

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BRIAR CREEK, A PLANNED COMMUNITY**

THIS DECLARATION is made to be effective upon the date of its recording by Jester Venture, L.P., a Pennsylvania limited partnership ("Declarant"):

WITNESSETH:

WHEREAS, Declarant is the owner of certain developed and undeveloped acreage located in Cranberry Township, Butler County, Pennsylvania, as recorded in Plan Book Volume 257, Pages 1-23, in the Recorder of Deeds Office of Butler County, Pennsylvania, inclusive, all considered the Briar Creek Plan; and

WHEREAS, Declarant has developed said acreage as a Planned Residential Development, under the name of Briar Creek, and is required by Cranberry Township to establish a Briar Creek Homeowners Association, and to transfer to the Homeowners Association (as hereinafter defined), title to all Open Space (as hereinafter defined); and

WHEREAS, Declarant intends that this Declaration comply with the requirements of the Pennsylvania Uniform Planned Community Act, 68 P.S. §5101 et. seq. (the "Act").

NOW, THEREFORE, Declarant hereby declares the foregoing recitals to be part hereof, and that all of the properties described above shall be held, sold and conveyed subject to the terms hereof, and to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the affected real property and shall be binding on all parties having any right, title or interest in the affected properties or any part thereof and their heirs, administrators, successors and assigns, and shall inure to the benefit of and be the obligation of each owner therein, as follows:

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to Briar Creek Homeowners Association, Inc., a Pennsylvania non-profit corporation, its successors and assigns, and except when the context clearly provides otherwise, "Association" shall mean its Board of Directors. The Association shall be governed by its By-Laws.

Section 2. "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association as provided in the By-Laws of the Association.

Section 3. "Declarant" shall mean and refer to Jester Venture, L.P., a Pennsylvania limited partnership and its successors and assigns that become such successors and/or assigns for the purpose of continuing the development of the Plan hereunder.

Section 4. "Easement Area" shall mean easements for access, ingress and regress across that portion of the Properties and granted to the owner(s) of Lot 52 and Lot 53 as shown on the Plan and to Danny W. and Gina Marie Bigley, and their respective heirs, successors and assigns.

Section 5. "Living Unit" shall mean and refer to any structure or to any portion of a structure situated upon the Properties which is designed and intended for use and occupancy as a residence by a single family.

Section 6. "Lot" shall mean a Unit, as that term is defined under the Act, and shall include the Lots shown on the Plan, except for Lot 52 and Lot 53 shown on the Plan. It is intended that Declarant will convey Lot 52 and Lot 53 to a third party (together with his or her survivors, the "Initial Lot Owner") and that so long as the Initial Lot Owner owns Lot 52 and/or Lot 53, such lots will not be residential lots subject to the terms of this Declaration. In the event Lot 52 and/or Lot 53 are conveyed by the Initial Lot Owner to a third party, such lots shall then become subject to the terms of this Declaration. Accordingly, subject to the terms of the Act, Declarant retains the right by amendment of this Declaration to add Lot 52 and Lot 53 as additional residential Lots to the Briar Creek planned community in which event all of the provisions of this Declaration shall apply to Lot 52 and Lot 53.

Section 7. "Members" shall mean and refer to those who are entitled to membership as set forth in Article III of this Declaration.

Section 8. "Occupant" shall mean and refer to the resident of a single family structure or a Living Unit, which shall include a contract purchaser, a lessee and a guest.

Section 9. "Open Space" shall mean all real property owned by the Association for the common use and enjoyment of the Members of the Association. The Open Space to be owned by the Association includes a) all Open Space shown on the Plan, and; b) all property on the Plan that is not part of any of Lots 1 - 68 as identified on the Plan and that is not part of a street as identified on the Plan; and c) all detention areas, the planted island traffic separator and the sidewalks now or hereafter existing in the Plan, including without limitation, the Easement Area. Open Space does not include the roads or streets to be constructed by Declarant in the Briar Creek Plan which are subsequently dedicated to the municipality pursuant to Section 4 hereof.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. An Owner may

delegate his or her rights to use the Open Space, including any common facilities belonging to the Association, to the Occupants of his Living Unit.

Section 11. "Plan" shall mean the Briar Creek Plan, recorded in the Plan Book Volume _____, Page _____ in the Recorder of Deeds Office of Butler County, Pennsylvania.

Section 12. "Properties" shall mean and refer to all that certain real property presently owned by Declarant shown on the Plan.

Section 13. "Purchaser" shall mean and refer to any person who purchases a Lot for residential use, other than a purchaser who by written agreement with the Declarant indicates that it is in the business of buying and selling planned community units or a purchaser who succeeds to a "special declarant right" as that term is defined in the Act.

Section 14. "Recorded" shall mean duly recorded in the Office of the Recorder of Deeds, Butler County, Pennsylvania.

ARTICLE II

Property Rights - Easements as to Common Areas

Section 1. Owner's Easement of Enjoyment. Every Owner and Occupant has a right and easement of use and enjoyment upon the Open Space which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) To the levy by the Association of annual and special assessments, and to their timely payment by the Owner.
- (b) To suspension by the Association of the voting rights of affected Owners during default in payment of any assessment.
- (c) To suspension by the Association during such default, from use by residents (including Owners) of the affected Unit.
- (d) To suspension from such uses for up to sixty (60) days, and/or to imposition of reasonable penalty, for violation of rules and regulations, or posted notices. Until a penalty is paid, suspension from use shall be in effect.
- (e) Any action under subsections (b), (c), and (d) above shall be in addition to and shall have no effect upon responsibility for payment of continuing and accruing assessment charges.

- (f) To the imposition by the Association of charges it deems reasonable for the use of any common facility or area, because of its special nature in appeal, use and costs.
- (g) To limits reasonably fixed by the Association to the number of guests that may use common facilities and areas.
- (h) To action of the Association to transfer by dedication and otherwise, at such time or times, and on such terms as it deems proper, all or part of the Open Space to such public or quasi public body or agency as it chooses, and deems to be beneficial to the Lot Owners generally, provided however, that no such action shall be taken and be effective unless it has been approved in writing by eighty percent (80%) of all of the votes of the Lot Owners, including eighty percent (80%) of the votes not including Declarant, voting in accordance with Article III, Section 2 hereof, and further provided that any such transfer of Open Space shall be subject to its continued existence as protected Open Space, which shall be restricted by the other provisions set forth in this Declaration of Covenants, Conditions and Restrictions which are applicable to Open Space.
- (i) To agreement between the Association and others providing for the sharing of Open Space by occupants of neighboring properties.
- (j) To the right of the Association to take such steps as are reasonably necessary to protect the Open Space against an attempted foreclosure.
- (k) To such other rules and regulations as the Board may adopt.
- (l) To existing matters shown on the Plan, including, without limitation, the Easement Area.

Section 2. Delegation of Use. Any Owner may delegate his right of enjoyment to the Open Space and facilities to the members of his family, and to his guests, subject to such rules and regulations as the Board of Directors may from time to time adopt, and to such notices as it may cause to be posted; provided, however, that there shall be no abrogation of the duty of any Owner to pay assessments as may be made upon him and his Lot. A leasing to tenants shall operate as a delegation. A tenant shall be held to the same standards of conduct as an Owner. All leases shall be subject to immediate termination upon the determination of the Board for cause deemed by it to be sufficient, and upon twenty-one (21) days prior notice to the Owner.

Section 3. Title to Open Space. Subject to the reservations set forth in Sections 4 and 5 of this Article II, title to the Open Space shall be conveyed to the Association free and clear of

all monetary liens and monetary encumbrances not later than the sale and conveyance of the last Lot in the Plan to a Purchaser. The Open Space is presently owned by the Declarant and the obligation to convey the Open Space to the Association is binding on the Declarant and any successor in title to the Open Space regardless of whether such successor succeeds to any special declarant right as that term is defined in the Act. The conveyance to the Association does not require the Association to furnish any consideration. The conveyance shall be by special warranty deed. After the conveyance, the maintenance responsibility for the Open Space shall belong to the Association.

Insurance
Tax
Liability

Section 4. Completion of Improvements in Open Space/Right to Dedicate Streets.

All improvements shown on the Plan to or upon the Open Space shall be completed as required by the subdivision regulations of Cranberry Township but in any event not later than the sale of the last Lot in the Plan to a Purchaser. The completion of the improvements is secured by funds being held in a sequestered account and pledged to Cranberry Township. Until the completion of the improvements, the Declarant shall be solely responsible for real estate taxes, if any, assessed against or allocable to the improvements and the Open Space involved. Declarant shall have the complete and unfettered right to dedicate to Cranberry Township the streets to be constructed by Declarant in the Plan.

Section 5. Reservation of Right to Construct and Dedicate Utility Easements.

Declarant shall have the complete and unfettered right to reserve and shall be deemed to reserve for the purpose of development all or any portion of the Open Space for various utility uses as deemed appropriate by Declarant, including, without limitation, storm sewer, sanitary sewer, water, gas, electric line, cable t.v. and telephone lines, and rights of way for utility uses, together with the right to dedicate to any appropriate party or entity the same where applicable and customary, and the right of incidental ingress and egress across the Open Space in connection therewith, and with development of the Properties Declarant's rights hereunder shall not unreasonably interfere with the Members' easements of enjoyment. To the extent possible, Declarant shall restore all disturbed areas to substantially their prior condition.

Section 6. Disputes.

- (a) Any dispute between Owners shall be resolved by the Board of Directors of the Association.
- (b) A member of the Board who is involved in a dispute shall remove himself from the Board as it hears and judges the case. The opposing Owner may designate a substitute, acceptable to the Board, as a member of the Board for that purpose. The case shall be deemed as if it were binding arbitration, and shall be handled and disposed of as under subsection (d) of this Section 6.

(c) Any dispute between an Owner or a group of Owners and the Association, regardless of the amount involved, shall be resolved by arbitration, submitted by any party after sixty (60) calendar days notice to the other party or parties.

(d) Arbitration under subsection (c) shall be pursuant to the terms described in this subsection (d). The Owner or group of Owners, as the case may be, and the Association shall each choose an impartial arbitrator (collectively, the "Initial Arbitrators") within ten (10) days of a written request from either party for arbitration and the two Initial Arbitrators shall choose a third impartial arbitrator within three (3) days of the date that both Initial Arbitrators are appointed (said third arbitrator is hereinafter referred to as the "Arbitrator") who shall alone decide the matter and whose decision shall be binding on the parties, be final, and shall not be subject to appeal. If the two Initial Arbitrators fail to agree on the third arbitrator within the required period, then within three (3) days after such period, the parties shall so notify the Chief Judge of the United States District Court for the Western District of Pennsylvania (the "District Court") who will appoint the Arbitrator as soon as practicable but within five (5) business days of such notice. Should the Chief Judge not appoint the Arbitrator within such time period, then the parties shall immediately notify the Duty Judge then acting for the District Court, and the Duty Judge shall choose the Arbitrator. Should the Duty Judge not appoint the Arbitrator within five (5) business days after a request to do so, then the Arbitrator shall be appointed by such other judge of the District Court as the Initial Arbitrators shall agree (the "Judge"). Should the Initial Arbitrators not appoint a Judge or should such Judge not appoint the Arbitrator within five (5) business days of his or her appointment, then the Arbitrator shall be chosen in accordance with AAA Rules, as defined below. If any party fails to timely designate an arbitrator, such dispute or disagreement shall automatically be deemed resolved by the single arbitrator appointed (who in such case shall be deemed the Arbitrator). The arbitrators will have a minimum of ten (10) years' experience in the practice of commercial law or in a profession related to the subject matter of the dispute and in Pittsburgh, Pennsylvania, and will use the then-prevailing Commercial Arbitration Rules of the American Arbitration Association (the "AAA Rules") to govern the proceeding. The arbitration shall occur in Pittsburgh at a site chosen by the Arbitrator. Both parties shall continue performing their obligations hereunder pending the determination of the arbitration proceeding, except as otherwise provided in this Declaration. The Arbitrator shall have no power to change the provisions of this Declaration and the Arbitrator shall base his/her decision on the provisions of this Declaration and, as appropriate, shall apply the law of the Commonwealth of Pennsylvania. The Arbitrator shall have no power to award punitive, consequential or exemplary damages. The Arbitrator shall submit his/her decision in writing within thirty (30) days of the Arbitrator's appointment. The decision of the Arbitrator shall be binding on the parties and the expense of the arbitration shall be shared equally by the parties.

ARTICLE III

Membership and Voting Rights

Section 1. Members. Each Lot is assigned one membership in the Association. The ownership of the membership shall be appurtenant to and may not be separated from ownership of the Lot.

Section 2. Membership and Voting Rights. The Association shall have one (1) class of voting membership. Each Lot is entitled to one (1) vote in the Association.

Section 3. Period of Declarant Control. In order to provide for the efficient development of the Plan and its completion for the benefit of all of the Owners, the Declarant reserves (subject to the limitations stated below) the right for a period of five (5) years from the date of the first conveyance of a Lot to a Purchaser to appoint and remove the officers and the Board of Directors of the Association.

- (a) The period of Declarant control shall end on the earlier of (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Purchasers; (ii) two (2) years after all declarants (as defined in the Act) have ceased to offer any Lots for sale in the ordinary course of business; or (iii) two (2) years after any development right to add new Lots, if any, was last exercised.
- (b) Not later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Lots to Purchasers, at least one member and not less than twenty-five percent (25%) of the members of the Board shall be elected by Owners other than Declarant.
- (c) Not later than sixty (60) days after the conveyance of fifty percent (50%) of the Lots to Purchasers not less than thirty-three percent (33%) of the members of the Board shall be elected by Owners other than Declarant.
- (d) Not later than the termination of the period of Declarant control, the Owners including the Declarant shall elect a Board the majority of whom shall be Owners other than the Declarant.

Section 4. Joint Owners or Occupants. When more than one person owns a Lot, and when more than one person resides at a Lot owned by another, the votes or vote attaching to the Lot shall be voted as undivided single votes, but all of such individuals shall be entitled to attend meetings and, with the limitation of sharing the vote among them, participate therein. Once a vote is cast without a contest, it shall be final and not reviewable.

ARTICLE IV

Covenants for Assessment

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- (1) annual assessments or charges; and
- (2) special assessments for capital improvements.

If a delinquency occurs in the payment of annual and/or special assessments, said assessment(s), together with incidentals of interest, costs, and reasonable attorney's fees, shall be a charge on the Lot and until it is paid shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such incidentals, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment was made.

Section 2. Purpose of Assessments. The assessments levied by the Association hereunder shall be used exclusively for the improvement and maintenance of the Properties, including the management of the Properties, payment of real estate taxes and payment of insurance premiums.

Section 3. Date of Commencement of Assessments: Due Date. The date when any assessments authorized by this Declaration may begin shall be established by the Board of Directors of the Association. Such date shall also mark the beginning of the fiscal year of the Association. Due Dates for any assessments shall be established by the Board of Directors.

Section 4. Annual Operating and Maintenance Assessments. At least forty-five (45) days prior to the beginning of the fiscal year of the Association when assessments are to begin and thereafter at least forty five (45) days prior to the commencement of each successive fiscal year, the Board shall prepare a budget covering the estimated expenses for the improvement and maintenance of the Common Area, including the management of the Common Area, payment of real estate taxes and payment of insurance premiums for the ensuing year. The annual assessment to be levied against each Lot will be computed by multiplying the budgeted expenses by a fraction whose numerator is one (1) and whose denominator is the number of Lots that may be developed under the Plan. Except that during the transition period, when the community is being developed, the following special allocations shall apply:

- (a) Until a Lot is made ready for building on it from the installation of a finished road, and utilities of water, sewage, gas, electric, and surface drainage, there shall be no assessment against it.

- (b) While a Lot is benefitted but is without a building and occupancy, it shall be assessed up to 10% of the maximum annual assessment aforesaid.
- (c) Assessments under subsection (b) above shall relate fairly to the actual costs to the Association for the Open Space and the resulting service and benefit to the Lot.
- (d) One year after the Living Unit to be constructed on a Lot is substantially completed and ready for occupancy, or whenever it becomes occupied, whichever occurs first, the same shall be assessed fully.
- (e) The Board of Directors may increase the maximum annual assessment to meet demonstrable cost increases.

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment:

- (a) For Capital Improvements. Applicable to any one year only, or to coincide with the time requirements under outside financing, for the purpose of raising the sums needed for such financing and/or for the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Open Space, including fixtures and personal property related thereto; and every such assessment shall have the prior approval of a majority of the Members and the Declarant, if the Declarant owns any Units at the time of such assessment. Such assessment shall be effective for the life of the need for it.
- (b) Reserves for Major Repairs and/or Replacements. The Board shall create such a fund for the Open Space as it deems appropriate. An amount for such purposes so determined shall be added to the regular assessments for operation and maintenance. The amount shall be uniform, or adjusted equitably according to circumstance as the Board shall determine. The fund shall be kept in an interest bearing account, or be held otherwise at higher income rates with equal or comparable security. The fund, including principal and interest, shall be used only for the stated purposes and not otherwise without the prior approval by two-thirds (2/3) of all of the votes of all Lot Owners, including Declarant, voting in accordance with Article III, Section 2 hereof. The funds shall be the property of the Association. The interests of the Owners therein shall be equitable and appurtenant to and inseparable from their respective titles.
- (c) Reserves for Addition to the Open Space. With the approval of two-thirds (2/3) of all of the votes of all Lot Owners, the Board may create a special

reserve fund for identified additions or improvements to the Open Space. It shall be funded, managed, used, and owned in all respects as is the fund under subsection (b) above. Notwithstanding any provision to the contrary contained herein, Declarant shall not be liable for its pro rata share of any assessments resulting from such special reserve fund, even if Declarant is then the Owner of 25% or less of the Lots.

Section 6. To Obtain Necessary Approvals of Owners. Written notice of any meeting called in accordance with the By-Laws of the Association, for the purpose of taking any action, shall be sent to all Members not less than ten (10) nor more than thirty (30) days in advance of the meeting. If the required quorum is not represented and present, the President, with the approval of a majority of the Board, including himself, may declare the proposed action as rejected, without any further meeting on it, or another meeting may be called subject to the same notice requirement. A meeting without a quorum may continue for purposes of discussion and planning.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate and may be collected on a monthly, quarterly, semi-annual or annual basis as the Board shall determine.

Section 8. Effect of Nonpayment of Assessments - Remedies of the Association. All assessments under this Article IV are "assessments" and any assessments not paid within thirty (30) days after the due date shall be increased by the amount of legal fees that the Association may have incurred and may yet incur with reference to such assessments until they are collected, and such increased assessments shall bear interest at the highest legal rate. The Association may bring an action at law against the Owner personally obligated to pay the same and the Association may proceed on the lien against the property. No Owner may waive or otherwise escape liability for any assessment provided for herein by non-use of the Open Space or abandonment of his Lot. The Board may impose such late charges as it deems appropriate.

Section 9. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot by its Owner shall not affect any assessment lien. However, the bona fide sale or transfer of any Lot pursuant to or in lieu of mortgage foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due and from the lien thereof.

Section 10. Exempt Property. All properties dedicated to, and accepted by, a local public authority, and all properties owned by the Association, or by a charitable or non-profit organization exempt from taxation by the laws of the Commonwealth of Pennsylvania, and to the extent provided by said laws, shall be exempt from the assessments created herein. However, no

such Lot devoted to residential use shall be exempt from said assessments, charges, and liens hereunder whatever its ownership.

ARTICLE V

Insurance

Section 1. Owner's Coverage. Each Owner is responsible for all forms of insurance on all of his interests, except on his interests in the Open Space, and in other assets of the Association, such as protect him from loss and against claims of liability. The Board, in its discretion, may also carry such insurance coverages for the benefit of Owners, at equitable cost to each Owner, which shall be added to and be a part of regular assessments.

Section 2. Association Coverage. The Board shall keep the Association insured:

- (a) With liability coverages, on property, equipment, and persons.
- (b) With coverages on real and personal property against loss.
- (c) With such other coverages, such as errors and omissions or officers and directors' liability, and such as fidelity bonds, as it may deem appropriate.
- (d) All coverages shall be with such insurers, in such forms, in such amounts, for such periods, and otherwise, as the Board deems prudent with such professional advice as it may obtain.
- (e) The Board shall review, or obtain professional review and a written report, of its insurance program and the Association's insurance needs from time to time, but always within intervals not to exceed thirty-six (36) months.
- (f) All premiums and incidental costs shall be operating expenses of the Association.

ARTICLE VI

General and Miscellaneous Provisions

A. General Provisions

Section 1. Enforcement. The Association, or any Owner, according to his interest (including Declarant) shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by and under the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no case be deemed an abandonment of or change in the same, or a waiver of the right to do so thereafter in the same or other circumstances.

Section 2. Severability. Invalidation of any one or part of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. References. Unless the context clearly provides otherwise, all references to action by the Association shall mean action by its Board of Directors. All pronouns and other references shall be read and applied according to their context and circumstances.

B. Miscellaneous Provisions

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date of the recording of the Briar Creek Plan and shall be automatically extended for successive periods of ten (10) years, unless within the last year prior to such twentieth year anniversary date, or prior to any successive ten year anniversary date, the covenants and restrictions of this Declaration are declared terminated by duly recorded action of the Association approved by agreement of the Lot Owners, including Declarant, to which 90% of the votes in the Association are allocated, voting in accordance with Article III, Section 2 hereof; provided, however, the termination of this Declaration shall in no event terminate or extinguish the applicability of any state or local regulations, including without limitation the ordinances of Cranberry Township which are otherwise applicable to the Open Space.

Section 2. Amendment. This Declaration may be amended with the written approval of 67% of all of the votes of the Lot Owners, including Declarant, voting in accordance with Article III, Section 2, provided that any amendment which by this Declaration or by the Act is required to be approved by a greater majority of the votes allocated to the Lots or by certain specified parties shall not be effective unless approved by such majorities and such parties. Any amendment must be recorded and shall take effect immediately upon recordation, or as may be provided therein.

Section 3. Conflicts and Interpretations. In the case of any conflict between this Declaration and the By-Laws of the Association, the Declaration shall control. Interpretations where necessary shall be made by the Board of Directors with due regard for the purposes and spirit of this Declaration. Nothing contained in this Declaration is intended to modify or supercede applicable state or local laws or ordinances, including, without limitation, zoning, building code, subdivision or land development ordinances effective as of the date hereof.

Section 4. Mortgages. Each Lot Owner shall have the right to mortgage or encumber only his own Lot. The lien thereof, and foreclosure thereon shall, however, include the Lot and all rights, obligations, terms and conditions generally hereof as relate to a Lot, a Unit, and its Owner(s). A mortgagee succeeding to ownership shall thereupon be an Owner.

Section 5. Limitations on Uses of Open Space. All Open Space shall be limited in use to purposes authorized by the Association or its Board of Directors, subject to the provisions of this Declaration and to uses permitted by Cranberry Township. Lot Owners and Occupants are prohibited from encroaching upon or improving upon Open Spaces in any manner inconsistent with the Plan and the ordinances of Cranberry Township. All trees in the Open Space shall be protected perpetually and the logging or felling of healthy, live trees shall be prohibited. The Association shall be responsible for replacing any trees which die in the Open Space.

Section 6. Maintenance. The Association shall be responsible for maintenance of the Open Space and all other common elements, including without limitation, sidewalks, island areas located in any roadways and maintenance of any sewage pump station on the Properties (if such pump station is not maintained by a public authority) in accordance with federal, state and municipal laws and regulations. The Association shall also be responsible for obtaining an annual inspection of the stormwater management facilities, and providing routine maintenance of the stormwater management facilities.

Section 7. Additional Agreements. Owners and the Association agree to enter into, or join in, additional agreements to the extent necessary to comply with the terms of the Act.

ARTICLE VII

Use Restrictions and Obligations

Section 1. Use Restrictions and Obligations.

- (a) None of the Lots shall be used for any purpose other than for residential uses. No structures shall be erected or maintained on any building plot other than the one detached single-family dwelling and its appurtenant

garage. No Lots may be further subdivided; provided, however, that this limitation shall not preclude the granting of easements or rights of way. Use of Lots must be in accordance with these Declarations and the ordinances of Cranberry Township.

- (b) No building shall be erected nearer to the front line or nearer to the side street than the building setback lines shown on the Plan as recorded. All building on Lots must be in accordance with these Declarations and the ordinances of Cranberry Township.
- (c) No noxious or offensive activity shall be carried upon any Lot nor shall anything be done thereon which may be or may become any annoyance or nuisance to the neighborhood.
- (d) No trailer, tent or shed shall be placed on any building plot, except for Declarant's construction trailer or a construction trailer of the contractor building a home on such Lot. Inactive construction equipment or construction vehicles may not be stored in the open where they may be seen from any occupied residence in the phase once 50% of the residences in such phase have been completed. Construction equipment which is in weekly use shall not be considered "inactive." No garage or any structure other than the dwelling house for which the plans have been approved in accord with the terms hereof shall be used as a residence, temporarily or permanently. No dwelling house in the process of construction shall be occupied as a residence until the exterior construction thereof shall have been completed.
- (e) Easements are shown on the Briar Creek Plan and reserved for sewers, drainage and utility installations and maintenance and for such purposes and uses as may be shown on the Plan as recorded. All Lots are subject to such easements and no Lot Owner or Occupant may encroach upon or improve upon any such sewer or utility easement in any manner inconsistent with the Plan, recorded easements and the ordinances of Cranberry Township.
- (f) The Owner of each Lot covered by these covenants shall have an easement over all Lots adjoining his property to discharge over those Lots all surface waters that naturally rise in or flow or fall upon his property. All Lots are subject to such an easement in favor of the Owners of adjoining Lots and their successors and assigns, which easement shall be a covenant running with the property. Any Owner of a Lot who, in violation of this covenant, institutes any legal proceeding against any adjoining Owner for discharge of surface waters over his property shall be liable to indemnify

and hold harmless the Owner against whom the proceedings have been instituted from any and all attorney's fees, damages assessed or other legal expense or cost of any kind incurred in the defense of the proceeding. The Owner of each Lot covered by these covenants hereby (i) agrees to accept the conveyance from the Declarant and the responsibility subsequent to said conveyance for the required Pennsylvania General NPDES Permit for discharges of storm water from construction activities on such Owner's Lot as such Permit has been issued by the Commonwealth of Pennsylvania Department of Environmental Protection, Bureau of Land and Water Conservation, and (ii) acknowledges that the Association agrees to accept and shall accept the responsibility for the ongoing maintenance of the detention pond right-of-way areas at such time as the Declarant conveys said detention pond right-of-way areas to the Association and, at such time, shall become a co-permittee with respect to the NPDES Permit.

- (g) No fence shall be erected on any building plot, or along lines thereof, nearer to the road upon which said plot fronts than the main front wall of the dwelling house erected thereon, except that split rail fences or other open fences approved by Declarant shall be acceptable, and no fence shall be built to a greater height than four (4) feet.
- (h) No building shall be erected, placed, or altered on any building lot in this plan until the building plans and specifications have been approved in writing by Declarant.
- (i) All driveways must have a minimum of crushed stone prior to occupancy.
- (j) Satellite dishes greater than two feet in diameter shall not be permitted on any Lot or house. Television and radio antennae, whether mounted on the rooftop or on the ground, shall be prohibited on the exterior of any building or otherwise on any Lot.
- (k) No automobile or motor driven vehicles shall be left on a Lot for a period longer than thirty (30) days in a condition that it is not able to be operated on the public highway, after which time the vehicle shall be considered a nuisance and detrimental to the welfare of the neighborhood and shall be removed from the Lot. No trucks, commercial vehicles, boats, trailers, campers or mobile homes shall be parked or stored on any Lot unless the same are in a garage or at the rear of the dwelling and out of the view from the curb in front of the dwelling; provided however, that the reasonable use of such vehicles as may be necessary during construction of a home on any Lot shall not be prohibited by this requirement.

- (l) No debris incidental to work on one Lot may be placed on another Lot. All debris must be removed by completion of work to which it is incidental (or upon suspension of the work for any reason - beyond brief temporary suspension).
- (m) No sign of any kind shall be displayed to the public view on any Lot except one temporary sign of not more than four (4) square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period. All approved signs must comply with the ordinances of Cranberry Township.
- (n) All lawns must be either seeded or sodded for the entire front area, both sides, and to a minimum distance of thirty (30) feet to the rear of the house; said seeding or sodding to be done within six (6) months or the next immediate growing season after erection of a house on a Lot, whichever occurs first. All seeding shall be the homeowner's responsibility.
- (o) No house shall have an exposed foundation of concrete or concrete block. The approved exterior building materials must extend to grade level.
- (p) The Association shall be responsible for maintaining all landscape buffer shown on the Briar Creek Plan, including replacing any trees in such landscape buffer which die. All such trees shall be protected perpetually and the logging or felling of any such healthy, live trees shall be prohibited.
- (q) The house and all landscaping on any Lot shall be completed within one year after the issuance of a building permit. The driveway on any lot shall be constructed at the Owner's expense and paved with bituminous paving within six (6) months of the occupancy of the house constructed on such Lot.
- (r) The Open Space shall be perpetually preserved as open space and shall not be permitted to be utilized for residential or commercial purposes.
- (s) No Lot shall be permitted to have driveway access onto pre-existing roads of Cranberry Township. Driveway access for all Lots shall be only to proposed internal roads within the development.
- (t) Any Lots containing delineated wetlands, including the Open Space, shall have such information clearly mentioned on any and all homeowner's documents, including the individual deeds for all such individual Lots.

Declarant shall identify any such areas as "wetlands area" on the Plan to be recorded.

- (u) The Owner of each Lot that purchases a Lot from Declarant shall be responsible for the construction of a sidewalk along the entire street frontage of such Lot in the location shown on the Briar Creek Plan. The Owner of each Lot is hereby granted an easement for the purpose of such construction. The sidewalks shall be constructed in accordance with Cranberry Township standards and the sidewalk on each Lot shall be completed within six (6) months of the occupancy of the house constructed on such Lot.
- (v) These covenants are made for the common benefit of all Owners in the Plan who by acquisition of their respective Lots shall be conclusively deemed to have accepted and agreed to these covenants, so that if the Owner of any Lot shall at any time violate, or attempt to violate, any of the covenants or restrictions herein contained, it shall be lawful for any other person or persons owning any Lot or Lots in the Plan to prosecute a proceeding in law or in equity against such person or persons violating, or attempting to violate any such covenants, and to prevent him or them from so doing, and to recover damages for such violations and attorney's fees incidental to such action.
- (w) Any of the covenants in subsections (b) - (u) above may be modified in their applications and/or their terms, at the discretion of the undersigned, subject to applicable state and local ordinances and regulations.

IN WITNESS WHEREOF, Declarant has set its hand and seal this 20th day of November, 2002

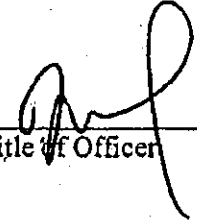
JESTER VENTURE, L.P.
By: JESTER G.P., LLC, ITS SOLE
GENERAL PARTNER

Deborah K. Kuehling

By: [Signature]
Title: G.P.

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF BUTLER)

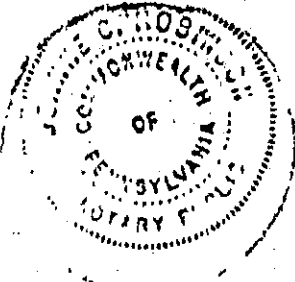
On this, the 20th day of NOV., 2002, before me a Notary Public, the undersigned officer, personally appeared Jeffrey L. Meyerl, who acknowledged himself to be the member of Jester G. P., LLC the Sole General Partner of Jester Venture, L.P., a Pennsylvania limited partnership, and that he as such member of the Jester G. P., LLC the Sole General Partner being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the limited partnership by Jester G. P. LLC as General Partner.



Title of Officer

Sworn and subscribed this
20th day of NOV., 2002


Notary Public



Notarial Seal
Deanne C. Robinson, Notary Public
Moon Twp., Allegheny County
My Commission Expires Dec. 13, 2004

Mail To:

Cranberry Township
2525 Rochester Road, Suite 400
Cranberry Township, PA 16066



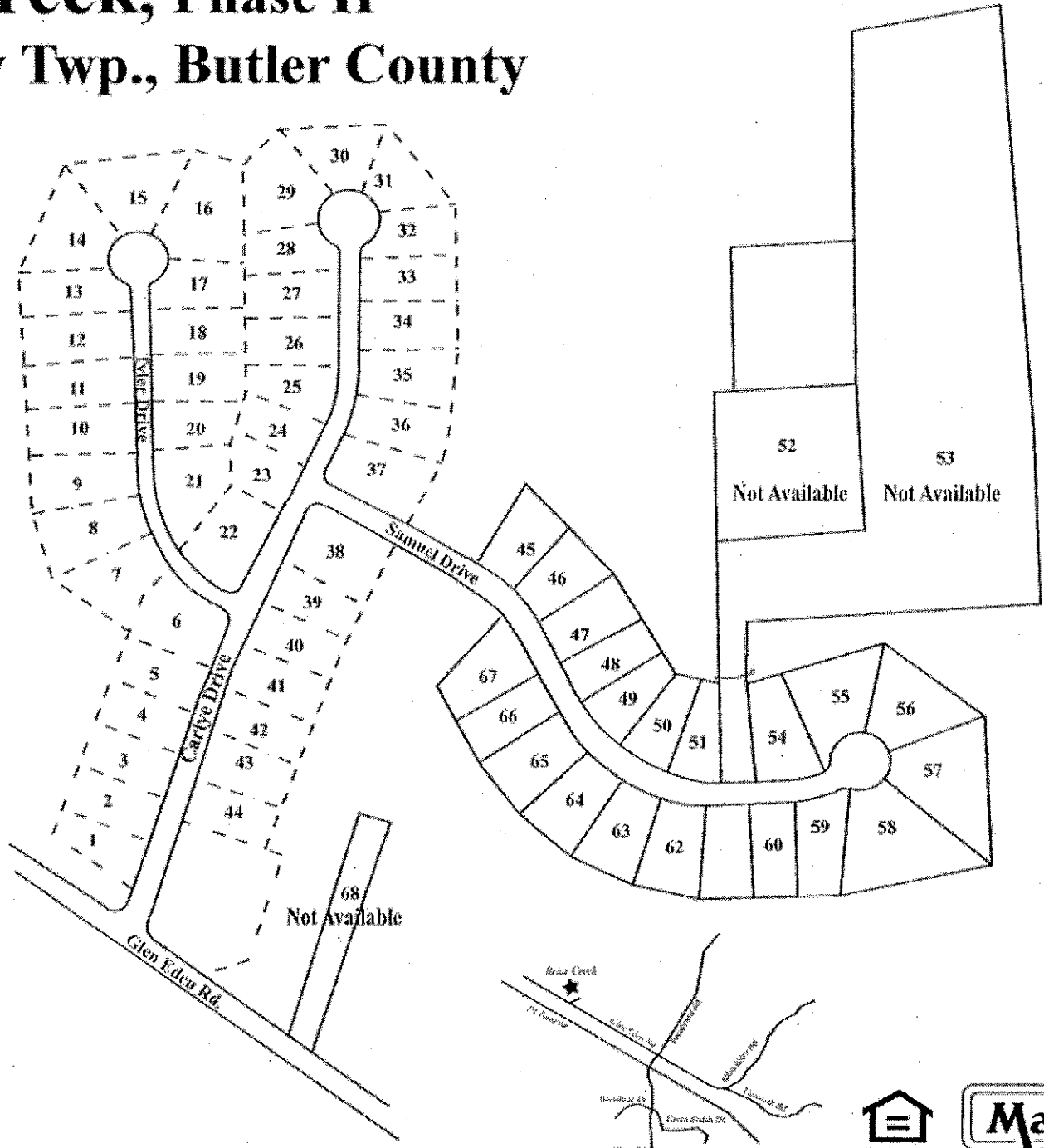
I hereby CERTIFY
that this document is
recorded in the
Recorder's Office
of Butler County,
Pennsylvania


Michele M. Mustillo - Recorder of Deeds



Briar Creek, Phase II

Cranberry Twp., Butler County



This artwork is for illustrative purposes only and not part of a legal document. 11/2004



Maronda Homes
 AN EASILY OBSERVABLE BETTER VALUE!

