



**Allegheny County
Valerie McDonald Roberts
Recorder of Deeds
Pittsburgh, PA 15219**

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As
Deed Agreement

Parties: TIMBERGLEN PHASE 1

To

TIMBERGLEN PHASE 1

Recorded By: TIMBERGLEN COMMUNITY SERVICES

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Valerie McDonald-Roberts Recorder of Deeds

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TIMBERGLEN, A PLANNED TOWNHOUSE COMMUNITY

TIMBERGLEN PHASE I

DECLARATION OF PLANNED COMMUNITY

Please mail recorded documents to:

**Timberglen Community Services Association
PO Box 715
Imperial, PA 15126**

TIMBERGLEN, A PLANNED TOWNHOUSE COMMUNITY

Phase I

DECLARATION OF PLANNED COMMUNITY

THIS DECLARATION made this 19th day of AUGUST, 2003 by TIMBERGLEN COMMUNITY SERVICES ASSOCIATION, INC., hereinafter referred to as "Successor Declarant".

WHEREAS, Successor Declarant is the successor to the Declarant Redwood Estates Ltd., a Limited Partnership and previous owner in fee simple and record owner of certain real property situate in the Township of North Fayette, County of Allegheny, Commonwealth of Pennsylvania, as more fully described on Exhibit "A", attached hereto and hereby made a part hereof, which Declarant executed a certain Declaration of Covenants, Conditions and Restrictions on March 20, 2002, which were recorded in the Recorders Office of Allegheny County, Pennsylvania in Deed Book Volume 11298, pages 75 through 148 which land, buildings, improvements and the easements, rights and appurtenances thereto (collectively the "property") are now included in the property which the Successor Declarant does now hereby submit to the provisions of the Uniform Planned Community Act, of December 19, 1996, P.L. 1336 (68 Pa.C.S.A. §5101, et seq.) and as from time to time amended, hereby declares that the property shall hereafter consist of units and common elements and shall be known and identified as TIMBERGLEN, PHASE I, a Planned Townhouse Community, and accordingly said property shall be used, held, sold and conveyed subject to:

- (a) the provisions of the aforesaid Act;
- (b) the provisions of this Declaration;
- (c) the Declaration Plan;
- (d) the By-Laws; of the unit owners association each as is recorded or to be recorded;
- (e) such Rules and Regulations as the unit owners association council may duly adopt and all amendments to the Declaration and By-Laws and each and all of the aforesaid five (5) provisions are included in any reference to "planned community documents" and shall run with the real property and be binding on all parties having any right, title or interest in the property or any part thereof and their heirs, administrators, successors and assigns and shall inure to the benefit of each owner thereof.

WHEREAS, the Successor Declarant by the recording of this instrument wishes to amend the existing "Declaration of Covenants, Conditions and Restrictions" so recorded at Deed Book Volume 11298, pages 75 through 148 and any Amendments thereto, as it affects Timberglen, Phase I, a Planned Townhouse Community, the existing "By-Laws" so recorded in the Recorder's Office of Allegheny County at Deed Book Volume 11298, Page 149 through 175 and any relevant Amendments thereto as it affects Timberglen, Phase I, a Planned Townhouse Community, and other existing "governing documents" and to bring the Timberglen community into voluntary compliance with the Uniform Planned Community Act and the Successor Declarant so executes this Instrument with the consent and approval of the required number of unit owners.

WHEREAS, the Declarant in so amending the existing "Declaration of Covenants, Conditions, and Restrictions", the existing "By-Laws, and other existing governing documents", and by the adoption of the relevant provisions of the Uniform Planned Community Act desires to provide for the preservation and enhancement of the property values and amenities in the Timberglen community through the maintenance of the land and improvements erected thereon, and to this end, desires to subject the real property and all improvements thereon as described in Exhibit "A", of which Declarant is the legal owner and /or which the Successor Declarant vested with the power to manage, regulate or otherwise govern, to the covenants, restrictions, easements, charges and liens, each and all of which is and are for the benefit of such property and each owner thereof.

ARTICLE I

Definitions

For the purposes of this Declaration and other governing documents, which shall include any Amendments to the Declaration and shall include all plats and plans, the following terms shall have the meanings set forth below:

1.1 ACT shall mean the Uniform Planned Community Act of Pennsylvania, Act of December 19, 1996, P.L. 1336, No. 180 (68 Pa.C.S.A. §5101, et seq.) and any amendments thereto, and any successor act thereto to the extent specified in such successor act.

1.2 ADDITIONAL REAL ESTATE real estate that may be added to a planned community.

1.3 ALLOCATED INTERESTS the common expense liability and votes in the association allocated to each unit.

1.4 ASSESSMENT shall mean the sums assessed against a unit by resolutions duly adopted by the Executive Board for the share of common expenses and other expenses chargeable to a unit.

1.5 ASSOCIATION shall mean Timberglen Community Services Association, Inc. a Pennsylvania non-profit corporation. The unit owners association organized under Section 5301 of the Act.

1.6 BOARD (EXECUTIVE BOARD) the body, regardless of name, designated in the Declaration to act on behalf of the Association who shall manage the business, operations and affairs of the property on behalf of the unit owners in compliance with the Act and under the planned community documents.

1.7 BUILDING means any multi-unit building or buildings or complex thereof, whether in vertical or horizontal arrangement, as well as other improvements comprising a part of the property and used, or intended for use, for residential purposes or for any other lawful purpose or for any combination of such uses.

1.8 BY-LAWS (Amended) means those so designated and as are or will be publicly recorded under the Act, and which replaces the By-Laws dated the 22nd day of January 2002 and recorded in the Recorders Office of Allegheny County, Pennsylvania at Deed Book Volume 11298, Page 149 through and any amendments thereto and as pertains to the subject property of this Declaration and includes such amendments thereof as may be adopted from time to time, all of the same being deemed to be a part hereof as if attached hereto.

1.9 COMMON ELEMENTS Common facilities or controlled facilities.

1.10 COMMON EXPENSE LIABILITY The liability for common expenses allocated to each unit under Section 5208 (relating to allocation of votes and common expense liabilities).

1.11 COMMON EXPENSES is defined as expenditures made or financial liabilities incurred by or on behalf of the Association, together with any allocations to reserve, including general common expenses and shall mean and include, but shall not be limited to:

- (a) expenses of administration, maintenance, repair and replacement of the common elements;
- (b) expenses agreed upon as common by the unit owners;
- (c) expenses declared common by the provisions of the Act, or of this Declaration, or the By-Laws;
- (d) any other expenditures made or liabilities incurred by or on behalf of the Association, together with any allocation to reserves.

1.12 COMMON FACILITIES Any real estate within a planned community which is owned by the Association or leased to the Association. The term does not include a unit.

1.13 COMMON RECEIPTS shall mean and include:

- (a) funds collected from unit owners as common expenses or otherwise;
- (b) receipts designated as common by the provisions of the Act or by any other governing documents;
- (c) receipts which may be derived by permitting others to use the common elements.

1.14 COMMON SURPLUS shall mean the excess of all common receipts over all common

elements.

1.15 CONTROLLED FACILITIES any real estate within a planned community, whether or not a part of a unit, that is not a common facility but is maintained, improved, repaired, replaced, regulated, managed, insured or controlled by the association.

1.16 CONVERTIBLE REAL ESTATE shall mean a portion of flexible planned community not within a building containing a unit within which additional units, limited common facilities or limited controlled facilities or any combination thereof may be created.

1.17 DECLARANT(Successor) shall mean Timberglen Community Services Association, Inc.; a Pennsylvania non profit corporation, or any other properly appointed and designated person or entity who has executed the Declaration as Declarant or Successor Declarant or any amendment to the Declaration, who offers to dispose of or disposes of its interest in a unit in the Timberglen, Phase I, Community, a planned townhouse community not previously disposed of and who has executed a Declaration and who has authority to execute any amendment thereto to add additional real estate and who possesses special Declarant rights and as is defined by §5103 of the Act.

1.18 DECLARATION shall mean the instrument by which the Successor Declarant has submitted the property to the provisions of the Act that creates a planned community, and all amendments of such instrument.

1.19 DECLARATION PLAN shall mean the collection of plans of the property, prepared in accordance with the Act and recorded concurrently herewith, including all recorded amendments thereof.

1.20 DEVELOPMENT RIGHTS shall mean any right or combination of rights reserved by a Declarant in the Declaration to add real estate to a planned community, to create units, common facilities, limited common facilities, controlled facilities or limited controlled facilities within the planned community, to subdivide units, to convert units into common facilities or controlled facilities or to withdraw real estate from a planned community.

1.21 DISPOSE OR DISPOSITION shall mean a voluntary transfer of any legal or equitable interest in a unit or proposed unit other than as security interest for an obligation.

1.22 EXECUTIVE BOARD shall mean the body designated in this Declaration to act on behalf of the Association.

1.23 FLEXIBLE PLANNED COMMUNITY shall mean the within planned community containing withdrawable or convertible real estate and/or a planned community to which additional real estate may be added or a combination thereof.

1.24 GENERAL COMMON EXPENSES shall mean all common expenses other than limited common expenses.

1.25 GOVERNING DOCUMENTS shall mean this Declaration, the By-Laws, the Declaration Plan, the insurance trust agreement, the management standards agreement, the Association rules and rules and regulations adopted by the design review committee, and all amendments and supplements to the foregoing.

1.26 IDENTIFYING NUMBER shall mean a symbol that identifies only one unit in a planned community.

1.27 INSURANCE TRUST AGREEMENT shall mean the agreement between the Executive Board and insurance trustee governing the terms pursuant to which the insurance trustee agrees to act as the trustee of all property insurance purchased by the Executive Board.

1.28 INSURANCE TRUSTEE shall mean the institutional lender from time to time designated by the Executive Board to serve as the trustee of all property insurance purchased by the Executive Board.

1.29 LIMITED COMMON ELEMENTS OR LIMITED COMMON AREA means all those things and areas designated in this Declaration or the Declaration Plan or by resolution of the council as and only for so long as the same are reserved for the use of a certain unit or for certain units to the exclusion of other units. Such right of use may be so reserved as an interest appurtenant to a particular unit or

units, also a limited common facility or a limited controlled facility. In all other respects they shall be and remain common elements or common areas.

1.30 LIMITED COMMON EXPENSES shall mean all expenses identified as such under Section 5314(c) of the Act relating to assessments for common expenses.

1.31 LIMITED COMMON FACILITY shall mean a portion of the common facilities allocated by or pursuant to the Declaration or by the operation of Section 5205(2) or (3) of the Act relating to unit boundaries for the exclusive use of one or more, but fewer than all of the units.

1.32 LIMITED CONTROLLED FACILITY shall mean a portion of the controlled facilities, other than controlled facilities which are themselves part of a unit, allocated by or pursuant to the Declaration or by operation of Section 5202(2) or (3) of the Act, relating to unit boundaries, for the exclusive use of one or more, but fewer than all of the units.

1.33 MANAGEMENT STANDARDS AGREEMENT shall mean a written agreement in favor of institutional lenders holding or insuring mortgages secured upon units conditioning specified action of the Executive Board or Association, or both, upon specified mortgagee's approval, permitting such institutional lenders to take certain actions upon the failure of the Executive Board of Association, or both, to take specified action establishing certain management standards, or conforming the governing documents to the requirements of such mortgagees or insurers, provided that any such agreements do not contravene the requirements of the governing documents or any applicable law.

1.34 NOTICES MORTGAGEES shall refer to institutional lenders which are holders of first mortgages in units as to which holders the Executive Board receives notices as provided for by Section 17.1 of this Declaration.

1.35 OFFERINGS shall mean any advertisement, inducement, solicitation or attempt to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a planned community not located in the Commonwealth of Pennsylvania, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the planned community is located.

1.36 PERSON shall mean a natural person, corporation, partnership, association, trust, other entity, or any combination thereof.

1.37 PLANNED COMMUNITY shall mean real estate with respect to which a person, by virtue of ownership of an interest in any portion of the real estate, is or may become obligated by covenant, easement or agreement imposed on the owner's interest to pay any amount for real property taxes, insurance, maintenance, repair, improvement, management, administration or regulation of any part of the real estate other than the portion or interest owned solely by the person. The term excludes a cooperative and a condominium, but a condominium or cooperative may be part of a planned community. For purposes of this definition "ownership" includes holding a leasehold interest of more than 20 years, including renewal options, in real estate. The term includes nonresidential campground communities.

1.38 PROPERTY shall mean the land described on Exhibit "A" attached hereto and hereby made a part hereof, the buildings and all other improvements on the land, all owned in fee simple, and all easements, rights and appurtenances belonging thereto or intended for the benefit thereof, which pursuant to this Declaration and any amendments hereto have been submitted to the provisions of the Act.

1.39 PURCHASER shall mean any person, other than Successor Declarant, who by means of a disposition, acquires a legal or equitable interest other than:

- (a) a leasehold interest (including renewal options) of less than twenty (20) years, but a person who will become a unit owner in a leasehold planned community upon consummation of the disposition shall be deemed to be a purchaser; or
- (b) security for an obligation.

1.40 REAL ESTATE shall mean any fee, leasehold or other estate or interest in over or under land, including structures, fixtures and other improvements and interests which, by custom, usage or law pass

with a conveyance of land there not described in the contract of sale or instrument of conveyance. Real estate includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

1.41 RECORDED means that an instrument has been duly entered of record in the Office of the Recorder of Deeds of Allegheny County, Pennsylvania.

1.42 RECORDER shall mean the Recorder of Deeds of Allegheny County, Pennsylvania.

1.43 SINGLE FAMILY shall mean a group of one or more persons (not to exceed three (3) persons unrelated to each other by blood or marriage) who maintain a common household in a unit.

1.44 SPECIAL SUCCESSOR DECLARANT RIGHTS shall mean rights reserved for the benefit of Successor Declarant to:

- (a) complete improvements indicated on plats and plans filed with the Declaration;
- (b) cannot convert real estate in a flexible planned community;
- (c) all additional real estate to a flexible planned community;
- (d) withdraw withdrawable real estate from a flexible planned community;
- (e) convert a unit: into two (2) or more units, common elements, or into two (2) or more units and common elements;
- (f) maintain sales offices, management offices, signs advertising the planned community and models;
- (g) use easements through the common elements for the purpose of making improvements within the planned community or within any convertible or additional real estate;
- (h) cause the planned community to be merged or consolidated with another planned community;
- (i) appoint or remove any officer of the Association or any Executive Board member during any period of Declarant control;
- (j) to exercise an option specifically reserved to create units, limited common elements or both within convertible real estate, or to add additional real estate to or withdraw withdrawable real estate from the planned community;
- (k) convert any unit prior to the sale of that unit to a common or limited common areas;
- (l) make the planned community subject to a master association;
- (m) convert and make the existing community subject to the provisions of the Uniform Planned Community Act;
- (n) all rights reserved pursuant to the Uniform Planned Community Act.

1.45 TOTAL DESTRUCTION shall mean damages or destructions to a building which renders at least seventy-five (75%) percent of the units in the damaged building uninhabitable.

1.46 UNIT shall mean a physical portion of the planned community designated for separate ownership, the boundaries of which are described in Article III.

1.47 UNIT DEED shall mean deed of conveyance of unit in recordable form.

1.48 UNIT DESIGNATION shall mean the combination of letters and numbers designating a unit on Declaration Plan.

1.49 UNIT OWNER shall mean a Declarant who owns a unit or a person to whom ownership of a unit has been conveyed. Unit owner does not include a person having an interest in a unit solely as security for an obligation.

ARTICLE II

Names and Descriptions of Buildings

2.1 NAME the name by which the real estate, the building and the Association of unit owners in this planned community are to be identified as: "Timberglen Planned Townhouse Community".

2.2 NUMBER OF UNITS AND BUILDING:

(a) the Declaration Plan shows and previously declared and by this declaration hereby reaffirms : Twenty (20) Buildings each having five (5) units for a total of one hundred (100) units.

(b) Each unit shall have an equal undivided interest of 1/100 in the common area and therefore each unit shall have an equal one (1) vote.

2.3 OPTION TO CONVERT CONVERTIBLE REAL ESTATE OR ADD ADDITIONAL REAL ESTATE OR TO WITHDRAW WITHDRAWABLE REAL ESTATE

(a) Successor Declarant, pursuant to Sections 5206, 5211 and 5212 of the Uniform Planned Community Act (68 Pa.C.S.A. Sections 5206, 5211 and 5212) specifically reserves the option, until the seventh (7th) anniversary of the recording of this Declaration, to convert convertible real estate, to add additional real estate, to create additional units, common and limited common elements, or both, within convertible real estate or to add additional real estate to and additional units and common elements thereon or withdraw withdrawable real estate from the planned community; without the consent of any unit owner, lessee, mortgagee or any other secured or non-secured party. Successor Declarant expressly reserves the right to add any or all portions of the additional real estate to convert convertible real estate or withdraw withdrawable real estate at any time, at different times, in any size or manner, in any order without limitation and without any requirement that any other real estate be added, converted or withdrawn.

(b) All restrictions in this Declaration affecting use, occupancy and alienation of units will apply to any units created and / or converted within any convertible or additional real estate.

(c) With regard to any phase or parts thereof proposed or implemented or otherwise any real estate added or converted to the planned townhouse community, Successor Declarant does not warrant or make any assurances to:

(i) the common and limited common elements created within any convertible or additional real estate and whether same will be of the general types and sizes as those within other parts of the planned townhouse community;

(ii) the proportion of limited common elements to units created within any convertible or additional real estate may not be approximately equal to the proportion existing within other parts of the planned townhouse community.

(d) There shall be an equal 1/100th undivided interest of each unit owner in the common area. All future percentages of interest, upon the exercise of any option by the Successor Declarant to add or withdraw real estate will likewise be determined by assigning each additional unit an equal percentage of the common interest with the existing units previously declared.

ARTICLE III

Unit Designation: Description of Units

3.1 Unit Designation Each unit is identified on the Declaration Plan by the unit identifying number. The common elements are described at Section 4.3 hereof, and the undivided interest in the common elements appurtenant to each unit is set forth on Exhibit "B".

3.2 Boundaries of Units Except for such portions thereof as are part of the common elements, the boundaries of the units are described as follows:

- (a) The centerline of exterior walls of the units which are adjacent to each such unit (i.e. partywall);
- (b) The exterior-side surface of each such exterior walls of the building which are either part of the perimeter of such unit or pass through such unit;

- (c) The exterior-side surface of walls located on the perimeter of such unit, except that where such surface is that of wallboard the other parallel surface of such wall board shall constitute such boundary (this shall mean from and including the wall board);
- (d) The projections of interior or exterior walls, ceilings or floors as appropriate to form the boundary of any enclosed portion of a unit, such as a cantilever (not to include a patio or porch);
- (e) The subsurface of the concrete sub-floor of such unit;
- (f) The exterior surface of the windows, window frames, window tracks and window sills which are set in the exterior walls of the building of which the unit is a part and are situated on the perimeter of such unit;
- (g) The exterior surface of the doors (including sliding glass doors), door frames, door hinges and doorsills which are set in the interior or exterior walls of a building of which the unit is a part and are situated on the perimeter of such unit;
- (h) The exterior side surface of the roof of each unit;
- (i) The front, side and rear yard area designations as set forth in the Declaration Plan and the total property as more particularly described in the metes and bounds description set forth in each individual deed of conveyance of each unit, subject to easements as set forth herein.

3.3 Description of the Unit Each unit consists of all portions of the building located with the unit boundaries described in Section 3.2 above, including, but not limited to:

- (a) The air space enclosed thereby;
- (b) All exterior walls, partitions and dividers which are wholly contained within said unit boundaries and from the centerline of each common or party wall into the unit, which constitutes a boundary of the unit, but excluding any pipes, ducts, wires, cables or conduits which this Declaration characterizes as common elements and other common elements (as defined in Section 1.8 hereof) contained wholly or in part within such walls, partitions and dividers;
- (c) All doors, door frames, doorways, door hinges, door handles, door locks and door sills set in the interior and exterior walls of the building of which such unit is a part and situate on the perimeter thereof, and all other doors, door frames, doorways, door hinges, door handles, door locks and door sills wholly situate within the title lines of such unit;
- (d) All windows, window frames, window tracks and windowsills which are set in the interior and exterior walls of the building of which the unit is a part and are situate on the perimeter thereof or in an exterior wall of the building and serving only such unit;
- (e) All electrical receptacles, outlets and fixtures located in the ceiling of such unit or in a perimeter or interior wall thereof;
- (f) All plumbing fixtures located within such unit boundaries;
- (g) All electrical equipment, including receptacles, outlets and fixtures and wiring serving only such unit;
- (h) The air conditioning, heating and ventilating ducts (including registers and vents) servicing only such unit;
- (i) The air conditioning and heating equipment servicing only such unit;
- (j) The fresh water pipes, discharge pipes and all other plumbing, pipes and conduits serving only such unit and notwithstanding the unit boundaries set forth at Section 3.2 above, whether located within such unit boundaries;
- (k) The hot water heaters servicing only such unit;
- (l) The front and rear yard designations as set forth in the Declaration Plan and the total property as more particularly described in the metes and bounds description set forth on each individual deed of conveyance of each unit;

- (m) Such fixtures, appliances, machinery and equipment as are located wholly within such boundaries and serve only such unit;
- (n) The proportionate undivided interest in the common elements assigned to such unit as shown on Exhibit "B", attached hereto, which interest shall and does hereby include as appurtenant to the unit, the grant to the owner thereof of easements, in common with all other unit owners (i) for the use of all pipes, wires, ducts, cables, conduits, utility lines and other common elements serving that unit and located in any other unit or in or on the common elements, or both and (ii) for structural support;
- (o) Membership in the Association that is appurtenant to and inseparable from, unit ownership and which includes liability for common expenses;
- (p) For any and all purposes, each unit may be identified and shall be deemed fully and accurately described solely by reference to the number assigned to it as designated on any Declaration Plan, previously recorded of record;
- (q) Description of the Planned Community, Phase I:
Each building as it now exists in Phase I, is a two (2) story frame dwelling with brick veneer and wood frame siding. All units have garages except the units in Buildings #100 and 800.

3.4 EASEMENTS

- (a) Each unit owner, the Successor Declarant and/or the Association shall have a perpetual easement for the use and enjoyment of all roadside walkways and detention basins.
- (b) The Successor Declarant and/or the Association shall have a perpetual easement to transverse over, come upon, and/or enter upon any or all units for the care, repair, maintenance of storm water management all yards, grass, lawns, roofs, gutters, flashing and for any repair, maintenance or replacement for any common expense declared by the Successor Declarant and/or assume in writing by the Association and for any other reason deemed necessary by the Successor Declarant and/or the Association, including but not limited to the repair, maintenance or replacement of any retaining walls either designated a common element or common expense.

ARTICLE IV

Common Elements; Share

4.1 DEFINITION OF COMMON ELEMENTS Common elements are defined at Section 1.10 of this Declaration and are shown on the Declaration Plan.

4.2 BOUNDARIES, UNIT OWNER AND EXECUTIVE BOARD RIGHT

- (a) Whenever in this Declaration a boundary of a unit is described as being the exterior-side or unit-side surface of a designated part of the building, it is intended thereby, and it is hereby declared, that the unit owner of such unit shall have an easement for the purpose of applying and removing paint, wallpaper, carpet, tile and other wall, floor and ceiling covering to and from such exterior-side or unit-side surface and otherwise decorating, cleaning and maintaining the same, it being understood and agreed that the Executive Board, acting on behalf of all unit owners, and having no specific obligation to so do unless set forth in the Declaration shall at all times, retain the right to maintain, clean, repair or replace the balance of such walls, floors and ceilings (other than interior wallboard) of which any such exterior-side or unit-side surfaces are a part, notwithstanding the fact that such maintenance, cleaning and repair or replacement may temporarily adversely affect the unit owner's easement and right to use the exterior-side or unit-side surface thereof.

- (b) Whenever in this Declaration a boundary of a unit is described as being the exterior surface of a designated part of a unit, it is intended thereby and it is hereby declared that the unit owner shall have the sole responsibility to maintain the exterior and interior of the unit and to incur all cost of repair, replacement and maintenance of such unit, unless the responsibility for the repair, replacement or maintenance of any portion of the unit is specifically assumed by the Association and specific provisions are made for such repair, replacement or maintenance within the Association's budget, however, the Executive Board acting on behalf of all unit owners shall retain the right: (i) to clean, maintain, replace and/or paint such exterior surface and to perform all yard, shrub and tree repair, maintenance and/or replacement at the expense of a unit owner in accordance with standards established by the Executive Board or the Design Review Committee; or (ii) to require the unit owner to pay for work to be performed and charged such expense as a special assessment to the unit owner involved or allocate such expense as a special assessment among the unit owners involved on an equitable basis.
- (c) All maintenance, repair and replacement of the exterior-side surface and structural components of any unit and limited common elements appurtenant thereto shall be performed in strict conformance with this Declaration, the Declaration Plan, the By-Laws and Rules and Regulations of the Association as amended.

4.3 The following is a description of all common elements:

- (a) The common elements shall mean and include:
 - (i) the land not conveyed to a unit owner as part of the components of the unit as described herein, and those portions of the units which are not included within the title lines of any unit and which are not made part of a unit;
 - (ii) portions of the land and building used exclusively for the management, operation or maintenance of the common elements;
 - (iii) installations of all central services and utilities and water, sewer, electric, telephone and other utility lines, pipes, fixtures, meters, laterals and associated equipment and appurtenances thereto not within the title lines of any which and which are not made part of a unit and not otherwise dedicated to public use or owned by a public entity, including the detention basin constructed within the Planned Community which serve the common elements or serve more than one unit or both; NOTE: any utility lines and/or laterals which service any individual unit (i.e. gas, water, electric, cable, etc.) within the title lines are not common elements and the repair, maintenance and replacement of same shall be the sole responsibility of the unit owner.
 - (iv) all other apparatus and installations existing for common use;
 - (v) all roads and designated parking pads within the Planned Community;
 - (vi) all unit storm water piping and appurtenances thereto;
 - (vii) retaining walls as declared common elements by the Declaration Plan;
 - (viii) all other parts or elements of any building or the property necessary or convenient to the property's existence, management, operation, maintenance and safety, or in common use and which are not herein or in the Declaration Plan made a part of a unit, and such facilities as are designated herein and in the By-Laws as common elements;
 - (ix) Whenever in this Declaration and the Declaration Plan, a title line of a unit is described as being the exterior surface of a designated part of a unit, it is intended thereby and it is hereby declared that the Executive Board acting on behalf of all unit owners shall at all times while this Declaration is in effect, retain the right to

require the owners of such unit to clean, maintain, replace and/or paint the same in accordance with instructions of the Executive Board and at the expense of such owner.

4.4 Any portion of the common elements allocated by the Declaration or Declaration Plan for the exclusive use of one or more, but fewer than all of the units. Any limited common elements as designated on the Declaration Plan.

4.5 Each limited common element is allocated to the unit adjacent to it, or otherwise specifically assigned to a unit or two or more, but less than all of the units.

4.6 Allocation may not be altered without the consent of the unit owners whose units are affected.

4.7 The allocation may not be altered without the consent of the unit owners whose units are affected. A limited common element may be reallocated by an amendment to this Declaration executed by those unit owners between or among whose units the reallocation is made. The persons executing the amendment to this Declaration shall provide a copy thereof to the Association.

4.8 A common element not previously allocated as a limited common element may not be so allocated except pursuant to an amendment to this Declaration executed by a majority of the unit owners.

4.9 Allocations shall be made by amendments to the Declaration.

4.10 Votes and common expense liability allocated to any unit may not be altered without unanimous consent of all unit owners.

4.11 Common elements are not subject to partition and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an individual interest in the common elements made without the unit to which it is allocated is void.

4.12 OTHER COMMON ELEMENTS The Association, acting by and through the Executive Board, may with the approval of a majority of the votes cast, acquire and enter into agreements whereby it acquires leaseholds, memberships and other possessory or use interests in land or facilities, whether or not contiguous to the property, intended to provide for the enjoyment, recreation or other use or benefit of the unit owners. The expenses of rental, membership fees, operations, replacements and other undertakings in connection therewith shall be common expenses.

4.13 SHARE

- (a) The percentage of undivided interest in the common elements, expenses of the Association, and portion of the votes in the Association attributable to each unit shall be as set forth on Exhibit "B", and such percentage shall not be altered except by an amended Declaration, duly executed by all of the unit owners affected thereby and recorded;
- (b) The formula used to establish the allocation is set forth in Exhibit "B";
- (c) The share of a unit in the common elements shall be inseparable from each unit, and any conveyance, lease, devise or other disposition or mortgage or other encumbrance of any unit shall extend to and include the share in the common elements, whether or not expressly referred to in the instrument effecting the same;
- (d) The percentage of the undivided interest in the common elements shall be equal, expenses of the Association and portions of the votes in the Association attributable to each unit shall likewise be equal and as previously declared shall be equally reallocated and equally reduced in accordance with the formula set forth in this Declaration as additional real estate and units are declared.

4.14 USE OF COMMON ELEMENTS

- (a) Each unit owners shall have the right to use the common elements (other than the limited common elements) in common with all other units owners as may be required or permitted for the use, occupancy and enjoyment of his unit, except as limited in this

Declaration, the Uniform Planned Community Act or any other governing document. Such right shall extend to the family members, invitees, servants, agents and lessees of unit owner, except as such rights and uses may, from time to time be limited by this Declaration, the Uniform Planned Community Act or any other governing document.

(b) The Executive Board shall, if any questions arise, determine the purpose for which a common element is intended to be used. The Executive Board, as provided in the By-Laws, shall have the right to promulgate rules and regulations governing the use of the common elements.

4.15 LEASE OF A COMMON ELEMENT The Association, by and through the Executive Board, shall have the power and authority to lease any portion of any common area within the community.

4.16 USE OF LIMITED COMMON ELEMENTS Each unit owner to whom the particular limited common element is allocated and his family members, invitees, servants, agents and lessees shall have the right to exclusive use of that limited common elements appurtenant to his unit, subject to the provisions of the governing document.

4.17 WAIVER OF USE OF NO EFFECT No unit owner may waive his right to use and enjoy all or any portion of the common elements. No unit owner may:

- (i) escape liability for the assessments provided for by this Declaration, or otherwise duly and properly levied by the council, in accordance herewith or with other governing documents, or
- (ii) avoid any other covenant, easement, restriction or other provisions of this Declaration, or any other governing document or other instrument concerning or affecting the management and operation of the property and to which such unit owner is properly bound by non-use of the common elements or any part thereof, or by abandonment of his unit.

4.18 EASEMENTS

- (a) Each unit owner shall have an easement in common with all other affected unit owners to use all pipes, wires, ducts, cables, conduits, utility lines and other common elements serving his unit and to any extent located in any other unit, and such easement shall include also having the facility in place, and the servicing, maintaining and replacing the same and each unit shall be subject to like easement in favor of all other affected unit owners.
- (b) Each unit shall have an easement to the extent necessary for structural support over every other affected unit and over affected common elements and each unit and the common elements, each to the extent necessary shall be subject to each easement for structural support.
- (c) Every owner shall have a right and easement of enjoyment and ingress and egress in and to the unlimited common areas (as distinguished from limited common areas) and such easement shall be appurtenant to and shall pass with the title to every unit, subject to the right of the Association to limit the number of guests that may use the common areas.
- (d) The real estate and all parts thereof are subject to reservation of coal and mining rights, oil and gas leases, rights-of-way easements, covenants, restrictions or conditions, as may be set forth in prior instruments of record and as may be now or hereafter established or granted by Successor Declarant or by the Association.

4.19 RESTRICTIONS ON USE AND OCCUPANCY The units and the common and limited elements shall be occupied and used subject to the following restrictions and subject to further restrictions set forth in the By-Laws and/or rules and regulations and other governing documents:

- (a) No part of the property shall be used for other than housing for residential purposes for

which the property was designated.

- (b) No unit owners shall permit his unit to be used or occupied for any prohibited purposes.
- (c) Except as reserved by the Successor Declarant, its successors and assigns, no industry, business, trade occupation or profession of any kind, commercial, religious, educational or otherwise designated for profit, altruism, exploration or otherwise shall be conducted, maintained or permitted on any part of the property.
- (d) Except as to the Successor Declarant, no signs, advertising or other displays shall be maintained or permitted on any part of the property. The right is reserved by the Successor Declarant or its agent or agents to place signs of any kind or nature on any unsold or unoccupied units, and on any part of the common elements.
- (e) There shall be no obstruction of the common elements nor shall anything or any structure be stored in or on the common elements without the prior consent of the Executive Board, except as herein expressly provided.
- (f) The use and the covering of the interior surfaces of windows, whether by draperies, shades or other items visible on the exterior of the building and/or unit, shall be subject to the rules and regulations of the Executive Board.
- (g) Nothing shall be done or kept in any unit or in the limited common or common elements which will increase the rate of insurance on the property or contents thereof, applicable for residential use, without the prior written consent of the Executive Board.
- (h) No unit owner shall permit anything to be done or kept in the unit, or in the limited common or common elements which will violate any law, statute, ordinance or regulations of any governmental body or which will result in the cancellation of any insurance maintained by the unit owner or the Executive Board. No waste shall be committed in the common elements.
- (i) Unit owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the building (including any loft, balcony or porch) or on the property and no sign, awning, canopy, shutter, radio or television antenna, or satellite devices of any kind or nature shall be affixed to or placed upon the exterior walls or roofs of any exterior part thereof, without the prior written consent of the Executive Board.
- (j) No animals, livestock, fowl or poultry of any kind shall be raised, bred or may be kept in units, subject to the rules and regulations adopted by the Executive Board.
- (k) No obnoxious or offensive activity shall be carried or in any unit or in the common and limited common elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other unit owners or occupants.
- (l) No clothes, sheets, blankets, laundry or other articles of any kind shall be hung out or exposed on any part of the common elements. The common elements shall be kept free and clear of rubbish, debris and other unsightly materials.
- (m) No benches, chairs or other personal property shall be kept on, nor shall any playing, lounging, parking of baby carriages, playpens, bicycles, wagons, toys or vehicles be permitted on any part of the common elements without the prior consent of, and subject to any regulations of the Executive Board.

- (n) No unit owner shall overload the electric wiring in the individual units, or operate any machines, appliances, accessories or equipment in such manner as to cause an unreasonable disturbance to others. Installation, removal, reconstruction or repair of any electrical lighting and power circuit or electrical outlet box or terminal device included in such outlet box, or any item of heating or air conditioning equipment, any of which is located within an interior partition of a unit, may be undertaken by the unit owner of such unit. The cost of such installation, removal, reconstruction or repair whether undertaken by a unit owner or by the Executive Board (under the same procedures utilized for common elements) shall be borne by the unit owner of the unit benefited thereby.
- (o) No unit owner shall place or store anything on the patio or balcony or any limited common element appurtenant to his unit, other than plantings or patio furniture, nor shall such patio or balcony be decorated, painted or otherwise altered without the written consent of the Executive Board in accordance with the rules and regulations. No plantings or other vegetation may exceed the height of the patio walls.
- (p) Reasonable rules and regulations concerning the use and enjoyment of the property may be promulgated from time to time by the Executive Board, subject to the right of the Association to change such rules and regulations. Copies of the then current rules and regulations and any amendments thereto shall be furnished to all unit owners by the Executive Board promptly after the adoption of such rules and regulations or any amendments thereto.
- (q) Nothing shall be done in any unit or on any lot or property within the title lines of each unit which may become a nuisance to the other unit owners.
- (r) No boat, boat trailer, house trailer, trailer, commercial truck, tow truck, lift truck or any similar items shall be parked, placed and/or stored in the open within the title line of any unit or within the Planned Townhouse Community.
- (s) No lumber, materials, bulk materials, refuse or trash shall be kept, stored, or allowed to accumulate within the title area of any unit, except building materials during the course of construction of any approved structure. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.
- (t) No water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained with the title area of any unit above the surface of the ground. Easements have been reserved for sewers, drainage and utility installations and maintenance and for such purposes and uses as are shown on any record plan. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each unit and all improvements on it shall be maintained continuously by the unit owner, except for those improvements for which a public authority or utility company is responsible. The Successor Declarant, its agents, successors and assigns, shall have the right to enter upon all parts of the easement area of each unit for any of the purposes for which said easements and rights-of-way are reserved. The Declarant shall also have the right at the time of, or after grading any street or any part thereof, to enter upon any abutting unit and grade the portion of such unit adjacent to such street, but there shall be no obligation on the Declarant to do such grading, unless otherwise properly required to do so by an appropriate governmental authority.
- (u) No vehicle, truck or trailer of any kind or nature shall be parked, placed or kept on any

- street or streets within the Planned Townhouse Community after 3:00 o'clock A.M. and never for a period in excess of twelve (12) hours.
- (v) Plants, shrubs, flowers, bushes, trees, grass or any other vegetation shall be placed or otherwise displayed in accordance with the Rules & Regulations.
- (w) No fences, lines, wires, walls or other barriers may be constructed, installed and/or placed on or within the title area of any unit.
- (x) No sheds or other structures, swing sets, swings, or play stations of any kind or nature shall be placed within the title area of any unit.
- (y) Nothing in this Article IV shall be construed to limit in any way, the rights and powers of the Executive Board and the Design Review Committee to approve or disapprove any proposed structural or activity in accordance with the governing documents as from time to time amended.

ARTICLE V

Maintenance and Repair of Units

5.1 UNIT MAINTENANCE AND REPAIR Each unit owner shall have the sole and exclusive duty and responsibility to maintain, repair and replace, at its own expense, all portions of his/her unit, except to the extent that any portion of his unit is damaged and destroyed and insurance proceeds are payable with respect to said damage or destruction pursuant to policies maintained by the Executive Board.

5.2 NO STRUCTURAL MODIFICATIONS No unit owner shall make any structural modifications or structural alterations within his unit unless he has obtained the prior written consent of the Design Review Committee and the Executive Board. No act shall be done under any circumstances, which act does or may tend to impair the structural integrity of the unit and/or building, or adversely affect or jeopardize the soundness or safety of any improvement erected on the property, or impair any easement or right appurtenant thereto, without the unanimous prior written consent of all unit owners affected thereby and of the Design Review Committee and the Executive Board.

Subject to the provisions of this Declaration and law, a unit owner may make any improvements to his/her unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the planned community.

Subject to the provisions of this Declaration and law, a unit owner may not change the appearance of the common elements or the exterior appearance of a unit or any other portion of the planned townhouse community without written permission of the Association.

Subject to the provisions of this Declaration and law, a unit owner after acquiring an adjoining unit or an adjoining part of an adjoining unit, with the written consent of the Executive Board, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of any unit or building within the planned townhouse community. Removal of partitions or creation of apertures under this section is not an alteration of boundaries.

5.3 RESPONSIBILITIES OF UNIT OWNER Each unit owner shall:

- (a) Paint, wallpaper, carpet, tile, decorate and maintain the interior surfaces of all walls, ceilings, doors, window frames, vents and floors within the unit, including all wallboard;
- (b) Perform such unit owner's responsibilities in such a manner and at such reasonable hours so as not to disturb other unit owners;
- (c) Not repair, alter, replace, paint or otherwise decorate or change the appearance of any exterior portion of a unit or any portion of the limited common elements or common elements without first obtaining consent in writing of the Design Review Committee;
- (d) Not repair, alter, replace, paint, decorate or change any exterior portion of the unit or

limited common elements appurtenant to the unit, without first obtaining consent in writing of the Design Review Committee, which Committee shall first obtain the written consent of the Executive Board;

- (e) Not perform any work that such unit owner wishes to perform that may be the responsibility of the Executive Board, except after having first received written authorization of the Executive Board to do so. Any consent by the Executive Board to the performance of such work by the unit owner shall not constitute an agreement by the Executive Board to pay the cost or expense thereof. Any consent given by the Executive Board may set forth the terms of such consent, and the unit owner shall be required to abide therewith if such unit owner proceeds with such work.
- (f) Subject to provisions of Subsection 5.3(b) and (c) above and Subsection 6.2 below, maintain the limited common elements in good condition consistent with standards established by the Design Review Committee.

5.4 LIMITATIONS ON LIABILITY Nothing contained in this Declaration or any other governing document shall be construed to impose personal liability upon Declarant or any member or officer of the Association or Executive Board, or any member of the Design Review Committee for the maintenance, repair or replacement of any unit or common element or give rise to a cause of action against them. Neither the Association, the Executive Board, the Declarant, nor the Design Review Committee shall be liable to any unit owner or to each other for damages of any kind except for willful misconduct or bad faith.

5.5 APPEARANCE OF UNITS No unit owner may change the color or appearance of the exterior doors, window trim or any other part of the exterior of any unit or of any common or limited common elements or any other portion of the Planned Townhouse Community without the expressed written permission of the Association. All painting, repair, replacement of any portion of the exterior of any unit must be performed in strict accordance with this Declaration and all other governing documents of the Timberglen, Phase I, a Planned Townhouse Community. All exterior appearances, including, but not limited to, colors, textures and materials are within the exclusive control of the Executive Board.

ARTICLE VI

Maintenance and Repair of Common Elements

and Limited Common Elements

6.1 RESPONSIBILITY FOR MAINTENANCE AND REPAIR OF COMMON ELEMENTS

- (a) Except to the extent provided by this Declaration and law, the Association is responsible for maintenance, repair and replacement of the common elements and each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the Association and the other unit owners and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or any unit through which access is taken, the unit owner responsible for the damage, or the Association if it is responsible, is liable for the prompt repair thereof.
- (b) Nothing herein contained shall be construed to preclude the unit owners acting through the Executive Board from delegating the responsibility and expense of maintaining, repairing and replacing the limited common elements appurtenant to a unit, to the unit owner of such unit.
- (c) If any common expense is caused by the negligence or misconduct of any unit owner, the Association may assess that expense exclusively against his unit.

6.2 RESPONSIBILITY FOR MAINTENANCE AND REPAIR OF LIMITED COMMON ELEMENTS The Association shall assume the responsibility for maintenance, repair and replacement of the

limited common elements, subject to the limitation and restrictions imposed by law and the governing documents, and except for such acts as are thereby required to be performed by the unit owners. The responsibility of maintaining, repairing and replacing the limited common elements appurtenant to a unit may be delegated to the unit owner of such unit by an appropriate provision set forth in the By-Laws or other governing document, or otherwise by the Executive Board in a duly adopted resolution. If such responsibility is so delegated in the By-Laws or other governing document or otherwise by Executive Board in a duly adopted resolution, each unit owner shall have the responsibility and shall bear the expense of maintaining, repairing and replacing limited common elements appurtenant to his unit, and the replacement or repair of window glass and screens, replacement and repair of front doors, storm doors and garage doors, necessitated by normal wear and tear, which replacement or repair shall be the responsibility of the unit owner unless such responsibility for replacement or repair is assumed by the Association by a majority vote of the Executive Board, in which case said replacement or repair shall be at the sole cost and expense of the Association which then shall have the right to increase the common assessment accordingly to cover the increased costs. In any event, the repair or replacement of all doors or gates appurtenant to a unit shall be at the sole cost and responsibility of the unit owner. In the event that after such a delegation, the unit owner fails to maintain, repair and replace the limited common elements appurtenant to his unit, the Association shall have the right to levy an assessment against such unit owner for the cost thereof, which shall have the same force and effect as all other assessments levied hereunder. If the responsibility for the maintenance, repair and replacement of the limited common elements has been delegated to the individual unit owners in the manner specified in this Section, the unit owners, by a vote of a majority of the unit owners, may reassign such responsibility to the Executive Board, in which event the cost of such maintenance, repair and replacement of the limited common elements shall be common expense.

6.3 COMMON ELEMENTS AND COMMON EXPENSES Expenses incurred or to be incurred for the maintenance, repair, management and operation of the common elements shall be common expenses and as such collected from unit owners.

6.4 COMMON EXPENSE FOR AREAS NOT COMMON ELEMENTS

- (a) The repair, care, maintenance and replacement of the siding, wooden front porches, roofs, gutters, soffit, fascia and flashing and downspouts of each and all units, and all roadside sidewalks shall be within the exclusive jurisdiction and function of the Association and shall be deemed a common expense. NOTE: snow and ice removal or maintenance within the title lines of a unit shall not be a common expense.
- (b) The cutting and maintenance of all authorized grass on all units shall be within the exclusive jurisdiction and function of the Association and shall be deemed a common expense.
- (c) Each unit owner shall have the responsibility to bring his or her driveway up to the standards prescribed by the association and at the sole cost of the unit owner. After the unit owner has brought the driveway to the standards as prescribed by the association, the coating, general maintenance and/or replacement of each driveway on each unit shall be the sole responsibility and cost of the Unit Owner. If in the event the unit owner, upon notice from the Association, fails to upgrade the driveway to the standards set by the Association , the Association shall have the authority to so upgrade the driveway and to assess the cost of same to the unit owner.

ARTICLE VII Easements

7.1 UTILITY EASEMENT

The units and the common elements are and shall be hereby made subject to easements established and as may from time to time be established by Declarant or the Executive Board in favor of the appropriate utility and service companies or government agencies or authorities for such utility services as are desirable or necessary

to serve adequately and properly or any portion thereof and all appurtenances thereto, including without limitation, the right to install, lay, maintain, repair, relocate and replace water mains and pipes, sewer and drain lines, gas lines, pipes and conduits, community television facilities, telephone wires and equipment and electrical wires and conduits and associated equipment and vents and ducts over, under, through, along and on the property; provided, however, that unless approved in writing by the unit owner or unit owners affected, any such easement through a unit shall be located either in substantially the same location as such facilities or similar facilities exist at the time of first conveyance of the unit by Declarant or so as not to materially interfere with the use or occupancy of the unit by its occupants and so as not to detract from the value of the unit.

7.2 INGRESS AND EGRESS

The common elements shall be and are hereby made subject to an easement in favor of the unit owners and their family members, invitees, servants, agents and lessees, the Executive Board and the agents and employees of the Executive Board for pedestrian and vehicular traffic on, over, through and across such portions of the common elements as may, from time to time be intended for such purposes.

7.3 MAINTENANCE AND REPAIR

The common elements and all units where a common expense has been declared shall be and are hereby made subject to the following easements (in addition to any other easements set forth in this Declaration) in favor of any unit or units for which such easements are necessary:

- (a) For the installation, repair, maintenance, use, removal and/or replacement of any recessed cabinet in the bathroom of units, or any other fixture, structure or appurtenance in any other part of the unit, the access to which is necessary for repair, maintenance, use, removal and/or replacement. In the event that a part of any such cabinet is located in a portion of the wall adjacent to such unit is part of the common elements;
- (b) For the installation, repair, maintenance, use, removal and/or replacement of lighting fixtures, electrical receptacles and the like which are located in a portion of the ceiling or wall adjacent to a unit which is part of the common elements; provided that the installation, repair, maintenance, use, removal or replacement of such fixtures, receptacles and the like will not reasonably interfere with any part of the common elements or impair or structurally weaken a building;
- (c) For driving and removing nails, screws and bolts from the unit-side surface of the walls of a unit into a portion of such wall which is part of the common elements; provided that such action will not unreasonably interfere with the use of any part of the common elements or impair or structurally weaken a building;
- (d) For the installation, repair, maintenance, use, removal and/or replacement of pipes, ducts, electrical wiring, community television and radio lines and all other utility lines and conduits which are part of a unit and which pass across or through a portion of the common elements;
- (e) For the installation, repair, maintenance, use, removal and/or replacement of limited common elements appurtenant to such unit in the event that the responsibility for maintaining the limited common elements has been delegated to the unit owners as permitted by Section 6.2 above.
- (f) The repair, care, maintenance and replacement of the siding, wooden front porches, roofs, soffit and facia, downspouts, and flashing of each and all units, and all roadside sidewalks shall be within the exclusive jurisdiction and function of the Association and shall be deemed a common expense.
- (g) The cutting and maintenance of all authorized grass on all units shall be within the exclusive jurisdiction and function of the Association and shall be deemed a common expense.

(h) Subject to the terms and conditions of Article VI, subparagraph 6.4 above, the coating, general maintenance and the replacement of each driveway on each unit shall be the sole responsibility and cost of the Unit Owner.

7.4 **SUPPORT** To the extent necessary each unit shall have an easement for structural support over the common elements and over any other unit in a building and each unit and the common elements shall be subject to an easement for structural support in favor of every other unit in the building and the common elements.

7.5 **INSPECTION AND MAINTENANCE OF UNITS** The units shall be and are hereby made subject to the following easements:

- (a) In favor of the Executive Board for inspection of the units for the purpose of verifying performance by unit owners of all items of maintenance and repair for which they are responsible for inspection and maintenance of the common elements situated in or accessible from such unit for correction of emergency conditions in each unit of casualties to such common elements and/or unit and for any of the purposes set forth in Section 7.3 hereof or elsewhere in this Declaration or in any other governing documents. The Executive Board shall take reasonable steps to minimize the interference with a unit owner's use of his unit resulting from the Association's exercise of rights granted to it pursuant to this Section 7.5 or any other provision of this Declaration or any other governing document.
- (b) In favor of the common elements benefited for the installation, repair, maintenance, use, removal and/or replacement of pipes, ducts, electrical wiring, community television and radio lines and all other utility lines and conduits which are part of the common elements and which pass across or through a portion of a unit or units.

7.6 **ENCROACHMENT** If any unit or units shall encroach upon any common element or upon any other unit or units by reason of original construction or a cause other than the purposeful act or omission of the unit owner of such encroaching unit, then an easement appurtenant to such encroaching unit to the extent of such encroachment shall exist for so long as such encroachment shall exist. If any common element shall encroach upon any unit by reason of original construction or a cause other than the purposeful act or omission of the Executive Board then an easement appurtenant to such common element, to the extent of such encroachment shall exist for so long as such encroachment shall exist. In the event the building is partially or totally destroyed or is taken pursuant to the exercise of eminent domain or condemnation proceedings and then rebuilt, encroachment upon the common elements and/or units as and to the extent described above shall be permitted and a valid easement for said encroachments and the maintenance thereof shall exist for so long as such encroachment continues to exist.

7.7 **EXECUTIVE BOARD FUNCTIONS** There is hereby reserved to Declarant any successor Declarant, the Association and the Executive Board and their duly authorized agents, representatives and managers, such easements over, upon, across and through the units, common elements and other portions of the property as are necessary for the performance of the duties and obligations and exercise of the powers of the Executive Board and the Association as are set forth in the Declaration, the By-Laws and the other governing documents.

7.8 **DECLARANT'S EASEMENT TO CORRECT DRAINAGE** The Successor Declarant reserves an easement and right of way on, over and under the property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary following which the Declarant shall restore the affected property to its original condition as near as practicable. The Declarant shall give reasonable notice of intent to take such action to all affected unit owners, unless in the option of the Successor Declarant, an emergency exists which precludes such notice.

7.9 EASEMENT TO THE DECLARANT All of the common elements and all units shall be and are hereby made subject to all reasonably necessary easements in favor of the Successor Declarant, its successors and assigns, for the purpose of the rehabilitation and renovation of the property and the development and sale of the units. Such easements shall include, without limitation, easements for ingress, egress and parking, construction activities of any nature whatsoever movement of building materials and equipment conduct of sales and leasing activities and erection and maintenance of directional and promotional signs.

7.10 EASEMENTS APPURTEnant All easements and rights described and mentioned in this Declaration are easements appurtenant running with the land, property, units and common elements and shall inure perpetually in full force and effect and at all times to the benefit of and be binding upon the Declarant, its successors and assigns, the Executive Board, the Association, any unit owner, purchaser, mortgagee and other person having an interest in said lands and improvements, property, units, common elements or any portion thereof.

7.11 EASEMENT TO FACILITATE COMPLETION, CONVERSION AND EXPANSION
Subject to the provisions of this Declaration, the Successor Declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging Successor Declarant's obligations or exercising special Successor Declarant's rights.

ARTICLE VIII

Restrictions

8.1 SUBDIVISION OR COMBINATION Except as reserved to the Declarant, no unit may be divided or subdivided into smaller units or combined into a larger unit nor any portion (less than all) thereof sold or otherwise transferred without first amending this Declaration in accordance with the provisions hereof to show the changes in the unit to be affected thereby.

8.2 USE OF UNITS A unit may be used only for residential purposes and for no other purpose.

8.3 USE RESTRICTIONS No use or practice shall be permitted in a unit or on the property which:

- (a) is a source of undue annoyance to the other residents or occupants thereof or interferes with the peaceful possession and proper use of the property by such other residents or occupants;
- (b) will materially increase the rate of insurance on any improvement erected or situated on the property beyond that to be anticipated from the proper and accepted conduct of otherwise permitted uses hereunder;
- (c) subject to those use restrictions set forth in Article IV, Subparagraph 4.18 of this Declaration.

8.4 USE OF COMMON ELEMENTS

- (a) Subject to the provisions of the governing documents, all unit owners may use the common elements in such a manner as will not restrict, interfere with or impede the use thereof by other unit owners.
- (b) The common elements shall be used for the furnishing of those services and facilities for which the same are designed and reasonably intended.
- (c) No person shall use the common elements or any part thereof in any manner contrary to or not in accordance with the Association rules pertaining thereto as from time to time may be promulgated by the Executive Board. Without in any manner intending to limit the generality of the foregoing, the Executive Board shall have the right but not the obligation to promulgate rules and regulations governing the use of the common elements by unit owners or occupiers and their respective families, guests, invitees and servants.
- (d) subject to those use restrictions set forth in Article IV, Subparagraph 4.18 of this Declaration.

8.5 COMPLIANCE WITH LAWS, ORDINANCES AND REGULATIONS

All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The respective responsibilities of unit owners and the Executive Board of complying with the requirements of governmental bodies which require maintenance, modification or repair of the property shall be the same as hereinabove provided for the maintenance and repair of that portion of the property subject to such requirements.

ARTICLE IX

Administration

9.1 EXECUTIVE BOARD AND ASSOCIATION The property shall be administered, supervised and managed by the Executive Board which shall act within the framework of the Association by and on behalf of the unit owners in accordance with the Uniform Planned Community Act (a/k/a the "Act"), Declaration, By-Laws and other governing documents. The Executive Board is hereby vested with the rights, powers, privileges and duties necessary or incidental to the proper administration of the property as provided in the act and the governing documents.

9.2 POWERS OF ASSOCIATION Subject to the provisions of this Declaration, the Association may:

- (a) adopt and amend By-Laws and rules and regulations;
- (b) adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners;
- (c) hire and terminate managing agents and other employees, agents and independent contractors;
- (d) institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the planned community;
- (e) make contracts and incur liabilities;
- (f) regulate the use, maintenance, repair, replacement and modification of common elements;
- (g) cause additional improvements to be made as a part of the common elements;
- (h) acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to the provisions of Section 5318 of the Uniform Planned Community Act relating to conveyance or encumbrance of common elements;
- (i) grant easements, leases, licenses and concessions through or over the common elements, but any such easement, lease, license or concession:
 - (i) that is not for the benefit of all or substantially all of the unit owners shall not be granted without the same unit owner approval that is required for an amendment to the declaration; or
 - (ii) that materially impairs any right or benefit that one or more unit owners may have with respect to the common elements shall not be granted without the prior written approval of those unit owners;
- (j) impose and receive any payments, fees or charges for the use, rental or operation of the common elements;
- (k) impose charges for late payment of assessments and after notice and an opportunity to be heard, levy reasonable fines, which may include costs, interest and legal fees for violations of the Declaration, By-Laws and rules and regulations of the Association;
- (l) impose reasonable charges for the preparation and recordation of amendments to the Declaration, resale certificates or statements of unpaid assessments;
- (m) provide for the indemnification of its officers and Executive Board and maintain directors'

- and officers' liability insurance;
- (n) exercise any other powers conferred by this Declaration or By-Laws;
- (o) exercise all other powers that may be exercised in the Commonwealth by legal entities of the same type as the Association;
- (p) exercise any other powers necessary and proper for the governance and operation of the Association;
- (q) assign its right to future income, including the right to receive the payments made on account of common expense assessments, but only to the extent the Declaration expressly so provides;
- (r) assign or delegate any powers of the Association listed in this section to a master association subject to the provisions of Section 5222 (relating to master associations) and accept any assignment or delegation of powers from one or more planned communities or other incorporated or unincorporated associations.

9.3 UNIT OWNER PARTICIPATION IN ASSOCIATION All unit owners by virtue of their respective ownerships shall be members of the Association during their respective ownerships. If any unit is jointly owned, the owners of such unit shall together constitute one (1) member of the Association.

9.4 FUNCTION OF EXECUTIVE BOARD

- (a) The affairs of the Association shall be governed by the Executive Board, who shall not be compensated for such services. The Association shall provide the entity within the structure of which the Executive Board shall function to accomplish the purposes of the Association. The Executive Board shall, on behalf of the Association and unit owners, have power to manage the business, operation and affairs of the property and for such purposes, to engage employees and appoint agents and to define their duties and fix their compensation, enter into contracts and other written instruments or documents and to authorize the execution thereof by members of the Executive Board. The Executive Board shall have such other powers and duties as are set forth in the governing documents and the Act.
- (b) The Executive Board may act in all instances on behalf of the Association, except as provided in the act or the Declaration.
- (c) Limitation on Authority The Executive Board may not act on behalf of the Association to amend the Declaration, to terminate the planned townhouse community, or to elect members of the Executive Board or determine the qualifications, powers and duties or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term. In addition to other rights conferred by the Declaration, By-Laws or this sub-part, the unit owners by majority vote, may reject any budget or capital expenditure approved by the Executive Board within thirty (30) days after the approval.
- (d) the unit owners shall elect an Executive Board of at least three (3), but not more than five (5) members, at least a majority of whom must be unit owners. The Executive Board shall elect the officers. The persons elected shall take office upon election.

9.5 UNIT OWNER VOTES Each unit owner shall, at meetings of the Association, be entitled to cast one (1) vote.

9.6 ACQUISITION OF PROPERTY All funds and all properties whether real or personal, leasehold or fee, acquired by the Executive Board and the proceeds thereof after deducting therefrom the costs incurred by the Executive Board in acquiring the same, shall be held for the benefit of the unit owners in accordance with their respective shares.

9.7 INCOME All income received by the Executive Board from the rental or licensing of any part of the common elements, as well as such income anticipated, shall be used for the purpose of reducing

prospective common expenses.

9.8 COMPLIANCE WITH TOWNSHIP REGULATIONS The Executive Board and Association shall be bound by the rules and regulations prescribed by the Township of North Fayette at the time of final approval of the application for building permits for the construction of Timberglen, Phase I, a Planned Townhouse Community.

9.9 LIMITATION OF LIABILITY, INDEMNIFICATION, LEGAL COSTS AND ATTORNEY'S FEES The Executive Board members, officers, assistant officers, the Successor Declarant and other committee members:

- (a) shall not be liable to any unit owner or other occupant of the property as a result of any actions taken or omitted to be taken in such capacities or for any mistake of judgment, negligence or otherwise except for their own willful misconduct or gross negligence;
- (b) shall have no personal liability in contract to a unit owner or any other person or entity, under any agreement, instrument or transaction entered into or executed by them on behalf of the Executive Board, Association or unit owners;
- (c) shall have no personal liability in tort, direct or imputed, to a unit owner or any person or entity by virtue of acts performed by themselves or by agents, employees or contractors employed or retained by them, on their behalf in their official capacity, except for their own willful misconduct or gross negligence;
- (d) shall have no personal liability arising out of the use, misuses or conditions of the property or any part thereof, or which might in any other way be assessed against or imputed to them as a result, or by virtue of their capacities as such;
- (e) The unit owners and/or Association and/or other occupants including any mortgagee and/or lien holder and/or any other party agrees to indemnify and hold harmless the Executive Board members, officers, assistant officers, Successor Declarant and/or any committee members for any act or omission to act whatsoever and/or any damages or loss as same pertains to Timberglen, Phase I, a Planned Townhouse Community in any matter or manner whatsoever and which results in any claim, demand, law suit or other legal proceedings. Furthermore, any unit owner or unit owners, Association and/or occupants and/or mortgagee and/or other lien holder and/or any other party who shall initiate or cause to initiate and/or being and/or file any claim, demand, law suit or other legal proceedings against any Executive Board member, officer, assistant officer, Successor Declarant or any committee member for any reason whatsoever, shall pay on demand, the cost to defend including attorney's fees and other legal costs incurred by any Executive Board member, officers, assistant officers, Successor Declarant and/or any committee members as a result of any claim, demand, law suit and/or other legal proceeding initiated by any unit owner, unit owners, Association and/or other occupants including mortgagee and/or other lien holder and/or any other party.

ARTICLE X

Design Control

10.1 DESIGN REVIEW COMMITTEE COMPOSITION-APPOINTMENT, REMOVAL

- (a) Committee Composition The Design Review Committee shall consist of up to three (3) persons.
- (b) Appointment The Executive Board shall appoint members of the Design Review Committee from among candidates nominated by any unit owner. The three (3) members of the first Design Review Committee shall be appointed for one (1), two (2) and three (3) year terms, respectively. Thereafter, each new Design Review Committee member shall serve for a term of three (3) years. If a vacancy occurs, the Executive Board shall

appoint a new member of the Design Review Committee to serve for the remainder of the unexpired term.

10.2 FUNCTIONS:

- (a) The Design Review Committee shall:
 - (i) consider and act upon any and all proposals or plans submitted to it pursuant to the terms of this Declaration;
 - (ii) ascertain that any improvements constructed on the property by anyone other Successor Declarant conform to plans previously approved by the Design Review Committee;
 - (iii) adopt Design Review Committee rules;
 - (iv) recommend to the Executive Board, enforcement of the provisions of this Article X;
 - (v) carry out all other duties imposed upon it by this Declaration or delegated to it by the Executive Board.
- (b) Notwithstanding anything contained in this Declaration expressly or implied to the contrary and subject to any exceptions provided for by the Design Review Committee rules and subject to the restrictions set forth in Article IV, Subparagraph 4.18 of this Declaration, no building, fence, wall, aerial or other projection, addition, porch, patio, structure or other exterior improvements shall be commenced, constructed, painted, erected or placed upon any unit, the common elements or the limited common elements or any other portion of the property, other than by or on behalf of Successor Declarant, nor shall any exterior addition to or change or alteration therein or change or alteration of the exterior finish thereof be made other than by or on behalf of Successor Declarant, until an application including final plans and specifications showing the nature, kind, shape, height, materials, colors, dimensions and location thereof have been submitted to and approved in writing by the Design Review Committee as to harmony of external design and color with the then existing improvements erected on the property conformity with the provisions of this Declaration and location in relation to surrounding structures and topography. Design Review Committee approval shall also be required prior to the removal (other than by or on behalf of Successor Declarant) of any tree located on the property having a trunk diameter of more than three (3") inches. Satellite dishes 18 inches or less may be installed on the exterior of a unit subject to the location and the manner of the installation being approved by the Design Review Committee and the Executive Board.

10.3 MEETINGS AND PROCEDURES

- (a) The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of a majority of the members of the Design Review Committee at a meeting or otherwise, shall constitute the act of the Committee. The Design Review Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise.
- (b) Any person desiring to take any action requiring approval of the Design Review Committee shall submit to such committee, an application including copies of the plans and specifications therefore in the form specified by such committee, plus such other information as such committee may reasonably request and pay such reasonable fees or assessments as may from time to time be fixed by the Executive Board. Any such submission not disapproved in writing within forty-five (45) days shall be deemed approved, unless such committee shall determine and so notify the applicant that the submission is not satisfactory, specifying with particularity the further information needed

or the defects in the submission made. In the event of such a notice by such committee that the submission is not satisfactory, the forty-five (45) day period provided for herein shall commence again when a resubmission is made. This procedure may be repeated where the Design Review Committee deems such actions necessary to permit compliance with its rules, this Declaration and its duties hereunder and the applicable By-Laws.

10.4 ESTOPPEL CERTIFICATE Within twenty (20) days after written demand therefore is delivered to the Design Review Committee by the Executive Board or any unit owner and upon payment of such reasonable fee and/or assessment as may from time to time be fixed by the Executive Board such committee shall provide an estoppel certificate executed by any two (2) of its members certifying with respect to any unit that as of the date thereof, either (i) the committee has no objection to any improvements and other work made or done thereon or therein, or (ii) such improvements and/or work do not so comply with this Declaration or committee rules, in which event the certificate shall also (1) identify the non-complying improvements and/or work and (2) set forth with reasonable particularly the cause or causes for such non-compliance. Any purchaser from the Executive Board or a unit owner or mortgagee or other encumbrancer shall be entitled to rely on any such certificate with respect to the matters therein set forth such matters being conclusive as between the Executive Board, Successor Declarant and all unit owners and any such purchaser, mortgagee or other encumbrancer.

10.5 COMMITTEE RULES The Design Review Committee may, from time to time, adopt, amend and repeal, by majority vote or written consent of its members, rules and regulations to be known as "Design Review Committee Rules". Such rules may interpret and implement this Declaration by setting forth the standards and procedures for review by committee and may provide for a procedure for appeal of any determination or guidelines to the Executive Board or other body specified by such Design Review Committee Rules. Such rules may also provide, consistent with the jurisdiction of such committee, guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use within the property. A copy of such rules shall upon request be made available by the Executive Board to all unit owners and other interested persons.

10.6 NO WAIVER The approval by the Design Review Committee of any plans, drawings or specifications for any work done or proposed or for any other matter requiring the approval of the Design Review Committee under this Declaration shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

10.7 ENFORCEMENT OF DESIGN REVIEW COMMITTEE RULES AND DECISIONS

The Design Review Committee may recommend to the Successor Declarant or the Executive Board that Successor Declarant or the Executive Board take appropriate action to prevent or remove any unauthorized or unapproved construction or improvements on any portion of the property. It shall be conclusively presumed that any action subject to approval of the Design Review Committee was so approved if the committee fails to make such a recommendation to Successor Declarant or to the Board within one (1) year after the date of occurrence or completion of such construction or improvement.

10.8 LIABILITY Neither Successor Declarant, the Design Review Committee, nor any member thereof shall be liable to the Association, the Executive Board, any unit owner or to any other party for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective; (b) the construction or performance of any work upon the property; (c) the

execution and filing of an estoppel certificate, whether or not the facts therein are correct; or (d) any other act, action or conduct of the Design Review Committee or any of its members thereof, so long as that with respect to the liability of a member of the Design Review Committee such member has acted in good faith on the basis of such information as may be possessed by him and/or them. Furthermore, any unit owner, the Executive Board or any member thereof and/or the Association and/or any other party, shall pay on demand to the Successor Declarant and/or any member of the Design Review Committee the cost incurred including attorney's fees and court costs by the Successor Declarant or any members of the Design Review Committee as a result of any claim, demand, law suit or other legal proceeding initiated by any unit owner, the Executive Board and/or any member thereof, and/or the Association and/or any other party whatsoever.

10.9 **APPEALS TO EXECUTIVE BOARD FROM DECISIONS OF DESIGN REVIEW COMMITTEE** The Executive Board shall have the power to serve as a board of appeals for aggrieved parties from decisions of the Design Review Committee and may adopt resolutions outlining procedures for the exercise of the powers granted in this Section 10.9.

ARTICLE XI

Assessments

11.1 COMMON EXPENSE

- (a) The Association shall make a common expense assessment.
- (b) After any assessment has been made by the Association, assessments shall thereafter be made annually and shall be based on a budget adopted annually by the Association. All common expense annual assessment shall be due and payable in equal monthly installments in advance, on the first (1st) day of each month, special assessments shall be due and payable in the month in which they are billed, unless otherwise provided by the Executive Board.
- (c) Common expense shall be assessed against all units in accordance with the common expense liability allocated to each unit. Any past due assessment or installment thereof shall bear interest and or penalty in compliance with the Rules & Regulations.
- (d) Except as otherwise provided herein:
 - (i) Any common expense associated with the maintenance, repair or replacement of a limited common element shall be assessed in equal shares against the units to which that limited common element was assigned at the time the expense was incurred;
 - (ii) Any common expense benefitting fewer than all of the units shall be assessed exclusively against the units benefitted.
- (e) **Reallocation** If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.
- (f) **Surplus Funds** Any amounts accumulated from assessments for general common and limited common expenses and income from the operation of the common and limited common elements in excess of the amount required for actual general common and limited common expenses and reserves for future general common and limited common expenses shall be assigned to and deposited in the reserve account.

11.2 LIEN FOR ASSESSMENTS

- (a) The Association has a lien on a unit for any assessment levied against the unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The

Association's lien may be foreclosed in like manner as a mortgage on real estate. A judicial or other sale of the unit in execution of a common element lien or any other lien shall not affect the lien of a mortgage thereon, except the mortgage for which the sale is being held, if the mortgage is or shall be prior to all other liens upon the same property except those liens identified in 42 Pa.C.S. §8152(a) as amended (relating to judicial sale as affecting lien of mortgage) and liens for assessments created under this section. Unless the fees for the use, rental or operation of the common elements, other than limited common elements; charges for late payment of assessments; fines for violations of the By-Laws, Declaration and Rules and Regulations of the Association; charges for the preparation and recordation of amendments to this Declaration; resale certificates or statements of unpaid assessments and interest charged and reasonable costs and expenses of the Association, including legal fees incurred in connection with collection of any sums due the Association by the unit owner or enforcement of the provisions of the Declaration, By-Laws and Rules & Regulations against the unit owner are enforceable as assessments under this section. If an assessment is payable in installments and one or more installments is not paid when due, the entire outstanding balance of the assessment becomes effective as a lien from the due date of the delinquent installment.

(b) Priority of Lien

1. General Rule A lien under this section is prior to all other liens and encumbrances of a unit except:
 - (i) liens and encumbrances recorded before the recordation of the Declaration;
 - (ii) mortgages and deeds of trust on the unit securing first mortgage holders and recorded before the due date of the assessment, if the assessment is not payable in installments, or the due date of the unpaid installment, if the assessment is payable in installment;
 - (iii) Liens for real estate taxes and other governmental assessments or charges against the unit.
2. Limited Non-divestiture The Association's lien for common expenses shall be divested by a judicial sale of the unit:
 - (i) As to unpaid common expense assessments that come due during the six months immediately preceding institution of an action to enforce collection of a lien against a unit by a judicial sale, only to the extent that the six (6) months unpaid assessments are paid out of the proceeds of the sale;
 - (ii) As to unpaid common expense assessments other than the six months assessment referred to in subparagraph (i), in the full amount of these unpaid assessment, whether or not the proceeds of the judicial sale are adequate to pay the assessments. To the extent the proceeds of the sale are sufficient to pay some or all of these additional assessments, after satisfaction in full of the costs of the judicial sale, and the liens and encumbrances of the types described in Paragraph 1 and the unpaid common expense assessments that come due during the six-month period described in subparagraph (i), they shall be paid before any remaining proceeds may be paid to any other claimant, including the prior owner of the unit.
3. Monetary Exemption The lien is not subject to the provisions of 42 Pa.C.S. §8123 (relating to the general monetary exemption).

(c) Notice and Perfection of Lien Subject to the provisions of subsection (b), recording of this

(d) Declaration constitutes record notice and perfection of the lien.

(e) Limitation of Actions A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the assessments become payable.

(f) Other Remedies Preserved Nothing in this section shall be construed to prohibit actions or suits to recover sums for which subsection (a) creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.

(g) Cost and Attorney's Fees A judgment or decree in any action or suit brought under this section shall include costs and reasonable attorney's fees for the prevailing party.

(g) Statement of Unpaid Assessments The Association shall furnish to a unit owner upon written request, a recordable statement setting forth the amount of unpaid assessments currently levied against his unit and any credits of surplus in favor of his unit pursuant to Section 5313 (relating to surplus funds). The statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Executive Board and every unit owner.

4. Reserve Each annual budget for common expenses shall include an amount reasonably considered by the Executive Board to be sufficient as a reserve for replacements and contingencies. To initiate such reserve, the Declarant may collect from each of its grantees, at time of settlement, an amount equal to one-sixth (1/6th) of the first annual budget allocable to the unit purchased by such grantee and shall remit each amount to the Executive Board. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserve. In addition, the Executive Board shall have the right to segregate all or any portion of the reserve for any specific replacement or contingency upon such conditions as the Executive Board deems appropriate.

5. Accounting At each annual meeting, the Executive Board shall make available for all review to all unit owners, an itemized accounting of the common expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the annual budget or assessments and leases and sales of property owned or managed by the Executive Board on behalf of the Association and showing the net excess or deficit of income over expenditures plus reserves.

6. Special Assessments If any annual budget proves inadequate for any reason, including nonpayment of any unit owner's assessments, or any nonrecurring common expense or any common expense not set forth in the annual budget as adopted, the Executive Board may at any time levy a further assessment, which shall be assessed to the unit owners according to each unit owner's percentage interest in the common elements. Such further assessment shall be payable in such monthly installments as the Board may determine. The Executive Board shall serve notice of such further assessment on all unit owners by a statement in writing giving the amount and reasons therefore, and such further assessment shall become effective and shall be payable at such time or times as determined by the Executive Board.

7. Acceleration If a unit owner is in default in the monthly payment of the aforesaid charges or assessments for thirty (30) days, the Executive Board may, in addition to all other remedies in the act or Declaration contained, accelerate all other monthly payments of charges and assessments due for the calendar year in which

such default occurs, provided, however, a foreclosing permitted mortgage shall be entitled to automatic subordination of such sums in excess of amounts given price over mortgage liens in the act.

8. **Fees, Interest and Charges** All sums assessed by the Executive Board against any unit owner as a regular or special assessment shall bear interest and or penalty thereon in accordance with the Rules & Regulations, from the fifteenth (15th) day following default in payment of any installment when due. Any delinquent owner shall also be obligated to pay (i) all expenses of the Board, including reasonable attorney's fees incurred in the collection of the delinquent assessment of legal proceedings or otherwise, and (ii) any amounts paid by the Board for taxes or on account of superior liens or otherwise to protect its lien, which expenses and amounts together with accrued interest shall be deemed to constitute part of the delinquent assessment and shall be collectible as such, subject to subsection 11.2 above.

9. **Confession of Judgment** In order to expedite the Executive Board's collection of any delinquent assessment, each unit owner (by the acceptance of the deed to his unit, shall be deemed to have appointed any one or more Executive Board members the Attorney-in-Fact for such unit owner to confess judgment against such unit owner in any court of competent jurisdiction in Pennsylvania, for any such unpaid assessments, which appointment (being for security) shall be irrevocable and for so doing, a copy of this Article 11 and said deed, both verified by Affidavit shall be sufficient warrant. The authority granted herein to confess judgment shall not be exhausted by any exercise thereof but shall continue from time to time and at all times until the Declaration shall be terminated.

ARTICLE XII

Insurance

12.1 ASSOCIATION INSURANCE

(a) **Insurance to be Carried by Association** Commencing immediately the Association shall maintain to the extent reasonably available:

1. Property insurance on the common elements.
2. Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Executive Board but not less than any amount specified in the Declaration covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements.

(b) **Other Insurance Carried by Association** If the insurance described in subsection (a) is not maintained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all unit owners. The Association in any event may carry any other insurance it deems appropriate to protect the Association or the unit owners.

(c) **Contents of Insurance Policies** Insurance policies carried pursuant to subsection (a) must provide that:

1. Each unit owner is an insured person under the policy with respect to liability arising out of his ownership of an undivided interest in the common elements or membership in the Association.
2. The insurer waives its right to subrogation under the policy against any unit owner within the Planned Townhouse Community or members of his household.

3. No act or omission by an unit owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.
4. If, at any time of a loss under the policy, there is other insurance in the name of a unit owner covering the same property covered by the policy, the policy is primary insurance not contributing with the other insurance.

(d) Proceeds from Property Insurance Any loss covered by the property policy under subsection (a)(1) shall be adjusted with the Association but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose or otherwise to the Association and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for unit owners and lien holders as their interest may appear. Subject to the provisions of subsection (g), the proceeds shall be disbursed first for the repair or restoration of the damaged common elements, and unit owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the common elements have been completely repaired or restored or the planned townhouse community is terminated.

(e) Unit Owner May Obtain Insurance An insurance policy issued to the Association does not prevent a unit owner from obtaining insurance for his own benefit.

(f) Evidence and Cancellation of Insurance An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and upon request to any unit owner, mortgagee or beneficiary under a deed of trust. The insurance may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.

(g) Disposition of Insurance Proceeds

1. Any portion of the planned townhouse community damaged or destroyed shall be repaired or replaced promptly by the Association unless:
 - (i) the planned townhouse community is terminated;
 - (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance;
 - (iii) eighty (80%) percent of the unit owners including every owner of a unit or assigned limited common elements which will not be rebuilt vote not to rebuild.

The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.

12.2 If the entire planned townhouse community is not repaired or replaced:

- (a) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the planned townhouse community;
- (b) the remainder of the proceeds shall be distributed to all the unit owners in proportion to their common element interest.

If the unit owners vote not to rebuild any unit, that unit's entire common element interest votes in the Association and common expense liability are automatically reallocated upon the vote as if the unit had been condemned and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting the reallocations.

12.3 Notwithstanding the provisions of this subsection, Section 15.2 (relating to termination of

planned townhouse community) governs the distribution of insurance proceeds if the planned community is terminated.

12.4 The premiums for the insurance covering the common elements shall be deemed common expenses.

ARTICLE XIII

Compliance and Remedies

13.1 COMPLIANCE WITH GOVERNING DOCUMENTS Each unit owner shall be governed by and shall comply with the terms of the governing documents and any rules and regulations adopted pursuant thereto; all as may be amended from time to time. All unit owners, lessees, and other persons on or about the property, are subject to the provisions of the ACT and of the governing documents, and the mere acquisition or rental of any unit shall signify that the provisions of the governing documents are accepted and ratified. A default shall entitle the Executive Board, the Association, and unit owners to the relief set forth in this Article XIII.

13.2 REMEDIES Failure to comply with any of the terms of the governing documents and rules and regulations adopted pursuant thereto, shall be grounds for relief which may include without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, disallowance to vote at any Association meeting, or any combination thereof, and which relief may be sought by the Executive Board, the Association, or, if appropriate, by an aggrieved unit owner and may include costs, interest, reasonable fines, and attorney's fees.

13.3 NEGLIGENCE OF UNIT OWNERS Each unit owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary to his act, neglect or carelessness or by that of any member of his family or his or their guests, employees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Executive Board. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy, or abandonment of a unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation. If any common expense is caused by the negligence or misconduct of any unit owner, the Association may assess that expense exclusively against his unit.

13.4 NO WAIVER The failure of the Executive Board, the Association or a unit owner to enforce any right, provision, covenant or condition which may be granted by the governing documents shall not constitute a waiver of the right of the Executive Board, the Association or unit owner to enforce such right, provision, covenant or condition subsequent to such failure.

13.5 REMEDIES CUMULATIVE All rights, remedies and privileges granted to the Executive Board, the Association, or a unit owner pursuant to any terms, provisions, covenants or conditions of the governing documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party by the governing documents, the ACT, or at law or in equity.

13.6 VIOLATION OF LAW Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any unit or other portion of the property, other than by Successor Declarant, is hereby declared to be a violation of the Declaration and subject to any or all of the enforcement procedures set forth herein.

13.7 FINES IMPOSED AFTER HEARING No fines shall be imposed unless and until the party against whom they are to be imposed has been given an opportunity to be heard.

ARTICLE XIV

Alienation and Conveyance of Units

14.1 UNITS AS REAL PROPERTY Units may be sold, conveyed, mortgaged, leased or otherwise dealt with in the same manner as like dealings are conducted with respect to other real property and

interests therein. Every written instrument dealing with a unit shall specifically set forth the name, Timberglen, Phase I, a Planned Townhouse Community and the unit identification number of such unit. Any lease between a unit owner and a lessee shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the governing documents, and that any failure by the lessee to comply with the terms of any such documents shall be a default under the lease.

14.2 UNIT DEEDS Deed of units shall include the following:

- (a) The name, Timberglen, Phase I, a Planned Townhouse Community, a statement that the property is located in the Township of North Fayette, Pennsylvania, together with a reference, if available to the recording office, the book and page where the Declaration and Declaration Plan and any Amendments thereto are recorded;
- (b) The unit identification number;
- (c) A reference to the last unit deed if the unit was previously conveyed;
- (d) The share which is assigned to the unit in this Declaration and any amendments thereof;
- (e) In addition to the foregoing, the first (1st) deed conveying each unit shall contain the following specific provisions:

The grantee, for and on behalf of the grantee and the grantee's heirs, personal representatives, successors and assigns, by the acceptance of this deed covenants and agrees to pay such charges for the maintenance of, repairs to, replacement of and expenses in connection with the common elements as may be assessed from time to time by the Association in accordance with the Uniform Planned Community Act of Pennsylvania, and further covenants and agrees that the unit conveyed by this deed shall be subject to a charge for all amounts so assessed.

14.3 RESTRICTIONS NOTIFICATION OF SALE OF UNIT; PROHIBITION AGAINST CERTAIN

- (a) Concurrently with the consummation of the sale of any unit under circumstances whereby the transferee becomes a unit owner or within five (5) business days thereafter, the transferee shall notify the Executive Board in writing of such sale. Such notification shall set forth (i) the name of the transferee and his transferor, (ii) the street address of the unit purchased by the transferee, (iii) the transferee's mailing address, and (iv) the date of sale. Prior to receipt of such notification, any and all communications required or permitted to be given by the Association, the Executive Board, the design review committee, or any subcommittee shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor.
- (b) The right of any unit owner to sell, transfer or otherwise convey a unit may not be made subject to any right of first refusal or similar restriction in favor of the Association or Executive Board.

14.4 RESALE OF UNIT BY UNIT OWNER In the event of a resale of a unit by a unit owner other than a Declarant, the unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a copy of the Declaration (other than the plats and plans), the By-Laws, the Rules and Regulations of the Association and certificate containing:

1. a statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit.
2. a statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and any surplus fund credits to be applied with regard to the unit, if any.
3. a statement of any other fees payable by unit owners.

4. a statement of any capital expenditures proposed by the Association for the current and two (2) next succeeding fiscal years.
5. a statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the Association for any specified project.
6. the most recent regularly prepared balance sheet and income and expense statement, if any, of the Association.
7. the current operating budget of the Association.
8. a statement of any judgments against the Association and the status of any pending suits to which the Association is a party.
9. a statement describing any insurance coverage provided for the benefit of unit owners.
10. a statement as to whether the Executive Board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the Declaration.
11. a statement as to whether the Executive Board has knowledge of any violation of applicable governmental requirements or knowledge of the existence of any hazardous conditions pursuant to Section 5402(a)(26) of the Uniform Planned Community Act (relating to public offering statement; general provisions) with respect to the unit, the limited common elements assigned thereto or any other portion of the Planned Townhouse Community.
12. A statement of the remaining term of any leasehold estate affecting the Planned Townhouse Community and the provisions governing any extension or renewal thereof.
13. A statement as to whether the Declaration provides for cumulative voting or class voting.
14. A statement as to whether an agreement to terminate the planned townhouse community has been submitted to the unit owners for approval and remains outstanding.
15. A statement of whether the planned townhouse community is a master association or is part of a master association or could become a master association or part of a master association.
16. A statement describing which units, if any, may be owned in time-share estates and the maximum number of time-share estates that may be created in the planned townhouse community.
17. A statement of whether the Declarant or Successor Declarant retains the special declarant right to cause a merger or consolidation of the planned townhouse community and, if so, the information describing such right which was supplied by the Declarant or Successor Declarant pursuant to Section 5205(13) (relating to contents of Declaration; all planned communities), if any.

(b) Information Supplied by Association The Association, within ten (10) days after a request by a unit owner, shall furnish a certificate containing the information and copies of documents necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to section (a) is not liable to the purchaser for any erroneous information provided by the Association and included in the certificate.

(c) Liability for Error or Inaction by Association A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the Association. A unit owner is not liable to a purchaser for the failure or delay of the Association to provide the certificate in a timely manner but the purchase contract is

voidable by the purchaser until the certificate has been provided and for five (5) days thereafter or until conveyance, whichever occurs first.

ARTICLE XV

Amendment of Declaration and Declaration Plan; Termination

15.1 AMENDMENT PROCEDURE EXCEPT IN CASES OF AMENDMENTS THAT MAY BE EXECUTED BY THE DECLARANT; Amendments to this Declaration and the Declaration Plan shall be proposed and adopted as follows:

- (a) Number of votes required Except as otherwise provided herein, the Declaration, including the plats and plans, may be amended only by vote of unit owners constituting a majority of the votes cast. Voting shall be in accordance with the by-laws of the association.
- (b) Limitation of action to challenge amendment No Action to challenge the validity of an amendment adopted by the Association pursuant to this Section may be brought more than one (1) year after the amendment is recorded.
- (c) Every amendment to the Declaration must be recorded in the County in which the Planned Townhouse Community is located, in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the Planned Townhouse Community in both the grantor and grantee index.
- (d) An amendment is effective only upon recordation.
- (e) Except as otherwise provided herein, no amendment may create or increase special Declarant rights, change the boundaries of any unit, the common element interest, common expense liability or voting strength in the Association allocated to a unit, or the uses to which any unit is restricted.
- (f) Officer authorized to execute amendment Amendments to the Declaration required by this Section to be recorded by the Association shall be prepared, executed, recorded and certified by any officer of the Association designated by the Association for that purpose or, in the absence of designation, by the president of the Association.
- (g) Corrective Amendments Except as otherwise provided in the Declaration, if any amendment to the Declaration is necessary in the judgment of the Executive Board to cure any ambiguity or to correct or supplement any provision of the Declaration, including the plats and plans, that is defective, missing or inconsistent with any other provision thereof or with this sub-part or if an amendment is necessary in the judgment of the Executive Board to conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust on units in planned community projects (such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation), then, at any time and from time to time, the Executive Board may, at its discretion, effect an appropriate corrective amendment without the approval of the unit owners or the holders of any liens on all or any part of the planned community, upon receipt by the Executive Board of an option from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this subsection.

15.2 TERMINATION OF PLANNED TOWNHOUSE COMMUNITY

- (a) Number of Votes Required Except in the case of taking of all the units by eminent domain, a planned townhouse community may be terminated only by agreement of unit owners of units to which at least eighty (80%) percent of the votes in the Association are allocated.
- (b) Execution and Recording Agreement and Ratification An Agreement of unit owners

to terminate a Planned Townhouse Community must be evidenced by their execution of a termination agreement or ratification thereof, in the same manner as a deed by the requisite number of unit owners who are owners of record as of the date preceding the date of recordation of the termination agreement. The termination agreement must specify the date it was first executed or ratified by a unit owner. The termination agreement will become null and void unless it is recorded on or before the earlier of:

- (1) The expiration of one year from the date it was first executed or ratified by a unit owner;
- (2) Such date as shall be specified in the termination agreement;

If, pursuant to a termination agreement, the real estate constituting the planned townhouse community is to be sold following termination, the termination agreement must set forth the terms of the sale. A termination agreement and all ratification thereof must be recorded in the county in which the Planned Townhouse Community is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the Planned Townhouse Community in both the grantor and grantee index. A termination agreement is effective only upon recordation.

(c) Status if Real Estate Sold The Association, on behalf of the unit owners, may contract for the sale of the Planned Community, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b). If the real estate constituting the Planned Townhouse Community is to be sold following termination, title to that real estate, upon termination, vests in the Association as trustee for the holders of all interests in the units. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (f). Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by this sub-part or the Declaration.

(d) Status if Real Estate not Sold If the real estate constituting the Planned Townhouse Community is not to be sold following termination, title to the common facilities and if applicable, in a planned community containing any units having horizontal boundaries described in the Declaration, upon termination to the real estate, vests in the unit owners as tenants in common in proportion to their respective interests as provided in subsection (f) and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit.

(e) Distribution of Assets of Association Following termination of the Planned Townhouse Community, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee or unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the Association holding liens on the units which were recorded, filed of public record or otherwise perfected before termination may enforce those liens in the same manner as any lienholder. All other creditors of the Association are to be treated as if they had perfected liens on the units immediately before termination.

(f) Respective Interests of Unit Owners The respective interests of unit owners referred to in subsections (c), (d), and (e) are as follows:

1. Except as provided in Paragraph 2, the respective interests of unit owners are the fair market value of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within thirty (30) days after distribution by unit owners of units to which twenty-five (25%) percent of the votes in the Association are allocated. The proportion of any unit owner's interest in that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.
2. If any unit or any common element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(g) Effect of Foreclosure or Enforcement of Lien Except as provided in Subsection (h), foreclosure or enforcement of a lien or encumbrance against the entire Planned Townhouse Community does not of itself terminate the Planned Townhouse Community, and foreclosure or enforcement of a lien or encumbrance against a portion of the Planned Townhouse Community, does not withdraw that portion from the Planned Townhouse Community.

(h) Exclusion from Planned Townhouse Community Upon Foreclosure If a lien or encumbrance against a portion of the real estate comprising the planned townhouse community has priority over the Declaration and if the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the planned townhouse community.

ARTICLE XVI

Liability

16.1 LIMITATIONS OF LIABILITY The Successor Declarant, its agents, servants, employees, successors and/or assignees shall not be liable to any unit owner, their heirs, executors or assigns, the Association, the Executive Board, any officer, any committee member, any mortgagee and/or other lien holder, and/or any other party whatsoever for any damage, loss or prejudice suffered or claimed whatsoever and for any reason whatsoever. Furthermore, any unit owner or unit owners, Association, and/or other occupant, and/or any other party, and/or the Executive Board, or any member thereof, or any officer who shall initiate or cause to initiate and/or bring, and/or file any claim, demand, lawsuit or other legal proceeding against the Successor Declarant for any reason whatsoever, shall pay to the Successor Declarant on demand, the costs incurred by the Successor Declarant, including attorney's fees and court costs incurred in the defense of any such claim, demand, lawsuit or other legal proceeding of any kind or nature whatsoever.

NOWHERE AND AT NO TIME DOES THE SUCCESSOR DECLARANT, ITS SUCCESSORS OR ASSIGNS DECLARE, CREATE OR GIVE ANY IMPLIED OR EXPRESSED WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS IT APPLIES TO THE UNITS AND COMMON AND LIMITED COMMON ELEMENTS IN THE WITHIN PLANNED COMMUNITY PROJECT.

ARTICLE XVII

Noticed Mortgages

17.1 MORTGAGES

- (a) Each unit owner shall, upon reasonable written request, provide the Executive Board of the name and address of the holders of all mortgages encumbering such unit owner's unit. The holder of any mortgage encumbering a unit may notify the Executive Board of such holder's identity and address with a reference to the unit which such holder's mortgage encumbers.
- (b) The Executive Board shall maintain a record of the names and addresses of the holders of mortgages as to which it receives notice pursuant to the provisions of this Section 17.1. Institutional lenders holding first mortgages of which the Executive Board receives notice pursuant to this Section 17.1 are referred to in this Declaration as noticed mortgagees.
- (c) Noticed mortgagees may, by written notice to the Executive Board, request written notice of any default by the mortgagor of such unit in the performance of such mortgagor's obligations under the governing documents, provided, however, that the Executive Board shall not be required to give notice of any default cured within sixty (60) days of commencement. Such request shall state the name and mailing address of the noticed mortgagee, the name of the mortgagor, the date of recording of the mortgage and the official records book and page number, file number or other reference identifying such recording, and the unit encumbered by said mortgage; and such request shall also contain a reference to this Article of the Declaration. Each notice of default given pursuant to such request may be sent by regular mail, postage prepaid, addressed to the noticed mortgagee at the address stated in such request.

17.2 SPECIFIC APPROVAL Unless at least two-thirds (2/3) of the noticed mortgagees (based

upon one (1) vote for each first mortgage on each unit) or unit owners (other than the Successor Declarant) have given their prior written approval, neither the unit owners, the Executive Board nor the Association shall be entitled to:

- (a) by act or omission, seek to remove the property from the provisions of the Act;
- (b) change the pro rata interest or obligations of any unit for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each unit in the common elements;
- (c) partition or subdivide any unit;
- (d) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements shall not be deemed a transfer within the meaning of this clause);
- (e) use hazard insurance proceeds for losses to any portion of the property (whether to units or to common elements) for any other than the repair, replacement or reconstruction of such property, except as provided by statute in case of substantial loss to the units and/or common elements.

ARTICLE XVIII General Provisions

18.1 SEVERABILITY Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provisions hereof, and all such other provisions shall remain in full force and effect.

18.2 DELIVERY OF NOTICES AND DOCUMENTS

- (a) Unless otherwise permitted by the By-Laws;

(b) Any written notice or other documents relating to or required or permitted by this Declaration or any other governing document may be delivered to unit owner either personally or by mail in the manner provided for by the By-Laws. Each unit owner shall file his correct mailing address with the Executive Board and shall promptly notify the Executive Board in writing of any subsequent change of address.

18.3 CAPTIONS Captions used in this Declaration are inserted solely as a matter of convenience and shall not define or limit any of the terms or provisions hereof.

18.4 PROVISIONS BINDING UPON SUCCESSORS AND ASSIGNS; COVENANTS RUNNING WITH LAND. The present title to the property hereby subjected to the provisions of the Act by the Successor Declarant, and the title to each unit which shall be hereafter conveyed or acquired in any manner, is hereby expressly declared and made subject to the terms and provisions of the Declaration, and the governing documents. All present and future unit owners, and all present and future lessees, occupants and mortgagees of units shall be subject to, and shall comply with all of the provisions of the ACT, this Declaration, the By-Laws and the other governing documents, as they may be amended from time to time. The acceptance of a deed or conveyance or mortgage or the entering into of a lease or the entering into occupancy of any unit shall constitute an agreement that provisions of the ACT, this Declaration, the By-Laws, and the other governing documents are accepted and ratified by such unit owner, lessee, mortgagee, or occupant, and all of such provisions shall be covenants, running with the land, property, and buildings and shall bind any person having at any time any interest or estate in any unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage, or lease thereof.

18.5 APPLICATION OF RULE AGAINST PERPETUITIES The rule against perpetuities may not be applied to defeat any provision of this Declaration or any instrument executed pursuant to this Declaration.

18.6 GENDER, SINGULAR, PLURAL Whenever the context so permits, the use of the plural shall include the singular, the singular shall include the plural, and any gender shall be deemed to include all genders.

18.7 EFFECTIVE DATE This Declaration shall become effective on the date when it, the Declaration Plan, and the By-Laws are recorded.

IN WITNESS WHEREOF, the SUCCESSOR DECLARANT, ASSOCIATION, EXECUTIVE BOARD being so duly authorized by THE UNIT OWNERS and intending to be legally bound hereby, has executed this Declaration the day and year first above written.

ATTEST:

**TIMBERGLEN COMMUNITY SERVICES
ASSOCIATION, a Pennsylvania
Non-Profit Corporation**

Jerry Koll
Secretary

By Brian L. Dunkin
President

(CORPORATE SEAL)

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF ALLEGHENY) SS:

On this, the _____ day of _____, 20____, before me a Notary Public, in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____, President of Timberglen Community Services Association, a Pennsylvania corporation and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President of Timberglen Community Services.

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

Notary Public

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF ALLEGHENY) SS:

Recorded in the office for the recording of deeds, etc., in and for the said County on the
20____, in Deed Book Volume _____, Page _____.
WITNESS my hand and seal of said office, the day and year aforesaid.

Recorder

TIMBERGLEN, PHASE 1
A PLANNED TOWNEHOUSE COMMUNITY

ALL THAT CERTAIN TRACK OR PARCEL OF LAND SITUATE IN NORTH FAYETTE TOWNSHIP, COUNTY OF ALLEGHENY, COMMONWEALTH OF PENNSYLVANIA, BEING ALL OF PHASE ONE OF THE ORIGINAL PLAN AS RECORDED IN THE RECORDER'S OFFICE OF ALLEGHENY COUNTY, PENNSYLVANIA IN PLAN BOOK VOLUME 127, PAGES 152 AND 153 AND AS MORE PARTICULARLY DESCRIBED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AS RECORDED IN THE RECORDER'S OFFICE OF ALLEGHENY COUNTY, PENNSYLVANIA AT DEED BOOK VOLUME 7936, PAGE 479.

Exhibit "A" to Declaration
Of Planned Community

C-57-3

TIMBERGLEN, PHASE 1
A PLANNED TOWNHOUSE COMMUNITY

SCHEDULE OF UNITS

THE UNDIVIDED PERCENTAGE OF COMMON INTEREST OF EACH UNIT SHALL BE EQUAL AND THAT EACH UNIT SHALL LIKEWISE HAVE ONE (1) VOTE FOR ANY AND ALL PURPOSES SET FORTH IN THE WITHIN DECLARATION OF PLANNED COMMUNITY, THE BY-LAWS OR ANY OTHER GOVERNING DOCUMENTS.