

DECLARATION OF COVENANTS, RESTRICTIONS  
AND EASEMENTS  
FOR  
"KEATS GLEN AT CORNER KETCH"  
(a planned community)

THIS DECLARATION is made on June 1, 2000 by SOUTHDOWN HOMES, L.P., a Pennsylvania limited partnership (the "Declarant") for itself and its successors.

BACKGROUND

Declarant is the owner in fee simple of the land described on Exhibit "A" attached hereto and made a part hereof, situate in East Brandywine Township, Chester County, Pennsylvania (the "Land") which is being developed as shown on the Plans (as hereinafter defined) as a residential planned community known as "KEATS GLEN AT CORNER KETCH". Declarant is recording this Declaration to create a planned community with respect to the Land and the Homes and other improvements to be constructed thereon pursuant to the Pennsylvania Uniform Planned Community Act, 68 Pa.C.S. §5101, et seq. (the "Act"), subject to all the terms and conditions hereof.

WITNESSETH:

NOW, THEREFORE, the Declarant hereby declares and covenants for itself and its successors and assigns that the Land and all buildings and improvements now or hereafter constructed thereon is and shall be held, transferred, sold, conveyed, used and occupies under and subject to the covenants, restrictions, easements and conditions in this Declaration, all of which shall run with the Land and each of the Homes and oter improvements now or hereafter constructed thereon, as follows:

ARTICLE I - DEFINITIONS

1.01 Act Definitions. Capitalized terms used herein that are defined in the Act shall have the meanings ascribed to them in the Act; and any terms used herein that are defined in the Act and also defined herein shall have the general meanings ascribed to them in the Act and the specific meanings ascribed to them in this Declaration.

1.02 Defined Terms. In addition to the terms defined in the Act and elsewhere in this Declaration, the following terms, when used herein, shall have the meanings ascribed to them in this section 1.02:

(a) "Assessments" – amounts levied or assessed by the Association against the Lots and Unit Owners from time to time, pursuant to this Declaration and the Act, for the purpose of paying or providing for the payment of Common Expenses.

(b) "Association" – KEATS GLEN COMMUNITY ASSOCIATION, INC., which shall be organized as a Pennsylvania non-profit corporation before the first Lot is transferred by the Declarant to a Unit Owner other than a Declarant.

(c) "Board" – the board of directors of the Association, consisting of those individuals elected from time to time to serve on the Executive Board of the Association pursuant to this Declaration, the By-laws and the Act.

(d) "By-laws" – the By-Laws of the Association as amended from time to time. The By-laws shall bind the Association and all Unit Owners whether or not they are recorded.

(e) "Common Facilities" – means the Open Space, the planting buffers shown on the Plans and the Stormwater Management Facilities, and any other facilities or property that may be conveyed to or acquired by the Association from time to time for the common use or benefit of the Lots and Unit Owners; but excluding any part of the Land and any roads, utility installations and other improvements dedicated or to be offered for dedication to the Township, other governmental entities or utility companies.

(f) "Common Expense Liability" – the liability appurtenant to each Lot to pay a share of Common Expenses and Assessments therefore imposed pursuant to this Declaration and allocated to such Lot hereunder.

(g) "Common Expenses" – includes the actual and estimated expenses incurred or to be incurred by the Association from time to time for the general benefit of the Association and all Unit Owners, including but not limited to (i) general overhead and administrative expenses of the Association, (ii) federal, state or local taxes or other impositions or charges that may be levied or assessed against the Association or its property or income, (iii) premiums for insurance and bonds carried by the Association, (iv) the costs of maintaining, managing, insuring and repairing the Common Facilities, and making any necessary replacements thereto or thereof, (v) amounts set aside as operating and capital reserves, (vi) expenses of prosecuting or defending any litigation or other proceedings by, against or affecting the Association which the Association may bring or defend pursuant to this Declaration, including (without limitation) the expenses of enforcing or attempting to enforce the Community Documents, (vii) the fees or other compensation payable to any manager that may be engaged by the Association to assist the Association in managing, operating or administering the Association or the Common Facilities, and (viii) all other expenses and liabilities incurred or that may be incurred by the Association in carrying out or performing its rights, duties and functions.

(h) "Community" – means the planned community created heregy known as "KEATS GLEN AT CORNER KETCH, a Planned Community", consisting of all the Lots, Homes and Common Facilities.

(i) "Community Documents" – means, as applicable, this Declaration, the By-Laws and the Regulations, as amended from time to time.

(j) "Convertible Real Estate" – that part of the Land designated on the Plans as Convertible Real Estate.

(k) "Declarant" – the Declarant originally named herein, and any successor Declarant.

(l) "Declarant Control Period" – the period of time beginning on the date of the first transfer of a Lot to a Unit Owner (other than a Declarant) and ending on the earliest of (i) seven (7) years after the date thereof, (ii) sixty (60) days after the conveyance of seventy-five percent (75%) of the Lots to Unit Owners (other than a Declarant), or (iii) two (2) years after the Declarant has ceased to offer Lots for sale in the ordinary course of business.

(m) "Declaration" – this Declaration, as amended from time to time, together with the Plans, as the same may be amended from time to time. The Plans are an integral part of this Declaration.

(n) "Director" – a member of the Board.

(o) "Eligible Mortgage" – a first mortgage encumbering a Lot held by an Eligible Mortgagee.

(p) "Eligible Mortgagee" – means a Bank, Savings and Loan Association, Savings Bank or other federally or state chartered financial institution, or any guarantor or insurer of a first mortgage lien against a Unit that is federally or state chartered financial institution or federal or state governmental agency or corporation (including, but not limited to, the Veterans Administration, the United States Department of Housing and Urban Development, the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation, or their successors), which has given written notice to the Association, by certified mail, return receipt requested, of its name and address and the address and description of the Unit on which it holds, insures or guarantees an Eligible Mortgage. If an Eligible Mortgage is assigned by and Eligible Mortgagee to another person that qualifies as an Eligible Mortgagee hereunder, the Association shall not be bound to recognize the assignee as an Eligible Mortgage unless and until the Association shall have received written notice of such assignment and written notice of the name and address of the assignee.

(q) "Home" – a single family detached residential dwelling constructed on a lot.

(r) "Land" – the real estate described on Exhibit "A" attached hereto, together with all easements, rights and privileges benefiting said Land, and subject to the easements, restrictions and other matters of record described on Exhibit "B" attached hereto as well as the easements, covenants and restrictions set forth herein or created pursuant hereto.

(s) "Lot" – a separate and subdivided building lot within the Community being one of 50 building lots, numbered 1 through 50, as shown on the Plans. Reference herein to a "Lot" includes the Home and other improvements thereon. Each Lot, together with the Home and All other improvement now or hereafter constructed thereon, shall constitute a separate Unit for purposes of this Declaration and the Act, as is synonymous with the term "Unit" as used in the Act.

(t) "Open Space" – means those parts of the Land designated on the Plans as "OPEN SPACE" including specifically Open Space A, Parcel A (containing approximately 3.176 acres), Open Space A < Parcel B (containing approximately 2.116 acres, Open Space A, Parcel C (containing approximately 0.907 acres, and Open Space D (containing 4.672 acres).

(u) "Person" – any individual, corporation, partnership, trust, limited liability company or any other legal entity.

(v) "Plans" – the plans depicting the Community attached hereto as Exhibit "C" and made a part hereof, as the same may be amended from time to time, entitled "PLANNED COMMUNITY PLANS OF KEATS GLEN AT CORNER KETCH" prepared by Edward B. Walsh & Associates, Inc. and recorded or intended to be recorded contemporaneously herewith.

(w) "Property" – means the Land and all improvements now or hereafter constructed thereon, all easements benefiting said Land, and all appurtenances thereto; EXCEPTING AND RESERVING THEREFROM, however, any part of the Land and any improvements now or hereafter constructed thereon dedicated or to be dedicated to the Township or any other municipal body or public utility including, without limitation, the interior roads and utility facilities to be constructed as part of the development of the Community.

(x) "Regulations" – the rules and regulations promulgated by the Association from time to time governing and regulating the Unit Owners' use and enjoyment of the Common Facilities and other matters pursuant to this Declaration and the Act.

(y) “Special Declarant Rights” – has the meaning given to such term in the Act and includes the rights reserved for the benefit of the Declarant hereunder to (i) complete the improvements shown on the Plans, (ii) maintain offices, signs and models, (iii) use easements through the Common Facilities for the purpose of making improvements within the Property, (iv) change the boundary lines between Lots owned by the Declarant, (v) appoint and removed Directors during the Declarant Control Period, (vi) convert and create Units within the Convertible Real Estate, and (vii) any other rights reserved herein by the Declarant constituting “Special Declarant Rights” under the Act.

(z) “Stormwater Management Facilities” – means any stormwater drainage facilities, including retention or detention basins, berms, swales, pipes, culverts, endwalls, inlets, outlets and related facilities and components now or hereafter constructed on the Property, excluding stormwater management facilities constructed within the roadways serving the Property to the extent that the same are or later become the responsibility of the Township.

(aa) “Township” – East Brandywine Township, Chester County, Pennsylvania.

(bb) “Unit” – has the same meaning as the term “Lot”.

(cc) “Unit Owner” – the owner(s) of the fee simple title to any Lot (including the Declarant as to any Lots owned by the Declarant), other than a Person holding title only as security for an obligation. All obligations imposed on a “Unit Owner” hereunder (including, without limitation, the obligation to pay Assessments) are the joint and several obligations of all Persons who are the “Unit Owners” of a Lot regardless of the manner in which they hold such title.

## ARTICLE II – SUBMISSION OF PROPERTY TO ACT; UNIT BOUNDARIES; APPLICABILITY OF DECLARATION; CONSTRUCTION AND INTERPRETATION

2.01 Applicability of Declaration. Declarant hereby creates a Planned Community with respect to the Property and submits the Property to the Act, subject to the limitations hereinafter set forth, pursuant to this Declaration. All present and future Unit Owners (and their respective tenants, subtenants, family members, guests, agents, servants, employees and any other persons occupying or using any Lot or the Common Facilities) shall be bound by the Community Documents.

2.02 Construction. If there is any conflict or inconsistency between this Declaration and the other Community Documents, this Declaration shall control except to the extent contrary to the Act or other applicable law.

2.03 Easements, Etc. The Property is subject to, and the Lots are and will be conveyed subject to (a) those recorded easements and other matters of record set forth on Exhibit "B" attached hereto and made a part hereof, (b) those other easements, notes, conditions and restrictions as set forth herein and on the Plans, and (c) such other easements as the Declarant may hereafter create in favor of utility companies or others in connection with the development of the Community.

2.04 Lot/Unit Boundaries; Unit Numbers. The title lines and horizontal boundaries of each Lot are set forth on the Plans. Each Lot consists of all land and air space located within the aforesaid title lines, and the Home and other improvements now or hereafter constructed thereon or therein. Each Lot shall have the identifying Unit or Lot number as shown on the Plan.

### ARTICLE III - ASSOCIATION; MEMBERSHIP; VOTING

3.01 The Association; Powers. The Association shall be an association of and among all Unit Owners and shall have all duties, rights, privileges, functions and responsibilities set forth in the Act and this Declaration, including, without limitation, the following:

(a) To maintain the Common Facilities and make any necessary repairs or replacements thereof or thereto;

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

(c) To adopt (and amend) operating and capital budgets of the Association;

(d) To compute, levy, assess and collect Assessments, and impose and collect late charges and interest for delinquencies in the payment thereof;

(e) To enter into contracts with third parties as necessary or appropriate from time to time in connection with the performance of the Association's rights, duties and obligations hereunder, and to pay for goods and services furnished to the Association pursuant to such contracts;

(f) To adopt, amend and repeal reasonable Regulations as the Board may deem necessary or desirable from time to time;

(g) To enforce the Community Documents and impose reasonable fines for violations thereof;

(h) To engage and compensate lawyers, accountants and other advisors in connection with any matters affecting the business or affairs of the Association;

(i) To indemnify present and former Directors, officers and other agents of the Association, and to advance (or reimburse them for) costs incurred in connection with or as a result of any liability, suit or proceeding which they or any of them may incur, or to which they may be subject, as a result of serving on behalf of the Association, to the extent required or permitted by applicable law, the By-laws or any separate contract between the Association and such Persons;

(j) To grant easements over, across, through or under the Common Facilities in favor of utility or service companies furnishing electric, gas, water, sanitary sewer, telephone or cable television services for the behalf of any Lots or Common Facilities;

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

(l) To dedicate or transfer all or any part of the Common Facilities to any municipal, county, state, federal or other public agency, authority or utility, for such purposes and subject to such conditions as may be agreed upon by the Unit Owners, provided that no such dedication or transfer shall become effective unless the same has been authorized by the vote or consent of Members entitled to cast at least sixty-seven percent (67%) of the votes which all Members of the Association are entitled to cast, and provided further that notwithstanding any shorter notice period permitted by the By-laws, written notice of such proposed action (specifying in reasonable detail the property to be transferred, the proposed transferee and the purposes of such transfer) shall be mailed to each Unit Owner not less than thirty (30) days in advance of the scheduled meeting at which such action is to be considered.

(m) To do all other things necessary or expedient in order to carry out all the powers, rights, privileges, duties and functions of the Association and exercise all powers incidental thereto.

3.02 Membership. Every Unit Owner is a member of the Association. Membership in the Association is appurtenant to, and cannot be severed from, ownership of a Lot. membership in the Association transfers automatically upon conveyance of title to a Lot and cannot be assigned or transferred by any other means. No Unit Owner can or will be relieved of the obligation to pay Assessments or to satisfy any other obligations arising hereunder by any waiver or purported waiver of the right to use or enjoy the Common Facilities or any other benefits of membership in the Association, or by any purported abandonment of a Lot.

3.03 Voting Rights of Unit Owners. There shall be one (1) vote allocated and appurtenant to each Lot. The vote appurtenant to a Lot may be cast by any one of the Unit Owners thereof at a meeting of Members, but if there is a conflict among such Unit Owners present as to how such vote shall be cast on any matter, such vote shall not be counted, except as may otherwise be provided in the By-laws.

3.04 Election of Board.

(a) Subject to the other provisions of the Community Documents, the Board shall have the full and exclusive power and authority to act on behalf of the Association. The initial Board shall consist of one (1) or more Directors, and the Board may consist of such greater number as provided in the By-laws.

(b) Subject to Section 3.04(c) hereof, during the Declarant Control Period, all members of the Board shall be appointed and may be removed and replaced by the Declarant from time to time, with or without an actual meeting, without the necessity of obligating resignations from Directors replaced or removed, and without prior notice to the other Unit Owners.

(c) No later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Lots to Unit Owners (other than a Declarant), at least one (1) Director (and not less than twenty-five percent (25%) of the Directors) shall be elected by Unit Owners other than the Declarant. No later than sixty (60) days after conveyance of fifty percent (50%) of the Lots to Unit Owners (other than a Declarant), not less than thirty-three percent (33%) of the Directors shall be elected by Unit Owners other than the Declarant. The Declarant reserves the right, in its discretion, to surrender voluntarily the right to appoint and remove Directors before the Declarant Control Period ends, or to accelerate the time for appointment of Directors by the other Unit Owners; and may, as a condition thereof, require that specified actions of the Association or the Board be approved by the Declarant before they become effective. Such actions shall be specified in an instrument executed and recorded by the Declarant. The Declarant may conditionally surrender the right to appoint and remove members of the Board, reserving the right to exercise such rights at a later time upon giving thirty (30) days prior written notice to the Association.

(d) On or before the end of the Declarant Control Period, all Directors shall be elected by the Unit Owners.

3.05 Election of Officers. Officers of the Association shall consist of such executives and subordinate officers as may be specified (or provided for) in the By-laws. Officers of the Association shall be appointed by the Board in the manner specified in the By-laws.



3.06 Voting by Ballot or Proxy. To the extent provided in the By-laws and to the fullest extent permitted by the Act, the Unit Owners may vote on any matter on which Unit Owners are entitled to vote under the Community Documents (including, but not limited to, election of Directors and amending the Community Documents), by proxy, by partial or unanimous written consent, or by mail-in ballot.

#### ARTICLE IV – COMMON FACILITIES; MAINTENANCE AND REPAIR

4.01 Management and Maintenance of Common Facilities. The Association shall manage and maintain the Common Facilities and shall make any necessary repairs thereto or replacements thereof. The Common Facilities include (without limitation) the following, whether now existing or hereafter constructed (i) the Open Space, and any planting buffers or landscaping installed by the Declarant thereon, (ii) entrance signs and structures (and related landscaping) installed or constructed by the Declarant, and (iii) the Stormwater Management Facilities.

4.02 Use and Enjoyment of Common Facilities. Subject to Regulations promulgated by the Association from time to time, the Common Facilities shall be for the exclusive use, enjoyment and benefit of the Unit Owners. The Board has the power to make reasonable Regulations regulating the use of the Common Facilities by Unit Owners, their family members and guests.

4.03 Use and Maintenance of Open Space.

(a) The Association shall assume the obligation to manage and maintain the Open Space and to pay all expenses incident thereto commencing on the earlier to occur of the conveyance of the Open Space to the Association or the conveyance of the first Lot from the Declarant to a Unit Owner (other than a Declarant). The Declarant may convey the Open Space to the Association at any time this Declaration is recorded and the Association shall accept conveyance thereof without condition. The Association shall assume the obligation to maintain, repair and replace the Common Facilities to be constructed by the Declarant once such facilities have been completed by the Declarant.

(b) The extent of maintenance and mowing of the Open Space shall be as determined by the Board from time to time. Certain parts of the Open Space may be left in its natural state, while other areas may be subject to more active maintenance. Stormwater basins within the Open Space shall be mowed and otherwise maintained according to sound practice and applicable laws and ordinances. Areas of the Open Space where planting berms or buffers are created by the Declarant as shown on the Plans shall be maintained by the Association in order to preserve the buffering effect thereof, and the Association shall prune and maintain such buffers and berms and replace any dead or diseased plantings therein as needed from time to time. Use of the Open Space shall be limited to passive use of the Unit Owners unless the Board authorizes other uses.

(c) The Open Space shall not be subdivided or subject to partition, sale or division (voluntarily or involuntarily, by judicial or non-judicial action) nor shall any part thereof or interest therein be sold, leased or otherwise disposed of except for the following dispositions which can be made free and clear of the terms hereof, subject to the requisite approval of the Unit Owners as provided in the Act, and subject to the approval of the Declarant during the Declarant Control Period.

(i) transfers of the Open Space to a governmental body or to a conservancy or similar non-profit public interest body or, subject to the approval by the appropriate agencies of the Township, to any other person or entity or group which shall covenant to own and operate the Open Space consistent with the provisions hereof;

(ii) by condemnation or deed in lieu of condemnation; and

(iii) as expressly permitted by the terms of this Declaration and the Act.

(d) The Open Space shall contain no buildings or other structures (except structures related to passive recreational or maintenance uses, such as paths) other than entrance structures and facilities related to the sanitary and storm sewer, public water and utilities supply and like systems.

4.04 Maintenance, Repair and Replacement of Lots and Dwellings. Each Unit Owner is responsible for the maintenance, repair, replacement and insurance of his or her own Lot and Home. The Board may make reasonable Regulations with respect to the maintenance, mowing, trimming, placement, addition and replacement of lawns, landscaping, trees, shrubbery and other plantings in the yards within the title lines of the Lots, but such Regulations shall not create any obligation on the part of the Association to maintain, repair, replace or incur the Lots or any improvements of landscaping thereon.

#### 4.05 Declarant's Right to Construct Common Facilities.

(a) Declarant reserves the right to construct and convey to the Association all Common Facilities, existing or proposed, as shown on the Plans, including, without limitation, the Open Space and the Stormwater Management Facilities. Except for improvements identified on the Plans as "must be built", and except for improvements required to be installed as a condition of subdivision and land development approval of the Plans by the Township or other governmental authorities, the Declarant has no obligation to construct or convey any Common Facilities to the Association.

(b) The Association shall assume the obligation for maintenance, management, repair and insurance of each Common Facility once it has been completed (in the case of a Common Element to be constructed). A Common Facility shall be deemed complete when it has been substantially completed and the Declarant has recorded a certificate signed by a registered surveyor, architect or professional engineer stating that the same has been completed in compliance with the description thereof in the Community Documents so as to permit the use thereof for its intended purpose. Declarant may convey each Common Facility separately from other conveyance thereof without condition upon completion thereof. All Common Facilities which the Declarant reserves the right to construct or is required to construct shall be completed by the Declarant at or before the time such Common Facility is necessary for the use and occupancy of the Lots and Homes, but no later than the date of conveyance (or lease) of the last Unit owned by the Declarant or, if earlier, the termination of the Special Declarant Rights reserved by the Declarant. Until a Common Facility is completed, the Declarant shall be responsible for all real estate taxes facility and other expenses associated therewith.

(c) The Association shall assume the obligation for maintenance, management, repair and insurance of each Common Facility once it has been completed and shall be obligated to include in its budget (and, if necessary, amend the then-current budget and increase the then-current Assessments to pay) the costs of maintaining, repairing and insuring the same. Pending the completion of a Common Facility, such Common Facility shall be owned by the Declarant and all real estate taxes and other expenses associated therewith shall be borne by the Declarant.

(d) The Declarant shall have the right to convey Common Facilities to the Association before the completion thereof if a third party guarantee, bond, escrow or letter of credit or other reasonable financial security is provided by the Declarant for the benefit of the Association complying with the applicable provisions of the Act.

(e) The Declarant guarantees the completion of the Common Facilities shown on the Plats and designated as “must be built”. The obligation of the Declarant to complete and convey improvements required to be constructed shall be binding on the Declarant and any successor in interests of the Declarant therein, whether or not such successor in interest succeeds to any Special Declarant Rights. The Declarant is not providing any security for the direct benefit of the Association to secure the completion thereof. The Declarant has entered into or will enter into agreements with the Township pursuant to which the Declarant shall be obligated to complete certain improvements within the Community and will post financial security with the Township to secure the completion thereof. The amount of such financial security and the procedure for its delivery and release shall be as determined by the Township according to procedures set forth in the Pennsylvania Municipalities Planning Code.

(f) When a Common Facility is completed, the Declarant will so notify the Association and deliver to the Association such deed(s) or other appropriate instruments of conveyance as are appropriate for the Common Facilities in question. A Common Facility constructed on the Open Space after the Open Space is conveyed to the Association shall automatically be deemed conveyed to the Association upon completion thereof, without any further instrument or deed being required.

4.06 No Other Common Facilities. Except as otherwise expressly provided herein or as shown on the Plans, the only Common Facilities of the Community shall be the Open Space and any improvements thereon, such as landscaping and entrance signs or structures, and the Stormwater Management Facilities. Declarant shall have no obligation to construct or convey any other facilities, property or improvements to the Association. None of the Common Facilities are Limited Common Facilities.

4.07 Warrant as to Common Facilities.

(a) The Declarant will warrant the Common Facilities to be constructed by it against structural defects as required by the Act. To the fullest extent permitted by law, the Declarant disclaims any warranty except with respect to structural defects in Common Facilities actually constructed by or for the Declarant.

(b) **THE EXPRESSED WARRANTY HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTY GIVEN HEREIN WITH RESPECT TO THE COMMON FACILITIES IS THE SOLE AND EXCLUSIVE WARRANTY WITH RESPECT THERETO. DECLARANT'S WARRANTY WITH RESPECT TO THE COMMON FACILITIES SHALL APPLY SOLELY TO IMPROVEMENTS, STRUCTURES OR COMPONENTS THEREOF CONSTRUCTED BY THE DECLARANT AND SHALL NOT APPLY TO ANY PART OF THE COMMON FACILITIES CONSTRUCTED BY OR UNDER THE DIRECTION OF THE ASSOCIATION.**

(c) **TO THE EXTENT PERMITTED BY LAW, THE OPEN SPACE SHALL BE CONVEYED "AS IS" AND WITHOUT REPRESENTATION OR WARRANTY OR ANY KIND.**

4.08 Dedication to Township; Easements.

(a) If requested or required by the Township, the Association (and the Unit Owner(s) of any Lot(s) affected thereby) shall dedicate to the Township, or join with the Declarant in dedicating to the Township, an easement over and across the Open Space and/or such portion of such Lot on which any Stormwater Management Facilities or drainage easements are located.

(b) All drainage and storm sewer easements shown on the Plans shall be for the benefit of the Declarant, the Association and the Township, and their respective agents, contractors and subcontractors, to facilitate construction, inspection, maintenance, repair and replacement of the Stormwater Management Facilities.

ARTICLE V – COVENANT FOR ASSESSMENTS; LIENS; COLLECTION

5.01 Assessments; Allocation of Common Expense Liability.

(a) Each Unit Owner must pay all Assessments levied against such Unit Owner or his Lot. The Common Expense Liability appurtenant and allocated to each Lot shall be equal, and shall be the percentage equivalent of a fraction, the numerator of which is 1 and the denominator of which is the number of Lots (exclusive of Lots that the Declarant reserves the right to create but has not yet created within the Convertible Real Estate).

(b) Assessments levied against a Lot are also the joint and several personal obligation of the Unit Owners thereof at the time the Assessment (or any installment thereof) fall due.

(c) The Unit Owners' obligation to pay Assessments is not subject to deduction or set-off, and is not otherwise be diminished, discharged, suspended or abated, because of: (i) any claim which any Unit Owner(s) may have against the Association or the Declarant; (ii) the failure or alleged failure of the Association to provide services required hereunder; (iii) the fact that there is no Home on such Unit Owner's Lot or that the Home is unoccupied or uninhabitable for any reason; (iv) the default of any other Unit Owner(s) in the payment of Assessments; or (v) any other circumstance.

5.02 Damages. Each Unit Owner shall reimburse and indemnify the Association upon demand for any losses, expenses, costs or damages incurred by the Association as a result of any damage to Common Facilities caused by the act, omission or negligence of such Unit Owner or his tenants, agents, guests, family members, licensees, contractors or sub contractors. Such damages may be assessed and collected as Special Assessment against such Unit Owner.

5.03 Time for Payment. The due date for payment of Assessments or installments thereof shall be determined by the Board, but shall not be more frequent than monthly. Unless otherwise determined by the Board, the Assessment for each fiscal year shall be due and payable in substantially equal monthly installments on the first day of each calendar month.

5.04 Non-Payment; Late Charges; Lien.

(a) Any Assessment (or installment thereof) that is not paid within fifteen (15) days after the due date thereof shall be considered delinquent and shall be subject to a late charge of five percent (5%) of the overdue sum. Interest on any Assessment (or installment thereof) that is not paid within thirty (30) days after the due date thereof shall accrue beginning on the thirty-first (31<sup>st</sup>) day after the due date at the rate of fifteen (15%) percent per annum (or such other rate, not to exceed the highest rate permitted by law, as the Board may from time to time determine). Interest at that rate shall continue to accrue after any judgment is entered in favor of the Association and until full payment of the delinquent amount is actually received by the Association. Any costs of collection, including reasonable attorney's fees, incurred by the Association in collecting or attempting to collect any delinquent Assessment (whether or not suit is commenced) may be assessed and collected in the same manner as any other Assessments hereunder against the delinquent Unit Owner, and such amount shall be secured by the Association's lien for Assessments.

(b) If a Unit Owner is delinquent in the payment of any Assessment (or installment thereof) for more than forty-five (45) days after the due date thereof, the Association shall have the right to accelerate all future installments of such Assessments with respect to the delinquent Union Owner (if Assessments are payable in installments), and to suspend such Unit Owner's privilege to pay future Assessments in installments for such reasonable period of time as the Bard may determine. Notice of acceleration shall be given to the delinquent Unit Owner and shall become effective unless the delinquent Unit Owner pays to the Association, within ten (10) days after the date of mailing such notice, all delinquent Assessment or installments thereof, all interest thereon, and all late charges, and costs of collection incurred by the Association in connection with such delinquency.

**(c) The Association shall have a lien on each Lot and Home for all Assessments levied against a Lot or the Unit Owner thereof, to the fullest extent and with the maximum protection afforded by, the Act. Such lien shall have the priority and may be enforced in the manner provided for in the Act, and by any other remedies available at law or in equity. The recording of this Declaration constitutes notice and perfection of the Association's lien. The Association shall have the right to collect from a Unit Owner, and the lien of the Association shall secure, all amounts paid or expended by the Association to collect unpaid Assessments (including reasonable attorneys fees) and/or to protect or preserve the Lot or the priority of the Association's claim or lien including, without limitation, amounts paid or incurred by the Association to pay or discharge real estate taxes or other liens senior in priority to the Association's lien.**

5.05 Other Remedies. Assessments and other amounts payable by any Unit Owner may also be recovered by a lawsuit brought by the Association against the Unit Owner and any other person personally obligated to pay the same, and the Association shall have all other rights and remedies available at law or in equity.

5.06 Collection Upon Sale of a Lot.

(a) If a Lot is transferred in connection with the foreclosure or execution sale of a Lot, any unpaid Assessments of which the Sheriff has notice shall be paid out of the proceeds of such sale after payment of other claims required by law to be paid first, but before any distribution of proceeds to the Unit Owner. If an Eligible Mortgagee or other purchaser acquires title to a Lot pursuant to foreclosure of an Eligible Mortgage, or by deed in lieu of foreclosure, the purchaser shall not be liable for unpaid Assessments accrued through the date of foreclosure sale, but such Eligible Mortgagee or other purchaser shall be liable to the Association for the payment of any Assessments (or installments thereof) coming due after the date of such sale.

(b) Upon the voluntary sale or conveyance of a Lot or any other transfer (including transfers by operation of law), except as provided in subparagraph (a) above, the transferor and the transferee shall be jointly and severally liable for all Assessments or installments thereof that have been assessed or levied against such Lot and which are unpaid as of the date of conveyance, except as otherwise provided in the Act.

5.07 Assessments on First Time Buyers. Each Unit Owner who purchases a Lot directly from the Declarant shall pay, at the time of conveyance, a one time assessment in the amount of Three Hundred Dollars (\$300.00), which is in addition to, and not in lieu of, the regular Assessments payable with respect to the year in which such conveyance takes place.

5.08 Discretion of Board of Directors. In connection with the collection or attempted collection of delinquent Assessments, the Board shall have the power, in its discretion, to waive, settle and/or compromise the obligation of a Unit Owner to pay delinquent Assessments, interest, late charges, and/or costs of collection, if the Board determines that it is in the best interests of the Association to do so based upon such factors as the Board deems relevant, including, without limitation, the anticipated costs and likelihood of collecting the full amount due.

5.09 Basis and Computation of Regular Assessments.

(a) Approximately sixty (60) days before the beginning of each fiscal year of the Association, the Board shall adopt a budget for such fiscal year setting forth estimated Common Expenses and the Assessments thereof. The total Assessment for Common Expenses for that fiscal year shall be computed based on and shall be in an amount sufficient to pay the estimated Common Expenses set forth in such budget (in excess of any surplus from a prior year or years that has not been set aside as reserves by the Board). In determining Assessments for any year, the Board shall have the right to include in the Budget for such year a reasonable allowance for delinquent or uncollectible Assessments, as well as such allocations to reserves as the Board deems appropriate. The Association shall adopt a balanced budget in each fiscal year and shall levy Assessments sufficient to pay all budgeted expenses.

(b) The budget of the Association may be modified from time to time by the Board to reflect any material change in the Common Expenses incurred or expected to be incurred by the Association for such fiscal year, and the Board shall have the power to increase or decrease Assessments based on such changes in the budget. Such increase or decrease will be effective not earlier than thirty (30) days after the date of the notice thereof been given to the Unit Owners.



(c) Within thirty (30) days after the Board adopts a budget for a fiscal year, the Board shall cause notice of the Assessment and a copy of the budget to be mailed to each Unit Owner. Such budget shall become effective as of the first day of the fiscal year to which such budget relates, without the necessity of obtaining the approval of the Members. IF the Bard fails to adopt or delays adopting a Budget or a new Assessment for a fiscal year, the Unit Owners shall continue to pay Assessments and installments thereof based upon the Budget and Assessment in effect for the preceding year. Once an Assessment has been made by the Bard, it shall automatically continue in force for the fiscal year for which it was initially adopted, and during each subsequent fiscal year, until a new budget and a new Assessment is adopted by the Board.

5.10 Special Assessments. The Board shall have the power to levy special Assessments for such purpose or purposes as the Board from time to time deem necessary or appropriate, including, but not limited to, paying the costs of unanticipated maintenance, repairs or replacements of the Common Facilities. Special Assessments benefiting all Unit Owners shall be levied equally on all Lots, and shall be due and payable in a lump sum or in such installments as the Board shall determine.

5.11 Commencement of Assessments. Each Lot shall become subject to Assessments beginning on the date such Lot is conveyed to a Unit Owner (other than a Declarant) and such Lot shall continue thereafter to be subject to Assessments hereunder. At the time of conveyance of a Lot by a Declarant, the purchaser thereof shall pay an amount equal to the then current Assessment applicable to the Lot, which shall be pro-rated based upon the number of days remaining in the payment period for which such Assessment has been levied.

## ARTICLE VI – INSURANCE

6.01 Property Casualty Insurance. Beginning no later than the first conveyance of a Lot to a Unit Owner other than a Declarant, the Association shall maintain, to the extent reasonably available, “all risk” property and casualty insurance insuring the Common Facilities against all common risks of direct physical loss, covering the interests of the Association, the Board and the Unit Owners, as their interest may appear; provided that such insurance shall only be obtained if reasonably available for the type of Common Facilities owned by the Association. The total amount of insurance (after application of any deductibles) shall be not less that eighty percent (80%) of the actual value of the insured property (exclusive of land, excavations, foundations and other items normally excluded from such casualty policies).

6.02 Association Liability Insurance. The Association shall obtain and maintain comprehensive general public liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000.00 for bodily injury or death arising from a single occurrence.

6.03 Other Insurance. The Association may carry any other insurance including, but not limited to, Directors and officers liability insurance, fidelity bonds, and the like, as the Bard may determine from time to time.

6.04 Policy Terms. Property, casualty and liability insurance carried by the Association pursuant to Sections 6.01 and 6.02 hereof shall contain any policy terms required by the Act. Each Unit Owner shall be an insured person under the Association's liability insurance with respect to liability arising out of his membership in the Association. Each policy shall provide that the insurer waives its right of subrogation under the policy against any Unit Owner or member of the Unit Owner's household, and shall provide that no act or omission by a Unit Owner (unless acting within the scope of his authority on behalf of the Association) will void the policy or be a condition of recovery under the policy.

6.05 Failure to Obtain Insurance. If the insurance described in Sections 6.01 and 6.02 hereof is not maintained, the Association shall promptly cause notice of the fact to be given to all Unit Owners.

6.06 Insurance Obligations of Unit Owners. Each Unit Owner is responsible for carrying hazard, fire, flood and liability insurance with respect to his Lot and Home, and the contents thereof and any personal property thereon, and against losses, damages or injuries occurring on his Lot, at the Unit Owner's expense. The Association has no insurance responsibility with respect to any Lot or Home.

6.07 Adjustment of Losses. Any losses covered by any property insurance policy maintained by the Association shall be adjusted solely by and with the approval of the Association and proceeds thereof shall be payable to the Association and not to any mortgagee or Unit Owner. The Association shall hold such proceeds in trust for the benefit of the Association, the Unit Owners and lien holders, as their interests may appear. Subject to Section 6.08 below, such proceeds shall be disbursed first for the repair or restoration of the damaged Common Facilities and Unit Owners or lien holders shall be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Common Facilities have been completely repaired or restored and the Board elects to pay such surplus, or the Community is terminated.

6.08 Use of Proceeds.

(a) Any part of the Common Facilities for which the Association maintains property insurance which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the Community is terminated in the manner provided under the Act, (ii) repair or replacement would be illegal under any state or local health or safety statute, law, regulation or ordinance, or (iii) eighty percent (80%) of the Unit Owners (including every Unit Owner to whose Unit any Limited Common Element which will not be rebuilt is allocated, vote not to rebuild. The cost of the repair or replacement in excess of available insurance proceeds and reserves shall be a Common Expense.

(b) Any part of a Unit or Home for which insurance is required to be maintained by the Unit Owner and which is damaged or destroyed shall be repaired or replaced promptly by the Unit Owner and any cost of repair or replacement in excess of available insurance proceeds shall be borne by the Unit Owner.

(c) If the entire Community is not repaired or replaced, the insurance proceeds shall be distributed and disbursed pursuant to the requirements of the Act.

6.09 Other Insurance Requirements. The Association shall maintain, to the extent reasonably available, any insurance coverages that may be required under applicable law or under applicable guidelines and regulations promulgated by the Department of Housing and Urban Development, the Veterans' Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and/or their successors or assigns. The Board shall have the right to increase insurance coverages and obtain additional insurance coverages not specifically required hereunder as the Board may from time to time determine, in its discretion, and the premiums for such additional or different insurance coverages shall be General Common Expenses, Policies of insurance shall be deposited with and shall be maintained by the Board.

6.10 Powers of Board. The Board shall have full and exclusive power and authority to negotiate, adjust and compromise all claims for insurance coverages, and to execute and deliver releases therefor upon payment of the agreed settlement for such claims.

## ARTICLE VII – BUILDING AND USE RESTRICTIONS

7.01 Subdivision or Partition. Once a Lot has been conveyed by Declarant to a Unit Owner, such Lot may not be further subdivided or partitioned, directly or indirectly; provided that the foregoing shall not be deemed to prevent minor lot line charges between Lots which are approved by the township and which are for the purpose of correcting or eliminating encroachments. The Declarant may, in its sole discretion (i) relocate boundaries between Lots owned by the Declarant, and (ii) change the boundary line between Lots owned by Declarant and the Common Facilities (either before or after conveyance thereof to the Association), provided that in either such case the approval of the Township has been obtained. In no event shall any relocation or change of boundary lines result in an increase in the number of Lots.

7.02 Residential Use. The Lots and Homes shall be used only for residential purposes; provided that home occupations are allowed if they (i) are permitted by applicable laws and ordinances, (ii) are incidental and/or accessory to the primary and principal residential use of the Home, (iii) do not unreasonably interfere with the use and enjoyment of other Units as determined by the Board, and (iv) comply with any Regulations adopted by the Board.

7.03 Above-Ground Utilities. Except as provided below, no above-ground conduits, pipelines, electric, telephone, cable television, radio and other utility transmission lines or antennae shall be installed on any Lot or on the exterior of any Home. Satellite dishes or other free-standing or roof-mounted antennae or reception devices shall not be constructed or erected on any Lot or Homes, except for one (1) satellite dish per home or similar device that does not exceed approximately Eighteen Inches (18) in diameter per FCC regulations, which shall be screened from view of other Homes in a manner approved by the Board.

7.04 Animals. No Lot shall be used for stabling, housing, raising, breeding, boarding or keeping one or more horses, cattle, hogs, goats, sheep, fowl, birds or other animals or livestock of any nature for personal or commercial purposes, except for a reasonable number of personal domestic household pets, such as dogs and cats. The Board may adopt reasonable Regulations limiting the number of household pets that may be kept on any Lot or Home. No Unit Owner, occupant, tenant or sub-tenant of any Lot shall permit or allow any pets to run loose on or about any part of the Open Space or any other Lot. Subject to any Regulations promulgated by the Board, pets may be walked or exercised on or about the Open Space. Each Owner, tenant or other occupant of a Lot shall be responsible for immediately collecting, removing and properly disposing of any and all animal waste left by his or her pets on or about the streets, sidewalks, walkways, driveways or Open Space.

7.05 Pools. No above-ground swimming pools shall be constructed or maintained on any Lot. One (1) in-ground swimming pool shall be permitted on each Lot subject to the prior approval of the Board, if otherwise allowed under applicable zoning and other ordinances and regulation. The Board may promulgate reasonable Regulations relating to pools and other recreational facilities, including regulations pertaining to the height and materials for fencing surrounding such facilities, the type and amount of outdoor lighting, and requiring adequate screening from view of neighboring Lots. Plans for such pools and other facilities shall be submitted for approval in accordance with Section 7.12 hereof.

7.06 Outdoor Storage; Vehicles. Outdoor storage of appliances, lumber, wood or building materials shall not be permitted except during the construction of a Home or other permitted structure. No camper, travel trailer or mobile home, recreational vehicle, all terrain vehicle, boat, boat trailer, or other trailer, nor any unlicensed motor vehicle shall be kept or stored outside on any Lot or on or along the streets within the Community except for reasonable periods of time when the same is in use. Outdoor storage or parking of tractors, equipment or commercial vehicles on or about a Lot is prohibited, except for motor vehicles used by occupants of a Home in the course of his or her business which are passenger vehicles, sport/utility style vehicles, pickup trucks and/or vans, subject to such Regulations as the Board may adopt. Outdoor storage of firewood is permitted provided it is neatly stacked to a height not more than four (4) feet from the ground level, and is located to the rear of a Home so as to screen it from view as much as possible.

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

7.08 Out Buildings. No outbuildings, storage sheds or recreational equipment may be constructed on any Lot unless such improvements are approved by the Board and/or comply with any Regulation relating thereto promulgated by the Board.

7.09 Fencing. Fencing on a Lot (including decorative "accent fencing") shall be subject to the approval of the Board.

7.10 Changes to Improvements. No exterior additions, modifications or alterations of any Home or other improvements on a Lot or new building or improvements on a Lot shall be constructed unless:

(a) The exterior materials and colors to be used in connection therewith are consistent and harmonious with the exterior materials and colors used in connection with the original construction of the Home on such Lot, or are otherwise approved by the Board, and

(b) The plans, specifications and elevations therefor have been approved by the Board.

If any Home is partially or entirely destroyed by fire, storm or other casualty and is partially or completely reconstructed following such damage or destruction, it shall be constructed or reconstructed utilizing the same exterior materials and colors as were used in the original construction, unless otherwise approved by the Board. Any new Home to be constructed to replace a Home that has been damaged, destroyed or razed shall be substantially the same architectural style, size and design as the Home it is replacing unless otherwise approved by the Board.

7.11 Appearance; Nuisances; Maintenance. Each Unit Owner shall keep his Lot and Home in a clean, neat, sanitary and safe condition, and shall maintain the lawn, shrubbery, landscaping and trees on his Lot in neat condition and in compliance with any Regulations promulgated by the Association relating thereto. Each Unit Owner shall refrain from any activity that unreasonably interferes with the quiet and peaceful enjoyment of other Lots by their Unit Owners and occupants.

7.12 Architectural Approval.

(a) When any provision of this Declaration requires the approval of the Board prior to or in connection with the construction, reconstruction, alteration or modification of any improvements on any Lot, the Unit Owner shall submit to the Board appropriate plans, specifications and elevations depicting the style, size and height of the proposed improvements, the exterior building materials and colors to be used in connection therewith (including roofing materials) and the proposed location thereof on the Lot.)

(b) The Board shall have the discretion to disapprove any proposed new improvements, or alterations or modifications to existing improvements, which the Board determines are undesirable based upon the nature, size, style and colors of other Homes and improvements located (or planned for construction) within the Community, the proximity of the proposed improvements to neighboring Lots and the general architectural and aesthetic compatibility of the proposed improvements with other similar improvements constructed or planned for construction on the other Lots. The Board may also consider the visual impact that such proposed improvements may have on neighboring or nearby Lots.

(c) All plans submitted to the Board for review may be retained by the Board regardless of whether the proposed improvement is approved or disapproved. The Board may, pursuant to the By-laws, delegate some or all of the Board's architectural review and approval responsibilities under this Article VII to an architectural review committee.

(d) The Board may promulgate Regulations establishing procedures to be followed with respect to matters requiring the approval of the Board or the architectural review committee hereunder. The Board may promulgate Regulations setting forth general architectural and aesthetic standards or policies to be met for all or specified types of improvements, and may establish other procedures for the review and approval of certain types of improvements (or alterations or modification thereof) if the Board, in its sole discretion, determines that strict adherence to the procedures set forth herein is not necessary in order to protect the interests of the Association and the Unit Owners.

(e) The Board shall render its decision with regard to the proposed improvements within thirty (30) days after receipt of the applicant's request for approval accompanied by all plans and specifications required to be submitted hereunder. Such decisions shall be rendered in writing. If additional information regarding the proposal is requested., the aforesaid thirty (30) day period shall run from the date all such additional information is submitted by the applicant. If such proposed improvement is not approved, the reasons for disapproval shall be set forth in the written decision. If a written decision is not rendered within the aforesaid thirty (30) day period, then the Unit Owner may submit a second written request for such decision, which shall be sent by certified mail, return receipt requested. If the Board fails to render a decision within fifteen (15) days after receipt of such second request, the proposed improvement shall be deemed to have been approved as submitted, but no change to the plans or specifications submitted may be made without submission of such changes for approval in accordance with the procedures set forth herein. The disapproval of any proposed improvement shall be without prejudice to the right of the Unit Owner to resubmit an application for approval in which the reasons for disapproval have been addressed by the applicant. Approval may be granted subject to conditions specified in the written decision granting such conditional approval, in which event the proposed improvement shall be deemed to have been approved subject to compliance with such conditions.

(f) In rendering its decision with regard to a proposal submitted by a Unit Owner hereunder, the Board (or the architectural review committee, as the case may be) shall have the power to interpret this Declaration and any Regulations relating to architectural and aesthetic standards, and to grant reasonable variances from specific requirements of this Declaration or the Regulations if, in the Board's opinion (i) the particular requirement to be varied poses unreasonable hardship on the applicant as a result of the peculiar features of the applicant's Lot or Home or other existing improvements or features on the Lot, (ii) the particular requirement to be varied would not render the proposed improvements aesthetically incompatible or inconsistent with other existing improvements on the applicant's Lot or existing improvements on neighboring or nearby Lots, or (iii) the particular requirement, as applied to the particular proposed improvements, is not reasonably practical. The granting of such variances shall be within the sole and absolute discretion of the Board, and no variance granted in any one instance shall create any obligation on the Board to grant a variance in any other instance. Variances may be granted subject to such conditions as the Board may require in its sole discretion.

7.13 Compliance with Zoning, Etc. Neither the Declarant, the Association, the Board nor any officer, director, employee, agent or representative thereof shall be responsible for determining if a proposed improvement complies with applicable zoning, building, health, safety or other laws or ordinances. Each Unit Owner constructing any improvement or alteration of existing improvement on his Lot shall obtain (at his sole cost) all necessary governmental approvals and permits before commencing the improvement and shall deliver copies thereof to the Association upon request. Any improvement or thing permitted by this Declaration (or by approval of the Board) shall be subject to and limited by applicable zoning ordinances and other land use laws, ordinances and regulations.

7.14 Liability for Approval or Disapproval. Neither the Declarant, the Association, the Board (or any committee thereof) nor any director, officer, employee, agent or representative thereof shall be liable, in damages or otherwise to anyone in for approval or disapproval of any plan or proposal for the construction, reconstruction, alteration, modification or addition of any improvement, or for the consequences of such approval or disapproval. The establishment of a mechanism for the approval of plans and specifications for certain improvements is for the limited purpose of protecting aesthetic standards for the benefit of the Unit Owners and Declarant, and is not for the purpose of protecting the health or safety of Unit Owners or others. Accordingly, neither the Declarant nor the Association, nor any of their directors, officers, representatives or agents, are responsible for determining the safety or structural soundness of any proposed building or improvement or its compliance with applicable laws, regulations, ordinances or building codes.



7.15 Leasing. A Unit Owner may lease no less than his entire Lot and Home at any time from time to time provided that the following conditions are satisfied (which shall not be applicable to any leases entered into by the Declarant with respect to Homes owned by the Declarant): (i) such lease must be in writing, (ii) such lease (and any subsequent amendments or modifications thereto) shall be delivered by the Unit Owner to the Association upon request of the Association, and (iii) such lease shall expressly state the obligation of the lessee(s) to comply with this Declaration and the Regulations. Whether or not expressly stated in any lease, (A) the tenant(s) shall be bound by the Declaration and the Regulations, (B) the Association shall be deemed a third party beneficiary of any provision of the lease governing the lessee's obligations to comply with the Community Documents, (C) the Associations shall be entitled to demand payment directly from the lessee of any Assessments, fines or other sums payable by the Unit Owner, if requested by the Association, and (D) the Association shall have the right to require that the Unit Owner terminate such lease within thirty (30) days after written notice from the Association as a result of any violations of the Community Documents by the lessee which have continued unabated for fifteen (15) days after written notice thereof is given by the Association to the Unit Owner or the lessee, or if the lessee commits two or more violations of a substantially similar nature within any period of six (6) consecutive months.

7.16 Certain Declarant Rights. Notwithstanding any provision hereof to the contrary, while Declarant owns any Lots, Declarant shall be entitled to maintain one (1) or more model homes, sales offices and construction offices (including mobile offices) and to maintain on or about the Common Facilities and on Units owned by the Declarant such construction equipment, vehicles, lumber and building materials as are necessary from time to time in connection with the development of the Property, the construction of Dwellings and the Common Facilities. Unless otherwise expressly provided in this Article VII, the restrictions and obligations set forth in this Article VII apply only to Unit Owners other than the Declarant. Homes and other improvements constructed by the Declarant or any affiliate thereof are not to be subject to the restrictions or architectural review provisions in this Article VII. Declarant reserves the right to change, from time to time, the style, models, configuration, elevations, pricing and other features of the Homes that the Declarant may build on the Lots.

7.17 Use of Common Facilities. The Common Facilities shall be for the common use and enjoyment of the Unit Owners. However, neither the Unit Owners nor their family, guests or others shall have the right to use the Open Space or any other Common Facilities except as permitted by this Declaration and by Regulations adopted by the Board from time to time. No Person (other than as authorized by the Association) shall place, construct, erect, deposit or store any structure, improvement, refuse, rubbish, or other property of any kind on the Open Space or on any other Common Facilities, and no vehicle or bicycle shall be operated on the Open Space by any Unit Owner or his or her family members, guests, invitees or tenants. No construction, improvement, modification, maintenance, alteration or similar activities with respect to the Common Facilities shall be undertaken except by or under the direction of the Declarant or the Association.

7.18 Signs; Mail Boxes. No any signs shall be placed on the exterior of a Dwelling or on a Lot, except (i) reasonable "for sale" or "for rent" signs after the Declarant Control Period ends, and (ii) one (1) small sign affixed to the exterior of a Dwelling (complying with such Regulations as the Association may adopt) stating the Unit Owner's name, house number and/or street address. Mailboxes shall comply with such Regulations as may from time to time be promulgated by the Board.

7.19 Outside Ornaments and Decorations. No Unit Owner shall place or maintain on or about his or her Home or affix to the exterior of any Home any lawn ornaments or other decorations (including, but not limited to, likenesses of animals or birds, bird baths or fountains) unless such proposed ornament or decoration is approved by the Board. The preceding shall not be deemed to prohibit (i) temporary placement and use of reasonable seasonal and holiday decorations, ornaments and lighting, subject to such limitations as the Board may prescribe by Regulations, or (ii) reasonable and customary landscaping treatments subject to such limitations or guidelines as the Board may provide by Regulations or otherwise approve.

7.20 Recreational Equipment. Swing sets, sandboxes and other recreational equipment are permitted in backyards. Temporary basketball backboards not affixed to the building are permitted in driveways near the garage entrance and in all events behind the front yard setback lines.

7.21 Outdoor Lighting. No floodlights, halogen or mercury vapor lights are permitted on the exterior of any building without the express written consent of the Board. Floodlights may not be directed upon or otherwise impact neighboring Lots or Dwellings.

## ARTICLE VIII – EASEMENTS; SPECIAL DECLARANT RIGHTS

8.01 Easement to Construct and to Dedicate Improvements. Declarant hereby reserves for itself, its successors and assigns and the Association, the following easements, rights and privileges:

(a) All easements, whether general or specific, shown on the Plans;

(b) An easement over, under, through and across the Property for the construction, installation, repair, inspection, alteration, maintenance and use of utilities and utility facilities including, without limitation, electrical, telephone, cable television, water, sewer and similar facilities;

(c) The right to grant easements through, over, across and under the Property and all parts thereof to public or private entities for utility services and facilities (including electric, telephone, cable television, public water, sanitary sewer, storm sewer, natural gas or other utility services);

(d) The right to alter the location of any easements shown on the Plan in a manner which will reflect the actual “as-built” location of any Common Facilities or utility facilities constructed thereon, and to amend this Declaration and/or the Plans and/or record one more separate easement agreements setting forth metes and bounds descriptions of such easement areas; and

(e) The right to dedicate or offer for dedication to the Township or other appropriate municipal or quasi-governmental entity (i) all roads and road right-of-ways with respect to roads constructed within the Property pursuant to the Plan, (ii) all drainage easements and other easements necessary or appropriate to provide access to and from any Stormwater Management Facilities or other Common Facilities, and any other facilities or easements required or that may be required to be dedicated or offered for dedication to the public.

8.02 General Utility Easements. The Declarant and the Association shall each have the authority to grant to third parties additional utility easements that are deemed reasonable by the Declarant or the Board to supply utility services to the Homes or the Common Facilities.

8.03 Easement for Inspection and Abatement. The Declarant and the Association (and their respective representatives and agents) shall have the right and easement to have access to each Lot as may be necessary in order to inspect, maintain, repair or replace any Common Facilities therein or accessible therefrom, or to inspect for or abate any violation of this Declaration or the Regulations of the Association.

8.04 Easement of Access and Use of Streets. Pending dedication of the interior streets within the Property to the Township, each Unit Owner shall have an easement of use, access, ingress, egress and regress, in common with all other Unit Owners and the Declarant, and others claiming under them, over undedicated streets within the Community for the purpose of providing vehicular and pedestrian access to and from the Unit Owners' respective Lots. Such easements shall also be for the benefit of tenants and occupants of the Homes, and the family members, guests and permittees of such Unit Owners, tenants and occupants.

8.05 No Obstruction. No Unit Owner shall conduct any activities on or about his Lot or the Common Facilities, or construct or place on his Lot any building, structure, trees or other obstruction which may interfere with or obstruct the Declarant's, the Association's or any other persons' right of use or enjoyment of the Common Facilities or any of the easements created, granted or reserved herein or on the Plan, or any other easement affecting the Property or any part thereof. No trees shall be planted on or within any sanitary or storm sewer easements shown on the Plans or created subsequent to the recording hereof.

8.06 Easement for Encroachments. If any part of the Common Facilities now or hereafter encroaches on any Lot, or if any Lot or Home or improvement thereon hereafter encroaches upon any Common Facilities (other than as a result of the intentional or negligent act or omission of a Unit Owner other than the Declarant), a valid easement appurtenant for such encroachment shall exist.

8.07 Reservation of Special Declarant Rights. Declarant hereby reserves for itself, and any successor Declarant, the following rights:

(a) The right to maintain and relocate, from time to time, one (1) or more (but not more than five (5)) construction offices and/or sales offices on the Open Space (without limitation as to size or location) and on Lots owned by the Declarant;

(b) The right to maintain signs on Lots owned by the Declarant and on the Open Space advertising Lots owned by the Declarant for sale or lease, and such other signs, including directional, promotional and informational signs, as the Declarant, its contractors or agents may desire to place on its Lots or on the Common Facilities in connection with the marketing and/or sale of Lots and the construction of Dwellings and other improvements on the Property.

(c) The right to maintain, locate and relocate offices and models used in connection with the management of and sale or rental of Lots and Homes owned by the Declarant on Lots owned by the Declarant;

(d) The right and easement to complete all improvements, Common Facilities and Homes planned for construction within the Property;

(e) Subject to approval of the Township, the right to relocate boundaries between Lots owned by the Declarant, and the right to relocate the boundaries between Lots and Open Space, together with the right to prepare, execute and record such amendments to this Declaration and the Plans as may be necessary to show the altered boundaries, to the fullest extent permitted by Section 5214 of the Act.

(f) The right to use and enjoy any and all easements through the Common Facilities for the purpose of constructing, maintaining and/or repairing any improvements within the Property;

(g) The right to appoint, remove and replace officers and Directors of the Association during the Declarant Control Period; to the fullest extent permitted hereunder and by the Act; and

(h) The right to transfer, in the manner set forth in the Act, any or all of the Special Declarant Rights reserved unto the Declarant herein.

#### 8.08 Declarant's Rights as to Convertible Real Estate.

(a) Declarant reserves the right to create additional Units within the Convertible Real Estate. Such right may be exercised at any time within seven (7) years after this Declaration is recorded, after which time said option shall lapse as to any part of the Convertible Real Estate with respect to which the Declarant has not, on or before that date, exercised its option hereunder. There are no limitation on the options reserved by the Declarant hereunder, except those created by or imposed by operation of law and those expressly set forth in this Declaration.

(b) If additional Units are created within the Convertible Real Estate, the voting power in the Association and the Common Expense Liability appurtenant to each Unit shall be reallocated. Each Lot within the Convertible Real Estate shall carry one (1) vote and the Common Expense Liability allocated to each such Lot shall be as determined pursuant to Section 5.01 hereof.

(c) The Declarant reserves the right to convert parts of the Convertible Real Estate at different times and in any order the Declarant may determine. No assurances are made with regard to the order in which, or boundaries of, parts of the Convertible Real Estate that may be converted at any time.

(d) The maximum number of Units that may be created within the Community, inclusive of those that may be created within the Convertible Real Estate, is 50. All Units created within the Convertible Real Estate shall be restricted exclusively to residential use and shall otherwise be subject to Article VII hereof.

(e) No assurances are made with respect to the compatibility of Homes created within the Convertible Real Estate to existing Homes within the Community in terms of architectural style, quality of construction, principal materials employed, size or price range.

(f) All restrictions in this Declaration affecting use, occupancy and alienation of the Units shall apply to Lots and Homes created within the Convertible Real Estate, subject to reasonable differentiations that the Declarant may deem appropriate based on the different character, style or type of Units created within the Convertible Real Estate, which differentiation the Declarant reserves the right to make in the Declarant's sole and absolute discretion.

(g) No assurances are made with respect to other improvements or Limited Common Elements that may be made or created within the Convertible Real Estate. No assurance is made that (i) the Limited Common Elements created within the Convertible Real Estate will be of the same general types, sizes or character as those located within other parts of the Community, or (ii) that the proportion of Limited Common Elements to Units created within the Convertible Real Estate will be approximately equal to the proportion existing within other parts of the Community. The Declarant intends (but does not guaranty) that the type of improvements that will be created within the Convertible Real Estate (if, as and when the same is converted) will be substantially similar to those made within the Community initially subject to this Declaration. Homes constructed within the Convertible Real Estate shall be constructed within the title lines of the Lots therein as approved pursuant to the approved and recorded subdivision plans thereof, as the same may be amended with the approval of the Township. The Declarant intends (but does not guaranty) that the location of Lots, Homes, streets and other improvements will be substantially as depicted on the Plans.

## ARTICLE IX – PROVISION BENEFITTING TOWNSHIP

9.01 Township's Right to Enforce. The Township is a third party beneficiary of, and shall have the right to enforce, the provisions of this Declaration requiring the Association to maintain the Common Facilities. The Township shall have the right (but not the obligation) to compel the maintenance of the Common Facilities in the event that the Association fails to do so, provided that the Township shall give notice to the Association of such failure and provide the Association with a reasonable opportunity to cure such failure, and shall have all rights provided in the Township's ordinances. The cost of such maintenance and enforcement proceedings by the Township, together with interest, penalties, costs and attorney's fees, shall be assessed ratably against the Lots that have a right of enjoyment of the Common Facilities affected thereby, and shall become a lien on such Lots from the time such lien may be filed by the Township. If a lien is placed by the Township against Lots because of the failure of the Declarant, the Association or any successor organization to maintain the Common Facilities in reasonable order and condition as provided herein, the Township shall, upon conveyance of a Lot, or securing any home equity loan by any Unit Owner, release its lien as to the affected Lot upon payment of the amount due which was ratably assessed to that Lot, based upon the applicable Common Expense Liability allocated to that Lot. This provision may not be amended without the prior consent of the Township.

9.02 Amendment. This Article IX may not be amended without the prior written approval of the Township.

## ARTICLE X – COMPLIANCE AND ENFORCEMENT

10.01 Compliance and Breach. The Board shall have the authority to exercise any and all remedies provided in this Declaration, or as otherwise may be provided by law, to enforce compliance with or remedy any violation of the Community Documents, including the right to bring a suit at law or in equity to compel compliance therewith, to restrain or abate any violation thereof or to recover damages for such including attorney's fees, from any Unit Owner or other person violating the Community Documents.

### 10.02 Enforcement by Unit Owners; Procedures.

(a) The Association shall have the sole and exclusive right and authority to enforce the covenants in this Declaration relating to the payment of Assessments by Unit Owners.

(b) If the Board (or the architectural review committee, as the case may be), approves the construction, alteration or modification of any structure or improvement under Article VII hereof, such decision shall be final, binding and conclusive on all Unit Owners, and no Unit Owner shall have the right to bring any action at law or in equity to contest or appeal such approval or to compel the removal, modification or alteration of any structure or improvement built, made or altered in compliance therewith.

(c) No Unit Owner shall have the right to bring any action at law or in equity to enforce any of the other terms, covenants, restrictions or provisions of this Declaration, or of the By-Laws or the Rules and regulations, unless such Unit Owner shall have first complied with the procedures in Section 10.03 hereof.

#### 10.03 Grievance Procedure.

(a) If any Unit Owner alleges that one or more other Unit Owners or occupants of any Home has violated or is violating any provision of the Community Documents, before commencing any action or suite relating thereto such Unit Owner shall first give written notice thereof to the Board and the affected Unit Owner(s) specifying with reasonable particularity the name and address of the alleged violator and the nature of the activities constituting such violation.

(b) Within forty-five (45) days after the receipt of such notice, the Board, or a Committee of the Board, shall hold a hearing with respect to such complaint. Notice of the time, date and place of such hearing shall be given to the complainant and the person or persons against whom such complaint is made. Within fifteen (15) days after the date of such hearing, the Board or a Committee thereof, as the case may be, shall render a decision as to whether or not the actions complained of constituted a violation of the Community Documents and, if a violation has been determined to exist, a determination of what, if any, relief or remedies the Board deems appropriate under the circumstances. The Board may promulgate Regulations relating to the procedure to be followed in cases where an Unit Owner complains of the acts or omissions of other Unit Owners or occupants, and to govern procedures that shall apply at any hearing or hearings. If deemed necessary by the Board, any hearing with respect to an alleged violation of the Community Documents may be continued from time to time until the Board of Directors has obtained all information and/or testimony necessary in order to render its decision.

(c) In all hearings before the Board or any Committee thereof, all parties thereto shall be entitled to be represented by legal counsel.



(d) In connection with any suit at law or in equity by one or more Unit Owners against one or more other Unit Owner(s) or occupants of any Unit alleging any violation hereof, the Association shall have right to intervene in such proceedings if deemed to be in the best interests of the Association, including without limitation any proceeding calling into question the validity, enforceability or interpretation of any provisions of the Community Documents.

10.04 Remedies Cumulative; No Waiver. All rights and remedies provided for herein, or as otherwise may be available at law or in equity, shall be cumulative and may be pursued individually, together, at one time or from time to time, as the Board of the Association deems appropriate in its sole discretion. No waiver of an no delay or forbearance in the enforcement of any provisions of the Community Documents shall constitute a waiver of the right to do so. Neither the Association or any Unit Owner shall be deemed to have waived any right of enforcement or any breach or default of the provisions of this Declaration on the part of any Unit Owner or occupant Unless such waiver shall be in writing, and then only to the extent expressly set forth in such waiver.

## ARTICLE XI – MISCELLANEOUS

11.01 Assignment of Declarant's Rights and Obligations. Declarant has the right to assign its rights, privileges and obligations hereunder to a successor by a written instrument executed by the Declarant and such successor in compliance with the Act.

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

(a) Any amendment to this Declaration may be proposed by the Declarant, the Board or by Unit Owners entitled to cast at least twenty percent (20%) of the votes which all Unit Owners entitled to cast with respect to the Association. The manner of proposing amendments to this Declaration and giving notice to Unit Owners thereof shall be the same as the procedure set forth in the By-laws for amending the By-laws.

(b) Until the end of the Declarant Control Period, this Declaration may be amended by the Declarant, actin alone, without the consent or approval of any other Unit Owners. Thereafter, this Declaration may be amended only with the affirmative vote or written consent of at least sixty-seven percent (67%) of the votes which all Unit Owners are entitled to cast, except as provided in the other subsections hereof.

(c) The Declaration can be amended by the Declarant without the approval of the Unit Owners in any manner or for any purpose set forth in Section 5219(a)(3) of the Act, to the extent applicable to this Declaration and the Association.

(d) No amendment to this Declaration shall make any change that would in any way alter, modify or affect any of the rights, easements or privileges of the Declarant, including Special Declarant Rights, without the written consent of the Declarant.

(e) No amendment to this Declaration which would in any way alter, modify, or affect any of the rights, easements or powers granted to the Township (including, without limitation, Article IX of this Declaration) may be made except by an instrument approved in writing by the governing body of the Township or joined or executed by the governing body of the Township.

(f) Each amendment to the Declaration shall be executed by or on behalf of the Association or the Declarant, as the case may be, in the manner provided in the Act, and shall be effective upon recording.

11.03 Severability. If any provision of this Declaration is determined by a court to be invalid or unenforceable, such provision shall be deemed stricken therefrom and shall not affect the validity or enforceability of the remaining provisions of this Declaration. If any provision of this Declaration is unenforceable or invalid as written, but may be reasonably reformed to make the same valid and enforceable and carry out the reasonable intent of the Declarant as specified herein, it is the intent of the Declarant that any court interpreting such provision shall, to the extent permitted by law, reform the same so as to make the same valid and enforceable in order to most closely effectuate the reasonable intent of the Declarant expressed therein.

11.04 Governing Law. This Declaration and all substantive rights, obligations and liabilities of the Declarant, the Association and the Unit Owners shall be governed by Pennsylvania law.

11.05 Number and Gender. Wherever any provision of this Declaration refers to the singular, such provision shall be deemed to include the plural whenever necessary or appropriate to give effect to such provisions, and the use of any gender shall be deemed to include any other gender.

11.06 Covenants, Restrictions and Easements Running with the Land. This Declaration, and all covenants, restrictions and easements set forth herein, shall run with the Land, in perpetuity, whether or not any deed conveying the Property or any Lot shall expressly refer to this Declaration; and all such covenants, restrictions and easements, shall, except as otherwise expressly provided herein, shall be binding on and shall benefit the Declarant, the Association and all Unit Owners, and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the Declarant has executed this Declaration the date set forth above.

DECLARANT:

SOUTHDOWN HOMES, L.P.  
BY SOUTHDOWN PROPERTIES, INC.  
Its general partner

By: (Original Signed by Jack Loew)  
Jack R Loew, Vice President

COMMONWEALTH OF PENNSYLVANIA :  
 : SS  
 COUNTY OF CHESTER :

On the 6<sup>th</sup> day of **September**, 2000, before me the undersigned, a notary public for the Commonwealth of Pennsylvania residing in the County of Chester, personally appeared Jack R. Loew, who acknowledged himself to be the Vice President of Southdown Properties, Inc., and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes herein contained by signing the name of the corporation by himself as such officer.

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

*(Original Signed by Elva Johnson)*  
 Notary Public

Notary Seal  
 Elva C Johnson, Notary Public  
 Media Boro, Delaware County  
 My Commission Expires Dec 18, 2000

**EXHIBIT "A"**

**PLATS / PLANS OF KEATS GLEN AT CORNER KETCH**

1748  
Keats Glen  
July 21, 2000  
(Revised 9/6/00)

**LEGAL DESCRIPTION  
KEATS GLEN**

**ALL THAT CERTAIN** parcel of land situate in East Brandywine Township, Chester County, Pennsylvania as shown on a Site Plan for Delaware County Community College Chester County Campus dated August 4, 1996 and last revised January 4, 2000 by Edward B. Walsh and Associates, Inc., Civil Engineers and Surveyors, Downingtown, Pennsylvania and being more fully described as follows:

**BEGINNING** at the northwest corner of land now or late of East Brandywine Baptist Church in the bed Horseshoe Pike (variable width);

thence from the point of beginning, along the title line in the bed of Corner Ketch Road crossing the east legal right of way line of Horseshoe Pike North 01 degrees 57 minutes 05 seconds West 694.32 feet to the southwest corner of lands now or late of Mitchell S. and Jean D. Mauger;

thence along the south line of said lands, crossing the east right of way line of Corner Ketch Road North 85 degrees 44 minutes 24 seconds East 439.82 feet to a point;

thence continuing along the east line of said lands North 29 degrees 00 minutes 12 seconds West 206.09 feet to a point;

thence continuing partly along the south line of said lands and partly along the south line of lands now or late of James and Vicki Young and partly along the south line of lands now or late of Jane Blosiensi respectively North 82 degrees 47 minutes 52 seconds East 415.15 feet to a point;

thence continuing along the south line of said Blosiensi North 82 degrees 36 minutes 47 seconds East 861.41 feet to the northwest corner of lands now or late of Delaware County Community College;

thence along said lands the following five (5) courses and distances:

- 1) South 07 degrees 23 minutes 13 seconds East 157.47 feet to a point;
- 2) South 27 degrees 28 minutes 32 seconds West 335.68 feet to a point;
- 3) South 42 degrees 15 minutes 16 seconds West 195.17 feet to a point;
- 4) South 02 degrees 13 minutes 06 seconds West 236.36 feet to a point;
- 5) crossing Brantwyn Drive fifty (50) feet wide South 31 degrees 51 minutes 10 seconds West 580.25 feet to a point in the northeast line of lands now or late of East Brandywine Baptist Church, aforesaid;

thence along the same the following three (3) courses and distances:

- 1) North 58 degrees 08 minutes 50 seconds West 442.47 feet to a point;
- 2) North 58 degrees 36 minutes 45 seconds West 426.67 feet to a point;
- 3) crossing the east legal right of way line of Horseshoe Pike South 52 degrees 42 minutes 47 seconds West 326.64 feet to the point of BEGINNING.

**CONTAINING:** 29.814 acres of land, be the same more or less.

## **EXHIBIT "B"**

### **TITLE EXECPTIONS**

1. Unrecorded easements, discrepancies or conflicts in boundary lines, shortages in area and encroachments, which an accurate and complete survey would disclose.
2. Rights of the public and others entitled thereto in and to the use of that portion of the premises within the bounds of Horseshoe Pike & Corner Ketch Road.
3. Rights granted to Bell Telephone Company in Misc. Deed Book 165 page 849
4. Rights granted to Bell Atlantic-Pennsylvania, Inc. in Record Book 4332 page 1578.
5. Rights and Privileges as in Deed Book A-38 page 319.
6. Conditions disclosed by survey made by Edward B. Walsh and Associates, Inc. dated 8-4-1998 last revised 6-11-1999 – (1) general notes (2) 30 feet wide road.
7. Terms and Conditions of Authorization to Discharge Under the National Pollutant discharge Elimination System in Record Book 672 page 135 and 3291 page 444.



**EXHIBIT "C"**

**PLANNED COMMUNITY PLANS OF KEATS GLEN AT CORNER KETCH**