Board of Directors 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) There shall be two classes of Members of the Association, which shall consist of Class A Members and the Class B Member. Each Owner (other than the Declarant) shall be a Class A Member, and each Class A Member shall be entitled to one (1) vote for each Lot within 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.

The Class B Member shall be the Declarant who shall have three (3) votes for each Lot (with or without a Dwelling thereon) that the Declarant owns within the Community. The number of votes that may be cast by the Class B Member shall be converted to one (1) vote for each Lot (with or without a Dwelling thereon) owned by the Class B Member upon the first to occur of the following: (i) when the total number of votes entitled to be cast by all Class A Members equals the total number of votes entitled to be cast by the Class B Member (based on three (3) votes per Lot owned by the Class B Member); or (ii) upon the expiration of seven (7) years after the recording of this Declaration (the "Declarant Control Period"). The Class B Membership shall terminate and there shall no longer be any Class B Member of the Association upon the conveyance of the last Lot owned by the Declarant.

(d) Notwithstanding any provision of this Declaration to the contrary, no action shall be taken or adopted by the Association (whether before or after termination of the Declarant Control Period or the Class B Membership) which would in any way affect, alter or modify any of the rights, privileges, powers or options of the Declarant reserve herein, without the prior written approval of the Declarant.

(e) A Class A Member shall be entitled to vote at any annual or special meeting of Members of the Association only if such Class A Member shall have fully paid all Assessments made or levied against him or his Lot or Dwelling 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 or Dwelling, 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.

(f) 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 Owner thereof).

(g) 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, therefore, shall not be counted. The voting rights of a Class 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 Owner in a written instrument provided to the Secretary of the Association, subject to the provisions of this Declaration and the By-laws.

3.03 Board of Directors.

(a) Subject to the other provisions of this Declaration and of the By-laws, the Board of Directors shall have the full

power and authority to act on behalf of the Association. The initial Board of Directors 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 (b) below.

(b) Until at least seventy-five (75%) percent of the Lots are conveyed to Owners other than the Declarant, the Declarant, as the Class B Member, shall be entitled to elect and appoint all Members of the Board of Directors. A meeting shall be held within three (3) months of the date on which at least seventy-five (75%) percent of the Lots are conveyed to Owners other than the Declarant at which meeting one (1) of the Directors appointed by the Declarant shall be replaced by a Director selected by the Class A Members. After the expiration of the Declarant Control Period, a majority of the members of the Board of Directors shall be elected by the Class A Members at the annual meeting of Members next following the expiration of the Declarant Control Period, and the Declarant shall have the right to elect and appoint one (1) member to the Board of Directors. After the Declarant no longer owns any Lots or Dwellings within the Property, the entire Board of Directors shall be selected by the Class A Members. For purposes of this subparagraph, the percentage of Lots conveyed by the

Declarant shall be based upon a total number of Lots within the Property.

3.04 Conveyance of Community Facilities.

(a) As of the execution and recordation of this Declaration, there are no Community Facilities involving a conveyance of title to the Association. Notwithstanding the foregoing, the Association have the responsibility for the management, operation, administration, repair and replacement of existing stormwater management facilities, stormwater drainage systems and drainage basins are located upon Lots and also the obligation to maintain the entrance sign to be located on or near Lot 33. It is further anticipated that in connection with the development of the Adjoining Property that Open Space areas may be designated upon the Adjoining Property and that certain interests in the Open Space may be conveyed to the Association. In such event, the Association shall accept such conveyance upon such conditions as may be imposed by Declarant and/or New Garden Township.

3.05 Assessment Obligations of Owners.

(a) Each Owner of a Lot, upon acceptance of a deed or other instrument of conveyance to such Lot, shall be deemed to covenant and agree and does hereby covenant and agree to pay to the Association all Assessments that may be levied by the Association against his Lot or Dwelling or against him with respect to his Lot or Dwelling, including, but not limited to, all Regular Assessments made due and payable on a monthly or other periodic basis as

determined from time to time by the 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 Board of Directors for non-payment of Assessments or for non-compliance with the terms and conditions of this Declaration, By-laws or any rules or regulations promulgated by the Board of Directors.

(b) 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 the Dwelling, and shall be a continuing lien upon the Dwelling and the Lot against which such Assessment is made, from time to time of Assessment (notwithstanding that such Assessment may be payable at a later time or in two or more installments).

(c) All Assessments against a Lot or Dwelling shall constitute the personal obligation of the Person or Persons who are the Owners of the Lot or Dwelling at the time the Assessment falls due. Each Owner shall be liable for the portion of each Assessment coming due while he or she is the Owner of a Dwelling, and his or her grantee shall be jointly and severally liable for a portion thereof as may be due and payable at the time of the conveyance of the Lot to such grantee.

(d) The obligations of Owners to pay Regular Assessments and/or Special Assessments and/or any interest, late charges, delinquency assessments, costs of collection or attorneys' fees

shall not be subject to deduction or set-off as a result of any claim which any Owner or Owners may have against the Association or the Declarant arising out of any transaction, matter or thing of any nature whatsoever, and no Owner shall be relieved of his obligation to pay timely all Regular Assessments and Special Assessments or installments thereof, as a result of any failure or purported failure of the Association to provide services required to be provided hereunder by the Association. The Owner of a Lot on which no Dwelling has been constructed or on which a Dwelling has been constructed and has subsequently been demolished, destroyed or removed, shall be subject to all Regular Assessments and Special Assessments, and other obligations imposed pursuant to this Declaration in the same manner and to the same extent as the Owners of Lots on which Dwelling are located.

3.06 Non-Refundable Contribution by First Purchasers. The Association shall assess to each purchaser of a Dwelling purchased from the Declarant a one-time Assessment in an amount equal to Fifty Dollars (\$50.00), which shall be a non-refundable contribution to the Association and which amount may be used from time to time for any purposes deemed appropriate or desirable by the Board of Directors. Such Contributions shall be in addition to, and shall not be in lieu of or applied against the Regular Assessments levied or assessed against such Lot or Dwelling, or any Special Assessments that have been levied or assessed against such Lot or Dwelling.

3.07 Damages. Each Owner shall be obligated to reimburse and indemnify the Association for any expenses, costs or damages incurred by the Association, or with respect to any Community Facilities damaged or destroyed, by the act, omission or negligence of such Owner or his tenants, agents, guests, family members or licensees, upon demand by the Association.

3.08 Payment. Except as otherwise provided in this Declaration, the time for payment of Assessments by each Owner shall be determined by the Board of Directors. Unless otherwise determined by the Board of Directors, all Regular Assessments shall be payable in equal monthly installments which shall be due and payable on the first day of each calendar month. Special assessments shall be due and payable at such time, in a lump sum or in installments, as the Board of Directors may determine.

3.09 Non-Payment; Lien.

(a) In the event that any Assessment or installment thereof is not paid within fifteen (15) days after the due date thereof, interest thereon shall accrue from the due date at the rate of fifteen (15%) percent per annum (or such higher rate as determined). The Board of Directors shall have the right to levy the costs of collection (including attorneys' fees) against an Owner who is delinquent in the payment of any Assessment or installment thereof. The Board of Directors shall also have the right to charge a delinquency Assessment, as established from time to time, against any 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 Board of Directors shall have the right to accelerate all future installments of such Assessments with respect to the delinquent Owner.

(b) 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 Board of Directors shall have the right to suspend the rights of the delinquent Owner to use and enjoy the Community Facilities and to suspend the voting rights and other privileges of such Member.

(c) All such Assessments and charges chargeable to any Owner, including all fees, late charges, interest and costs of collection (including attorneys' fees) and any penalties levied against any Owner for non-payment of Assessments or non-compliance with this Declaration, the By-laws or the Rules and Regulations, shall constitute a lien against the Owner's Lot and the Dwelling in favor of the Association, provided that such lien shall be subordinate to the lien of any Eligible Mortgage. Such liens shall be effective from the time the Assessment or charge becomes due. In the event that an Owner owns more than one Lot or Dwelling within the Community, all such Assessments and charges shall be a lien against all Lots and Dwellings owned by such Owner within the

Community, even if delinquencies relate solely to Regular Assessments and Special Assessments or other costs levied with respect to fewer than all that Owner's Lots or Dwelling.

(d) The Board shall have the right to record in the Recorder of Deeds Office and/or the Prothonotary's Office of Chester County, Pennsylvania, a notice or claim of lien stating the description of the Lot, the name of the record Owner thereof, the date the Assessment or charge became due, and the amount thereof. Upon full payment of all sums secured by such lien, and payment of the costs of removing such claim from record, the Owner of such Lot or against which such lien is filed shall be entitled to a recordable satisfaction of lien to be prepared and recorded at his expense.

3.10 Collection. Assessments and other costs and expenses which may be payable by any Owner may be recovered by a lawsuit brought by the Board of Directors on behalf of the Association and/or the Owners, in any action at law or in equity against the Owner personally obligated to pay the same and the Association shall be entitled to seek and pursue any and all rights and remedies as may be available at law or in equity. In addition, the Board of Directors shall have the right to revoke or suspend all rights and privileges of the delinquent Owner hereunder, including the right to use and enjoy the Community Facilities and the right to vote in all matters on which Members of the Association are entitled to vote. The Association may recover from the delinquent 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.

3.11 Collection Upon Sale of a Dwelling.

(a) In the event that title to a Lot or Dwelling is transferred in connection with a sale pursuant to execution on any lien against the Dwelling, the Board of Directors 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 Dwelling. If an Eligible Mortgagee or other purchaser acquires title to a Dwelling 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) Upon the voluntary sale or conveyance of a Dwelling, or any other transfer (including transfers by operation of law) except as provided in subparagraph (a) above, the transferor and the transferee shall be jointly and severally liable for all unpaid Assessments which are charges against the Dwelling as of the date of sale, conveyance or transfer (whether or not such charges have been reduced to a lien). Any transferee liable jointly and severally shall have the right to recover from the Grantor any amount paid by the Grantee. Any Person who has entered into a written agreement to purchase a Dwelling from an Owner shall have

the right to obtain from the treasurer of the Association a statement, in writing, setting forth the amount of any unpaid Assessments charged against the Dwelling and its Owner. In the event that such statement does not include the full amount of the unpaid Assessments for which a notice of lien has not been filed, neither the purchaser nor the Dwelling after transfer thereof shall be liable or subject to a lien for the payment of the amount in excess of the unpaid Assessments set forth on such statement.

(c) In the event the Association is unable to recover the amount of any unpaid Assessments from a delinquent Owner in connection with the voluntary or involuntary sale or transfer of a Dwelling pursuant to subparagraphs (a) and (b) above, or otherwise, the unpaid balance thereof and any costs of collection incurred by the Association may be treated as Common Expense collectible from and assessed against all Owners as any other Common Expense.

3.12 Declarant's Assessment Obligations.

(a) Except as hereinafter expressly provided, the Declarant shall not be liable for any Assessments levied by the Association against Lots or Dwellings owned by the Declarant, nor shall such Dwellings or Lots be subject to any lien therefor. Declarant shall be liable for Assessments with respect to Dwellings owned by the Declarant that are leased to third party tenants, and Dwellings utilized by the Declarant as model homes or sales offices, after the expiration of twelve (12) months from the first date such model home or sales office is opened to the public.

(b) Notwithstanding the foregoing, until a sufficient number of Lots or Dwellings have been conveyed to Owners other than the Declarant so that total Regular Assessments against such Lots and Dwellings owned by Owners other than the Declarant equals or exceeds the Common Expenses actually incurred by the Association for such fiscal year for which such Regular Assessments are made, the Declarant shall be responsible on an annual basis for the amount, if any, by which the Common Expenses actually incurred by the Association exceed the Regular Assessments assessed to owners other than the Declarant (a "Deficit"). The Declarant's obligation to subsidize a Deficit of the Association shall end at the expiration of the first fiscal year of the Association in which the Regular Assessments against Lots or Dwellings owned by Owners other than the Declarant equals or exceeds the Common Expenses actually incurred by the Association for such fiscal year. The Declarant may advance all or a portion of an anticipated Deficit at any time during a fiscal year of the Association in which the Declarant anticipates such Deficit will occur. In the event that after the close of such fiscal year the amount of such funds advanced by the Declarant plus the amount of Assessments levied to the Owners exceeds the Common Expenses actually incurred by the Association during such fiscal year, such excess shall be payable to the Declarant within sixty (60) days after the end of such fiscal year. Once that number of Dwellings has been conveyed to Owners such that the Assessments levied against the Owners equals or exceeds the Common Expenses actually incurred by the Association, the Declarant

shall have no further liability with respect to Deficits of the Association. The amount necessary in order to fund a Deficit shall be due and payable by the Declarant within sixty (60) days after written notice thereof is given by the Board of Directors to the Declarant, such amount not to exceed, however, the actual Deficit incurred by the Association.

3.13. Basis and Computation of Regular Assessments.

(a) The Board of Directors 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 Board of Directors may deem appropriate. Regular 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 Regular Assessments levied from a prior year or years over Common Expenses actually incurred in such prior year or years. The Regular Assessment against each Lot shall then be determined by dividing the total amount to be assessed to all Owners by the number of Lots within the Property.

(b) The budget of the Association based on which Regular Assessments are made may be changed from time to time by the vote of a majority of the Board of Directors to reflect any substantial change in the Common Expenses incurred or expected to be incurred by the Association for such fiscal year, and the Board of Directors

shall have the power to increase or decrease Regular 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 Owners.

(c) Once the Regular Assessment against each Lot has been established by the Board of Directors, it shall not be necessary for the Board of Directors to levy Regular Assessments on a monthly basis or give notice of such Regular Assessments on a monthly basis, and it shall be sufficient for all purposes hereof if the Board of Directors shall cause notice of monthly Assessments due to be sent to all Owners after the Regular Assessment for any fiscal year has been determined or redetermined in accordance with this Declaration.

(d) Within thirty (30) days after adoption of the budget for a fiscal year, the Board of Directors shall cause notice of the Regular Assessment and a copy of the budget to be mailed to each Owner. Such budget shall become effective unless disapproved at a duly called and constituted meeting of the Association by majority vote of the Members of the Association. Unless a meeting is requested by the Members, as provided in the By-laws, 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 such budget is disapproved by the members, or in the event that the Board of Directors 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 Board of Directors (and not disapproved by the members) on the basis of which a new Regular Assessment may be determined.

3.14. Special Assessments. The Board of Directors shall have the power to levy Special Assessments for such purpose or purposes as the Board of Directors from time to time deem necessary or appropriate, including, but not limited to, paying the costs of unanticipated maintenance, repairs or replacements of the Community Facilities, or for the purpose of assessing one or more members for the cost of any damage or destruction to the Community Facilities resulting from the act or omission of such Member or Members. Special Assessments benefitting all Owners shall be levied equally on all Lots, and shall be due and payable in a lump sum or in such installments as the Board of Directors shall determine.

3.15. 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.

ARTICLE IV - INSURANCE

4.01 General Right and Duty to Purchase Insurance. The Board of Directors shall obtain or cause to be obtained comprehensive public liability and property damage 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 Board of Directors shall determine, provided that in no event shall such comprehensive public 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 Board of Directors 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 Community Facilities, including any such Community Facilities located on any Lots. The above referenced minimum coverage amount may be reduced to such amount as the Board of Directors of the Association shall determine is appropriate in the absence of the Association having any rights or interests in Open Space, so long as such minimum insurance amount (or such increased amount as the Board of Directors shall determine is appropriate) satisfied with in the event the Association does acquire any rights and interests in Open Space.

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

4.03 Insurance Obligations of Owners. Each 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 Board of Directors shall have the right to promulgate standards which shall be required to be met by each 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 Community Facilities located on such Lots). Each Owner shall carry blanket all-risk casualty insurance on the Dwelling and other structures constructed on his Lot, and each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of his Dwelling, the Owner shall proceed promptly to repair or to reconstruct the damaged Dwelling in a manner consistent with the original construction thereof. The Owner shall pay any costs of repair or reconstruction not covered by insurance proceeds. In the event that any Dwelling is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the construction of the Dwelling thereon, and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition.

4.04 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 Board of Directors, the Declarant, the 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 Owners requesting such endorsements. The Association shall maintain any insurance coverages that may be required under applicable law or under guidelines and regulations promulgated by the Department of Housing and Urban Development, the Veterans' Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and/or their successors or assigns. The Board of Directors shall have the right to increase insurance coverages and obtain additional insurance coverages not specifically stated herein as the Board of Directors 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 Board of Directors of the Association.

*4.05 Other Insurance Coverages. The Board of Directors shall also have the right to obtain other insurance coverages and endorsements which may be applicable to the Community 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 Board of Directors may from time to time deem necessary or appropriate.

4.06 "Subrogation" and "Other Insurance" Clauses. The Board of Directors shall endeavor, but shall not be obligated, to obtain policies providing that the insurer waives its right of subrogation as to any claims against Owners, the Association, the Declarant, the Board of Directors, and their respective servants, agents, guests, successors and assigns. The Board of Directors shall also endeavor (but shall not be obligated) to obtain policies which provide that any "other insurance" clause in any policy shall exclude individual Owners' policies from consideration.

4.07 Application of Insurance Proceeds. In the event of loss or damage to any portion of the Community Facilities, the Association shall be obligated to repair and restore the damage caused by such loss, unless such repair or replacement would be unlawful, or unless at least seventy-five (75%) percent of each Class of Members, and Eligible Mortgagees holding seventy-five (75%) percent of the first mortgage liens on Dwellings, vote not to replace or repair such loss. In the event that the net proceeds of insurance are insufficient to pay the estimated cost of repair or restoration, or the actual cost thereof, the Board of Directors shall promptly levy a Special Assessment against all Owners for such excess. In the event any Community Facilities are not

repaired or replaced, the insurance proceeds received thereon may be utilized by the Association to pay Common Expenses or to establish such reserve accounts as the Board of Directors may deem necessary or advisable, and any remaining proceeds may be distributed equally to the Owners and the Eligible Mortgagees, as their interest may appear, upon determination by the Board.

4.08 Powers of Board of Directors. The Board of Directors 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 V - BUILDING AND USE RESTRICTIONS

5.01 Business Uses. No industrial, manufacturing or commercial activity, trade or business shall be conducted on the Property or on or about any of the Lots, or in any Dwellings or other buildings or improvements now or hereafter constructed on the Property or any of the Lots, nor shall any commercial, industrial or manufacturing structure, building or facility be constructed on the Property or any of the Lots. No mining, quarrying or removal of gravel, soil, rock or other materials shall be conducted on the Property or any of the Lots, except for excavation and removal of soil necessary in connection with the normal construction and maintenance of buildings, driveways, landscaping and appurtenant residential improvements on the Lots.

5.02 Subdivision or Partition. Once a Lot has been conveyed by the Declarant, such Lot may not be further subdivided or partitioned, directly or indirectly. Declarant may, from time to time, relocate boundaries between Lots owned by the Declarant by a appropriate amendment to or revision of the Plan, as Declarant deems appropriate, in Declarant's sole and absolute discretion.

5.03 Residential Use. Except as otherwise expressly provided herein, the Lots and Dwellings shall be used solely and exclusively for residential purposes. No more than one Dwelling shall be located or constructed on any Lot. No other building, including any garage or other outbuilding, may be used or occupied, temporarily or permanently, as a residence.

5.04 Above-ground Utilities. No above-ground conduits, pipelines, electric, telephone, cable television, radio or other utility transmission lines or antennae shall be installed on any Lot or on the exterior of any Dwelling. Satellite dishes or other free-standing (or roof or chimney mounted) antennae or reception devices shall not be constructed or erected on any Lot.

5.05 Animals. No Lot or any building or improvement located thereon shall be used for stabling, housing, raising, breeding, boarding or keeping one or more horses, cattle, hogs, goats, sheep, fowl, birds or other animals or livestock of any nature for Personal or commercial purposes (excepting only Personal domestic household pets, such as dogs and cats).

5.06 Outdoor Storage. Outdoor storage of appliances, lumber, wood or building materials shall be forbidden except during the

construction of any Dwelling or other permitted structure on any Lot. No camper, travel trailer or mobile home, recreational vehicle, all terrain vehicle, boat, boat trailer, or other trailer, nor any unlicensed motor vehicle shall be kept or stored on any Lot, unless completely enclosed within a garage or other outbuilding permitted hereunder or is otherwise hidden or screened from view in a manner deemed acceptable by the Board of Directors of the Association, except in connection with the immediate maintenance, cleaning, repair or transportation thereof. The foregoing shall not be deemed to prohibit the outdoor storage of firewood provided that such firewood is neatly stacked to a height not more than four (4) feet from the ground level, and such firewood is located to the rear of a Dwelling so as to screen it as much as possible from view.

5.07 Debris. No storage, depositing, dumping, burial, burning or abandonment of any solid waste, debris, trash or refuse of any nature shall be permitted, except when such trash or debris is left outdoors for not more than twenty-four (24) hours for trash collection purposes, in which case such trash or refuse shall be kept in enclosed containers or approved recycling bins or containers. Such containers shall be removed promptly after the contents thereof have been collected.

5.08 Clothes Lines. No temporary or permanent clothes line, clothes drying rack or similar structure shall be permitted nor shall the Owners or occupants of any Dwelling or Lot dry or hang

clothes, linens, sheets, towels or other similar items outside for any purpose whatsoever.

5.09 Out Buildings; Pools. Except for attached or detached private garages constructed by the Declarant for the sole and exclusive personal and non-commercial use of the Owner of a Dwelling constructed on a Lot, no outbuildings or other enclosures shall be constructed on any Lot except with the prior written consent of the Declarant. However, one storage shed shall be permitted on each Lot, provided that the plans and specifications for such shed shall have been submitted to and approved by the Declarant, the size, dimension and elevation of such shed shall be consistent with normal residential personal uses and needs, and the exterior siding and roofing materials shall be on the same type and the same color as the siding and roofing materials used in the construction of the Dwelling on that Lot. Furthermore, children's recreational equipment may be erected on a Lot provided that such equipment is constructed of unpainted wood (or wood treated with colorless stain or preservative). No above-ground or above-grade swimming pool shall be permitted on any Lot. One in-ground swimming pool may be constructed on each Lot, provided that such pool shall be surrounded by appropriate fencing for the protection of unattended children, and the plans for such pools shall be subject to review and approval by the Declarant and the Association.

5.10 Flood Plan and Wetlands. No activities, uses or improvements shall be conducted, constructed or maintained on any

Lot which would be detrimental or adverse to or that may interfere with any erosion control, storm water control or soil conservation facilities or improvements located on such Lot (including, but not limited to, storm water management basins, drainage swales and the like). No Owner or occupant of any Lot shall disturb, or construct or maintain any improvements, or conduct any activities on any area which constitutes "wetlands" under applicable federal and state laws and regulations which may be in violation of applicable restrictions on such disturbance, construction or use.

5.11 Fencing. No fencing shall be permitted on any Lot except fencing which satisfies all of the following requirements:

(a) Such fencing is located in the rear of a Lot with no part thereof extending to the front of the Lot beyond the back wall of the Dwelling erected on such Lot;

(b) Such fencing shall not be more than four (4) feet in height;

(c) Such fencing shall be constructed of wood post and rail, split rail or other natural materials approved by the Declarant; and

(e) Such fencing shall not interfere with or impair any easement created or reserved pursuant to this Declaration or the Plan.

Such permitted fencing may include painted wire or mesh fencing which is affixed to and located inside such wooden fencing.

5.12 Exterior Changes/Additions to Dwelling and Outbuildings. No exterior additions, modifications or alterations of any

Dwelling, garage, shed or other structure permitted hereunder shall be constructed unless:

(a) The exterior materials and colors to be used in connection therewith are consistent with the exterior materials and colors used in connection with the original construction of the Dwelling on such Lot, and

(b) The plans, specifications and elevations for such addition, alteration, improvement or structure shall have been submitted to and approved in writing by the Declarant.

If any Dwelling, garage or other permitted outbuilding is partially or entirely destroyed by fire, storm or other casualty, any Dwelling, garage or outbuilding, as the case may be, partially or completely reconstructed as a result of such damage or destruction, shall be constructed or reconstructed utilizing the same exterior materials and colors as were used in the original structure, unless otherwise approved in writing by the Declarant. Any new structure to be constructed as a replacement to a structure which has been damaged, destroyed or razed shall be substantially the same architectural style and design as the structure which it is replacing, unless otherwise approved in writing by the Declarant.

5.13 Trees. No trees shall be removed, except for diseased or dead trees or trees needing to be removed to promote the growth of other trees or for safety reasons, unless otherwise approved by the Declarant.

5.14 Appearance; Nuisances. No portion of any Dwelling or Lot shall be used in whole or in part for the storage of any Property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye. No noxious or offensive activity shall be carried on upon any portion of the Property, nor shall anything be done thereon tending to cause annoyance or nuisance to any person using any portion of the Property. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly or unkempt condition of his Lot and Dwelling.

5.15 Architectural Approval.

(a) When any provision of this Declaration requires the approval of the Declarant prior to or in connection with the construction, reconstruction, alteration or modification of any Dwelling, garage, outbuilding, fence or other improvement on any Lot, the Person proposing such improvements shall submit to the Declarant appropriate plans, specifications and elevations depicting the style, size and height of the proposed improvement, the exterior building materials and colors to be used in connection therewith (including roofing materials) and the proposed location thereof on the Lot.

(b) The Declarant shall have the discretion to disapprove any proposed improvements, or alterations or modifications to existing improvements, which the Declarant determines are undesirable based upon the nature, size, style and colors of other Dwellings, garage and other improvements located

within the Community, the proximity of the proposed improvements to neighboring Dwellings and the general architectural and aesthetic compatibility of the proposed improvement, structure, alteration or modification with other similar structures and improvements constructed or planned for construction on the other Lots within the Community. The Declarant may also consider the visual impact that such proposed improvements, alterations, modifications or structures may have on the Owners or occupants of neighboring or nearby Dwellings within the Community.

(c) The Owner or occupant of any Lot proposing any such improvement, structure, fence, alteration or modification shall endeavor to maximize the aesthetic appeal thereof and minimize the negative visual impact thereof from Dwellings on adjacent or nearby Lots within the Community, and shall endeavor to minimize the cutting and removal of trees and the disturbance of other natural features of the Lot. All plans submitted to the Declarant for review may be retained by the Declarant regardless of whether the proposed improvement has been approved or disapproved.

(d) As of the date on which the Declarant Control Period expires, all rights of approval reserved unto the Declarant pursuant to this Article V shall be exercisable by the Board of Directors of the Association. The Board of Directors shall be entitled to appoint from among the Members of the Board or the Association not less than three (3) nor more than five (5) individuals to serve as an architectural control committee, and the Board of Directors shall have the authority to delegate its rights

under this Article V to such architectural control committee, subject always to the right of the Board of Directors to approve or disapprove the action of such committee.

5.16 Liability for Approval or Disapproval. Neither the Declarant, the Association, the Board of Directors nor any officer of the Association shall be liable, in damages or otherwise, to anyone in connection with the approval or disapproval of any plan or request for the construction, reconstruction, alteration, modification or addition of any improvement or structure, or for the consequences of such approval or disapproval. Neither the Declarant nor the Association shall be responsible for determining the safety or structural soundness of any proposed Dwelling, building or improvement or the compliance thereof or of the plans and specifications relating thereto with applicable laws, regulations, ordinances and building codes.

5.17 Declarant's Right to Maintain Models, Offices, Etc. Notwithstanding any provision of this Declaration to the contrary, while Declarant owns any part of the Property, Declarant shall be entitled to maintain one or more model homes, sales offices and construction offices (including mobile offices) and to maintain and keep on portions of the Property owned by Declarant, construction equipment, vehicles, lumber and other building materials as may be necessary from time to time in connection with the development of the Property, the construction of Dwellings, Community Facilities and appurtenant improvements, and the installation of stormwater

management and erosion control facilities, utilities and similar public improvements.

5.18 Other Declarant Rights. Notwithstanding any provision of this Declaration to the contrary, Declarant reserves the right at any time, in Declarant's sole discretion, to change the floor plans, exterior elevation, building materials and general appearance or architectural style of Dwellings and other improvements that may be constructed on any Lot or Lots owned by the Declarant.

5.19 Leases. Any Owner may lease his or her Dwelling for residential purposes. All tenants of the Dwelling shall be obligated to comply with all terms and conditions of this Declaration, the By-laws and the Rules and Regulations relating to the use, enjoyment and occupancy of Lots, Dwellings and the Community Facilities, whether or not such obligation shall be set forth in such lease. All leases shall be in writing, and upon execution thereof, the Owner leasing such Dwelling shall deliver a true and correct copy of the executed lease to the secretary of the Association. Any Owner may require his tenant to pay either to the Owner or directly to the Association all or a portion of any Regular Assessments, Supplemental Assessments or Special Assessments that may be levied with respect to such Owners' Lot or Dwelling; provided, however, that the Owner leasing such Dwelling shall remain primarily and directly liable to the Association for the payment of all such Assessments. If the tenant assumes responsibility for paying any Assessments or portions thereof

pursuant to such Tenant's lease, the Association shall have the right to collect such Assessments from the tenant directly, and the Owner shall be jointly and severally liable for payment of such Assessments to the Association. The Association shall not be obligated to attempt to collect unpaid Assessments from any tenant who has assumed the obligation to pay any Assessments before proceeding to collect such unpaid Assessments from the Owner of such Dwelling.

5.20 For Sale Signs. No real estate for sale signs or for rent signs of any type or size shall be displayed on any Lot at anytime during which Declarant owns at least one (1) Lot. The foregoing restriction shall not be deemed to preclude the Leos from displaying a for sale or for rent sign upon any Lot or Lots as may be owned by the Leos so long as the sale of such Lot or Lots is not in conflict with the terms of the Agreement of Sale dated February 9, 1994, as amended, which is referred to in the Background section of this Declaration.

ARTICLE VI - STORMWATER MANAGEMENT AND OTHER IMPROVEMENTS

6.01 Declarant's Easement to Construct. Declarant on behalf of itself and its successors and assigns reserves the right to enter upon the Property and any Lot as may be necessary from time to time in connection with the construction, completion, monitoring, grading, seeding, maintenance or repair of any Community Facilities or other facilities required or permitted to

be constructed by Declarant pursuant to the Plan or applicable Township ordinances and requirements including, but not limited to, stormwater management basins, culverts, subsurface pipes or conduits from the conveyance of stormwater runoff, drainage swales or berms, soil and surface runoff control devices, whether permanent or temporary, and similar improvements.

6.02 Association's Obligation to Maintain. The Association shall be responsible for the maintenance, repair, cleaning, mowing and general maintenance of any such basins or other facilities, as may be necessary from time to time to ensure the proper functioning thereof, or as otherwise may be required by the Township from time to time. The Association shall have an easement over and across any Lot on which such basin or other stormwater management facilities are located for the purpose of doing all things necessary to maintain, repair, clean, mow or replace the same. The costs and expenses of maintenance, cleaning, mowing, repairing and replacing such basins shall be deemed to be Common Expenses of the Association.

6.03 Dedication to the Township. If requested or required by the Township, the Owner of any Lot on which any stormwater management basin, culvert, pipes or similar facilities are located agrees to dedicate to the Township (and/or join with Declarant and/or the Association in dedicating to the Township) an easement over and across such portion of such Lot on which such drainage basin or other facilities are located, and to convey to the Township (or join with Declarant in the conveyance to the Township)

any surface or subsurface stormwater drainage pipes, conduits or culverts as may be located on such Lot.

6.04 Entrance Sign; Landscaping. Declarant intends to construct an entrance sign on or near Lot 33 shown on the Plan and a landscaping buffer along and around Lots 1, 2, 3, 4 30, 31, 32 and 33 shown on the Plan. The Association shall be responsible for maintaining the entrance sign on Lot 33, the landscaping buffer and any other entrance sign or decorative landscaping designed as a permanent part of the development at the Property, after conveyance of such Lot by the Declarant, in good condition and repair and shall, from time to time, replace any trees, shrubbery or other plants or other parts of such landscape areas to replace diseased or dead shrubs, trees or other plant materials. The Association shall have an easement across the Lot on which such signs or landscaping have been installed for all such purposes. The costs and expenses thereof shall be Common Expenses of the Association.

6.05 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 basin easements shown on the Plan, and with reference to all such stormwater management basin or drainage easements, Declarant reserves the right to alter the location thereof in a manner which 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 requested by Declarant, the Association and/or the Owner of any Lot affected by any such basin or drainage easement shall joint 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 as the Township may require from time to time.

ARTICLE VII - EASEMENTS

7.01 Easement to Construct Improvements. Declarant reserves for itself, and its successors and assigns, any and all easements shown on the Plan, and reserves for itself and its successors and assigns an easement over and across each of the Lots and the Property as may be necessary or convenient from time to time in connection with the construction, installation, repair and maintenance of utilities and utility facilities, including electrical, telephone, cable television and similar facilities. Declarant shall have the right to grant easements over and across the Property and any of the Lots to public or private entities furnishing or providing facilities for the transmission of utility services, including electrical, telephone, cable television and, if applicable, natural gas, services.

7.02 Easements. Declarant reserves for itself, and its successors and assigns, any and all easements shown and depicted on the Plan or as may be created pursuant to Subparagraph 7.01 above, including, but not limited to, all easements for the installation,

inspection or maintenance of stormwater sewers, easements of access to stormwater management basins and similar easements, and utility line easements, and Declarant reserves for itself, and its successors and assigns, the absolute right to grant and convey such easements to the Township, its successors or assigns.

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

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× 7.04 General Utility Easements. The entire Property shall be subject to an easement for the present and future installation and maintenance of electric service, cable television service, telephone service, water service, stormwater and sanitary sewage services and other utility services and all facilities appurtenant thereto, whether or not such easements may be currently disclosed upon the Plan, which easement shall run in favor of the Declarant, the Association and any entity or entities owning or operating such facilities or providing such services. The Declarant and the Board of Directors of the Association shall each have the authority to grant to third parties additional utility easements that are deemed reasonable by the Declarant or the Board of Directors in connection with supplying utility services to the Dwellings or to the Community Facilities.

7.05 Easement for Inspection and Abatement. The Declarant and the Association and its Board of Directors, officers and agents

shall have the right and easement to have access to each Dwelling and Lot as may be necessary in order to inspect, maintain, repair or replace any Community Facilities therein or accessible therefrom, or to inspect for or abate any violation of this Declaration or any of the Rules and Regulations of the Association.

7.06 Declarant's Easement for Marketing. The Declarant reserves to itself the right with respect to its marketing of Dwellings to use the Community Facilities and Lots or Dwellings that have not already been conveyed to purchasers, and to erect signs on the Community Facilities or on any Lots not conveyed to purchasers. Such rights and easements shall be reserved to the Declarant until Declarant has sold all Dwellings which may be constructed on the Property.

7.07 Easement for Community Facilities. Declarant reserves the right and privilege with respect to the construction of Dwellings, the Community Facilities and all appurtenant improvements to go upon any and all the Property for purposes of construction, reconstruction, maintenance, repair, replacement or correction of any Community Facilities or Dwellings. Such easement shall exist in favor of the Declarant for so long as Declarant owns any Lot or any of the Community Facilities.

7.08 Easement for Encroachments. If any portion of the Community Facilities hereafter encroaches on any Dwelling or Lot, or if any Dwelling hereafter encroaches upon any other Lot or upon any portion of the Community Facilities, other than as a result of the purposeful or negligent act or omission of the Owner of the

encroaching Dwelling, a valid easement appurtenant for such encroachment shall exist, to a distance of not more than three (3) feet onto the Lot or Community Facilities subject to such encroachment.

7.09 Easement of Owners to Use and Enjoy Community Facilities. The Owners shall have the right to use and enjoy, in common with the Declarant and with all other Owners, and their tenants, family members, invitees and guests, the Community Facilities subject to such Rules and Regulations regarding the use of the Community Facilities as the Board of Directors may promulgate from time to time.

7.10 Easement for Future Development. Declarant reserves the right, in connection with the development of the Adjoining Property, to enter upon the Property to undertake such construction activities as are necessary or convenient to install a riparian buffer along the rear property lines of Lots 26, 27, 28 and 29 shown on the Plan and with respect to the modification of stormwater management facilities as are required by the Plan including, in particular, but without limitation, the regrading and filling of temporary sedimentation basins and the creation of manmade wetlands areas upon Lots 7, 8, 15, 16, 17, 25, 26, 27, 28 and 29 and such other Lots as may be identified by the Township in connection with the development of the Adjoining Property.

VIII - PROVISIONS BENEFITTING NEW GARDEN TOWNSHIP

8.01 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 Open Space if, as and when acquired and any stormwater management facilities. The Township shall have the right (but not the obligation) to compel the maintenance of the Community Facilities in the event that the Association fails to do so, provided that the Township shall give notice to the Association of such failure and provide the Association with opportunity to cure such failure. The amount of any expenses incurred by the Township and charged to the Association in connection therewith shall be Common Expenses of the Association.

8.02 Dedication of Open Space to Township. The Board of Directors shall have the right, upon receiving the affirmative vote of Members entitled to cast at least fifty-one (51%) percent of the votes which all Members are entitled to cast, to offer to dedicate to the Township the Open Space, if, as and when acquired, provided that the Township shall be under no obligation to accept such offer. In the event that the Township is willing to assume the ownership or responsibility for the Open Space, then the terms and conditions of such transfer or dedication of the Open Space by the Association to the Township shall be as determined by the Board of Directors.

8.03 Limit on Township's Obligations. No provisions of this Declaration which grant any rights to the Township shall be construed to impose any obligation of maintenance or repair of any of the Community 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 Community 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 Common Expenses of the Association.

IX - MISCELLANEOUS

9.01 Declarant's Rights. The rights of Declarant contained herein shall inure to its benefit and bind it 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 as the Declarant hereunder, specifically referring to this Declaration and specifically assigning its rights and easements as the Declarant hereunder to such successor.

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

(a) The Declarant shall have the right to make any amendments to this Declaration, with or without the consent or approval of the Members, at any time until at least seventy-five

(75%) percent of all Dwellings which the Declarant reserves the right to construct in the Community have been conveyed by the Declarant.

(b) Any amendment to this Declaration may be proposed by the Board of Directors, or by Members entitled to cast at least ten (10%) percent of the votes which each Class of Members is entitled to cast. No such proposed amendment to this Declaration shall be adopted unless approved by majority vote of Members of each Class of Membership who are present and voting at any duly constituted and convened regular or special Meeting 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 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 By-laws for service of notice of meetings of the Association.

(c) This Declaration may be amended without a vote of the Members, by an agreement executed and acknowledged by Members of each Class of Membership entitled to cast at least sixty (60%) percent of the votes of which all Members of each such Class would be entitled to cast at any meeting of the Members called for the purpose of considering such amendment. Such amendment shall be effective when recorded. A copy of such executed amendment shall be delivered to all Members promptly upon recording thereof.

(d) 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 joinder therein by the Declarant.

9.03 Approval of Amendments by Township. Any amendment to this Declaration which affects the interests of the Township shall be submitted to the Township for its review and approval, such approval to be deemed 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 such amendment, then no such amendment that would affect the rights of the Township granted hereunder shall be effective.

9.04 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.

9.05 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 here from and shall not affect the validity or enforceability of any other provisions of this Declaration. In the event that any provisions of this Declaration