

Elmhurst, a Planned Community

Public Offering Statement

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For definitions of capitalized words and terms which are not otherwise defined in this Public Offering Statement, see Article I of the *Declaration of Covenants, Restrictions, Easements and Establishment of Homeowners Association for Elmhurst, a Planned Community in Sewickley Borough, Allegheny County, Pennsylvania* (the "Declaration"), a copy of which is attached to this Public Offering Statement, and Section 5103 of the Pennsylvania Uniform Planned Community Act, 68 Pa.C.S. § 5101, *et seq.*

## Elmhurst, a Planned Community

### Public Offering Statement

#### Introduction and Disclosure

Pursuant to the requirements of the *Pennsylvania Uniform Planned Community Act*, 68 Pa.C.S. § 5101, *et seq.* (the "Act"), a Public Offering Statement conveys information<sup>1</sup> regarding a property identified as a "Planned Community." The name of the property which is the subject of this Public Offering Statement is **Elmhurst, a Planned Community**.

The Act identifies the person or entity creating a planned community as a "Declarant." The Declarant of Elmhurst, a Planned Community is Charter Homes at Elmhurst, Inc., a Pennsylvania corporation.

In Pennsylvania, the most common form of Planned Community is a community of individual homes and homesites, with a community homeowners association that owns portions of the community property; the portions owned by the homeowners association being "Common Facilities."

At Elmhurst, a Planned Community, each individual homesite is a parcel of land, very similar to a subdivided "lot." Under the Act, these individual parcels of land are referred to as "Units."<sup>2</sup> As in the case of a subdivision of lots, individual homes and townhomes are built on the land Unit parcels and each individual Unit parcel is owned completely ("*in fee simple*") by the homeowner.

In addition to defining individual homesites as "Units," the Act describes and uses the terms "planned community," and "subject property," to identify real estate which is the subject to the Act. In this Public Offering Statement, the terms "Planned Community" and "Subject Property" are synonymous.

**A Public Offering Statement must inform a purchaser of property in a planned community that: within seven days after receipt of this Public Offering Statement, or any amendment to this Public Offering Statement that materially and adversely affects the rights or obligations of the purchaser, the purchaser, before conveyance, may cancel any contract for purchase of a Unit from a Declarant.**

**If the Declarant fails to provide a Public Offering Statement, and any amendments, to a purchaser before conveying a Unit, the purchaser may, in addition to any other relief, recover from the Declarant an amount equal to 5% of the sales price of the unit up to a maximum of \$2,000 or actual damages, whichever is the greater amount.**

**A minor omission or error in the Public Offering Statement, or an amendment thereto, that is not willful shall entitle the purchaser to recover only actual damages, if any.**

**If a purchaser receives the Public Offering Statement more than seven days before signing a contract, the purchaser cannot cancel the contract unless there is an amendment to the Public Offering Statement that would have a material and adverse effect on the rights or obligations of that purchaser.**

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<sup>1</sup> The information in this Public Offering Statement is based on the requirements of the Act, and on the formal documents referred to in this document which are of record, are on file with governmental entities having jurisdiction, or are duly adopted in accordance with applicable law. These formal documents establish the rights and obligations of property ownership in Elmhurst, a Planned Community. If any of the information in this Public Offering Statement differs from the Act, or differs from the content of any formal recorded, filed, or adopted document, the terms and provisions of the Act, or of the applicable formal document(s) take precedence over the information in this Public Offering Statement. No sales person or other representative may modify any of the terms of the formal documents.

<sup>2</sup> A "Unit" is defined in the Act as a "physical portion of the planned community designated for separate ownership or occupancy, ..." with boundaries described in a "Declaration" and portions of which may be part of the "Controlled Facilities" of the planned community (see Section 1 of this Public Offering Statement).

## 1. The Community of Elmhurst

The name of the planned community is Elmhurst, a Planned Community and is a parcel of land located along Ohio River Boulevard, Boundary Street, and Thorn Street in Sewickley Borough, Allegheny County, Pennsylvania.

The proposed design, components, and construction of the development and improvements of Elmhurst, a Planned Community are shown on a Development Plan on file with Sewickley Borough, with a portion of this Development Plan being recorded in the Department of Real Estate of Allegheny County, Pennsylvania in Plan Book Volume 285, Page 10.

The developer of Elmhurst, a Planned Community is Charter Homes at Elmhurst, Inc., with an address at 1190 Dillerville Road, Lancaster, PA 17601, identified in documents as the "Declarant" and in this Public Offering Statement either as the Declarant or as the "Developer."

Elmhurst, a Planned Community is comprised of individual residential parcels of land (referred to as "Units") on which both single family homes and townhomes are, or are planned to be, built, together with Common Elements for the use and enjoyment of the residents of the Elmhurst community.

The Developer is or will be offering these individual residential Units for sale with homes constructed on the Units. The homes built, however, are not part of a Unit as defined in the Act.

The Declarant intends that all of the Units will be offered for sale to home buyers and the Declarant does not intend to market blocks of Units to investors nor to rent Units. Notwithstanding this intent, there are no restrictions on the sale or leasing of Units held or conveyed to others by the Declarant.

A Planned Community is established, and subsequently operated and governed, in accordance with a written document, identified as a "Declaration."<sup>3</sup> A copy of the Declaration, as amended, is attached to this Public Offering Statement and a summary of the Declaration provisions is in Sections 6 through 8 of this Public Offering Statement

## 2. Common Elements: Common Facilities and Controlled Facilities

Common Elements of the Elmhurst Community are owned and/or are maintained, improved, repaired, replaced, regulated, managed, insured and/or controlled by the Elmhurst Neighborhood Association, Inc. a membership corporation of which each Unit Owner in Elmhurst is a Member (see Section 9 of this Public Offering Statement). As Members of the Association, all homeowners are legally obligated to pay assessments to the Association to fund Association maintenance and operation obligations.

The Common Elements include areas of open land referred to in this Public Offering Statement as "Common Open Space."<sup>4</sup> In addition, all of the Storm Water System, all Streets and Driveways, most Walkways, and all Retaining Walls and fencing throughout the Elmhurst Community are Common Elements.

*The Common Elements are comprised of both Common Facilities and Controlled Facilities.*

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<sup>3</sup> The Declaration of Covenants, Restrictions, Easements and Establishment of Homeowners Association for Elmhurst, a Planned Community in Sewickley Borough, Allegheny County, Pennsylvania is of record in the Department of Real Estate of Allegheny County, Pennsylvania in Deed Book Volume 15926, Page 1, as amended by the First Amendment to Declaration of Covenants, Restrictions, Easements and Establishment of Homeowners Association for Elmhurst, a Planned Community in Sewickley Borough, Allegheny County, Pennsylvania of record in the Department of Real Estate of Allegheny County, Pennsylvania in Deed Book Volume 16097, Page 222.

<sup>4</sup> Common Open Space is all of the Subject Property *excluding* the Units, the Streets and Driveways, and any land Conveyed to any Governmental/Public Service Entities.

The *Common Facilities* include all the land, including all improvements to the land<sup>5</sup> within the Elmhurst Community which is not part of any of the Units, with the exception that the Common Facilities do not include any land Conveyed to any Governmental/Public Service Entities.

The community of Elmhurst is required, by governmental regulation, to control the flow of storm water through and from the land. Storm water is controlled by various Storm Water Facilities. Within Elmhurst, storm water flow is through swales and through storm water pipes, both of which are located within the Common Facilities and on some of the Units within the Planned Community.

The *Controlled Facilities* are those portions of the Elmhurst Community, whether or not a part of a Unit, which are not Common Facilities but are maintained, improved, repaired, replaced, regulated, managed, insured and/or controlled by the Elmhurst Neighborhood Association.

The Controlled Facilities include:

Those portions of the Storm Water Facilities that are not located within the Common Facilities;

Streets and Driveways to the extent located within the boundaries of Units;

all Walkways to the extent located within the Front Yards of Units;

all accessible areas of Lawns on Units within the entire Community; Lawn areas within enclosing fences or structures are considered to be inaccessible;

all Landscaping Plantings such as non-grass ground cover, flowers, shrubs, bushes and trees within the accessible areas of Units; areas within enclosing fences or structures are considered to be inaccessible.

### 3. Maintenance Obligations of Unit Owners

Except for maintenance, repair and replacement of Controlled Facilities,<sup>6</sup> the insurance, maintenance, repair and replacement of buildings located on a Unit are the sole responsibility of the Unit Owner. The Unit Owner must, at all times, maintain any and all buildings on the Unit in a manner which preserves, keeps functional, complies with all applicable Borough, County, State and Federal laws and retains the functional condition of the building(s).

### 4. Insurance Obligations of Unit Owners

Each Owner of a Unit shall, at all times, maintain at the Owner's cost, property insurance in an amount not less than an amount sufficient to replace and rebuild any and all structures on the Unit, and any and all improvements and betterments thereto. If requested by the Association, the Owner is required to provide evidence of such insurance.

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<sup>5</sup> The Improvements to the Common Facilities land include, but are not limited to Lawns and Landscaping Plantings, Retaining Walls; fences and fencing: entrance, identification, direction, information, and traffic control signs (including lighting thereof, if any), Storm Water Facilities, and utility and service conduits, lines, and systems within the Community to the extent not owned by the providers of services or by any other Governmental/Public Service Entity.

<sup>6</sup> See the identification of *Controlled Facilities* in Sections 2.7.3 and 2.7.4 of the Declaration.

5. Development of Elmhurst, a Planned Community

The overall tract of land identified as Elmhurst, a Planned Community has been planned to include 26 Units on which individual residences are or will be built.<sup>7</sup> Units 1 through 10 are planned for single family residences; Units 11 through 26 are planned for townhome residences.

The Developer has commenced construction of improvements to the Elmhurst Community required for the use and occupancy of the Units within Elmhurst as single family and townhome residential properties, including, but not limited to, the installation of private Streets and Driveways, utility services including water, sewage, electric, gas, telephone service, cable TV, and data systems, and Storm Water Facilities (collectively referred to as "Community Improvements"). The Community Improvements which must be built are identified and described in Section 1.16 of the Declaration. The Declarant has posted the following financial security with the indicated entities to assure the performance by the Declarant of these obligations.

Sewickley Borough (including sewers)	Bond in the amount of \$852,071.00
Sewickley Borough (Boundary Street work)	Bond in the amount of \$11,500.00
Sewickley Water Authority	Bond in the amount of \$98,088.41
gas and electric service	No financial security posted
telephone service	No financial security posted
cable TV, and data systems	No financial security posted

The source of funding to complete the Community Improvements is a construction loan from Beneficial Bank to Charter Homes at Elmhurst, Inc.

The Community Improvements to be completed by the Declarant are as follows and will be owned, upon completion, as indicated:

Private Streets and Driveways and Walkways will be Common Elements (both Common Facilities and Controlled Facilities) of the Elmhurst Neighborhood Association.

Water service pipes ("mains" and some "trunk" lines ) will be conveyed to and owned by Sewickley Water Authority. Water service trunk lines not conveyed to Sewickley Water Authority will be Common Facilities of the Elmhurst Neighborhood Association.

Sewer "mains" and some "trunk" lines conveying sewage waste will be conveyed to and owned by Borough of Sewickley. Sewer trunk lines not conveyed to Borough of Sewickley will be Common Facilities of the Elmhurst Neighborhood Association.

Electric, gas, telephone service, cable TV, and data transmission systems are not being completed by the Declarant and are, and will remain, the property of the respective service providers.

All Common Open Space, including improvements to the Common Open Space such as pedestrian Walkways, signs including but not limited to direction and information signs, and entrance and identification signs, including lighting thereof, if any, Lawns, Landscaping Plantings including but not limited to ground cover, flowers, shrubs, bushes and trees, and Retaining Walls will be Common Facilities of the Elmhurst Neighborhood Association.

The Storm Water System will be Common Elements (both Common Facilities and Controlled Facilities) of the Elmhurst Neighborhood Association.

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<sup>7</sup> Although Elmhurst, a Planned Community has been planned to be comprised of 26 residential Units, the Declarant has reserved the right, subject to Sewickley Borough approval, to divide Units into smaller Units, which could result in the Community being comprised of as many as 36 residential Units.

Except for the payments of assessments to the Association, real estate taxes, and utility bills, there are no responsibilities of Unit Owners for the maintenance, repair, improvement, administration and regulation of the Community Improvements.

All structural components and major utility installations of the Community Improvements in the Planned Community are currently under construction and are not complete as of the date of this Public Offering Statement.

The Developer is scheduled to complete the Community Improvements on or before the termination of the Development Period.<sup>8</sup>

The list of all structural components in the Elmhurst Community, including the dates of construction, installation and major repairs of existing structural components (if known or ascertainable), the expected useful life of each item, and the estimated cost in current dollars of replacing each of the structural components is as follows:

New Structural Components	Date of Construction	Expected Useful Life	Estimated Cost to Replace (in current dollars)
Storm Water Facilities	Under Construction	60 years	\$135,625.00
Streets and Driveways Paving	Under Construction	30 years	\$89,600.00
Streets and Driveway Curbing	Under Construction	50 years	\$42,528.00
Walkways	Under Construction	30 years	\$50,453.00
Retaining Walls	Under Construction	50 years	\$152,580.00
Fencing (on Common Facilities)	Under Construction	25 years	\$18,900.00
Signage	Under Construction	15 years	\$625.00
Centralized Mailboxes	Under Construction	30 years	\$500.00

Because all major electric, gas, telephone service, cable TV, and data transmissions systems installations are repaired and replaced by the utility service providers of these systems, there is no cost to the Association of replacing each of the same.

The following governmental approvals and permits are required for the use and occupancy of the Planned Community.

Land development approval from Sewickley Borough, which has been obtained, and which does not expire.

NPDES (National Pollutant Discharge Elimination System) Permit (Permit # PAG 02000214122) issued by the Pennsylvania Department of Environmental Protection, which has been obtained, with an expiration date of November 5, 2019.

Building Permits from Sewickley Borough for construction of homes on the individual Units, which have not been obtained, are expected to be obtained immediately prior to the construction of a home on a Unit, the expense of which is the responsibility of the builder of the home.

Certificates of Occupancy from Sewickley Borough for permission to occupy homes constructed on the individual Units, which have not been obtained, are expected to be obtained immediately prior to the occupancy of a home on a Unit, the expense of which is the responsibility of the builder of the home.

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<sup>8</sup> The Development Period is defined in Section 1.24 of the Declaration and will terminate one hundred and eighty (180) days after the Conveyance of all of the Units in the Subject Property to Owners of Units for which a Use and Occupancy Certificate for a dwelling constructed on such Unit has been issued by Sewickley Borough or other governmental entity.

## 6. The Declaration

**A copy of the Declaration is attached to this Public Offering Statement.**

The Declaration may be amended by a vote of the owners of Sixty Seven percent (67%) of the Units within Elmhurst, a Planned Community. In addition, the Declaration may be amended by the Executive Board in accordance with the provisions of Section 5219(f) of the Act.<sup>9</sup>

The Declaration defines and describes:

- a. the description, dimensions, and components of "Elmhurst, a Planned Community" (§§ 2.2 - 2.7, Exhibit "A", Development Plan(s) as defined in Declaration § 1.25)
- b. Community Improvements and provisions regarding assurance of completion (§ 2.9)
- c. the property rights and responsibilities regarding the Common Elements including:
  - 1) Owner's easement of enjoyment and right to delegate (§§ 3.3.3, 3.3.4)
  - 2) limitation of easements, rights and privileges (§ 3.4)
- d. easements and licenses granted to the Association and to the Declarant (§ 3.6) including:
  - 1) vehicle access easement (§ 3.6.1)
  - 2) snow removal and stockpiling easement (§ 3.6.2)
  - 3) Stormwater Facilities and surface water flow easements (§§ 3.6.3, 3.6.4.1)
  - 4) Common Element maintenance, repair, and replacement easement (§ 3.6.4.2)
  - 5) utilities and utility services easements (§§ 3.6.4.3, 3.6.5)
  - 6) covenants and negative easements which would interfere with foregoing (§ 3.6.4.4)
  - 7) Declarant easements for improvement and development of Subject Property, exercise of Declarant rights set forth in the Declaration, and sales and marketing activities (§ 3.6.6)
  - 8) Association access easements for inspection, violation remediation, and performance of maintenance, repairs, or replacement work (§ 3.6.7)
- e. a list of current recorded restrictions, easements, and licenses appurtenant to or included in the Subject Property (§ 3.7, Exhibit "B")
- f. the Declarant right to subject the Subject Property to other utility and/or construction easements (§ 3.8)

The Declaration establishes that the Elmhurst Neighborhood Association, Inc. (the "Association") will be the entity responsible for complying with responsibilities in the Planned Community. The Declaration defines and describes:

- a. the composition of the Association (§ 4.1)
- b. the powers and duties of the Association (§§ 4.1.1, 4.2)
- c. the responsibilities of the Association for the maintenance, improvement, repair, replacement, regulation, management and control of the Common Elements<sup>10</sup> (§§ 4.3.1, 4.3.2) including Unit Owners' grant of negotiating and resolution power of attorney to Association (§ 4.3.1)
- d. enforcement by Sewickley Borough and assessments therefor (§§ 5.13, 5.14)
- e. insurance to be carried by Association (§ 4.4)
- f. Membership and voting rights in the Association (§§ 4.5.1, 4.5.2), including Attached Dwelling and Detached Dwelling Membership and voting classes (§ 4.5.2.1)

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<sup>9</sup> For the purposes of curing any ambiguity, to correct or supplement any defective, missing, or inconsistent provisions, to conform to requirements of Financing Agencies (defined in Declaration § 1.29), to comply with any statute, regulation, code or ordinance now or in the future made applicable to the Community or to the Association, or to make or permit a reasonable modification in favor of the handicapped.

<sup>10</sup> Including without limitation operation and maintenance of the Storm Water System, maintenance of utility service facilities not owned by service providers, and maintenance of Walkways and Streets and Driveways (including the reasonably practical removal of snow and the reasonably practical treatment for ice accumulation, but as limited by the provisions of Declaration § 4.3.2.3).

The Declaration establishes that the Association will be managed by an Executive Board. The Declaration defines and describes:

- a. the composition of the Executive Board (§ 4.6)
- b. powers and duties of the Executive Board (§ 4.6.1)
- c. right and limitation of Declarant to appoint Members of the Executive Board during and only during the Declarant Transition Period (§ 4.6.2)
- d. provisions regarding transfer of control of the Executive Board from Declarant to Members elected by the Unit Owners (§§ 4.6.2.1 - 4.6.2.2)
- e. Association indemnification of officers, Executive Board and committee members (§ 4.6.3)

The Declaration establishes the procedures for assessments. The Declaration defines and describes:

- a. creation of the lien and personal obligation for payment of assessments (§ 5.1)
- b. purpose of assessments (§ 5.3)
  - 1) annual assessments (§ 5.4)
  - 2) special assessments for capital improvements (§ 5.5)
  - 3) assessment to repair damage caused by Owner or others for whom Owner is responsible (§ 5.6)
  - 4) emergency assessment for any unusual, unanticipated or emergency maintenance, repair, or other expense (§ 5.7)
  - 5) initial assessments (§ 5.8)
  - 6) capital improvement fee on resale or transfer (§ 5.9)
- c. payments of assessments (§ 5.10)
- d. remedies of the Association for non payment of assessments (§ 5.11)
- e. procedure for issuance of estoppel certificates (§ 5.2)

The Declaration establishes Special Declarant Rights to:

- a. subject the Planned Community to easements (§ 7.1)
- b. alter the dimensions, boundaries, scope, locations, and dimensions of the Community, Units, Common Elements, and Community Improvements, including Streets and Driveways and Walkways in accordance with Declaration § 2.1 (§ 7.2);
- c. appoint members of the Executive Board pursuant to the provisions of Declaration § 4.6.2 (§ 7.2)
- d. use easements and licenses granted to Declarant (§ 7.3)

The Declaration also describes and establishes provisions for:

- a. exceptions to Declaration provisions for development and sales (§ 7.4)
- b. rights of Secured Lenders (§ 8.1)
- c. obligations of Association to Secured Lenders (§ 8.2)
- d. exercise of Special Declarant Rights by Declarant (§ 8.3)
- e. enforcement of the provisions of the Declaration (§ 9.1)
- f. severability of parts of the Declaration (§ 9.2)
- g. amendment of the Declaration (§ 9.3)

There is no provision in the Declaration for any circumstances under which the Association is to become a master association or part of a master association. (A "master association" exercises powers granted to other associations on behalf of one or more other planned communities or other incorporated or unincorporated associations.)



## 7. Restrictive Covenants - Review and Approval of Architecturally Controlled Improvements

**The Declaration contains requirements that most construction on a Unit,<sup>11</sup> and certain improvements and/or uses of a Unit are defined as "Architecturally Controlled Improvements" and are prohibited unless reviewed and approved by the Executive Board of the Association.**

**Declaration § 6.2 lists the following items subject to architectural review and approval:**

- a. construction of any improvement(s) on a Unit which requires any governmental permit;
- b. any addition to a structure on a Unit;
- c. any Walkway on a Unit;
- d. any Street or Driveway on a Unit;
- e. any Landscape Plantings on a Unit;
- f. construction or placement of any structure, improvement, fixture, device or item on a Unit attached to or appurtenant to the principal structure on the Unit including, but not limited to, any greenhouse, playhouse or play structure, solar panel, fireplace, grill, or other cooking or food preparation facility (excepting such of which as are portable and, when not in use, are stored within a structure);
- g. any alteration, modification or change in or to any of the exterior components, fixtures, materials, colors, and/or appearance of any building, fence, wall or other structure or any portion thereof (including without limitation, any painting thereof) on a Unit;
- h. any addition to and/or demolition or removal of any building, fence, wall or other structure or any portion thereof on a Unit;
- i. installation of lighting fixtures, illuminating devices or illumination sources, including but not limited to lamppost lights, anywhere on a Unit excepting only such lighting fixtures, illuminating devices or illumination sources installed wholly within a building on a Unit;
- j. fencing, privacy wall or gate, together with landscaping adjacent or in proximity thereto on a Unit;
- k. erection and/or maintenance of any antenna or exposed electrical or electronic wires or lines on the outside of any structure, including without limiting the generality thereof, any television receiving antenna, satellite receiving antenna, radio receiving antenna or radio or television transmitting antenna; and
- l. anything hung, painted, displayed, relocated or extended on or affixed or placed upon the outside surfaces of doors, the outside of the windows (or inside, if visible from the outside), the exterior walls, or roofs of any structure on a Unit or any part thereof.

The procedure for compliance with review, and approval or disapproval of any Architecturally Controlled Improvements, is set forth in Declaration §§ 6.2.2 and 6.2.3.

Provisions for enforcement of control of Architecturally Controlled Improvements are set forth in Declaration § 6.1.

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<sup>11</sup> Other than the construction of the original improvements to a Unit such as the initial construction of a Dwelling (as defined in Declaration § 1.26) on the Unit.

8. Restrictive Covenants - Use Restrictions

**The Declaration contains restrictions on the use of Units and Common Facilities within the Community including:**

- a. restrictions against parking of vehicles owned, controlled, or under Owner direction anywhere within the Community except in an area completely within the Owner's Unit or within the garage portion of an Owner's Dwelling (§ 6.3);
- b. requirement to remediate, repair, and restore any casualty damage to any structure on, or other improvement to, a Unit (§ 6.4.1);
- c. prohibition of activities or conditions constituting a nuisance, or being offensive, dangerous, or hazardous (§§ 6.4.2, 6.4.3);
- d. prohibition of use of temporary facilities for residential use (§ 6.4.4);
- e. prohibition of hanging or exposing laundry on exterior of Dwelling or other structure on a Unit (§6.4.5);
- f. prohibition of fences or visual barrier mass groupings of shrubs, trees or other plantings unless approved as an Architecturally Controlled Improvement (§ 6.4.5);
- g. requirement that Dwelling to be used solely for residential purposes, unless otherwise expressly allowed (§ 6.4.7);
- h. prohibition of use of Unit for trade, business or profession, except customary home occupations clearly incidental to the residential use of the Unit, and subject to compliance with and approval of all governmental agencies having jurisdiction (§ 6.4.8);
- i. prohibition of keeping animals (except domestic house pets) on a Unit and requirement of maintenance and control of pet(s) so as not to offend or disturb other Unit owners or occupants by noise, elimination, odor, intrusion, destruction of property or otherwise (§ 6.4.9);
- j. prohibitions of signs, billboards, notices, advertising, displays, or other attention attracting devices on a Unit, or within a Dwelling if viewable from outside the Dwelling, excepting only governmentally-required address signs and small (one square foot in size) signs identifying the occupant and home occupation, if applicable, (§ 6.4.10);
- k. requirement that any building, appurtenant structure or other improvement on a Unit shall be constructed, placed or maintained pursuant to all statutes, laws, ordinances, rules and regulations of all governmental entities having jurisdiction; and all construction, and all parts and phases thereof including, but not limited to, electrical work and plumbing, shall be performed in accordance with all applicable building codes and regulations (§ 6.5);
- l. exception for reasonable adaptation of any Unit, Dwelling, or other structure for handicapped or special use, subject to regulations of Sewickley Borough (§ 6.6).

9. The Elmhurst Neighborhood Association

The Elmhurst Neighborhood Association, Inc. (the "Association") is organized as a Pennsylvania non-profit membership corporation.

The Association may contract with outside firms for management services, and to perform some of the required functions of the Association.

The Association has several functions:

- a. The Association is responsible for maintaining, repairing and replacing when required all of the Common Facilities within the Community<sup>12</sup> including without limitation:
  - all improvements to the Common Facilities including Lawns, Landscape Plantings, Streets and Driveways, Walkways, Retaining Walls, fences, and Common Open Space;
  - the Storm Water System;
  - entrance and identification signs (including lighting thereof, if any), direction and information signs, and traffic control signs;
  - utility and service conduits, lines and systems within the Subject Property and not owned by the providers of services or by any other Governmental/Public Service Entity.
- b. The Association is responsible for maintaining all of the Controlled Facilities within the Community<sup>13</sup> including without limitation:
  - Streets and Driveways to the extent located within the boundaries of any Unit;
  - Walkways which are (1) not part of the Dwelling on a Unit, and (2) located within the boundaries of the Front Yard of a Unit;
  - all Lawns located within the accessible areas of Units;
  - Landscape Plantings located within the accessible areas of Units;
  - Retaining Walls located within the boundaries of Units.
- c. The Association can enforce, against any Unit Owner(s) violating them, the conditions, covenants, restrictions, and easements in the *Declaration*.

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<sup>12</sup> See Declaration §§ 1.12.1, 2.7.1, 2.7.2

<sup>13</sup> See Declaration §§ 1.12.2, 2.7.3, 2.7.4

10. Membership and Assessments

a. Membership

To accomplish the purposes of the Declaration, each purchaser (or other grantee) of a Unit in Elmhurst, a Planned Community is obligated, upon and by becoming an Owner of a Unit in Elmhurst, a Planned Community to become an Owner/Member of the Association.

The Owner, or owners collectively if more than one, of each individual Unit shall constitute one Member of the Association. Each Member shall hold such number of Memberships in the Association as is equal to the number of Unit(s) owned by such Member. The Association shall have such number of Memberships as there are Units in the Planned Community.

Each Membership will have one vote in the Association. The total number of votes in the Association will be equal to the total number of Units within the Planned Community.

If any Membership is comprised of two or more persons (that is, if any individual Unit is owned by two or more persons), the vote for such Membership shall be cast as such owners shall decide among themselves and the vote may be exercised by any one of them, unless any objection or protest by any other of them is made prior to the completion of a vote, in which case the vote for such Membership will be cast in accordance with the majority vote of such Owners and if no majority vote of such Owners is attainable, the vote of such Membership will be cast as an abstention. In no event, however, will more than one vote be cast with respect to any Membership.

b. Membership and Voting Classes

Membership and Voting classes have been created for each Dwelling type- Attached Dwelling and Detached Dwelling. The Attached Dwelling Unit Class is comprised of and limited to Memberships appurtenant to Units on which an Attached Dwelling is or may be constructed in accordance with the Approved Development. The Detached Dwelling Unit Class is comprised of and limited to Memberships appurtenant to Units on which a Detached Dwelling is or may be constructed in accordance with the Approved Development.

Section 4.5.2.1 of the Declaration establishes the rights of the Memberships of voting classes to decide and to affirm or reject issues affecting Units to which such Memberships are appurtenant.

c. Cumulative Voting

Cumulative voting is permitted only for the purpose of electing members of the Executive Board. Cumulative voting will not be permitted for any other purpose. Cumulative voting permits the casting of multiple votes for one candidate for election. In cumulative voting, each Membership is allocated the same number of votes as there are positions to be filled. For example, in an election to elect three directors, each Membership would have three votes. Under cumulative voting, in an election for three directors, each Membership would cast three votes. The three votes may be cast as one vote for each of three separate candidates, or all three votes may be cast for one candidate, or two votes may be cast for one candidate and one vote cast for a second candidate.

d. Association Interests

The interest in the Association allocated to each Unit is a ratio of one (1) to the total number of Units which are within the Community, expressed as a percentage.

Currently, there are 26 Units within the Community.

The Association Interest of each Unit is currently 1/26 or 3.846%.

e. Assessments

To carry out its responsibilities, the Association has the authority to collect assessments from each Unit Owner in Elmhurst, a Planned Community.

Each Unit Owner is obligated to pay annual and other assessments, when assessed, to the Association for the Association's operating and other expenses. In the event of failure to pay these assessments, the Association has the right to pursue collection by legal means and has a lien against the Unit owned which may be foreclosed against the Unit.

The budgets are the amounts of money required to meet the obligations of the Association as required by the Declaration.

The Assessment Liabilities are the amounts to be paid by each Unit Owner to the Association.

The General Common Expenses Assessment Liability for each Unit for each year is based on the General Common Expenses Budget established for the year, multiplied by the Association Interest of the Unit.

The Special Allocation Expenses Assessment Liabilities for each Unit for each year are based on the proportional benefit to such Unit of the Special Allocation Expenses Budgets. Special Allocation Expenses Budgets include, but are not be limited to:

the costs of utility services paid by the Association which shall be, if separately metered to each Unit, assessed in proportion to usage or, if not separately metered to each Unit, assessed in equal amounts to all Unit to which such utility services are provided;

costs associated with the maintenance, repair or replacement of a Limited Common Element which shall be assessed in equal shares against the Units to which such Limited Common Element was appurtenant at the time the cost was incurred.

**The estimated budget for the Association based on Elmhurst, a Planned Community being completed with 26 Units is attached to this Public Offering Statement.**

Until the entire Community is completed, interim budgets may be applicable.

**IMPORTANT NOTE: Interim Budgets may result in assessments which are, and may be, more or less than the assessments projected upon completion of the Community.**

**Interim budgets (and Assessments) may be less because operating costs may not include Association expenses for Community Improvements which are not yet complete.**

**Interim budgets (and Assessments) may be less because they may be based on the receipt of operating subsidies from the Declarant.**

Until the Association makes an Assessment, the Declarant will provide all of the money required by the Association to meet the obligations of the Association as required by the Declaration.

The date of start of all Assessments is determined by Declarant. See 68 Pa.C.S.A. § 5314, Uniform Law Comment.

The budgets of the Association include reserves for replacement of Common and Controlled Facilities as indicated in the budgets. In the event that reserves for replacements are insufficient when replacements of some Common Facilities<sup>14</sup> or Controlled Facilities<sup>15</sup> are required,<sup>16</sup> the Executive Board will levy, subject to approval of Unit Owners, special assessment(s) for capital improvements pursuant to Section 5.5 of the Declaration.<sup>17</sup>

In addition to annual assessments, each initial purchaser of a Unit from a Declarant is obligated to pay an initial assessment to the Association in the amount of \$400.00. The initial assessment will be used by the Association to pay start-up expenses, to prepay certain expenses, such as insurance premiums, and to provide an initial reserve against future expenses.

f. Other Fees and Expenses

Other than assessments assessed in accordance with the Declaration, there are no current or expected fees or charges to be paid by Unit Owners for the use of the Common Elements and other facilities related to the Planned Community.

There is no personal property not owned by the Association but provided by the Declarant.

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<sup>14</sup> See Sections 2.7.1 and 2.7.2 of the Declaration.

<sup>15</sup> See Sections 2.7.3 and 2.7.4 of the Declaration.

<sup>16</sup> "as and when in the sole judgment of the Executive Board required, in a manner which preserves, keeps functional, complies with all applicable Borough, County, State and Federal regulations, ordinances and laws and retains the functional condition thereof." Declaration § 4.3.2

<sup>17</sup> "In addition to the annual assessments authorized in the Governing Documents, the Executive Board 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, reconstruction, repair or replacement of a capital improvement of a part of the Common Elements including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of Members voting at a Special Purpose Meeting duly called for such purpose in accordance with the provisions of Section 4.5.3. of this Declaration." Declaration Section 5.5

## 11. Executive Board

The affairs of the Association will be managed by an Executive Board, the members of which will be (except during the Declarant Transition Period<sup>18</sup>) elected by the Members in accordance with the Bylaws of the Association. The Executive Board will be constituted and organized, and will operate, in accordance with the Bylaws of this Association.

To assure that the Association is established and operates to accomplish the purposes for which it is created, the Association will go through the Declarant Transition Period during which the Developer (Declarant) exercises greater control and has certain rights.

During this Declarant Transition Period, various governmental and other financing agencies encourage that the Developer (Declarant) be in control of the Association and be responsible for an orderly transition of control of the Association to resident Members over the course of the Declarant Transition Period.<sup>19</sup>

During the Declarant Transition Period, the Developer (Declarant) has the right to appoint a majority of the Executive Board of the Association. Other members of the Executive Board are elected by a vote of the Unit Owners. Initially, the Executive Board will be comprised of three members. The Executive Board, however, has the right to revise the number of its members.

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<sup>18</sup> The "Declarant Transition Period" will start on the date of the first conveyance of a Unit to a person other than a Declarant or Assignee Declarant and continue until the earliest of:

- a. Sixty days after conveyance by Declarant to persons other than a Declarant of Twenty Seven (27) Units (being 75% of the Units which may be created pursuant to the terms of this Declaration), or
- b. Five (5) years from the date of the first conveyance of a Unit to a person other than a Declarant or Assignee Declarant, or
- c. Two (2) years after all Declarant(s) and/or Assignee Declarant(s) have ceased to offer Units for sale in the ordinary course of business; or
- d. The date designated, by notice in writing, from the Declarant to the Executive Board of the Association as the date of termination of the Declarant Transition Period.

<sup>19</sup> See § 4.6.2 of the *Declaration*.

12. The Bylaws

**A copy of the Bylaws of the Association is attached to this Public Offering Statement**

The Bylaws define and describe:

- a. statement of purpose of the Association (Preamble, § 1.3)
- b. statement of laws to which Association is subject (Article I)
- c. structure of Association, powers of the Association (§§ 2.2 - 2.4)
- d. statement of name, principal office, and registered office of the Association (Article III)
- e. identification of Members of the Association (Article IV)
- f. meetings of the Members of the Association (§§ 5.1 - 5.4, 5.6 - 5.8, 5.10)
  - 1) quorum (§ 5.5),
  - 2) proxies and voting (§ 5.9)
- g. Executive Board of the Association (Article VI)
  - 1) composition of Executive Board and terms of Executive Board members (§§ 6.1, 6.2)
  - 3) election of Executive Board members
  - 4) resignation, removal, and filling vacancies of Executive Board members (§ 6.3)
  - 5) compensation, liability of Executive Board members (§ 6.4, 6.5)
  - 6) meetings of Executive Board members (§§ 6.6 - 6.10))
- h. committees (Article VII)
- i. powers and duties of the Executive Board (Article VIII)
- j. officers of the Association (Article IX)
  - 1) titles, qualifications, powers, and duties of officers (§§ 9.1 - 9.9)
  - 2) election of officers by the Executive Board (§ 9.1)
  - 3) resignation, removal, and filling vacancies of officers (§ 9.10)
- k. fiscal year of the Association (§10.6)
- l. amendments to the Bylaws (Article XI)

13. Resolutions, Rules and Regulations

- a. The Executive Board has adopted the following Resolution:

Resolution pursuant to the provisions of Declaration §§ 4.3.2.2 and 4.3.2.3, establishing that snow is to be removed from Streets and Driveways and Walkways (1) upon cessation, between 7:00 a.m. and 10:00 p.m., of a snowfall exceeding two inches (2"), or (2) starting at 7:00 a.m., upon cessation of a snowfall exceeding two inches (2") between 10:00 p.m. and 7:00 a.m.; ice removal or treatment is to be performed every two hours during the hours from 7:00 a.m. to 10:00 p.m.

- b. There are currently no rules or regulations affecting the Elmhurst Community other than pursuant to the provisions of the Declaration and the Bylaws.



14. Purchase Agreement and Other Documents and Provisions affecting Purchasers

**A copy of the form of purchase agreement to be entered into by a purchaser for a Unit in the Planned Community is attached to this document**

The purchase agreement form defines and describes:

- a. the parties (buyer and seller)
- b. the property being purchased
- c. the construction of a home on the property being purchased
  - 1) description of the home
  - 2) plans and specifications
- d. the purchase price for the property being purchased
- e. earnest money deposit(s):
  - 1) amount
  - 2) who holds
  - 3) interest earned on earnest money deposits is payable to the buyer
- f. settlement (or closing) of the purchase
- g. construction modification deposit(s)
- h. requirements for start of construction of a home
- i. mortgage financing contingency
- j. acknowledgments of provided items
  - 1) limited warranty applicable to the home and
  - 2) Public Offering Statement applicable to the property.
- k. notice provisions
- l. default provisions
- m. integration provision
- n. information regarding broker, cooperating broker (if any), and buyer agent (if any)

There are no other documents to be signed by purchasers of Units prior to or at settlement of the purchase of a Unit except as may be required by any mortgage lender selected by the purchaser and/or the entity selected by the purchaser to insure title to the Unit, of which Declarant has no knowledge.

There is no financing for purchasers offered or arranged by the Declarant.

There are no restraints on alienation of any Unit.

Any deposit (which shall not include any payment specifically stated in a sales contract to be in payment of or on account of extras, changes or custom work) made in connection with the purchase or reservation of a Unit from the Declarant ("Deposit") shall be placed in escrow and will be held in an escrow account in this Commonwealth by a licensed real estate broker, an attorney admitted to practice in this Commonwealth, a financial institution, or a licensed title insurance company in an account or in the form of a certificate of deposit designated solely for that purpose with a financial institution whose accounts are insured by a governmental agency or instrumentality until:

- (1) delivered to the Declarant, at the settlement of the purchase of the property being purchased;
- (2) delivered to the Declarant, because of purchaser's default under a contract to purchase the Unit;

or

- (3) refunded to the purchaser.

Any Deposit will be returned to the purchaser if the purchaser cancels the contract pursuant to section 5406 of the Act which provides that:

(a) declarant shall provide a purchaser of a unit with a copy of the public offering statement and all amendments thereto not later than the date the purchaser executes the contract of sale for such unit or, if no contract of sale is executed, not later than seven days before conveyance of such unit. Unless a purchaser is given the public offering statement, including all the currently effective amendments thereof, within the time period referred to in the preceding sentence, the purchaser, before conveyance, may cancel the contract within seven days after first receiving the public offering statement and all currently effective amendments. If a public offering statement is amended after the public offering statement has been received by a purchaser of a unit, the amendment shall be provided to the purchaser promptly after it becomes effective. If the amendment materially and adversely affects the rights or obligations or both of the purchaser, then the purchaser, before conveyance, may cancel the contract of sale within seven days after receiving the amendment.

(b) Method and effect of cancellation.--If a purchaser elects to cancel a contract pursuant to subsection (a), the purchaser may do so by hand-delivering notice thereof to the declarant or by mailing notice thereof by prepaid United States mail to the declarant or to the declarant's agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

In lieu of escrowing deposits in accordance with subsection (a) of Section 5408 of the Act, a declarant may: (1) obtain and maintain a corporate surety bond issued by a surety authorized to do business in this Commonwealth, and in which the declarant has no direct or indirect ownership interest, in the form and in the amount set forth in subsection (d) of Section 5408 of the Act; or (2) obtain and maintain an irrevocable letter of credit issued by a financial institution whose accounts are insured by a governmental agency or instrumentality, and in which the declarant has no direct or indirect ownership interest, in the form and in the amount set forth in subsection (d) of Section 5408 of the Act..

15. Conditions affecting Title

Some or all of the Planned Community is subject to recorded restrictions, easements and licenses. As of the date of this Public Offering Statement, the following restrictions, easements or licenses appurtenant to or included in the Subject Property are recorded, or intended to be recorded, in the Department of Real Estate of Allegheny County, Pennsylvania:

- a. rights granted to Duquesne Light Company as set forth in Deed Book Volume 8316, Page 534; and Deed Book Volume 5113, Page 601;
- b. rights granted to The Borough of Sewickley Water Authority as set forth in Deed Book Volume 8103, Page 560;
- c. twelve (12) foot right-of-way as set forth in Deed Book Volume 910, Page 78;
- d. notices in the deed as set forth in Deed Book Volume 15893, Page 495 regarding title to subsurface coal and right of support;
- e. legal operation and effect of the set-back lines, plan notes, easements, conditions and encumbrances as shown on the Initial Development Plan as such is defined in Section 1.25.1 of the Declaration;
- f. Declaration of Covenants, Restrictions, Easements and Establishment of Homeowners Association for Elmhurst, a Planned Community in Sewickley Borough, Allegheny County, Pennsylvania as set forth in Deed Book Volume 15926, Page 1;
- g. [Easements to sewer provider];
- h. [Easements to public water provider];
- i. [Easements to electric provider];
- j. [Easements to telephone provider];
- k. [Easements to cable television provider].

16. Other Documents and Provisions regarding the Planned Community

There are no contracts, leases nor agreements of a material nature to the Planned Community that will or may be subject to cancellation by the Association under section 5305 of the Act (relating to termination of contracts and leases of Declarant).

There are no judgments against the Association, nor any pending suits to which the Association is a party nor any pending suits material to the Planned Community of which the Declarant has actual knowledge.

There are no outstanding and uncured notices of violations of governmental requirements affecting the Planned Community.

There are restraints on alienation of Common Elements. The Association may not dispose of the Common Facilities, by sale or otherwise, except upon Conveyance of the Common Facilities to a Governmental/Public Service Entity or other organization which such other organization has been organized for, or has adopted the purpose of, ownership of the Common Facilities and performance of the duties and obligations of the Association as set forth in the Governing Documents, subject to the provisions of §5318 of the Act.

The Declarant has no knowledge of:

- (i) Hazardous conditions, including contamination, affecting the planned community site by hazardous substances, hazardous wastes or the like or the existence of underground storage tanks for petroleum products or other hazardous substances.
- (ii) Any investigation conducted to determine the presence of hazardous conditions on or affecting the planned community site.
- (iii) Any finding or action recommended to be taken in the report of any such investigation or by any governmental body, agency or authority, in order to correct any hazardous conditions and any action taken pursuant to those recommendations.

The address and phone number of the regional office of the Department of Environmental Resources (now Department of Environmental Protection) where information concerning environmental conditions affecting the Planned Community may be obtained is:

Department of Environmental Protection (412) 442-4000  
400 Waterfront Drive  
Pittsburg, PA 15222

The address and phone number of the regional office of the United States Environmental Protection Agency where information concerning environmental conditions affecting the Planned Community may be obtained is:

United States Environmental Protection Agency (800) 438-2474 or (800) 814-5122  
1650 Arch Street  
Philadelphia, PA 19103

## 17. Insurance Coverage

The following insurance coverage is provided or intended to be provided by the Association for the benefit of Unit Owners pursuant to the provisions of which,

- (1) Each Unit Owner is or shall be an insured person under the policy with respect to liability arising out of his or her Membership in the Association;
- (2) The insurer waives or shall waive its right to subrogation under the policy against any Unit Owner or member of the Owner's household.
- (3) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.
- (4) If at the time of a loss under the policy there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy is primary insurance not contributing with the other insurance:

comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Executive Board but not less than in the amount of One Million Dollars (\$1,000,000.00) for bodily injury and property damage per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, covering all occurrences commonly insured against for death, bodily injury covering all occurrences commonly insured against for property damage, arising out of or in connection with the use, ownership or maintenance of the Common Elements, including without limitation arising out of or in connection with the use or maintenance of the Controlled Facilities, which such insurance may contain deductible provision(s) in such amount(s) as are determined by the Executive Board; and

property insurance on the Common Facilities in such amount that the total amount of insurance after application of any deductibles (which such deductibles shall not be greater than the lesser of \$10,000 or 1% of the policy face amount) shall be not less than 100% of the insurable replacement cost of the insured property exclusive of land, excavations, foundations and other items normally excluded from property policies; and

any other insurance deemed appropriate by the Executive Board to protect the Association or the Unit Owners.

There is no insurance provided nor intended to be provided by the Association which includes improvements or betterments made to Units.

## 18. Warranties

The Declarant warrants that each Unit will comply with all laws, ordinances, rules and regulations of all governmental entities having jurisdiction thereof and will be served by public water, public sewer, electric, gas, and telephone service (referred to collectively as "Utilities") and for which all approvals, permits and contracts from all governmental entities having jurisdiction thereof and providers of Utilities therefor for construction of a single family home thereon are immediately obtainable and, upon the completion of the construction of a home thereon in accordance with all requirements of all governmental entities having jurisdiction thereof and in accordance with the requirements of all entities providing Utilities (including without limitation payment for and compliance with all requirements for the obtaining of approvals, permits and contracts for such construction and provision of Utilities), a certificate of occupancy shall be immediately obtainable therefor.

The Declarant also provides each home buyer with the warranties contained in Section 5411(b) of the Pennsylvania Uniform Planned Community Act (for two years from the date of closing of the purchase of the Unit, Declarant warrants against defects in components constituting the Unit which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration or replacement). Nothing in this section shall be construed to make the Declarant responsible for any items of maintenance relating to the Unit purchased.

**Except for any manufacturers' warranties and any limited warranty that may be provided, and except for the warranties provided pursuant to the Act, DECLARANT MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY NATURE, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THOSE OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, WORKMANLIKE CONSTRUCTION, HABITABILITY, DESIGN, CONDITION (INCLUDING AS TO LATENT DEFECTS), QUALITY OR OTHERWISE AS TO THE PLANNED COMMUNITY AND THE UNIT AND OTHER IMPROVEMENTS CONSTRUCTED THEREON, AND DECLARANT HEREBY EXPRESSLY DISCLAIMS ANY SUCH REPRESENTATIONS OR WARRANTIES TO THE FULLEST EXTENT PERMITTED BY THE ACT. By accepting a deed to a Unit, the Buyer acknowledges and accepts such disclaimer and agrees to waive any and all rights the Buyer may have by virtue of such representations and warranties. This exclusion shall be in addition to any exclusions set forth in any Purchase Agreement between the Buyer and the Declarant.**

19. Annexation. Merger and Dissolution

No additional properties may be included in, or "added on", to the overall tract of land identified as Elmhurst (such adding on is referred to as "annexation").

The documents provide that, in the event that the Association is dissolved, the Common Facilities must be conveyed to another entity which would continue to hold the Common Open Space for the enjoyment of all Unit Owners subject to the provisions of the Act.