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Michele Mustello

Butler County Recorder PA

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**DECLARATION OF PLANNED COMMUNITY  
FOR  
WHITETAIL MEADOWS**

Mail to:  
Fred Hesperheide  
1028 River Rd  
Emerton PA  
16373



I hereby CERTIFY  
that this document is  
recorded in the  
Recorder's Office  
of Butler County,  
Pennsylvania

*Michele M. Mustello*  
Michele M. Mustello - Recorder of Deeds

TABLE OF CONTENTS

I	SUBMISSION
II	DEFINITIONS
III	EASEMENTS
IV	MAINTENANCE AND RELATED EXPENSES RESPONSIBILITY
V	HOMEOWNER'S ASSOCIATION
VI	BUDGETS; COMMON EXPENSES; ASSESSMENTS AND ENFORCEMENT
VII	MASTER ASSOCIATION
VIII	CONSOLIDATION
IX	INSURANCE OF COMMON ELEMENTS
X	USE RESTRICTIONS AND ARCHITECTURAL PROVISIONS
XI	ADDITIONAL REAL ESTATE
XII	GENERAL PROVISIONS
XIII	DECLARANT'S RIGHTS
XIV	TERMINATION

**DECLARATION OF PLANNED COMMUNITY  
FOR  
WHITETAIL MEADOWS**

**FRED W. HESPENHEIDE** and **CHRISTINE A. HESPENHEIDE**, husband and wife, currently maintaining their principal place of business address at 1028 Riviera Road, Emlenton, Pennsylvania 16373 ("Declarant") hereby makes this Declaration of Planned Community (the "Declaration") with respect to **WHITETAIL MEADOWS**.

**PREAMBLE**

WHEREAS, Declarant is the owner of +/- 32.01 acres of real property situate in the Township of Adams, County of Butler, Commonwealth of Pennsylvania, described on **Exhibit "A"** attached hereto, and as shown on the Hesperheide Subdivision Plan - Final, which was recorded in the Recorder's Office of Butler County, Pennsylvania in Plan Book Volume 380, Page 50-53 (the "Plan"), including all easements, rights and appurtenances thereunto belonging and the buildings and improvements erected or to be erected thereon, (collectively, the "**Property**"); and

WHEREAS, Declarant desires to create with the recordation hereof the planned community to be known as "**Whitetail Meadows**" (the "Planned Community") with "**Phase I**" consisting of twenty-six (26) residential Lots designated as **Lot Nos. 12-37, Whitetail Meadows Trail, Helenium Drive** and the Open Spaces appurtenant to Phase I designated as Lots 5 OS, 6 OS, 8 OS, 9 OS, 10 OS and 11 OS as shown on the Plan, or as may be shown in future revisions to the Plan; and

WHEREAS, pursuant to the Master Planned Community Declaration dated July 8 2020, and recorded in the Recorder's Office of Butler County, Pennsylvania, at Instrument Number 202007090013317 ("Master Declaration"), Declarant created a Master Planned Community known as "**Whitetail Village Master Planned Community**" (the "**Master Community**"); and

WHEREAS, Declarant hereby declares that the Planned Community shall be held, improved, maintained, sold and conveyed subject to the following covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of the Planned Community, which shall run as a covenant with the land as to all real property subject to this Declaration, which shall be binding on all parties having any right, title, or interest in the Planned Community or any part thereof, and their heirs, successors, and

assigns, and which shall inure to the benefit of each Owner (as hereinafter defined) and the Township of Adams.

NOW THEREFORE, Declarant hereby declares the following covenants, conditions and restrictions affecting the Planned Community, with the intent to be legally bound hereby;

**ARTICLE I**

**SUBMISSION**

1.1 Declarant hereby makes the Planned Community subject to the following covenants, conditions, reservations and restrictions. It is the intent of the Declarant that the Planned Community subject to this Declaration shall constitute a "planned community," as that term is defined in the Pennsylvania Uniform Planned Community Act, 68 Pa.C.S. §§ 5101, et seq. (the "Act").

All improvements shown on the Plan "MUST BE BUILT" and are hereby labeled as such in accordance with the provisions of 68 Pa.C.S.A. § 5210 (b)(3).

**ARTICLE II**

**DEFINITIONS**

As used in this Declaration, the following terms shall have the meaning designated:

2.1 "Additional Real Estate" shall mean that certain real property as more particularly described on **Exhibit "C"** attached hereto.

2.2 "Approved Builder" shall mean any person or entity improving the Planned Community, including without limitation NVR, Inc., t/d/b/a Ryan Homes and t/d/b/a Heartland Homes of PA, as set forth in Section 10.2 of this Declaration.

2.3 "Association" shall mean **WHITETAIL MEADOWS HOMEOWNERS' ASSOCIATION**, an unincorporated association, formed solely to own and operate the Common Elements of the Planned Community.

2.4 "Common Elements" shall mean all real and personal property located within the Planned Community to be maintained by the Association for the common use and enjoyment of the Members of the Association, including "Common Facilities."

2.5 "Common Expenses" shall mean as defined herein and in the Act.

2.6 “Common Facilities” shall mean as defined herein and in the Act.

2.7 “Controlled Facilities” shall mean all real estate and improvements within the Planned Community which is part of or benefits solely, a Lot, which is not a Common Facility, but which is maintained, improved, repaired, replaced, regulated, managed, insured and/or controlled by the Association.

2.8 “Controlled Facility Expenses” shall mean the expenses of the Controlled Facilities, which are to be assessed against the Owners if incurred by the Association as a result of its responsibility for maintaining, improving, repairing, replacing, regulating, managing, insuring and controlling the Controlled Facilities which are a part of, or benefit solely, the Lots.

2.9 “Declarant” shall mean **FRED W. HESPENHEIDE** and **CHRISTINE A. HESPENHEIDE**, husband and wife, and their heirs, successors and assigns. The term “Declarant” does not include any other parties or entities, unless Special Declarant Rights are transferred through a signed and recorded instrument pursuant to the requirements of § 5304 of the Act.

2.10 “Declaration” shall mean this Declaration of Planned Community for Whitetail Meadows, the Planned Community, and any future amendments thereto.

2.11 “Limited Common Elements” shall mean those portions of the Common Elements that are designated by the Declarant for use by the Owner(s) of one (1) or more, but fewer than all, Lots.

2.12 “Lot” or “Lots” shall mean any one or more of the Lots as shown on the Plan.

2.13 “Master Association” shall mean the Whitetail Village Master Planned Community Association, formed solely to own and operate the Master Planned Community.

2.14 “Master Community” shall mean the Master Community of which the Planned Community is a part and which was created by the Master Community Declaration.

2.15 “Member” shall have the meaning described in Section 5.1.

2.16 “Mortgage” shall mean and refer to a permanent or construction mortgage, including any collateral security documents executed in connection therewith, secured by a mortgage on the Planned Community or any part thereof.

2.17 “Mortgagees” shall mean and refer to a beneficiary or holder of a Mortgage.

2.18 "Owner" shall mean and refer to Declarant or such other person(s) or entity(ies) which holds title to one or more Lots in the Planned Community. The term does not include a person(s) or entity(ies) having an interest in a Lot solely as security for an obligation.

2.19 "Planned Community" shall mean and refer to the Lots and the Common Elements of **Whitetail Meadows** as shown on the Plan.

2.20 "Property" shall have the meaning described in the Preamble.

2.21. "Single Family Lot" shall mean and refer to a Lot with a single family dwelling house constructed on the Lot.

2.22. "Townhouse Lot" shall mean and refer to a Lot with a townhome constructed on the Lot.

### **ARTICLE III**

#### **EASEMENTS**

3.1 Attached as **Exhibit "B"** is a list of the recorded easements, liens, and encumbrances affecting the Property.

3.2 Coal, oil, gas, coal bed methane gas, and all other subsurface mineral rights have been severed from the surface interest of the Property (collectively, "Oil and Gas"). Declarant is excepting and reserving therefrom and thereout all Oil and Gas and/or byproducts thereof within and underlying the Property (including all strata) together with necessary and reasonable rights to develop, extract and market same. All deeds to Lots will include the following:

**EXCEPTING AND RESERVING** therefrom and thereout to Grantor and their successors and assigns, all coal, oil, gas, coal bed methane gas, and all other subsurface mineral rights and/or byproducts thereof, within and underlying the Property (including all strata), together with necessary and reasonable rights to develop, extract and market same, providing that such development, extraction and marketing shall not disturb or interfere with Grantee's surface rights. Grantor hereby agrees, represents, warrants and covenants that it will not grant, lease, convey, assign or transfer to anyone the right to use the surface of the Property for any activity related to the testing for and/or exploration, development, production, transportation, extraction, and/or marketing of coal, oil, gas, coal bed methane gas, and all other subsurface mineral rights and/or byproducts thereof, within and underlying the Property, including without limitation, pipelines, gathering lines, access roads, impoundments, compression, compression stations, telecommunications and power lines related to coal, oil, gas, coal bed methane

gas, and all other subsurface mineral rights and/or byproducts thereof, within and underlying the Property.

**ALSO UNDER AND SUBJECT TO** exceptions, reservations, restrictions, covenants, easements, oil and gas leases, prior conveyances and reservations of mining and mineral rights, and rights of way as may appear upon the Property herein described or in prior instruments of record and as set forth in the Declaration and the Plan, as such may affect the Property herein described.

3.3 Utility Easements. Declarant hereby reserves an easement on, over, and under the Planned Community and all Lots created therein, in favor of the Declarant, Adams Township, appropriate utility and service companies, and governmental agencies and authorities for such private or public utility service lines and equipment as may be necessary or desirable to serve any portion of the Planned Community and the Additional Real Estate, regardless of whether said portions are converted. The easements created in this Section shall include, without limitation rights of utility and service companies, governmental agencies or authorities to install, lay, maintain, repair, relocate, and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise), electric wires, conduits, equipment, ducts and vents, over, under, through, along, and on the Planned Community. Declarant grants any Approved Builder the right to use such easements as necessary for the construction of improvements on Lots.

No storm sewers, sanitary sewers, electrical lines, water lines, cable or internet connections, or other utilities may be installed or relocated in the Plan, except as may be approved by the Declarant. Declarant hereby approves the location of all of the foregoing as required by any Approved Builder in the construction of improvements on Lots.

Should any entity furnishing a service, covered by the general easement herein provided, request a specific easement by separate recordable document, the Declarant shall have the right to grant such easement over the Planned Community without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Plan.

Declarant shall have the power to dedicate portions of the Common Elements to Adams Township, or to any other local, state, or federal governmental entity and/or any utility supplier at any time.

Declarant hereby specifically reserves an easement over all private alleyways appurtenant to any Lots, in favor of the Declarant, the Master Planned Community, appropriate utility and service companies and governmental agencies and authorities for such private or public utility service lines and equipment as may be necessary or desirable to serve any portion of the Planned Community.

3.4. Easement for Access to Master Planned Community. The Declarant, on its behalf and on behalf of its successors and assigns, including future members of the Master Planned Community, reserves a non-exclusive perpetual right of access and easement on, over, and under those portions of the Common Elements for the purpose of pedestrian and vehicular ingress, egress, and regress to and from all or any part of the Planned Community and to and from any portion of the Master Planned Community, including the right to modify the location of improvements to the Common Elements to facilitate such ingress, egress, and regress including, without limitation, the removal of obstructions to the exercise of such rights of ingress, egress, and regress and the grading or re-grading of landscaped areas of the Common Elements.

3.5. Declarant's Easement to Correct Drainage. Declarant reserves an easement on, over and under those portions of the Common Elements and Lots (with Lots being Controlled Facilities) for the purpose of maintaining and correcting drainage of surface water in order to maintain a reasonable standard of health, safety, and appearance for the Property, including all portions of the Additional Real Estate, regardless of whether said portions are converted. The easement created by this Section expressly includes the right to (i) cut any trees, bushes, or shrubbery; (ii) grade the soil; or (iii) take any other action reasonably necessary to achieve this purpose, following which Declarant shall restore the affected Common Elements and Lots as closely to their original condition as possible. Declarant grants the foregoing easement to correct drainage to Adams Township and to any Approved Builder with respect to Lots as required to maintain and correct drainage of surface water on the Lots.

3.6. Declarant's Easement for Development of Planned Community. Declarant reserves an easement on, over, and under those portions of the Common Elements for all purposes relating to the construction, development, leasing, and sale of improvements in the Planned Community, the Master Community and all portions of the Additional Real Estate, regardless of whether said portions are converted. This easement shall include, without limitation: (i) the right of vehicular and pedestrian ingress and egress; (ii) the right to park motor vehicles; (iii) the right to engage in construction marketing and promotional activities and events of any nature whatsoever, including the movement and storage of building materials and equipment; and (iv) the right to conduct sales, leasing, management, marketing and promotional activities, the maintenance of models and offices, and the erection and maintenance of directions and promotional signs. Declarant grants any Approved Builder the right to use such easements as necessary for the construction of improvements on the Lots.

3.7. Easement for Use of Common Elements.

(a) Grant of Easement. Each Owner and each person lawfully in the Planned Community is hereby granted a non-exclusive perpetual right and easement of access to and enjoyment in common with others of the Common Elements.

(b) Extent of Easement. The rights and easements of access and enjoyment created hereby shall be subject to the right of the Association to adopt Rules and Regulations governing the use of the Common Elements.

3.8 Easement for Reconstruction, Improvement, Repair, or Maintenance of Common Elements, including Common Facilities. Easements to permit every necessary and proper act by the Declarant and/or the Association to properly maintain the Common Elements, including Common Facilities, are hereby granted and established. These acts shall include, but are not limited to, entry upon, over, and under the Lots or any part thereof, the right to use all necessary and usual equipment for the performance of such acts, the usual and common noise level associated with the use of such equipment, together with all the other common and usual activity associated with such activities. Declarant grants any Approved Builder the right to use such easements as necessary for the construction of improvements on Lots.

3.9 Easement for Encroachments and Relocation of Boundaries Between Lots. To the extent that any Common Element encroaches on any Lot, a valid easement for the encroachment exists. The Declarant is hereby released from liability for failure to strictly adhere to the Plan. The Declarant will be afforded the opportunity to file a correction to the Plan in order to properly reflect the location of Lots and Common Elements. Such amendment and correction may include the relocation of boundaries between adjoining Lots without the joinder of the Owners of such Lots or the joinder of the Association in the event such relocation of boundaries affects the Common Elements. The Declarant is hereby authorized to prepare and record plats or plans as necessary to show such altered boundaries between adjoining Lots and their dimensions and identifying numbers.

3.10 Stormwater Management. All owners of a Lot in the Planned Community shall take title to such Lot subject to a "New Property Owner Post-Construction Stormwater Management Best Management Practice(s) Notification and Operation and Maintenance Agreement" (the "Operation and Maintenance Agreement"), which governs the management of the stormwater facilities located in the Master Planned Community. A copy of the Operating and Maintenance Agreement is attached to the Master Declaration as Exhibit "D". The Operation and Maintenance Agreement shall be executed by the Master Association in accordance with Section 9.3 of the Master Declaration.

#### ARTICLE IV

#### MAINTENANCE AND RELATED EXPENSES RESPONSIBILITY

4.1 General Maintenance Responsibilities. Maintenance responsibility is divided into responsibility for performance and responsibility for payment. Except as set forth herein, each Owner is responsible for both performance of and payment for all maintenance, repair, and replacement required for his Lot. In general, the Association is responsible for performing the maintenance, repair, and replacement of the Common

Elements, including landscaped areas, any Common Elements that may be designated as Limited Common Elements and certain portions of the Lots that may be designated as Controlled Facilities.

4.2 Specific Maintenance Responsibilities. The Lots and Common Elements shall be maintained and repaired by each Owner and by the Association respectively in accordance with the provisions of Section 5307 of the Act, except as expressly set forth to the contrary herein. The Association may provide for Association maintenance of Lot components where such items involve matters of concern related to the general health, safety and welfare of all occupants of the Planned Community and may promulgate guidelines governing the division of maintenance and repair responsibilities between the Owner and the Association.

(a) Association's Responsibility. The Association shall maintain, repair, and replace the Common Elements, including:

- (1) The maintenance, repair and snow removal from streets until such time as the streets are dedicated to and accepted by Adams Township.
- (2) The maintenance, including grass cutting, mulching, planting and lighting of any entry monument area.
- (3) Maintenance, repair, snow removal and replacement of all sidewalks adjacent to Common Elements.
- (4) Maintenance, repair, snow removal and replacement of all cluster mailboxes and any concrete pads and/or walks surrounding a cluster mailbox area
- (5) The maintenance of those areas designated as "Open Space".
- (6) The maintenance of any structure which may be erected on Common Elements.

(b) It is presently contemplated that different types of dwellings will be constructed on the Lots and may be created within the Additional Real Estate. It is presently contemplated that:

- (1) Single Family Lots will receive no services.
- (2) Townhome Lots will receive lawn services, consisting of grass cutting, weeding, lawn fertilization, spring/fall cleanup and mulching. In the event Townhome Lots are added to the Planned

Community, the Association will be responsible for such lawn services, which shall be assessed as a Limited Common Expense only to those Townhome Lots.

(c) Individual Owner's Responsibility: Except as set forth herein to the contrary, the repair, maintenance and replacement of all improvements located on the Lot shall be the responsibility of the Owner, including without limitation, all sidewalks located on a Lot and any stormwater management facilities located on a Lot.

(d) Master Association's Responsibility: The Master Association created by the Master Planned Community Declaration known as "Whitetail Village Master Planned Community" shall keep in good repair the common elements of the Master Planned Community ("Master Common Area"), including the following:

- (i) Landscaping, maintenance, repair, and replacement of common areas and the open space parcel designated as Lot 4 (OS) as shown on the Plan;
- (ii) Maintenance, repair, snow removal and replacement of all Master Common Area sidewalks located in the Master Planned Community which are not the responsibility of the Association pursuant to Section 4(a)(3) herein;
- (iii) Landscaping, maintenance, repair and replacement of all storm water management facilities constructed by or on behalf of the Declarant; and,
- (iv) Maintenance and repair (including snow and ice removal) of the rights-of-way designated as Aster Way and Scharberry Lane (which is to be renamed: "Scharberry Lane Extension"), unless and until such time as dedicated and accepted by Adams Township.

## ARTICLE V

### WHITETAIL MEADOWS HOMEOWNERS' ASSOCIATION

5.1 Membership. For the purpose of ownership and maintenance of the Common Elements and all common community services of every kind, of nature required or desired within the Planned Community, for the general use and benefit of all Owners, each and every Owner, in accepting a deed or contract for Lot in the Planned Community, agrees to and shall be subject to the obligations and duly enacted Bylaws and Rules and Regulations of the Association. The Members of the Association shall be the Declarant and all Owners. With respect to the affairs of the Association, the Owner of each Lot shall have one vote.

5.2 Succession. Declarant will retain the rights and powers described in Articles X, XI, and XIII hereof until the last Lot is sold to an Owner other than the

Declarant or Approved Builder, otherwise upon the transfer of Declarant's control of the Association in accordance with Article XIII, the Association shall succeed to the position of the Declarant with respect to the other provisions of these covenants, conditions, reservations and restrictions, and the term "Declarant" herein shall then mean the "Association." The Association shall succeed to the position of the Declarant with respect to the rights and powers of Articles X, XI, and XIII upon the conveyance of the last Lot to an Owner other than the Declarant.

5.3 Powers of the Association. The Association shall have the following powers:

- (a) To adopt and amend Bylaws and Rules and Regulations.
- (b) To adopt and amend budgets for revenues, expenditures and reserves and collect assessments for Common Expenses from the Members.
- (c) To hire and terminate managing agents and other employees, agents and independent contractors.
- (d) To institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Members on matters affecting the Association or the Planned Community.
- (e) To make contracts or incur liabilities.
- (f) To regulate the use, maintenance, repair, replacement and modification of the Common Elements.
- (g) To cause additional improvements to be made to the Common Elements.
- (h) To acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, but the Common Elements may be conveyed or subjected to a security interest only in accordance with the provisions of §5318 of the Act.
- (i) To grant easements, leases, licenses and concessions through or over the Common Elements; provided, however, that any exercise of such power which would materially impair the quiet enjoyment of a Member shall require the prior written approval of the affected Member.

- (j) To impose and collect payments, fees or charges for the use, rental or operation of the Common Elements.
- (k) To impose and collect charges for late payment of assessments, including the cost of any collection action related thereto, and, after notice and an opportunity to be heard, levy reasonable fines for violations of this Declaration and the Bylaws and Rules and Regulations of the Association.
- (l) To impose and collect charges on behalf of any master planned community of which the Planned Community is later made a member.
- (m) To impose reasonable charges for the preparation and recording of amendments to this Declaration, for resale certificates and to impose capital reserve fees as permitted and/or required by the Act.
- (n) To provide for the indemnification of its officers and executive board and to maintain directors' and officers' liability insurance.
- (o) To exercise any other powers conferred by the Act, this Declaration or the Bylaws of the Association.
- (p) To exercise all other powers that may be exercised in the Commonwealth of Pennsylvania by legal entities of the same type as the Association.
- (q) To exercise any other powers necessary and proper for the governance and operation of the Association.
- (r) To impose and collect charges on behalf of the Master Community.

5.4 Executive Board. Not later than the termination of any period of Declarant control in accordance with Section 13, the Members shall elect an Executive Board of at least three (3) members. The Executive Board shall elect the officers of the Association. The members of the Executive Board and the officers shall take office upon election. The Executive Board shall not have power to determine the qualifications, powers and duties or terms of office of the members of the Executive Board, but it may fill vacancies in its membership for the unexpired portion of any term. The Members, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting at which a quorum is present, may remove any member of the Executive Board with or without cause, other than a member appointed by the Declarant.

5.5 Bylaws. The Bylaws of the Association shall provide for all of the following:

- (a) The number of members of the Executive Board and the titles of the officers of the Association.
- (b) Election by the Executive Board of a President, Treasurer, Secretary and any other officers of the Association the Bylaws specify.
- (c) The qualifications, powers and duties, terms of office and manner of electing and removing members of the Executive Board and officers and filling vacancies.
- (d) Which, if any, of its powers the Executive Board or officers may delegate to other persons or to a managing agent.
- (e) Which of its officers may prepare, execute, certify and record amendments to this Declaration on behalf of the Association.
- (f) The method of amending the Bylaws.

Subject to the provisions of this Declaration and the Act, the Bylaws may provide for any other matters that the Association deems necessary and appropriate.

## ARTICLE VI

### BUDGETS; COMMON EXPENSES; ASSESSMENTS AND ENFORCEMENT

6.1 Budgets; Capital Expenditures. The Executive Board shall adopt a budget for revenues, expenditures and reserves at least annually. The Executive Board shall deliver to all Members copies of each budget approved by the Executive Board and notice of any capital expenditure approved by the Executive Board promptly after such approval. The Members, by affirmative vote of two thirds (2/3) of all Members, pursuant to procedures applicable to voting as set forth in the Bylaws of the Association, may reject any budget or capital expenditure approved by the Executive Board within thirty (30) days after approval.

6.2 Monthly Assessments. All Common Expenses assessments made in order to meet the requirements of the Association's annual budget shall be deemed to be adopted and assessed on an annual basis payable in monthly installments, and shall be due and payable in advance on the first day of the month. Each Lot shall be responsible for its prorata share of the Common Expenses, in addition to the Limited Common Expenses and Special Assessments and reserves as hereinafter defined as the same may

relate to such Lot. The obligation to pay Common Expenses that benefit fewer than all of the Lots shall be assessed exclusively against the Lots benefited on an equal basis. Declarant shall be responsible for all costs of the Association until such time as the Executive Board of the Association establishes an assessment against Lots. For assessment purposes, a Lot is deemed to be created, and thus subject to the payment of assessments, only upon issuance of an occupancy permit for that Lot.

(a) Tiered Assessments. The Budget adopted pursuant to Section 6.1 above shall be designed with a three-tier system for Monthly Assessments due based upon completion of the construction of improvements on a Lot and the type of dwelling constructed on a Lot. The three types of Monthly Assessments included in the Budget shall be: (i) the amount due for a Lot that is unoccupied and upon which construction is incomplete (an "Incomplete Lot"), (ii) the amount due for a Single Family Lot and (iii) the amount due for a Townhouse Lot. A Lot shall be considered an Incomplete Lot for Budget purposes until an occupancy permit is issued. Once an occupancy permit is issued for a Lot, such Lot shall then be assessed based upon the type of dwelling constructed thereon. In no event shall the Monthly Assessment due for an Incomplete Lot be greater than one third (1/3) of the Monthly Assessment due for a Single Family Lot if the Incomplete Lot is to be improved into a Single Family Lot and in no event shall the Monthly Assessment due for an Incomplete Lot be greater than one sixth (1/6) of the Monthly Assessment due for a Townhouse Lot if the Incomplete Lot is to be improved into a Townhouse Lot. As long as the Declarant and/or an Approved Builder own a Lot within the Planned Community, this Section 6.2(a) may not be amended without the prior approval of one hundred percent (100%) of the Members.

6.3 Assessments for Limited Common Expenses and Special Assessments. The Board may adopt assessments for Limited Common Expenses relating to the repair, maintenance and replacement of any Common Elements that may be designated as Limited Common Elements and shall be due and payable in one or more monthly installments as determined by the Executive Board. Also, the Board may adopt Special Assessments relating to the repair, maintenance and replacement of the Common Elements, which Special Assessments shall be due and payable in one or more monthly installments as determined by the Executive Board. Special Assessments may be subject to special allocation in accordance with the Act.

6.4 Lien for Assessments, Fines and Interest. The Association shall have a lien against each Lot for any Common Expense and/or Limited Common Expense assessments levied against that Member or fines imposed against that Member from the time the assessment or fine becomes due. Fees, charges, late charges, fines and interest charged under Sections 5.3(j), 5.3(k) and 5.3(l) and reasonable costs and expenses of the Association, including, but not limited to, legal fees, court costs, management charges and postage incurred in connection with collection of any sums due to the Association by a Member or enforcement of the provisions of this Declaration or the Bylaws, Rules or

Regulations of the Association against a Member are collectable as assessments under this Section.

6.5 Limitation on Expenditures. All expenses, charges and costs of the maintenance, repair or replacement of the Common Elements, and any other expenses, charges or costs which the Association may incur or expend pursuant hereto, shall be approved by the Executive Board, and a written memorandum thereof prepared and signed by the Treasurer of the Association. There shall be no structural alterations, capital additions to, or capital improvements on the Common Elements (other than for purposes of repairing, replacing and restoring portions of the Common Elements) requiring an expenditure in excess of Five Thousand Dollars (\$5,000) without the prior approval of sixty percent (60%) of the Members.

6.6 Reserve. Each annual budget for monthly assessments of Common Expenses shall include an amount reasonably considered by the Executive Board to be sufficient as a reserve for replacements. Extraordinary expenditures not originally included in the annual budget that may become necessary during the year may be charged first against such reserve, as the Executive Board shall determine. The Association shall have the right to segregate all or any portion of the reserve for any specific replacement upon such conditions as the Executive Board deems appropriate. The Association shall also have the right to apply any such reserve amounts to Common Expenses as the Executive Board deems appropriate; provided, however, that such maintenance or replacement assessments relating to specific Lots may not be reallocated to Lots that are not the subject of such specific maintenance and replacement accounts.

6.7 Capital Improvement Fees Collected upon Sale and Resale. Upon the purchase of a Lot, subject to the right of the Executive Board to determine otherwise, the Association shall collect from each purchaser (including the initial sale and resale), at the time of closing, a Capital Improvement Fee in the amount equal two hundred dollars (\$200.00). Notwithstanding anything herein to the contrary, such Capital Improvement Fee shall not be collected or due from the Declarant or from Approved Builders.

6.8 Capital Improvement Initiation Fee for Master Community. The Association shall pay to the Master Association a Capital Improvement Fee in the amount of Ten Thousand Dollars (\$10,000.00), to be paid over a period of four (4) years in an amount based upon the total of Lots sold in the preceding year to a purchaser other than the Declarant or an Approved Builder, but in no event greater than Two Thousand Five Hundred Dollars (\$2,500.00), beginning after the first full calendar year after the sale of the first Lot to a purchaser other than the Declarant or an Approved Builder. The yearly installments of the Capital Improvement Initiation Fee shall be funded through a portion of the Capital Improvement Fees collected pursuant to Section 6.7 herein and a portion of the Monthly Assessment attributable to the Association's contribution to the Master Association.

6.9 Association Records. A statement of revenues and expenses for the Association shall be produced. The Association shall keep financial records sufficiently detailed to enable the Association to comply with §5407 of the Act. All financial and other records shall be made reasonably available for examination by any Member and authorized agents. Within one hundred and eighty (180) days after the close of its fiscal year, the Association shall prepare annual financial statements consisting of at least a balance sheet and a statement of revenues and expenses for the Association. The cost of preparing the financial statements shall be a Common Expense. Each Member shall be entitled to receive from the Association, within thirty (30) days after submitting a written request to the Association, a copy of the annual financial statements and, if such financial statements are audited, reviewed or compiled by an independent certified public accountant or independent public accountant, a copy of the independent accountant's report on the financial statements. The Association may charge a fee, however such fee may not to exceed the cost of producing copies of such records.

6.10 Further Assessments. If any annual budget proves inadequate for any reason, including nonpayment of any Member's monthly 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 further monthly assessments or special assessments. Such further monthly assessments shall be payable over such period of time as the Executive Board may determine. The Executive Board shall serve notice of such further assessments on all Members by a statement in writing giving the amount and reasons therefore, and such further monthly assessments shall become effective as determined by the Executive Board.

6.11 Acceleration. If an Owner is in default in the payment of the aforesaid charges or monthly assessments for sixty (60) days, the Executive Board may, in addition to all other remedies set forth in this Declaration, accelerate all other monthly assessments to become due for the fiscal year in which such default occurs.

6.12 Interest and Charges. All sums assessed by the Association against any Member that remain unpaid shall bear interest thereon at a rate determined by the Executive Board (but not more than fifteen (15%) percent per annum) from the thirtieth (30<sup>th</sup>) day following the due date for payment. Initially the interest rate on unpaid assessed amounts shall be 8% percent per annum. Any delinquent Member shall also be obligated to reimburse (i) all expenses of the Association, including reasonable attorney's fees, incurred in the collection of the delinquent assessments by legal proceedings or otherwise; (ii) any amounts paid by the Association for taxes or on account of superior liens or otherwise to protect its liens, which expenses and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessments and shall be collectible as such, subject to Section 6.2 above.

6.13 Independent Covenant. The obligation to pay assessments is a separate and independent covenant on the part of each Member. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the

Association or the Executive Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements or from any other action it takes.

6.14 Implementation. The Association shall adopt in its Bylaws such additional or other procedures and requirements as it deems necessary and desirable to implement the provisions of this Article 6 and to otherwise provide for the efficient fiscal operation and management of the Common Elements.

6.15 Violations and Assessments. If a Member violates any of the terms of this Declaration, the Declarant and/or the Association shall have the right to undertake correction of the violation and the costs incurred by Declarant and/or the Association in correcting such violation so shall be immediately due and payable by the Member in the form of an assessment.

6.16 Subordination to the Lien of Mortgages. The lien of the assessment, provided for herein, shall be subordinate to any first lien mortgage placed upon a Lot. The sale or transfer of the Lot pursuant to or in lieu of mortgage foreclosure shall extinguish the lien of such assessment as to payment that became due more than 6 months prior to such sale or transfer. No such sale or transfer shall relieve such Owner or Lot from the obligation or liability for any assessments thereafter coming due or from the lien on any such subsequent assessments.

## ARTICLE VII

### MEMBERSHIP IN MASTER ASSOCIATION

7.1 Membership. For the purposes of ownership and maintenance of the Common Elements and all common community services of every kind and nature required or desired within the Master Planned Community, the Association is a member of the Master Association. The Association shall be responsible for the collection of assessments related to such obligations from the Owners and the timely remittance of such assessments to the Master Association. For collection purposes, the Association is deemed to be an agent of the Master Association.

7.2 Representation in Master Association. With respect to the affairs of the Master Association, upon transfer of Declarant's controls of the Master Association in accordance with Section 5.4 of the Whitetail Village Master Declaration, the Single Family Lots will elect one (1) representative and the Townhome Lots will elect one (1) representative to serve on behalf of the Association on the Executive Board of the Master Association. The selection will be held annually concurrently with the annual meeting of the Association employing such election procedures as the Association may agree.

7.3 Incorporation by Reference of Master Declaration. All of the applicable terms, covenants and provisions of the Master Community Declaration are incorporated herein by reference and made a part hereof.

**ARTICLE VIII**

**CONSOLIDATION**

8.1 Pursuant to Section 5223 of the Act, Declarant reserves the right to merge or consolidate the Planned Community. All representations as stated in Article XI of this Declaration shall apply to any consolidation as required by Section 5205(14) of the Act. The Declarant reserves the rights under this section for a period of ten years after the recording of this Declaration or as may be extended by law.

**ARTICLE IX**

**INSURANCE OF COMMON ELEMENTS**

9.1 Coverages. The Association's duly authorized agent shall have the authority to and shall obtain blanket, all-risk casualty insurance, if reasonably available, for all insurable improvements comprising the Common Elements. If blanket all risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Association shall obtain general public liability insurance and third party property damage insurance necessary to cover Association maintenance of the Controlled Facilities.

The Association shall also obtain a public liability policy covering the Common Elements and the Members for all damage or injury caused by the negligence of Association, or any of the Members or their agents. The public liability policy shall have at least a One Million and No/100 Dollars (\$1,000,000.00) minimum property damage limit.

The Association shall also obtain coverage to provide for the indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance.

9.2 Premiums. Premiums for all insurance on the Common Elements shall be paid by the Association. Such policies may contain a reasonable deductible, and in the case of casualty insurance, the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the Association.

9.3 Contracts. All insurance coverage obtained by the Association shall be written in the name of the Association as trustee for the respective benefited parties, as further identified in subsection (a) below. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (b) All policies on the Common Elements shall be for the benefit of the Declarant, the Association, the Members and Mortgagees, as their interest may appear, providing financing on the Common Elements.
- (c) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by the Members, occupants, or their Mortgagees.

9.4 Workers Compensation. In addition to the other insurance required by this Article, the Association shall obtain worker's compensation insurance, if and to the extent required by law.

9.5 Individual Owner Insurance.

**EACH OWNER SHOULD CONSULT WITH A KNOWLEDGEABLE INSURANCE AGENT AND PURCHASE AN APPROPRIATE HOMEOWNER'S POLICY TO PROTECT THE OWNER'S DWELLING AND ITS CONTENTS.**

**AS THE DWELLING AND THEIR CONTENTS ARE NOT COVERED BY THE ASSOCIATION'S INSURANCE POLICIES, IT IS RECOMMENDED THAT OWNERS OBTAIN AND MAINTAIN THE FOLLOWING MINIMUM COVERAGE:**

- (i) Hazard insurance, with an endorsement for extended coverage, or such other fire and casualty insurance which provides equal or greater protection for the Owners and the holders of Eligible Mortgages, if any, in each case complying with the applicable requirements of this Article. Such hazard insurance shall, if and to the extent reasonably available, provide coverage of all

portions of the Lot and including the betterments and improvements made to a Lot. Such hazard insurance shall insure against all risks of direct physical loss commonly insured against "in special form", including, without limitation, fire, vandalism, malicious mischief, wind, storm and water damage, and debris removal. The amount of any such hazard insurance obtained pursuant to this Article shall be not less than one hundred percent (100%) of the full insurance replacement value of the dwelling, including the betterments and improvements to a Lot "in special form" (i.e., one hundred percent (100%) of current "replacement cost"), with "any replacement building cost" and "inflation guard" endorsements, if available.

(ii) In addition, each Owner should maintain insurance on all personal property contained in the dwelling.

(iii) All insurance obtained by any Owner shall be at his own expense; PROVIDED, HOWEVER, that: (1) such policies shall not be invalidated by the waivers of subrogation contained in this Declaration; and (2) no Owner shall be entitled to exercise the right to maintain insurance coverage in such a way as to decrease the amounts which the Association may realize under any insurance policy which the Association may have in force on the property at any particular time.

Any Owner who obtains an individual insurance policy covering any portion of the Property other than the individual Lot of such Owner or personal property belonging to such Owner, shall be required to file a copy of such individual policy with the Association within thirty (30) days after purchase of such insurance.

## ARTICLE X

### USE RESTRICTIONS AND ARCHITECTURAL PROVISIONS

10.1 No Lot shall be used for any purpose other than for residential use, unless otherwise approved in writing by the Declarant and Adams Township. All use restrictions and architectural provisions set forth herein shall be further modified as required to be consistent with the ordinances of Adams Township. As used herein, "residential use" includes the right of Approved Builders to conduct marketing and sales activities, including but not limited to model homes.

10.2 Approval of Building Plans and Builders:

- (a) All uses and building plans for improvements shall comply with the Zoning Ordinance of Adams Township, including but not limited to setback requirements and shall be approved in writing by Declarant and

Adams Township prior to commencement of any construction activities on a Lot.

- (b) Only builders who have been approved in writing by the Declarant ("Approved Builders") are permitted to construct dwellings on Lots or make other improvements on Lots or within the Planned Community. Declarant hereby consents to NVR, Inc., trading as "Heartland Homes of PA" and/or "Ryan Homes" as an Approved Builder.

10.3. Each and every Lot and any improvement erected thereon shall be maintained in a reasonable manner in accordance with the standard generally prevailing throughout the Planned Community. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction over any portion of the Plan shall be observed and complied with, by and at the expense of all Owners.

10.4. No noxious or offensive activity shall be conducted upon any Lot, nor shall anything be done which may become an annoyance or nuisance to the Planned Community.

10.5. No garage or other structure, other than the dwelling for which the plans have been approved, shall be used as a residence, temporarily or permanently, nor shall any dwelling, foundation or basement in the process of construction be used for residential purposes.

10.6. No playhouse, treehouse, toolhouse, greenhouse, gazebo, or outbuilding or structure of any type detached from a dwelling, or children's play equipment or recreational equipment shall be constructed or placed on any Lot within the Plan without the approval of the Executive Board as to size, design, materials and location.

10.7. No additions, decks, awnings, hedges, walls or fences shall be permitted on any Lot unless approved as to height, location, material and design by the Declarant.

10.8. Mailboxes will be located in a location and will be of a design as approved by the Declarant and/or the Executive Board and/or the U.S. Postal Service. Presently, only cluster mailboxes are approved by the U.S. Postal Service.

10.9. Outside parking areas other than driveways shall not be permitted.

10.10. Except in connection with construction activities, oversized trucks, trailers, and other large vehicles may be parked on a Lot only if in garages. No junk or derelict vehicle or other vehicles on which current registration plates are not displayed shall be kept upon any portion of a Lot. Vehicle repairs and storage of vehicles are permitted on a Lot only if in garages. Campers, recreational vehicles and boats may not be parked in driveway for a period of more than 2 weeks within any six (6) month period for the purpose of cleaning, loading or unloading.

10.11. No solar collector or any other device or equipment erected either on the exterior of a dwelling or detached therefrom and designed for the production of energy for heating or cooling or for any other purpose shall be permitted without approval from the Executive Board.

10.12. No signs of any character shall be erected, posted or displayed on any Lot, except: 1) marketing signs installed by Declarant or any Approved Builder while actively marketing Lots for sale; 2) street and identification signs installed by the Association or Declarant; 3) one temporary real estate sign not to exceed six (6) square feet in area advertising that such Lot is on the market may be displayed from inside a window only; or 4) political signs in accordance with the Rules and Regulations established by the Association.

10.13. No Owner, guest, licensee, invitee or others shall discharge any toxic non-biodegradable substance into any storm water sewer(s) or open drainways. Such substances shall include but shall not be limited to: paint, oil, gasoline, any and all petroleum products, kerosene, paint thinner, anti-freeze and the like and any and all substances as defined by and as the same is commonly understood by the Environmental Protection Agency or any other agency or organization having jurisdiction over the same.

10.14. No Owner, guest, licensee, invitee or others shall take any action to interfere and/or impede with the flow of storm water for drainage purposes.

10.15. Open burning is not permitted on any Lot, except that outdoor fireplaces, firepits, grills and chimneys may be used if equipped with fire screens to prevent discharge of embers or ashes.

10.16. No farm animals and no animals of any type except for typical household pets such as dogs and cats shall be kept on the Lots. No external compound cages, kennels or hutches shall be permitted. Household pets shall be limited in number as to not cause a nuisance to the residents and guests. Pets shall not be permitted on the Common Elements unless accompanied by someone who can control them and unless carried or leashed. Lot Owners must promptly remove and properly dispose of their pet's droppings.

10.17. The Declarant reserves to itself the right during the first ten (10) years of the initial term to prepare and record further covenants and restrictions without joinder of any Owner which are not inconsistent herewith, as it may deem advisable for the maintenance, use, conservation and beautification of the Lots in the Planned Community and for the health, comfort, safety and general welfare of the Owners of said Lots. Any such amendment after the first ten (10) years of the initial term shall require the requisite percentage of Owners who own Lots in the Plan to join in and consent to the change as required by this Declaration and the Act.

**ARTICLE XI**  
**ADDITIONAL REAL ESTATE**

11.1. Additional Real Estate. The Additional Real Estate shall consist of all or any and all Lots, Open Space Parcels, or residual area as shown on the Plan that are not included within Phase I and may be added to the Planned Community in accordance with the Act and the provisions hereof. With respect to the Additional Real Estate, the Declarant makes the following representations in accordance with the act:

- (a) The Declarant reserves the option to create Lots, Limited Common Elements, Common Elements, and all of the foregoing within the Additional Real Estate.
- (b) The option reserved in subparagraph (a) above will expire ten (10) years after the recording of the Declaration or as may be extended by law. There are no other circumstances that will terminate this option before the expiration of the time limit.
- (c) The only limitations on the option reserved under subparagraph (a) are the limitations created by or imposed by the Act; otherwise, there are no limitations.
- (d) The interest in the Association appurtenant to each Lot, the relative voting strength in the Association appurtenant to each Lot, and the share of Common Expense assessments appurtenant to each Lot in the Additional Real Estate is based upon a formula of "A" equals 100 divided by "B," with "A" equal to the interest in the Association, relative voting strength and share of Common Expense assessments appurtenant to each Lot and "B" equal to the number of total Lots created both originally and in the Additional Real Estate.
- (e) Any portion of the Additional Real Estate may be added and there are no assurances with respect to order or portions that may be added.
- (f) It is presently contemplated that at the completion of all phases, there will be one hundred thirty (130) Lots added within the Additional Real Estate. However, the maximum number of Lots that may be added within the Additional Real Estate is limited only to the maximum permitted by the Township of Adams.
- (g) There are no assurances as to whether the Lots within the Additional Real Estate, when created, will be restricted exclusively to residential use.

- (h) The maximum density of the Planned Community, including any Lots contemplated to be created within the Additional Real Estate, shall be limited only by the maximum density permitted by the zoning ordinance of the Township of Adams.
- (i) There are no assurances with respect to the compatibility of the Lots created in the Additional Real Estate or with respect to the architectural style, quality of construction, principal materials employed in construction, or size of Lots that may be created in the Additional Real Estate.
- (j) In the event residential Lots are created in the Additional Real Estate and added to the Planned Community, the same restrictions affecting the use, occupancy, and alienation of the Lots that apply to the Lots originally created will apply to those Lots created within the Additional Real Estate.
- (k) There are no assurances made with respect to the general description of the other improvements and Limited Common Elements that may be made or created within the Additional Real Estate.
- (l) There are no limitations as to the locations of any buildings or other improvements that may be made within the Additional Real Estate.
- (m) There are no assurances that any of the Limited Common Elements created within the Additional Real Estate will be of the same general types and sizes as those contained within other parts of the Planned Community.
- (n) There are no assurances that the proportion of the Limited Common Elements appurtenant to the Lots created within the Additional Real Estate will be approximately equal to the proportion existing in other parts of the Planned Community. Any assurances made herein will not apply in the event the Additional Real Estate is not added to the Planned Community.

## ARTICLE XII

### GENERAL PROVISIONS

12.1 Amendments. Prior to the transfer of Declarant control pursuant to Section 13, Declarant may amend this Declaration so long as the amendment, in the reasonable discretion of the Declarant, has no material adverse effect upon the development of the Planned Community. No amendment required by any state or local government authority or agency will be deemed material. After the transfer of Declarant control, except for those amendments which may be adopted within the sole discretion of the Declarant, this Declaration may be amended only by the affirmative vote or written

consent, or any combination thereof, of two thirds (2/3) of the Members, unless unanimous consent of the Members is required by the Act. Any amendment to be effective must be recorded in the public records of Butler County, Pennsylvania. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege. No amendment may impair the validity or priority of the lien of any Mortgage held by a Mortgagee or impair the rights granted to Mortgagees herein without the prior written consent of such Mortgagees.

12.2 Limitation of Liability. The Declarant, its heirs, successors, administrators, executors, assigns, members, officers and employees [(i) through (iv) below shall be effective only from and after the Declarant's transfer of control of the Association in accordance with Article 13]:

- (i) Shall not be liable for the failure of any service obtained or the failure to so obtain any service needed or for any injury or damage to persons or property, however and wheresoever caused, except for any injury or damage caused by the willful misconduct or gross negligence of the Declarant, its members, officers or employees;
- (ii) Shall not be liable as a result of the performance of the Declarant for any mistake of judgment, negligence or otherwise except for the Declarant's willful misconduct or gross negligence;
- (iii) Shall have no personal liability to any person for any loss or damage caused by theft of or damage to personal property in or on the Common Elements or other places within the Plan and shall have no liability arising out of the use, misuse, or condition of the Common Elements, except for the Declarant's willful misconduct.
- (iv) The Declarant and its principals and officers shall be indemnified by the Association against all expenses and liabilities, including attorney's fees incurred by or imposed in connection with any proceedings, except for liability arising out of the willful misconduct or gross negligence of the Declarant;
- (v) The Declarant may obtain such insurance as it deems appropriate, where available and in such amounts and on such terms as the Declarant deems advisable, to satisfy the liability requirements of this Declaration.

12.3 The Declarant, its heirs, successors, administrators, executors, assigns, members, officers and employees shall not be liable for structural defects pursuant to 68 Pa.C.S. § 5411 within the Planned Community for any Lot, Common Element, Limited

Common Element, or any other feature constructed, modified, altered or improved by or on behalf of any Approved Builder other than Declarant.

12.4 The Declarant may obtain such insurance as it deems appropriate, where available and in such amounts and on such terms as the Declarant deems advisable to satisfy the liability requirements of this Declaration.

12.5 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

12.6 Use of the Words “WHITETAIL MEADOWS, a Planned Community”. No person shall use the words “WHITETAIL MEADOWS, a Planned Community” or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant. However, Members may use the terms “WHITETAIL MEADOWS, a Planned Community” in printed or promotional matter where such term is used solely to specify particular property or Lots located within the Plan.

12.7 Incorporation of Recitals. The recitals set forth in the Preamble section of this document are hereby incorporated herein as if fully set forth and repeated herein.

12.8 Conflicts with The Township of Adams Ordinances. In the event that any of the provisions, terms, conditions or covenants contained in this Declaration conflict with any provisions of the Ordinances of The Township of Adams (collectively the “Township Requirements”), the applicable provisions, terms and conditions of the Township Requirements shall prevail for all matters involved in any conflicts.

12.9 Conflicts with the Uniform Planned Community Act. In the event that any of the provisions, terms, conditions or covenants contained in this Declaration conflict with any provisions of the Uniform Planned Community Act, the applicable provisions, terms, conditions and provisions of the Uniform Planned Community Act shall prevail.

### ARTICLE XIII

#### DECLARANT’S RIGHTS

13.1 Any or all of the special rights and obligations of the Declarant may be transferred by the Declarant to other persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, that no such transfer shall be effective unless it is a written instrument signed by the Declarant and duly recorded in the public records of Butler County, Commonwealth of Pennsylvania.

### 13.2 Control.

(a) Subject to Section (b) of this Section, for a period of seven (7) years from the date of the recording of this Declaration, as may be extended by law, the Declarant shall have sole power and authority to appoint and remove the officers and members of the Executive Board of the Association, unless the Declarant earlier voluntarily surrenders the right to appoint and remove the officers and members of the Executive Board. However, this period of Declarant's control will terminate no later than the earlier of: (i) Sixty (60) days after the conveyance of seventy-five percent (75%) of the Lots to Owners other than a Declarant; (ii) two (2) years after a Declarant has ceased to offer Lots for sale in the ordinary course of business; or (iii) two (2) years after any development right to add new Lots in additional phases of development was last exercised.

(b) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots (including Lots created in the Additional Real Estate) to Members, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by the Members. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots to Members, not less than thirty-three percent (33%) of the members of the Executive Board shall be elected by the Members.

13.3 Conveyance of Common Elements to Association. Following transfer of the Declarant's control of the Association in accordance with Section 13.2(a), the Declarant shall grant and convey to the Association title to the Common Elements by special warranty deed. No consideration will be paid for this conveyance and all costs of deed preparation and recording shall be borne by the Declarant. Notwithstanding the foregoing, the Declarant shall not convey the Common Elements to the Association until all improvements to the Common Elements as may be required by Adams Township pursuant to any development approvals have been completed by Declarant. This obligation to convey title to the Common Elements shall be binding upon any successor in interest to the rights of the Declarant hereunder.

13.4. Relocation of Boundaries. Relocation of boundaries between Lots and conversion of Lots by the Declarant will be permitted subject to compliance with the provisions of Section 5214 and 5215 of the Act. Subdivision or conversion of the Lots by the Declarant pursuant to Section 5215 of the Act may not result in more than twenty (20) additional Lots. Owners may not subdivide Lots after the initial purchase from Declarant. Declarant shall have the right to subdivide and/or convert any Lots owned by Declarant into two or more Lots, Common Elements, Limited Common Elements or a combination of Lots, Common Elements and Limited Common Elements. Declarant shall also have the right to convert Common Elements to Limited Common Elements.

**ARTICLE XIV**  
**TERMINATION**

14.1. Means of Termination. The Planned Community may be terminated in the following manner:

a. By Statute. As provided by the Act with the consent of one hundred percent (100%) of the Owners.

b. Destruction. In the event there is substantial destruction of all of the Buildings and one hundred percent (100%) of the Owners directly affected by said destruction and Eligible Mortgagees who represent fifty-one percent (51%) of the votes of the Lots that are subject to Eligible Mortgages, voting as in all other instances, shall duly resolve not to proceed with repair or restoration, then and in that event, the Planned Community form of ownership will thereby be terminated. The determination not to reconstruct after casualty shall be evidenced by a certificate of the Executive Board executed by the President and Secretary certifying as to the facts effecting the termination, which certificate shall become effective upon recording in the public records of Butler County, Pennsylvania.

c. General Provisions. The termination of the Planned Community shall be evidenced by a certificate of the Executive Board executed by its President and Secretary certifying as to facts effecting the termination, which certificate shall become effective upon recording in the public records of Butler County, Pennsylvania. When the Property has been removed from the provisions of the Act, the former Owners shall, at the time such removal becomes effective, become tenants in common of the Property, and the holders of mortgages, judgments and other liens against the Lot or Lots formerly owned by such Owners shall have mortgages, judgments and liens upon the respective undivided common interests of the Owners in the entire Property. The undivided interest in the Property owned in common, which shall appertain to each Owner following such removal, shall be in the same proportion of the fair market value of such Owner's interest to the fair market value of the interest of all Owners determined in accordance with §5220 of the Act. All funds held by the Executive Board and all insurance proceeds, if any, shall be and continue to be held for the Owners in proportion to the amount of their respective Percentage Interests determined as aforesaid in accordance with §5220 of the Act. The costs incurred in connection with such termination shall be a Common Expense.

d. Removal from Act. If the Property shall be removed from the provisions of the Act, then the Property may be subject to an action for partition by any Owner or lien holder as if owned in common in which event the net proceeds of sale shall be divided among all the Owners in proportion to the fair market value of their respective Interests determined in accordance with §5220 of

the Act; provided, however, that no payment shall be made to an Owner until all liens or charges on his Lot have first been paid from his share of such net proceeds. Such removal of the Property from the provisions of the Act shall not preclude its subsequent submissions to the provisions thereof in accordance with the terms of the Act.

e. Easements, Covenants and Restrictions Run with the Land.

Notwithstanding any termination of the Planned Community in accordance with this Article, the easements created by this Declaration, and the covenants, conditions and restrictions imposed by this Declaration shall run with the Property in perpetuity, unaffected by such termination.

f. Maintenance of Common Elements. If the Property shall be

removed from the provisions of the Act, then the maintenance, repair and replacement of the Common Elements shall be the responsibility of the Owners.

[signatures follow on next page]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of this 8<sup>th</sup> day of July, 2020

[Signature]

[Signature]  
**FRED W. HESPENHEIDE**

[Signature]

[Signature]  
**CHRISTINE A. HESPENHEIDE**

**ACKNOWLEDGMENT**

COMMONWEALTH OF PENNSYLVANIA )

COUNTY OF Butler )

On this the 8<sup>th</sup> day of July, A.D. 2020, before me a Notary Public, the undersigned officer, personally appeared **FRED W. HESPENHEIDE** and **CHRISTINE A. HESPENHEIDE**, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

[Signature]  
Notary Public

Commonwealth of Pennsylvania - Notary Seal  
Timothy R. Seezox, Notary Public  
Butler County  
My commission expires May 18, 2022  
Commission number 1148406  
Member, Pennsylvania Association of Notaries

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

**ALL THOSE CERTAIN** parcels of ground, situate in the Township of Adams, County of Butler, Commonwealth of Pennsylvania, being designated as **Lot Nos. 12-69**, those Open Spaces designated as **Lot Nos. 5-11 OS**, and those rights of way designated as **Aster Lane, Lupine Drive, Cranesbill Drive, Helenium Drive, and Whitetail Meadows Trail on the Hesperheide Subdivision Plan – Final**, as recorded in the Butler County Recorder of Deeds in Plan Book Volume 380, Pages 50-53.

**EXHIBIT "B"****LIST OF EASEMENTS AND LICENSES**

1. All matters set forth in the Hesperheide Subdivision Plan as recorded in the Recorder's Office of Butler County, Pennsylvania in Plan Book Volume 219, pages 46 and 47.
2. All matters set forth in the Revised Hesperheide Subdivision as recorded in the Recorder's Office of Butler County, Pennsylvania in Plan Book Volume 370, pages 2 and 3.
3. All matters set forth in the Proposed Development Plan for Whitetail Meadows PRD (Proposed Development Plan of Lot 5 in Revised Hesperheide Subdivision) as recorded in the Recorder's Office of Butler County, Pennsylvania in Plan Book Volume 370, pages 4 to 11, inclusive.
4. All matters set forth in the Hesperheide Subdivision Plan Revision No. 3 a Re-Plat of Lot 3B of the Revised Hesperheide Subdivision (Plan Book 310, Page 2-3), as recorded in the Recorder's Office of Butler County, Pennsylvania in Plan Book 377, Pages 40 and 41.
5. All matters set forth in the Hesperheide Subdivision Plan - Final (Plan Book Volume 370, pages 2 to 11, inclusive) as recorded in the Recorder's Office of Butler County, Pennsylvania in Plan Book Volume 380, Pages 50 to 53, inclusive.
6. The following rights of way:
  - a. From William C. Hesperheide, et ux to New York State Natural Gas Corporation dated August 7, 1950 and recorded in Deed Book Volume 597, page 399; assigned to Consolidated Gas Supply Corporation by Assignment of Pipeline Rights of Way dated March 1, 1984 and recorded in Deed Book Volume 1190, page 656; as amended by Modification of Right of Way by and between Bernadine Hesperheide and CNG Transmission Corporation dated April 6, 1988 and recorded in Deed Book Volume 1406, page 970; Modification of Right of Way dated April 6, 1988 and recorded in Deed Book Volume 1406, page 972; further amended by Modification of Right of Way by and between Fred W. Hesperheide, et al and CNG Transmission Corporation dated April 6, 1988 and recorded in Deed Book Volume 1410, page 647.
  - b. From Kenneth W. Hesperheide to Pennsylvania Power Company dated November 22, 1967 and recorded in Deed Book Volume 885, page 21.

c. From Bernadine Hesperheide to Breakneck Creek Regional Authority dated July 11, 1991 and recorded in Deed Book Volume 2129, page 49.

d. From Fred W. Hesperheide, et al to Pennsylvania Power Company dated December 12, 2003 and recorded at Instrument 200402090004011.

e. From Fred W. Hesperheide, et ux to Pennsylvania Power Company dated December 12, 2003 and recorded at Instrument 200402120004463.

f. From Ken W. Hesperheide, et al to Pennsylvania Power Company dated May 1, 1967 and recorded in Deed Book Volume 878, page 47.

7. Land and property rights acquired by Commonwealth of Pennsylvania Department of Highways by condemnation filed at 149 December Term 1967, notice of which is recorded in Deed Book Volume 884, page 531: as amended or modified by Stipulation to Amend Declaration of Taking recorded in Deed Book Volume 918, page 563.

8. Right of Way from Fred W. Hesperheide and Christine A. Hesperheide to Pennsylvania Power Co. dated July 31, 2019 and recorded August 7, 2019 in Instrument No. 201908070015097.

9. Adams Township Stormwater Management Ordinance Operation and Maintenance (O&M) Agreement Stormwater Management Best Management Practices (SWM BMPs) between Fred W. Hesperheide and Christine A. Hesperheide and Adams Township dated September 4, 2019 and recorded September 10, 2019 in Instrument No. 201909100017818.

**EXHIBIT "C"**

**ADDITIONAL REAL ESTATE**

**ALL THOSE CERTAIN** parcels of ground, situate in the Township of Adams, County of Butler, Commonwealth of Pennsylvania, being designated as **Lot Nos. 38-69**, the Open Space designated as **Lot No. 7 OS**, and those rights of way designated as **Lupine Drive and Cranesbill Drive on the Hesperheide Subdivision Plan – Final**, as recorded in the Butler County Recorder of Deeds in Plan Book Volume 380, Pages 50-53.