

**RESTRICTIVE COVENANT AGREEMENT  
FOR  
PENNFIELD PLACE  
UPPER MACUNGIE TOWNSHIP  
LEHIGH COUNTY, PENNSYLVANIA**

**PREFACE**

KAY CONSTRUCTION, INC., a Pennsylvania corporation, the owner of a certain tract of ground located in Upper Macungie Township, Lehigh County, Pennsylvania, presently intends to construct sixty-eight (68) townhouse units on the property and to provide certain amenities for the units such as driveways, common parking areas and certain open space areas. It is intended that each unit will be constructed and conveyed with its own separated lot which will include two parking spaces; but that the driveways, wetlands, common parking areas and other common open areas will be transferred to an association comprised of the residents of the community and will be maintained and operated by the association.

Therefore, KAY CONSTRUCTION, INC. intends to create a Pennsylvania corporation to perform the role of the community association. Memberships in the association will be automatically held by the owners of each residential unit in the community. Each unit and its owner will be subject to the assessment by the corporation for its proportional share of funds necessary to complete the obligations and duties of the association. The association will have the power to lien each unit and its owner for non-payment of assessments.

KAY CONSTRUCTION, INC., intends the sixty-eight (68) units to be constructed in stages. Therefore, this declaration will apply to only those sections which KAY CONSTRUCTION, INC. has specifically submitted to this declaration by process set forth in this document. Until that time, each future section of the proposed community will not be encumbered or governed by this declaration.

Now, therefore, KAY CONSTRUCTION, INC. does hereby declare and covenant for itself, its successors and assigns, that the certain tract of ground situated in the Township of Upper Macungie, Lehigh County, Pennsylvania, being more fully described in Exhibit "A" hereto, is hereby and hereafter subject to the terms, covenants and restrictions hereinafter set forth; subject, however, to the vesting provisions governing the submission of portion of said property to the covenant and restrictions hereinafter set forth, all as more fully set forth herein:

**ARTICLE I – DEFINITIONS**

The following words and terms when used in the Declaration shall have the following meanings:

1. “Declaration” shall mean and refer to this Restrictive Covenant Agreement for Pennfield Place.
2. “Declarant” shall mean and refer to KAY CONSTRUCTION, INC.
3. “Association” shall mean and refer to Pennfield Place Community Association, a Pennsylvania corporation.
4. “The Property” shall mean and refer to that certain parcel owned, at the date of this Declaration, by Declarant and described by metes and bounds in Exhibit A hereto.
5. “Plan of Development” shall mean and refer to the plan of development of the Property, granted final approval by the Board of Supervisors of Upper Macungie Township on December 15, 1990, and any and all approved amendments, additions, revision or deletion to or from said plan.
6. “Pennfield Place” shall mean and refer to the residential community constructed on the Property pursuant to the Plan and Development.
7. “Unit” shall mean and refer to each residential lot pursuant to the Plan of Development, upon which a residential dwelling has been constructed.
8. “Common Areas” shall mean and refer to all non-residential lot areas of the Plan of Development and are described by metes and bounds in Exhibit B hereto (to be submitted in final form at later date).
9. “Membership” shall mean and refer to the unit of ownership interest in the Association.
10. “Member” shall mean and refer to each owner of a membership in the Association. If a membership is owned by joint-tenants, co-tenants, or tenants by the entireties, the joint-tenants, co-tenants or tenants by the entireties shall collectively comprise a single Member.
11. “Owner” shall mean and refer to the legal title holder of a Unit in Pennfield Place. If a Unit is owned by joint-tenants, co-tenants or tenants by the entireties, the joint-tenants, co-tenants or tenants by the entireties shall collectively comprise a single Owner. The mortgagee of the Unit shall not be an Owner unless or until such mortgagee has acquired fee title to the Unit.
12. “Party Wall” shall mean and refer to the entire wall or a portion of which is used for support by two, or more, residential Units in Pennfield Place, and is situated or intended to be situated on a boundary line between units.
13. “Residential Area” shall mean and refer to the area comprising the residential lots, and only the residential lots, on the Plan of Development.

**ARTICLE II – SUBMISSION OF PROPERTY**

1. It is the intention of this Declaration that the covenants and restrictions contained herein shall encumber and bind only those portions of the Property that have been submitted hereto by the act of Declarant.
  - a) Common Areas shall be submitted to this Declaration by and upon the conveyance thereof by Declarant to the Association. Thereafter, the Common Area conveyed to the Association shall be held, transferred, sold, conveyed, managed and occupied subject to the covenants, restrictions and provision of the Declaration.
  - b) Residential Areas shall be submitted to this Declaration by Declarant by the recording in the Office for the Recording of Deeds in and for Lehigh County of a “Notice of Submission”. Each Notice of Submission shall contain a metes and bounds description of the portion of Residential Area being submitted, a statement of the number of lots contained herein, and a statement that the property therein described is submitted to this Declaration. Thereafter, that portion of the Residential Area shall be held, transferred, sold, conveyed, managed and occupied subject to the covenants, restrictions and provisions of this Declaration.
  - c) The decision to convey Common Area to the Association and the decision to submit Residential Area to the Declaration shall be made solely by, and at the sole discretion of, the Declarant.

**ARTICLE III -- THE ASSOCIATION**

1. Affairs of the Association

The Association is a non-profit corporation under the laws of the Commonwealth of Pennsylvania and is charged with the duties and empowered with the rights as set forth in its Articles of Incorporation, its By-Laws and this Declaration. The affairs of the Association shall be governed by its Articles of Incorporation, its By-Laws and this Declaration.

2. Membership

The Association shall have two classes of Membership a)

Class A Membership

Each Owner, other than Declarant or a successor developer of Pennfield Place to Declarant, of a Unit in a Residential Area submitted to this shall be a Class A Member. Each Class A Membership shall be appurtenant to, and not severable from, ownership of a Unit and shall be held in the name of the title owner of said Unit, whether or not the Unit is owned jointly, in common or in any other form of tenancy. Each Unit shall have one and only one Membership regardless of the number of co-tenant, joint-tenants, or tenants by the entireties.

- b) Class B Membership

Declarant shall be the sole Class B Member. The Class B Membership may be

freely assigned or transferred by Declarant in whole or in part.

3. Duration of Membership

Each Class A Membership shall commence as of the date and hour of the completion of settlement for the conveyance of the Unit to the Owner and shall terminate upon the date and hour of the completion of settlement for the conveyance of such Unit by the Owner; thus, except as provided in 4 below, the initial Membership appurtenant to a Unit shall arise either upon the completion of settlement, the conveyance of that Unit by Declarant or a successor developer to a person other than Declarant or a successor developer or upon the submission of the Residential Area, of which that Unit is a part, to this Declaration, whichever shall occur later. Class B Membership shall terminate either upon the conveyance by Declarant, or a successor developer, as aforesaid, of the last Unit intended to be conveyed in Pennfield Place, pursuant to the then existing Plan of Development, or January 1, 1997, whichever shall occur first.

4. Voluntary Termination of Class B Membership

The Class B Member, or Members, by two-thirds vote thereof, may terminate the Class B Membership at any time prior to its termination pursuant to 3 above; provided, however, that, notwithstanding anything to the contrary herein contained, each lot in any Residential Area which has been submitted to this Declaration pursuant to Article II Section 1(b), and in which Residential Area, any Class A Membership has arisen, shall concurrently with the termination of the Class B Membership have appurtenant thereto one Class A Membership which shall be held by the Declarant or successor developer which has title to said lot. This provision shall thereafter govern Residential Areas thereafter submitted to this Declaration.

5. Voting

Each Class A Member shall be entitled to one vote on all matters on which Class A Members are entitled to vote. Class A Members shall not be entitled to cumulative voting for the election of directors. The Class B Member or Members shall be entitled to a total of 70 votes on all matter on which Class B Members are entitled to vote.

6. Board of Directors

The Association shall have a Board of Directors comprised of at least three, but not more than seven persons elected annually by the Class A and Class B Members (so long as such Members shall exist). The Board of Directors shall conduct the business of the Association.

7. Powers and Duties of the Association

The Association shall have the duty, obligation and the sole and exclusive power and right:

- a) To own, operate, maintain, repair, restore, manage, and improve all Open Areas deeded to it; and,
- b) To determine its own expense and necessary reserves and to raise all monies

- required therefore by levying upon, the collecting assessments against, the Members and the Units; and,
- c) To establish, promulgate, amend, repeal, distribute, approve, reject and enforce rules governing the use and occupancy of Open Areas and Residential Areas submitted to this Declaration; and,
  - d) To bring, prosecute, defend and settle litigation for or against the Association, and to satisfy any adverse judgment entered against it; and,
  - e) To otherwise perform and conduct all duties and powers imposed upon or granted to it by this Declaration, the By-Laws or any other document relating to the Association (including the power and duty to enforce this Declaration with respect to each Unit).

In the performance of these duties and powers, the Association, inter alia, shall:

- a) Maintain all Common Areas owned by it, including driveways and parking areas, in good order and repair and shall make all repairs, restorations and improvements necessary to so maintain those Common Areas; and,
- b) Make, or provide for all capital improvements to the Association owned Open Area, provided that the Board of Directors and 66% of the then Class A Membership deem them necessary and desirable; and,
- c) Take and carry out all actions reasonably necessary and proper to enforce the provisions of this Declaration; and,
- d) Secure and maintain policies of liability insurance insuring against liability as owner and operator of the Association owned Common Area; and,
- e) Perform any other acts necessary or proper to carry out any of the duties and obligations of the Association.

#### **ARTICLE IV –PROPERTY RIGHTS IN THE COMMON AREA**

##### **1. Owners' Easements of Enjoyment**

Subject to the provisions of Section 2 of this Article IV, every Owner, has family, successors, guests, licensees and invitees, shall have a right and easement of enjoyment in and to the Common Areas owned by the Association and such easement shall be appurtenant to and shall pass with the title to every Unit.

##### **2. Extent of Members' Easements**

The rights and easements of enjoyment created in 1 above shall be subject to the following:

- a) The rights of the Association, in accordance with its articles and By-Laws, to borrow money for the purpose of improving the Common Areas owned by it and in aid thereof to mortgage said properties and the rights of such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder;
- b) The right of the Association to make such steps as are reasonable necessary to protect the Association Owned Common Areas against foreclosure;

- c) The right of the Association, as provided in its Article and By-Laws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty days for any infraction of its published rules and regulation;
- d) The right of the Association to charge reasonable admission and other fees for the use of any capital improvements hereafter constructed by it in the Common Area owned by the Association.
- e) The right of the Association to dedicate or transfer all or any part of the Common Area owned by it to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds of the votes of the Class A Membership and two-thirds of the votes of the Class B Membership, in any, has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the action is sent to every Member at least sixty days in advance of any action taken; and
- f) The right of the Declarant, and of the Association to grant and reserve easements and rights-of-way through, under, over and across the Common Areas owned by the Association, and appurtenances for public or private water, sewer, drainage, fuel oil and other utilities, and for use in the construction by Declarant or any successor developer or improvements, of any kind, on the Property.

#### **ARTICLE V 1.**

##### Creation of the Lien and Personal Obligation

Declarant, as title owner of the Property at the date hereof, hereby covenants and decrees on its own behalf and on behalf of its successors and assigns, 1) that hereafter each Owner, of a Unit which is a Class A Member shall pay and shall be personally liable for such payment, to the Association all assessment, whether annual or special, as each is hereinafter defined, fixed, established and collected by the Association from time to time during the period that the Owner is a Class A Member, pursuant to the terms of this Declaration or the By-Laws of the Association and 2) that the respective Unit owned by each Class A Member shall be subject to an in rem charge and continuing lien upon and against it for the payment of said assessments, and any interest or penalties there on and all costs of collection thereof, by the Owner/Class A Member. Each Owner, by acceptance of a deed for his Unit or other evidence of ownership thereof, whether or not it shall be so expressed therein, shall be deemed by said acceptance to covenant and agree to pay the Association all assessments chargeable to the said Unit and Owner (from the commencement of his Class A Membership) all as set forth above herein.

##### 2. Purpose of Assessments

The assessment levied by the Association shall be used exclusively for the discharge of the powers and duties of the Association, including, inter alia, the improvement and maintenance of the Common Areas, the payment of taxes and insurance thereon, and repair, replacement, and additions thereof, and for the cost of labor, equipment, materials, management and supervision thereof.

### 3. Basic and Maximum of Annual Assessments

Commencing with the first Class A Membership and until January 1 of the year immediately following such, the annual assessment (which must be fixed at a uniform rate for all Class A Members) shall be at the annual rate of \$120.00 payable in monthly installments of \$10.00 each. From and after January 1, the annual assessment may be increased as hereinafter provided for the next succeeding year and at the end of each year for each succeeding year.

The board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount, provided that it shall be an affirmative obligation of the Association and its Board of Directors to fix such assessments at an amount sufficient to maintain and operate the Common Areas and facilities.

The Class B Members shall be exempt for the payment of any annual assessment or charge unless the annual assessments levied upon the Class A Members shall be insufficient in the aggregate to cover the actual costs of performing the obligations and duties imposed upon the Association in the Declaration or its By-Laws. In case of any such insufficiency, the Class B Members shall be responsible for the payment of same in an amount not to exceed the product of the annual assessment charged each Class A Member multiplied by the number obtained by subtracting the total of all Class A Membership from 68.

### 4. Special Assessments

In addition to the annual assessments authorized by Section 3 of Article V, the Association may levy in any assessment year a special assessment (which must be fixed at a rate that assessed each Class A Member  $1/68$  of the special assessment and the Class B Members the remainder of the special assessment) applicable to that year only, in an amount no higher than for the purpose of defraying, in the whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area owned by the Association including the necessary fixtures and personal property related thereto, or for any insufficiency in the annual assessment to cover actual costs, as described in Section 3 above which still remains after assessment of a annual assessment against the Class B Member, in any.

### 5. Dates of Commencement of Annual Assessments: Due Dates

The annual assessments provided for herein shall commence on the first day of the month following the commencement of the first Class A Member and shall be due and payable by each Class A Member in advance on the first day of each calendar month.

No monthly installment, or pro-rata portion thereof shall be returned upon transfer of Membership. It shall be the responsibility of the selling and buying parties to agree between themselves on the pro-ration of any installment paid in advance. However, each Class A Member whose Unit becomes initially subject to Membership during any month shall immediately pay the pro-rata monthly installment due for that month.

The due date of any special assessment under Section 4 here of shall be fixed in the resolution authorizing such assessment.

6. Duties of the Board of Directors

The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Member for each assessment period at least ten days in advance of such date or period and shall, at that time, prepare a roster of the Members and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member.

Written notice of the assessment shall thereupon be sent to every Member subject thereto. The Association shall, upon demand at any time, furnish to any Member, liable for said assessment, a certificate in writing signed by an Officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be prima facie evidence of payment of any assessment therein stated to have been paid.

7. Effect of Non-Payment of Assessment. The Personal Obligation of the Owner The Lien; Remedies of Association

If any assessment is not paid on the date when due (being the dates specified in Section 5 hereof), then such assessment shall be deemed delinquent and shall, together with such interest thereon and cost of collection thereof as are hereinafter provided, continue as a lien on the Unit which shall bind such Unit in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then Owner/Member to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. If the assessment is not paid within thirty days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of six per cent per annum and the Association may bring legal action against the Owner/Member personally obligated to pay the same or may enforce or foreclose the lien against the property; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court together with the costs of this action.

8. Subordination of the Lien to Mortgages and Municipal Liens

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages or municipal liens now or hereafter placed upon the Unit subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments there after becoming due, nor form the lien of any such subsequent assessment.

9. Exempt Property

All portions of the Property not yet submitted to this Declaration pursuant to Article II, Section I shall be exempted from the assessments, charge and lien created herein.

10. Year End Surplus

If at the end of any year the Association shall have spent, including accrued expenses, less than the income received by it from assessments or otherwise, it shall distribute the excess to



all Class A and Class B Members in proportion to their actual payments of assessments to the Association during that year, subject however to Section 11 of this Article. For the purposes of this Section, monies budgeted and collected for future repair and spent in the year collected, and shall not be distributed as surplus. Each Member receiving a distribution may, at his option, receive such corresponding monthly installments, or the appropriate portion thereof, for the next year. Such election must be made in writing the Association.

#### 11. Reassessment of Uncollectable Assessments

In all cases where all or any part of any annual or special assessment cannot be promptly collected from any Member or Members liable therefor, the Board of Directors shall reassess the same as an insufficiency pursuant to Sections 3 and 4 of this Article. Any Member or Members who have paid a reassessment made pursuant to this Section 11 shall be reimbursed, to the extent possible, as follows:

- a) From the monies, not of collection expenses, thereafter recovered by the Association in collection of the unpaid assessment; or,
- b) From the year ending surplus, if any, prior to distribution pursuant to Section 10 above. Any monies recovered, not of collection expenses, subsequent to full reimbursement pursuant to (a) and/or (b) above, shall be income to the Association in the year recovered.

### **ARTICLE VI – PARTY WALLS OR PARTY FENCES**

#### 1. General Rules of Law to Apply

To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to each party wall or party fence which is built as part of the original construction of the homes upon the property, and any replacement thereof.

In the event that any portion of any structure, as originally constructed by the Declarant, including any party wall or fence, shall protrude over an adjoining lot, such structure, party wall or fence shall not be deemed to be an encroachment upon the adjoining lot or lots, and Owners shall neither maintain any action for the removal of a party wall or fence or projection, nor any action for damages. In the event there is a protrusion as described in the immediately preceding sentence, it shall be deemed that said Owners have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the projection, party walls or structures, party walls or fences if same are constructed in conformance with the original structure, party wall or fence constructed by the Declarant. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

#### 2. Sharing of Repair and Maintenance

The cost of reasonable repair and maintenance of a party wall or party fence shall be shared equally by the Owners who made use of the wall or fence in proportion to such use.

3. Destruction by Fire or Other Casualty

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

4. Weatherproofing

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

5. Right to Contribution Runs with Land

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

### **ARTICLE VII – ARCHITECTURAL CONTROL**

1. No building, fence, wall or other structure shall be commenced, erected, or maintained upon any portion of the Property, theretofore submitted to this Declaration pursuant to Article II, Section 1, nor shall any exterior addition to or change or alteration kind, shape, height, materials, and locations of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and architectural committee composed of three or more representatives appointed by the Board. In the event said Board, or its designated committee fails to approve or disapprove such design and location within forty-five days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

### **ARTICLE VIII – USE OF PROPERTY**

1. Use and Structures

No lot (which shall for the purpose of this Article VIII mean and refer only to lots in Residential Areas which have been submitted to this Declaration pursuant to Article I, Section 1), shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one attached single-family dwelling not exceeding three stories in height. No dwelling or any part thereof erected on any Lot shall be used for any purpose except as a private dwelling for one family, nor shall any business of any kind be conducted therein. No business or trade of any kind, or noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

2. Alteration and Additions

No building, structures, dwelling, garage, carport or breezeway shall be erected on any Lot nor shall any alteration or addition to or repainting of the exterior thereof be made unless it shall conform in architecture, material and color to the dwelling as originally constructed by

the Declarant. This requirement may be waived by the Board of Directors upon application made pursuant to Article VII, above.

3. Signs

No sign of any kind shall be displayed to the public view on any dwelling or Lot except by the Declarant.

4. Drilling and Mining

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot.

5. Animals

No animals, livestock or poultry of any kind shall be raised, bred, or kept in any dwelling or on any Lot, except that dogs, cats or other domesticated household pets may be kept provided (1) that they are not kept, bred or maintained for any commercial purpose, and (2) any outside housing for any such animals or pets must be approved by the Board of Directors of the Association.

6. Garbage and Rubbish

Garbage and rubbish shall not be dumped or allowed to remain on any Lot, except in a closed metal receptacle. It shall be placed outside the dwelling for collection on the collection date as specified by the Association and in accordance with the regulations of the collection agency.

7. Lawn Mowing

Front and rear yard lawns, being all the area between the outermost wall of the dwelling as originally erected by the Declarant and the rear entrance of the lot, shall be mowed of all grass and weeds at least once every two weeks between April 15 and November 15 of each year.

8. Protective Screening

Wherever, on any Lot, the Declarant has placed or may hereafter plant screening material, the Association shall maintain such material intact and neither the Association nor the Owner shall remove any part thereof or add to the same. If any such planting dies or it is destroyed, the Association shall forthwith replace the same with planting of the same kind and size, or evergreen plants of the same size.

9. Easements

- a. Perpetual easements for the installation and maintenance of sewer, water, electric, gas and drainage facilities, for the benefit of the adjoining land owners and/or the

municipality and/or municipal or private utility company ultimately operating such facilities, are reserved as shown on the Plan of Development for the Property; also, easements in general have and will be granted by Declarant in and over each Lot for the installation of electric, gas, TV cable, and telephone facilities for Pennfield Place. No building or structure shall be erected within the easement areas occupied by such facilities without the approval of the utility to relocate said easement. If Declarant or any successor developer shall, at the time of a request to relocate a utility easement, still own any portion of the Property, its prior written approval shall also be required.

- b. Perpetual easements for the construction, paving, maintenance, repair and replacement of any common walkways for pedestrian use, which may be situated on any Lot are hereby reserved in and over each such Lot for the exclusive benefit of the Association, its Members, their invitees and licensees. The perpetual easement for walkways shall extend for not more than four feet on either side of the centerline of any common walkway that the Declarant may pave or otherwise construct to serve more than one Lot. The perpetual walkway easement area and paving shall be maintained by the Association and no building, fence or structure shall be erected in or over same.

## **ARTICLE IX – MISCELLANEOUS**

### 1. Enforcement

The Association, or any Owner of Residential Area submitted to the Declaration pursuant to Article II, Section 1, shall have the right to enforce these covenants and restrictions by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction; to restrain violations; to require specific performance and/or to recover damages; and the Association shall have the right to proceed against the land to enforce any lien created by these covenants. The failure by the Association, or any Owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Any Member of the Association shall have the right to enforce the obligations, imposed by this Declaration or the By-Laws of the Association, upon the Association or its Board of Directors by proceeding in law or equity to restrain any violation and/or to require specific performance of any obligation or duty.

### 2. Amendment

This Declaration may be amended or modified at any time, or from time to time, by Declarant, upon due recording in Lehigh County, Pennsylvania, of a document validly executed by Declarant setting forth the amendment thereto. After the termination of Class B Membership pursuant to this Declaration, the Class A Members of the Association may amend this document by resolution adopted by at least 75% of said Members; provided, however, that said Members may not amend or modify either the provisions contained herein requiring the Association to maintain, repair and restore Common Areas owned by it, or the provisions establishing the duty of Members to pay assessments to the Associations, including the lien against a Member's respective Unit for payment thereof.

### 3. Notices

Any notices required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed postage paid to the Member at the mailing at the mailing address of his Unit.

4. Severability

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect the validity of any other provisions hereof, and they shall remain in full force and effect.

5. Binding Effect

The provisions of this Declaration shall, pursuant to its terms, inure to the benefit of, and bind, the Property, Declarant, the Association, all Owners, all members, all other persons, entities or property benefited or bound by the specific terms hereof and the respective heirs, administrators, executor, successors and assigns of each of them.

6. Assigns and Successors of Declarant

The rights and obligations of Declarant contained herein, inure to and bind it in its capacity as developer of the Property. Therefore, these rights and obligations shall not, unless specifically set forth herein (as, for example, the obligation, and lien, or Class A assessments) inure to the benefit of, or bind, successors in title to the Property, or any portion thereof, unless the document of conveyance thereof, or another duly recorded document executed by Declarant, wholly or partially assign the obligations and/or benefits of Declarant in this Declaration to said successor it title.

7. Recording

This Declaration shall be forthwith recorded in the Office of the Recording of Deeds in and for Lehigh County, Pennsylvania.

IN WITNESS WHEREOF, the Declarant and the Association have set their hands and seals this 10<sup>th</sup> day of January, 1992.

BY: Richard M Koze, President

Attest Richard M Koze, Secretary

V0665 P0550

**Amendment of Restrictive Covenant Agreement  
For Pennfield Place, Upper Macungie Township  
Lehigh County, Pennsylvania**

WHEREAS, Kay Construction, Inc., a Pennsylvania corporation, herein called "Declarant", as executed on January 10, 1992 a Restrictive Covenant Agreement for Pennfield Place, Upper Macungie Township, Lehigh County, Pennsylvania, herein called "declaration" and

WHEREAS, Declarant has recorded such Declaration in the Recorder of Deeds Office for Lehigh County, Pennsylvania in Miscellaneous Volume 665, Page 536; and

WHEREAS, Declarant desires to amend the Declaration as authorized by Article IX, Paragraph 2 of the Declaration; and

WHEREAS, the Amendment contained herein shall be duly recorded in the Recorder of Deeds Office of Lehigh County, Pennsylvania;

NOW, THEREFORE, Declarant amends Article VIII – Use of Property, Paragraph 1 – Use and Structure of the Declaration by the addition to this paragraph following:

An exception shall be allowed for a business use allowed by the Upper Macungie Township Zoning Ordinance in which use shall be conducted solely inside the home, where all business contacts are done by telephone, mail, facsimile transmission or computer with no business signs or customer parking allowed so that the exterior reveals no business use. Such a use request shall be submitted in writing to the Board of Directors of the Association and shall be dealt with as provided in Article VII above.

IN WITNESS WHEREOF, the Declarant has set its hand and seal this 25<sup>th</sup> day of May, 1993.

Richard M Koze, President

V0715 P0584