

## PHASE 4

### PROTECTIVE COVENANTS FOR TOWAMENSING TRAILS PENN FOREST TOWNSHIP • CARBON COUNTY, PENNSYLVANIA

THIS DECLARATION is made this 17th day of October, 1974 by BROADSCOPE, INC., hereinafter called "Developer".

WHEREAS, developer is the owner of real property described in Article II of this Declaration and desires to create thereon a residential community with permanent parks, playgrounds, open spaces and other common facilities for the benefit of said community; and

**WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said parks, playgrounds, open spaces and other common facilities; and, to this end, desires to subject the real property described in Article II together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, restrictions, easements, charges and Liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and**

**WHEREAS, Developer has deemed is desirable for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and dispersing the assessments and charges hereinafter created; and**

WHEREAS, Developer has incorporated under the laws of the State of Pennsylvania, as a non-profit corporation, the Towamensing Trails Property Owners Association, Inc. for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, the Developer, declares that the real property

**described in Article II and such additions as may** hereafter be made pursuant to Article II hereof is and shall be held, transferred, sold, conveyed and occupied subject to the

covenants, restrictions, easements, charges and liens, hereinafter set forth.

#### ARTICLE I

**Section I. The following words when used in this Declaration or any Supplemental Declaration shall have the following meanings:**

(a) "Association" shall mean and refer to the Towamensing Trails Property Owners Association, Inc., its successors and assigns.

**(b) "The Properties" shall mean and refer to all existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II, hereof.**

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**(c) "Common Properties" shall mean and refer to those areas of land shown on any subdivision plat of The Properties and intended to be devoted to the common use and enjoyment of owners of The Properties.**

**(d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties with the exception of Common Properties as heretofore defined.**

**(e) "Living Unit" shall mean and refer to any portion of a building situated upon The Properties designated and intended for use and occupancy as a residence by a single family, whether a single family house or a unit in a multi -family structure.**

(f) "Multi' Family Structure" shall mean and refer to any building containing two or more Living Units under one roof except when each such Living Unit is situated upon its own individual Lot.

(g) "Limited Common Properties" shall mean and refer to those

Areas of land so designated upon any recorded subdivision plat

Of The Properties intended to be devoted to the common use and enjoyment of the owners of specifically designated properties, and also those areas so designated from time to time by the Developer for the purposes aforesaid.

**(h) "Private Ways, Private Roads and Private Lanes" shall mean and refer to every way of access for vehicles which are not dedicated to the general public but are designated as either Common Properties or Limited Common Properties. The fact that a Private Way, a Private Road or a**

Private Lane shall be known by the name of a street, road, avenue, place, or any other name shall in no wise cause the particular way, road, or lane to be public in nature despite the fact that the streets under general definitions are not private in nature.

**(j) "Private Pathways" shall mean and refer to those ways of access not available to regular traffic and which are not dedicated to the general public but are designated as either Common Properties or Limited Common Properties, and shall include .equestrian ways.**

**(j) "Public Streets, Public Roads, Public Ways and Public Lanes" shall be ways of access for vehicles which are dedicated to the general public**

**(k) "Utility Easements" shall mean and refer to those areas of land designated on any recorded subdivision plat of The Properties as "Utility Easements", or as may be provided in or by this Declaration, or any Supplemental Declaration.**

**(l) "Reserved Properties" shall mean and refer to those areas of land designated on any recorded subdivision plat of The Properties as "Reserved Properties".**

**(m) "Commercial Lot" shall mean and refer to any Lot so designated on any recorded subdivision plat of The Properties, or as may be so designated by this Declaration or any Supplemental Declaration.**

**(n) "Single Family Detached" shall mean and refer to any building intended for use by a single family and not attached to any other building.**

**(o) "Single Family Attached" shall mean and refer to any building containing two or more Living Units attached, but each Living Unit located on a separate parcel of land.**

(p) "A Parcel of Land" may be less than a Lot, a single Lot or more than a Lot, or several Lots, or a plot of land described by metes and bounds description.

**(q) "Owner" shall mean and refer to the Developer, and any other record owner and the contract purchaser from the Developer, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit situated upon The Properties, but shall not mean and refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding An lieu of foreclosure.**

**(r) "Member" shall mean and refer to all those Owners who are members of Towamensing Trails Property. Owners Association, Inc.**

(s) "Associate Member" shall mean all those persons or entities who are associated members of the Association as provided in Article III, Section 3, hereof. -

**(t) "Household" shall mean those who dwell under the same roof and constitute a family.**

**(u) "Architectural Review-Committee" shall mean a committee of persons which shall be appointed, by the developer or its assigns -for the purpose of approval or disapproval of improvements as more specifically set forth herein.**

ARTICLE II  
Properties Subject to This Declaration  
Additions Thereto

Section I. Existing Property. The real property which is, And shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located and situated in the Township of Penn. Forest County of Carbon and Commonwealth of Pennsylvania, as more specifically set forth by the legal description contained in Exhibit A attached hereto and made a part hereof and the plan of Section 4 recorded in the Recorder of Deeds Office in- and for Carbon County Pennsylvania.

**Section 2. Additions to Existing Property. Additional lands of the Developer situated in Carbon County, Pennsylvania, may become subject to this Declaration in the following manner:**

**(a) Additions in accordance with the General Plan of Development. The Developer, its successors and assigns, shall have in future stages of the development the right but not the obligation to bring within the plan of this Declaration additional properties, regardless of whether or not said properties are presently owned by the Developer, provided that such additions are compatible with the General Plan of**

Development which has been prepared -and heretofore made public prior to the date of this Declaration and prior to the sale of any Lot. UNDER NO CIRCUMSTANCES shall this Declaration or any Supplemental Declaration or such General Plan bind the

Developer, its successors and assigns, to make the proposed additions or to adhere to the Plan in any subsequent development of land shown upon such General Plan, or in anywise preclude the Developer, its successors and assigns, from conveying the lands included in the General Plan but not having been made subject to this Declaration or any Supplemental Declaration as herein provided, free and clear of such Plan, as well as free and clear of this Declaration or any Supplemental Declaration.

**(b) The Additions authorized hereunder shall be made by filing of record a Supplemental Declaration of Covenants and Restrictions with respect to the additional property which shall extend the plan of the covenants and restrictions of this**

Declaration to such property, and the Owners, including the Developer, of Lots and Living Units in such additions shall immediately be entitled to all privileges herein provided.-

**(c) Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if-any, of the added properties as are not consistent with the plan of this Declaration. In no event shall the Supplementary Declaration revoke, modify and add to the covenants established by this Declaration as to lots sold at the time of the-filing of the Supplementary Declaration.**

**(d) The Developer and Owners-of lots and Living Units and Commercial Lots located in the area designated Section 1, 2 & 3 of the General Plan of Development although subject to different but similar Protective Covenants already of record than those set forth herein shall immediately be entitled to all of the privileges and obligations connected therewith herein provided in the same manner and to the extent legally possible as though Supplementary Declaration had been filed-.under these Covenants and Restrictions as provided herein. -**

**Sect-ion 3, Additions Limited to the Developer. No one other**

**than the Developer, its successors and assigns, shall have the right to subject additional lands to the covenants and restrictions contained in this Declaration, unless the Developer, its successors and assigns, shall indicate in writing to the Association that such: additional lands may be included hereunder. - -**

**Section 4. Mergers. Upon a merger or consolidation of the Association with another association as provided by law, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the**

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properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within The Properties together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within The Properties except as hereinafter provided.

### ARTICLE III

#### Membership and Voting Rights in the Association

Section 1. Membership. The Developer, its successors and assigns shall be a member of the Association so long as it shall be the record owner of a fee, or an undivided fee, interest in any Lot or Living Unit which is subject by covenants of record to being assessed by the association, even though such assessment has not yet commenced, and the Developer shall also be a member until it is paid in full for every such Lot or Living Unit which it shall sell. Also, every person or entity who is a record owner of fee, or undivided fee or interest in any Lot or Living Unit which is subject by covenants of record to being assessed by the Association and who shall have paid the Developer in full for the purchase price of the Lot or Living Unit, shall be a member of the Association, provided that any such person or entity (except the Developer) who holds such interest merely as security for the performance of an obligation shall not be a member. -

Section 2. Voting Rights. The Association shall have two classes of voting membership.

**Class A. Class A members shall be all those persons or entities as defined in Section 1 with the exception of Developer, who have paid the Developer in full for the purchase price of the Lot or Living Unit. Class A members shall be entitled to one vote for each Lot or Living Unit in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot or Living Unit, the vote for such Lot or Living Unit shall be exercised as they among themselves determine; but in no event shall more than one vote be cast with respect to any such Lot or Living Unit.**

**Class B. Class B member shall be the Developer. The Class B member shall be entitled to nine Votes for each Lot or Living Unit, which is subject by covenants of record to being assessed by the Association, until such time as it shall cease to be a record owner, and shall have been paid in full**

**for such Lot or Living Unit. The Developer shall continue to have the right to cast votes as aforesaid (nine votes for each Lot or Living Unit) even though it may have contracted to sell the Lot or Living Unit or may have same under a mortgage or deed of trust.**

**For purposes of determining the votes allowed under this Section, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted.**

**Provided, however, that Class B membership shall cease and be converted to Class A membership when the total votes outstanding in Class A membership equal the total votes outstanding in the Class B membership.**

Section 3. Associate Members. Every person or entity who has entered into a Contract of purchase with the Developer covering a Lot or Living Unit which is subject by covenants of record to being assessed by the Association and who has not paid the Developer in full for the purchase price of the Lot or Living Unit shall be an associate member of the Association. An associate member shall be entitled to all of the privileges of a member except the right to vote in the election of directors, or otherwise. Rescission of a contract of purchase by the Developer for any reason shall terminate the associate membership:

**Section 4. Members and associate members are limited as to the easement of enjoyment of the common properties, with the exception of private ways of access for vehicles, in Article IV of this Declaration, and the attention of each member and associate member if specifically called to the limitation appearing in Article IV, Section 3(f) Article IV**

#### Property Rights of the Common Properties

Section 1. Members and Associate Members Easement of Enjoyment. Subject to the provisions of ARTICLE III hereof and Section 3 of this ARTICLE IV, every member and associate member, so long as the associate membership shall continue, shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit.

**Section 2. Title to the Common Properties. The Developer shall convey the Common Properties to the Association not later than the date its class B membership ceases as provided in Article III Section 2, or at an earlier time. All expenses of said conveyance to be borne by the Association.**

**Section 3. Extent of Members' and Associate Members' Easements. The rights and easements of enjoyment created hereby**

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with the exception of the rights and easements created in Section 6 of this ARTICLE IV shall be subject to the following;

**(a) the right of the Developer and/or Association to borrow money for the purpose of constructing, improving and maintaining the Common Properties or for and other purpose and in aid thereof to mortgage said properties or execute a deed of trust or other trust instrument covering said properties; and**

**(b) the right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosure; and**

**(c) the right of the Association to suspend the enjoyment rights of any Member or Associate Member for any period during which any assessment, service or use charge, remains Unpaid, and for any period not to exceed thirty '(30) days for any infraction of its published rules and regulations; and**

**(d) the right of the Association to charge reasonable service or use charges, admission and other fees for the use, service and enjoyment of the Common Properties; and**

**(e) the right of the Association to make the lakes available by lease or Otherwise subject to subparagraph (g) hereof, to another Association, which shall be a non-profit corporation, with the right of the other Association to charge dues to members and associate members and permit persons who, are not members or associate. members to become members of the other Association for a membership payment and also for payment of dues, and with the understanding the other Association shall have. the right to make rules and regulations which shall be enforceable as to members and associate members; and**

**(f) 'except as to the Developer, only one household shall be entitled to the benefit of the easement Of enjoyment as to the Common Properties by reason of ownership or contract of purchase of a Lot of Living Unit.; the Association may enlarge the limitation aforesaid by a majority Of its Board of Directors; and specifically, this limitation shall not apply to private ways of access for vehicles; and**

**(g) the right of the Developer, its assigns and invitees, until all lots and Living Units located within The Properties shall have been sold and paid for to make use of the Common Properties, at no charge to the Developer, to encourage sales; and**

(h) the right Of the individual members and associate members to the exclusive use of parking spaces as provided in Section 5 hereof; and

**(i) the right of the Association to dedicate or transfer all or any part of the Common Properties to any public or**

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private agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or-transfer, determination as to the purposes or as to the Conditions thereof shall be effective unless action shall be approved by a vote of 51% of the votes of each class or membership, and unless written notice of the proposed agreement and action thereunder is sent to every member at least thirty (30) days in advance of any action taken.

Section 4. Delegation, Any member or associate member may delegate his right of enjoyment to the Common Properties and facilities, however, that right shall be subject to Section 3 (f) of this ARTICLE IV and to published rules and regulations Of the Association.

Section 5. Parking Rights. Subject to reasonable rules and conditions, the Association shall maintain and designate at least one parking space conveniently located with respect to each Living Unit within a Multi-Family Structure for which the Developer may request same and such parking space shall be for the exclusive of members or associate members residing therein, their families and guests. The use of such space by any other member, associate member, or\_ person may be joined by the association or-the members or associate members entitled

thereto. The right of the exclusive use of such parking space

and to its maintenance and designation-by the Association shall be appurtenant to and shall pass with title .to each Living Unit within the Multi-Family Structure.

Section 6. Private Ways of Access for Vehicles. Each Owner shall have the right of ingress and egress and passage over all private ways of access for vehicles for himself, members of his household, and his guests and invitees, subject to such

limitations (except such limitations shall not apply to

Developer) as the Association may impose. from time to time as to guests and. invitees. Such right in, the private ways of access for vehicles which area part of the Common Properties shall be appurtenant to and shall pass with the title and equity to every Lot and Living Unit. All private ways of access for vehicles shall also be subject to a right-of-way for the agents, employees and officers of Carbon County, State of Pennsylvania and any other governmental or quasi-governmental agency having jurisdiction in Towamensing Trails to permit the performance of their duties,- including but not limited to, school buses, mail vehicles, emergency vehicles and law enforcement vehicles.

## ARTICLE V

### PROPERTY RIGHTS OF LIMITED COMMON PROPERTIES OWNERS EASEMENT OF ENJOYMENT

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**SECTION 1. A parcel of land designated by a letter shall be devoted to the common use and enjoyment of Lots and Living Units specifically designated by the addition of the same letter suffix to their Lot or Living Unit number as shown on the Subdivision Plan to the exclusion of the common use and enjoyment of other owners of lots and Living Units upon The Properties. The owners of the specifically designated Lots and Living Units, subject to ARTICLE X hereof-, shall have a right and easement enjoyment in and to the particular limited Common. Properties and such easement shall be appurtenant to and shall pass with every such specifically designated Lot or Living Unit.**

Section 2. TITLE TO LIMITED COMMON PROPERTIES. The Developer shall convey the limited common properties to the Association not later than the date its Class B membership ceases as provided in ARTICLE Section 2 or at an earlier time. All expenses of said conveyance to be borne by the Association.

**SECTION 3. MAINTENANCE OF LIMITED COMMON PROPERTIES. The specifically designated Lots or Living Units entitled to the common use and enjoyment of the Limited Common Properties shall be assessed equally on a per lot basis for the: actual cost or maintenance in accordance with ARTICLE VI, Sections 1, 2, 7, 8, 9, 10 and 11 in the same manner as though it was an annual assessment provided for in ARTICLE VI. This assessment, if any, is to be in addition to the annual assessment on the owner's individually owned Lots or Living Units.**

ARTICLE VI  
Covenant for Maintenance Assessments

**Section 1. Creation of Lien and Personal Obligation. The Developer for each Lot and Living Unit owned by it within The Properties hereby covenants and each Owner of any Lot or Living Unit by acceptance of a deed therefore, or by entering into a contract Of purchase with the Developer, whether or not it shall be expressed in any such deed, contract of purchase, or other conveyance,**

shall be deemed to covenant and agree to pay the Association: (a) annual assessments or charges; (b) special assessments for capital improvements. Such annual and special assessments-to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and cost of collection thereof, including reasonable attorney's fees, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney's fees also shall be the personal obligation of the person who was the owner of such

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**property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.**

Section 2. Purpose of Annual Assessments. The annual

**assessments levied hereunder by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners in The Properties and in particular for the construction, improvement and maintenance of properties, service and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and the improvements situated upon The Properties, including, but not limited to, Construction of the water system and sewer system, the payment of taxes and insurance on the Common Properties and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof. The limitation aforesaid shall not preclude the use of assessments levied hereunder for maintenance of ways of access for vehicles and roads and streets within The Properties, even though same may have been dedicated to the public.**

Section 3. Basis and Maximum of Annual Assessments Until

**the year beginning January, 1973, the annual assessment shall be \$60.00 per Lot or Living Unit. From and after January 1, 1973, the annual assessment may be increased by vote of the members, as hereinafter provided, for the next succeeding three years and at the end of each such period of three years for each succeeding period of three years. Unless the annual assessment shall be increased as aforesaid, it shall remain at \$60.00 per Lot or Living Unit.**

The Board of Directors of the association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount. Likewise, the Board of Directors of the Association may, after consideration of the lack of improvements as to lots in a certain area, fix the actual assessment for any year as to these particular lots at a lesser amount.

Section 4. Special Assessments for Capital improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the water system, the sewer system, and the ways of access for vehicles and roads and streets within The Properties, even though the roads and streets may have been dedicated to the public, and also other capital improvements upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment

shall have the assent of 51% of the votes of each class of members who are voting in person or by proxy  
at a meeting duly

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**called for this purpose, written notice of which shall be sent to all members at least 30 days in advance and shall set forth the purpose of the meeting. The Board of Directors of the Association may, after consideration of the lack of improvements as to lots in a certain area, fix the actual assessment for any year as to these particular lots at a lesser amount.**

Section 5. Change in Basis of Maximum of Annual Assessments.

**Subject to the limitations of Section 3 hereof, and for the purpose therein specified, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively for any such period provided that any such change shall have the assent of 51% of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least 30 days in advance and shall set forth the purpose of the meeting.**

**Section 6. Quorum for Any Action Authorized Under Sections 4 and 5. The Quorum of Any action authorized by Sections 4 and 5 hereof shall be as follows**

**At the first meeting called as provided in Sections 4 and 5 hereof, the presence at the meeting of members or of proxies, entitled to cast 50% of all votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting another meeting may be called, subject to the notice requirement set forth in Sections 4 and 5, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than 90 days following the preceding meeting.**

Section 7. Date of Commencement of Annual Assessments, Due

**Date. The annual assessments provided for herein shall commence on the date fixed by the Board of Directors of the Association to be the date of commencement ; however, in no event shall the assessment commence as to any particular Lot of Living Unit until a contract of sale covering such Lot or Living Unit has been entered into by the Developer.**

**Initially, and until changed by the Board of Directors, an annual assessment of \$60.00 per Lot or 'Living Unit shall be paid to the Association On the first day of March, commencing in the year following the date of the initial contract of sale, entered into for any Lot or Living Unit. The assessment for any year, after the first year, shall become due and payable on the first day of March, or any other day as fixed by the Board of Directors of the Association.**

**In the event the Board of, Directors provides for monthly payments of the assessments, and there is a default in said payments which is not remedied within 30 days, the Association shall have the option of declaring the assessment for the entire year due and payable.**

**In the event the Association or its Board of Directors would not be capable for any reason to make the annual or special assessment, collect said assessment and expend the funds for the purposes set forth in Article VI hereof, then all the rights, Powers and duties of the Association and the Board of Directors as set forth herein are given to the Developer to enable it to execute and carry out the provisions and intent of this Article VI.**

**The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment, and it may also be payable monthly with the same option on the part of the Association in the event of default.**

**Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Living Unit for each assessment period at least 30 days in advance of such date or-period and at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to**

inspection by any Owner.

Written notice of the assessment may thereupon be sent to every Owner subject thereto.

**The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessments have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.**

Section 9. Delegation of Collection of Assessment. The

Association may delegate the collection of the assessments

herein provided to the Developer, its successors and assigns. Due to the common interest of the Developer and the Association, the Association in the delegation of the collection of the assessments may agree that the failure on the part of the Owner to pay an assessment as herein provided shall be reason or ground for which the Developer may rescind a contract of sale as to a Lot or Living Unit.

Section 10. Effects- of Non-Payment of Assessment; The Lien; The. Personal Obligation; Remedies of Association. If the assessments are not paid on the date when due (being the date specified in Section 7 hereof) , then such assessment shall become delinquent as provided in Section 7 hereof and shall, upon the election of the Association to declare the entire assessment due and payable, together with such

interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the Owner to pay such assessment shall remain his

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personal obligation and shall not pass to his successors in title unless expressly assumed by them.

**If the assessment is not paid as provided in Section 7 and the Association shall declare the entire assessment due and payable, the assessment shall bear interest from the date of delinquency at the rate of 6% per annum, and the Association may foreclose the lien against said property, or may bring an action at law against the individual(s) or entity personally obligated to pay the same. Both actions shall be cumulative and neither shall preclude the other. There shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and attorney's fee of 25% but not less than \$25.00 together with the costs of the action.**

**Section 11. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust now or hereinafter placed upon the properties subject to assessment..**

The ordinary sale or transfer of the Properties subject to assessment shall not affect the assessment lien. However, the sale or transfer of any of The Properties which is subject to any first mortgage of deed of trust pursuant to a decree of foreclosure under such mortgage or deed of trust or any proceeding in lieu of foreclosure thereof shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. Such sale or transfer shall not relieve such property from liability for and assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

**Section 12... Exempt Property. The following property subject to this declaration shall be exempted from the assessments, Charge and lien created herein;**

**(a) All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;**

**(b) All Common Properties as defined in Article t hereof;**

**(c) All properties exempted from taxation by the laws of the Commonwealth of Pennsylvania, upon the terms and to the extent of such legal exemption;**

**(d) All Limited Common Properties;**

**(e) All Utility Easements and all other. easements;**

**(f) All Reserved Properties;(g**

(g) All Utilities.

ARTICLE VII Party Walls

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Section 1. General Rules of Law To Apply. Each wall, floor and ceiling which is built as part of the original construction of the homes upon the properties and placed on the dividing line between the lots, shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and the liability for property damage due to negligent or willful acts or omissions shall, apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is damaged by fire or other casualty, any Owner who has used the wall may restore it; and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof, in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contributions from the others under any rule of law regarding liability for the negligent or willful acts or omissions.

Section. 4 Weatherproofing. Notwithstanding any other provision in this Article, an Owner who by, his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with the Land. The right of any owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owners' successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of the majority of all the arbitrators shall be final and conclusive of the question involved.

## ARTICLE VIII Architectural Control Committee

Section 1. Review by Committee. No building, excavation, exterior remodeling or altering of any structure, wall or fence shall be commenced without obtaining written approval of the Developer or by an Architectural Committee composed of three (3) or more representatives appointed by the Board of Directors of the Association as to the location, elevation, set back from property lines, construction materials, quality of workmanship and harmony of external design with existing structures.

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**Section 2. Submission of Plans.** Plans drawn to scale showing interior and exterior elevations, exterior materials, color selections and landscaping plans must be presented to the Committee in triplicate for their approval.

These plans shall also include a lot plat showing the location of the structure on the lot and must include measures for controlling soil erosion and sedimentation. The Committee shall approve or disapprove the same plan within 45 days after the same has been submitted. The Committee shall have the right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with all of the provisions of these Covenants or the rules and regulations promulgated by the Developer or said Association.

**Section 3. Construction Time.** Once the construction of a building or any other structure commences upon any lot, the said structure shall be finally completed and ready for its intended use; and all exterior grading and planning completed within one year from the date of commencement of said construction

#### ARTICLE IX.

##### Exterior Maintenance

**Section 1. Exterior Maintenance.** In the event the Owner of any Lot or Living Unit shall fail promptly provide for exterior maintenance as to buildings or grounds, the Developer or the Association may, but shall not be obligated to do so, provide exterior maintenance as follows but not limited to: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements, removal of accumulated rubbish, debris, abandoned derelict or incomplete structures and materials and abandoned vehicles.

**Section 2—Assessment of Costs.** The cost of such exterior maintenance shall be assessed against the Lot or Living Unit upon which such Maintenance is done and shall be added to and become a part of the annual assessment or charge to which such Lot or Living Unit is subject under Article VI hereof and, as part of such annual assessment or charge, it shall be a lien subject, however, to a lien by reason of a first mortgage or first deed of trust, and shall become due and payable in all respects as provided in Article VI hereof. Upon Collection by the Association, the

**costs shall be paid to the Developer, if the Developer has performed the work.**

**Section 3. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance authorized by this Article VIII, the Developer or the Association, through its respective duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any**

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Lot or exterior of any Living Unit at reasonable hours on any day.

## ARTICLE X

### Utility Easements

Section 1. Reservations of Utility Easements. Developer, for

**itself, and its successors and assigns, hereby reserves and is given a perpetual, alienable and releasable easement, privilege and right on, over and under ground as hereinafter designated of The Properties, Common Properties, Limited Common Properties, private ways, private roads, private lanes, and public roads and streets shown on any said subdivision plat of The Properties (whether such easements are shown of said subdivision plat or not) And a 10-foot strip along the interior off all lot lines of each lot of The Properties, and said 10-foot strip aforesaid to be parallel to the interior lot lines of the respective lots, for the installation, maintenance, repair, replacement, transmission and removal of utilities including but not limited to electricity, antenna television transmissions and distribution systems, telephone poles, cables, conduits, water mains and lines, drainage lines and ditches or drainage**

**structure, sewers and other suitable equipment for sewage**

**collection and disposal, security systems, lighting, heating-and gas. The Developer shall have the unrestricted and sole right and power of alienating and releasing easements, and rights referred to in this Section, with the understanding, however, that the Developer will make sure utility easements available to the Association and such other suppliers of**

utilities as the Developer and Association shall agree upon in order that utilities may be installed. Such easements shall be made available to the Association without cost to it. The Association' and the Owners of lots, other than the

**Developer, subject to the privileges, rights and easements referred to in this Section 1 shall acquire no right, title or interest in or to any poles, wires, cables, conduits, pipes, mains, lines or other equipment or facilities placed on, in, over or under the property which is subject to said privileges, rights And easements except that the Association may own all pipes, mains, lines and other equipment or facilities which pertain to the sewer system if installed by it or granted to it. All such easements,**

**including those designated on any plat of The Properties, not made available to the Association and shall remain private easements and the sole and exclusive property of the Developer and its successors and assigns.**

ARTICLE XI

Plan for Construction and Maintenance of Common Properties

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Section 1. Ways of Access for Vehicles. The ways of access for vehicles shall be constructed by the Developer and those ways of access for vehicles which are not dedicated to the general public will be apart of the Common Properties. The Developer shall be obligated to construct all ways of access for vehicles in any subdivision of The Properties within a period of twenty-four (24) months after a lot is sold or contracted to be sold. The cost of maintenance, capital improvements, operation,

taxes and other expenses incident to the ways of access for vehicles, regardless of whether dedicated to the public or as Common Properties, shall be paid for assessments against each Lot or Living Unit as herein provided.

Section 2. Lakes. Permanent Parks and Permanent Recreational Plots. The Developer shall construct the Lakes, Permanent Parks

and Permanent Recreational Plots and other recreational facilities with the understanding, however, that the Developer shall be the sole judge as to the time when such Lakes, Permanent Parks and Permanent Recreational Plots and:

recreational facilities shall be constructed and if the Developer shall decide that it is not economically feasible to construct any or a portion of such due to the failure to sell sufficient Lots or Living Units it shall not be obligated to, construct same. When such Lakes, Permanent Parks and Permanent Recreational Plots and recreational facilities are dedicated or conveyed to the Association by the Developer or used by the Association members the cost of maintenance, capital improvements, operation, taxes and other expenses incident to these Common Properties shall be the obligation of the Association and shall be paid from assessments, against each Lot and Living Unit, as herein provided, and also from fees for the use of the Common Properties.

## ARTICLE XII Protective Covenants

Attached hereto as "Exhibit 1" and made a part thereof as fully as though contained herein word for word are the protective covenants relative to The Properties as well as any other lands which may be added as provided in ARTICLE II hereof. Every provision of this Declaration shall apply as fully as to the protective covenants as if same here set forth herein word for word.

## ARTICLE XIII

### General. Provisions

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to

the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of 30 years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for periods of 10 years unless an instrument signed by the then-Owners of two-thirds of the Lots or Living Units has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded three years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least 90 days in advance of any action taken.

**Section 2. Notices. Any notice given or required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member, Associate Member or Owner on the records of the Association at the time of such mailing.**

**Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding-at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.**

**Section 4. Assignment Transfer or Conveyance by Developer. The Developer reserves and shall have the right to-assign, transfer or convey any reservations, rights or obligations of the Developer hereunder, and upon such assignment, transfer or conveyance the Developer shall immediately be released and discharged as to any and all liability incident to such reservations, right or obligation.**

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in nowise affect any other provisions which shall remain in full force and effect.

#### PROTECTIVE COVENANTS

**1. Application. These Protective Covenants shall apply to all of the Existing Properties. Same shall also apply to additions to Existing Properties unless the Developer shall specifically except from these Protective Covenants such additions or a portion thereof in the Supplemental Declaration by which the Developer subjects such additions to this Declaration.**

**2. Architectural Control Committee. When the Architectural Control Committee hereinafter referred to as A.C.C., is alluded**

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**to in these Protective Covenants, it shall mean either the Board of Directors of the Developer or the Architectural Control Committee appointed by the Board of Directors pursuant to ARTICLE VIII of the Declaration. The provisions of ARTICLE VIII of the Declaration shall prevail in all respects as to these Protective Covenants, in the event of conflict between these Protective Covenants and ARTICLE VIII of the Declaration.**

3. Amendment, Rescission or Additions. The Board of Directors of the Developer, its successors and assigns, may amend, rescind or add to the Protective Covenants from time to time, but unless the Lots are specifically exempted from the Protective Covenants by the Declaration or a Supplemental Declaration at the time the Lots are subjected to the plan of the Declaration, such Amendment, Rescission or Addition shall not make the Protective Covenants as to those Lots zoned as Residential less restrictive for the construction of residential buildings than as provided in the Federal Housing Administration's then current edition of "Minimum Property Standards for One and Two-Living Units."

4. Zoning. The notes upon the recorded subdivision plats shall control as to the Lots reflected thereon. Structures upon Lots designated as commercial upon a recorded subdivision plat shall be entirely controlled as to kind, shape, height, materials, et cetera by the A.C.C.. As to Lots designated as Residential Lots upon A recorded subdivision plat, the notes upon the recorded subdivision plat shall control regarding structure types (Single Family Detached, Single family Attached and Multi-family Structure) which shall be permitted. The notes upon the recorded subdivision plat shall also control as to minimum square footage of each Single-Family Detached structure, Single Family Attached, structure as well as each Living Unit in a Multi-family structure. Provisions of ARTICLE VIII shall control as to kind, shape, height, materials, et cetera in regard to all structures erected upon or moved: upon Residential Lots.

**5. Resubdivision. No lot so designated shall be resubdivided except upon written approval of the A.C.C..**

6. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, or other

**outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.**

7. Setbacks. No building or attachment thereto shall be located on any lot nearer than-forty (40) feet to the front lot line or nearer than ten (10) feet to any side street line or nearer than ten (10) feet to an interior lot line except where such requirement creates an undue hardship on the Owner, such setback may be modified as necessary to prevent the hardship by the A.C.C..

8. Side Yards. Where Lots are zoned as Residential and following shall apply:

**(a) A Single Family Detached structure or any building incident thereto shall not be closer to a side lot line than 10 feet, except where such restriction creates an undue hardship upon the Owner. The A.C.C. may modify this restriction so as to alleviate the hardship.**

**(b) A Single Family Attached structure shall not be required to have a side yard, and a common or party wall may be constructed upon the dividing lines between Lots so that the wall may be partially upon one Lot and partially upon the other, or said common wall may be entirely upon one of the two lots involved.**

**(c) There shall be no requirement as to a side yard where Multi-family structures are involved, and subject to approval by the A.C.C., Multi-family structures may be constructed up to or upon the dividing line between Lots.**

The A.C.C. shall decide all questions relative to the location of Commercial structures upon Lots where such structures are permitted subject to paragraph numbered 4 and 7 hereof.

**9. Land Near Lakes, Water Courses Permanent Parks Permanent Recreational Plots. No building shall be placed nor shall any material or refuse be placed or stored upon any Lot or other Parcel of Land within 20 feet of the shore line of any Lake or within 20 feet of the edge of any open Water Course,**

**Park, Permanent Recreational Plot, or recreational facility. No residences may be built with the first floor elevation lower than 1648 feet elevation line as shown on the recorded plan.**

**10. Time for Completion of Buildings. Commercial structures, Single Family Attached structures, and Multi-family structures shall be completed according to plans and specifications both as to exterior and interior within such time as shall be fixed by the A.C.C. when the plans and specifications for the particular structure are approved by the A.C.C.. The following shall apply' to the construction of a Single Family Detached structure as**

well as a garage and out-buildings permitted:

**(a) The exterior of any Single Family Detached Structure, garage, or outbuildings permitted which shall be erected upon moved upon any Lot**

**Of The Properties covered by these Protective Covenants shall be completely finished within six months of the date of the start of construction.**

**(b) The interior Of any Single Family Detached structure, garage or outbuildings, which shall be erected upon or moved upon a Lot of The Properties covered by these Protective Covenants shall be completely finished within six months of the date of the start of construction.**

**The contractor, builder or Owner will submit all structures to inspection by the A.C.C. as required to determine compliance with completion dates as herein provided or as may be provided by the A.C.C.. In the event of non-compliance with completion dates as herein provided the Developer and/or the Association**

**shall have the right, but not the obligation, to hire a contractor and/or contractors to perform the work and furnish the materials necessary for compliance and the particular party acting shall bill the Owner for the amount expended plus 10% for administration. In the event the Owner does not pay same, the Developer and/or Association, as the case may be, shall have the legal right to file a statutory lien against the property involved and proceed in law or equity to sell the property to obtain said charges. All money received over and above said charges and court costs shall be paid over to the Owner.**

**11. Sewage Disposal. No individual sewage disposal system shall be permitted on any Lot or Parcel of Land of The Properties covered by these Protective Covenants unless such system is located, constructed and equipped in accordance with the requirements standards and recommendations of the State or Local public health authorities and approval is given by the**

When onsite sewage is permitted, all Lot Owners having same shall hook up to the central sewage system within six months after collecting lines pass their lot.

**12. Water Supply. No privately owned water system shall be permitted upon any Lot of Parcel of Land of The Properties covered by these-Protective Covenants, unless such system is designed and constructed in accordance with the requirements, standards and recommendations of the Health Department of the Commonwealth Of Pennsylvania and approved by the A.C.C..**

**13. Sight Distance at Intersections No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways` shall be placed or permitted to remain on any corner, Lot within the triangular area formed by the street property lines and a line connecting**

**them at points 25 feet from the intersection ;of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within. such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.**

14. Signs. No signs of any kind shall be displayed to the public view on any lot without the written permission of the

### **A.C.C.**

**15. Easements. Easements for 'installation and maintenance of utilities and drainage facilities are reserved in the Declaration and will be reserved in any Supplemental Declaration and also will be reserved as indicated upon any recorded subdivision plat of The Properties. 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 within the easements, or which may obstruct or retard the flow of water through drainage channels within the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which the Association, a public authority or utility company is responsible.**

16. Nuisances. No obnoxious or offensive activity shall be carried on upon any Lot or Parcel of Land of The Properties.

**17. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or Parcel of Land of The Properties, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose**

18. Garbage, and Refuse Disposal, No Lot of Parcel of Land of The Properties shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in a clean and sanitary container, and disposition of same shall be prompt.

**19. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot or-Parcel of Land of The Properties, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot or Parcel of Land.. No derrick or other structure. designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or Parcel of Land.**

**20. Vehicles. No vehicles, trailers or campers shall be abandoned or stored on any Lot or Parcel Of Land of The Properties, nor shall any vehicles-over ten tons in gross weight be driven over the public streets or private pathways. All vehicles, trailers and campers belonging to Owners of Single Family Detached dwellings are to be garaged and the garage doors are to be kept in a closed position except for ingress and egress.**

**21. Trees. No trees which exceed three inches in diameter shall be removed or cut within written approval of the A.C.C..**

**22. Boat Docks. No boat docks, floats or other structures extending into the lake shall be constructed or placed into or on said lake without prior written approval of the A.C.C..**

**23. Fire Arms. No fire arms, bows and arrows, slings or explosives shall be discharged or shot, nor shall any hunting be conducted on lots or on The Properties in the areas not reserved for said purposes.**

**24. Clearing Lots. No Owner shall clear his Lot of brush, trees, or anything else of an inflammable nature except after having first obtained the written approval of the A.C.C., which approval shall specify the time and manner in which such clearing shall be made. No fires are to be started in the street at any time. All expense for clearing and removal of**

debris including stumpage from the premises shall be for the account and risk of the Owner.

25. FENCES. No fences of any type shall be installed on any lot without the written permission of the A.C.C.

26. BOATING. The use of boats on the lake will be regulated by rules promulgated by the Towamensing Trails Property Owners Association. All other uses are prohibited.

27. These Protective Covenants shall be enforced in this Declaration of which the Protective Covenants are a part.

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