

DECLARATION OF

CAINE'S CREEK CONDOMINIUM COMMUNITY

PHASE III

Pursuant to the provisions of
the Pennsylvania Unit Property
Act, Act of July 3, 1963, P.L. 196

Dec 21 23 PM '77

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396 176

DECLARATION OF
CAINE'S CREEK CONDOMINIUM COMMUNITY
PHASE III

THIS DECLARATION, made this day of
A. D. 1977, by CHARLESTOWN ALIVE CORPORATION, a corporation duly
organized and existing under the laws of the Commonwealth of
Pennsylvania, hereinafter referred to as "Declarant", for itself,
its successors, grantees and assigns, hereby declares as follows:

1. Submission of Property. This Declaration is made
pursuant to the provisions of Section 401 of the Unit Property
Act, the Act of July 3, 1963, P.L. 196 (68 P.S. 700.101 et seq.)
as in force on the date hereof and as it may be amended (the
"Act") for the purpose of submitting to the provisions of the
Act the property described in Paragraph 2 hereof, owned by
the Declarant in fee simple, together with all easements,
rights and appurtenances belonging thereto; this being subject
to the Declaration of Community Restrictions heretofore filed
contemporaneously with the Declaration of Caine's Creek Condo-
minium Community, Phase I, the said Declaration of Community
Restrictions being filed in Miscellaneous Book 276, at page 76
with the Recorder of Deeds of Chester County, Pennsylvania.

2. Description of Property. The land and buildings
comprising the property which is the subject of this Declaration
are as follows:

A. The land shall mean the real estate described
by metes and bounds in Exhibit "A" attached hereto and made a
part hereof, together with such easements, rights and appur-
tenances belonging thereto and subject to such easements,

covenants, reservations and agreements as set forth in such description or descriptions or which are of record, as applicable, and in this Declaration (the "Land"). The Land more fully described in said Exhibit "A" is situate on Pothouse Road, Borough of Phoenixville, Chester County, Pennsylvania.

B. The buildings to be constructed thereon shall consist of buildings, the said buildings, yielding separate units, the said buildings hereinafter more fully described (the "Buildings"). A general description of the Buildings is set forth in Exhibit "B" attached hereto and made a part hereof. The said Land and Buildings are hereinbefore and hereinafter, sometimes, collectively referred to as the "Property" and are more fully described in the survey and plans hereinafter referred to as the "Declaration Plan".

3. Name. The name by which the Property shall be known is "CAINR'S CREEK CONDOMINIUM COMMUNITY, PHASE III".

4. Definitions and Terms. The terms used in this Declaration and in the Code of Regulations to be adopted pursuant thereto (the "Code"), other than those expressly defined below and elsewhere in this Declaration and in said Code, are intended to have the same meanings as are ascribed to said terms in the Act:

A. "Additional Projects" means and refers to additional buildings similar to the Buildings, which are the subject of this Declaration, contemplated by Declarant for development on adjoining parcels of land, which are currently to be held in separate ownership and not subject to the terms of this Declaration, but that, eventually, together with the Project contemplated hereunder, are to be linked together by and

have the use and enjoyment of, access to, certain grounds, driveways and passageways and the facilities, systems and structures thereon intended to be devoted to the common use and enjoyment of the occupants of all such Projects (the "Community Areas and Facilities"). By way of further explanation, Declarant envisions a total community consisting of other buildings consistent with the design of the current buildings.

B. "Community Association" means and refers to the Caine's Creek Community Association, a non-profit corporation formed under the laws of the Commonwealth of Pennsylvania for the purpose, *inter alia*, of preserving, maintaining and operating the Community Areas and Facilities.

C. "Declaration of Community Restrictions" means and refers to that certain Declaration of Community Restrictions, Covenants and Conditions by Declarant, which has been recorded heretofore in the Office of the Recorder of Deeds of Chester County (and to which this Declaration shall be subject and subordinate) in Miscellaneous Book No. 276, at Page 76, said Declaration of Community Restrictions having been recorded contemporaneously with the Declaration of Caine's Creek Condominium Community, Phase I, creating a system of uses, restrictions and covenants intended to be applied to this property and the project contemplated for development thereon, as well as to the properties comprising the additional projects, for the purpose of assuring the preservation and maintenance of the Community Areas and Facilities for the benefit of the occupants of all such projects.

D. "Declaration Plan" means and refers to that plan which is to be recorded contemporaneously herewith, as amended

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from time to time in accordance with the terms hereof, consisting of a survey of the Land and Buildings prepared, originally for conveyancing purposes, by Richard E. Martin, AIA Assoc., originally dated September 20, 1974, later revised November 24, 1975, and most recently Phase III lines and description added by Hopkins & Scott, Inc., registered surveyors, revised December 5, 1977, comprised as follows:

<u>Title</u>	<u>Plan Sheet</u>
Condominium Declaration Plan	DP-1

5. Declaration Plan. The Property is to consist of the Units and Common Elements (as those terms are defined in Paragraphs 6B and 6D, respectively, hereof) shown on the Declaration Plan.

6. Description of Units, Common Elements and Limited Common Elements.

A. The Declaration Plan contemplates the existence on the Property of Units intended in the manner described in Paragraphs 9 and 11 hereof for the residential purposes stated therein, and has a direct exit to a portion of the open area which is paved, or to a Common Element or Common Elements leading to a public street or way, or to an easement or right-of-way leading to a public street or way.

B. Each Unit includes the following portions of the Buildings, namely:

- (i) The interior portion, from the face of the cinder block in of each wall separating the Unit from any adjoining

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396 180

Unit, or from the exterior of the dry-wall in of each wall adjoining the Common Elements; the floor, from the top of the subfloor up; the ceiling, from the upper surface of the dry-wall down; and, in the case of Units with an appurtenant balcony or terrace, all portion of such balcony or terrace slab from the base of the floor up, and from the interior surface of the walls in, or all portions of such terrace slab, as the case may be; in the case of Units with a fireplace installed, all portions of the fireplace and the flue which is a part thereof; In case of Townhouse Units, the storage room attached thereto.

(ii) The air space enclosed within the title lines of the Unit, as such title lines are described in the Declaration Plan.

(iii) All walls, partitions and dividers wholly within such title lines.

(iv) All doors, arches and passages wholly within such title lines and connecting portions of the space enclosed thereby but excluding any doors, doorways, door bucks, hinges and outside trim leading to the Common Elements or to another Unit.

(v) All windows and window glass, frames and assemblies within such title lines. Each Unit shall also include any and all of the following items within the title lines of such Unit: ranges, sinks, tubs, showers, cabinets, toilets, shelves, dishwashers, clothes washers and driers, disposals, trash compactors, closets, light fixtures, shades or venetian blinds, moulding and baseboards; as and to the extent, if any, that any of the foregoing items are so affixed to the Building as to constitute real property (hereinafter collectively called "Fixtures").

(vi) The proportionate undivided interest in the Common Elements assigned to each Unit by Paragraph No. 1 hereto, which shall and does hereby include as appurtenant to the Unit, the grant to the owner thereof of easements, in common with all other Unit owners (i) for the use of all pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements, serving that Unit and located in any other Unit or on the Common Elements, or both; and (ii) for structural support over every other Unit and over the Common Elements.

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396 182

(vii) Membership in the Community Association that is appurtenant to, and inseparable from, Unit ownership and as an incident thereof, the use and enjoyment by each Unit of the Community Areas and Facilities governed by the Declaration of Community Restrictions, subject to the terms and conditions thereof, including the Common Area assessment and the Recreation Facility Assessment (more fully described in the Declaration of Community Restrictions in Sections 6.02 and 6.12 respectively).

C. If a Unit shall encroach upon any Common Element or upon any other Unit or should the Common Elements encroach upon any Unit by reason of original construction or a use other than the purposeful or negligent act or omission of the Unit Owner, his agents, employees or contractors, then an easement appurtenant to such encroaching Unit, or to such encroaching Common Element to the extent of such encroachment, shall exist so long as such encroachment shall exist. In the event the Building or Buildings are partially or totally destroyed, and then rebuilt, encroachment due to construction, on parts of the Common Elements or Condominium Units which do not substantially interfere with the use and enjoyment thereof, shall be permitted, and a valid easement for said encroachments and the maintenance thereof shall exist so long as such encroachment exists.

D. Common Elements means and includes those portions of the Property shown on the Declaration as not within

the Units and the Limited Common Elements, hereinafter set forth, including without limitation the following:

(i) The foundations, structural parts, columns, girders, beams, support, and open areas, and to the extent not hereinabove and in the Declaration Plan expressly included within the Units, roof, main walls, all other walls, partitions, floors, ceilings, halls, corridors, lobbies, stairways, and stair towers, all doors (excepting patio or balcony sliding glass doors), doorways, door bucks and hinges and outside trim between portions of the Common Elements, between Units and between the Common Elements and all entrances to and exits from the Buildings;

(ii) The land (including without limitation, roadways, yards, parking areas, driveways, walks, and ways);

(iii) All areas of the building used exclusively for the management, operation or maintenance of the Common Elements, including by way of illustration and not limitation, storage spaces;

(iv) All other walls, fences not hereinabove mentioned and in the Declaration Plan expressly included within the Units;

396 184

(v) All space devoted to the use of the superintendent and other persons employed in connection with the operation of the Property;

(vi) All installations of and systems for all central and appurtenant service and utilities, such as electricity, plumbing, lighting, telephone, T.V. system, sewage, trash compaction, heating and air conditioning, including the individual heating, and air conditioning elements within the space enclosed by the title lines of each Unit, hot and cold water, including all pipes, ducts, and wires, cables and conduits used in connection therewith, whether or not located within the title lines of the Units, to the point of connection with any Fixture in all cases where physically connected with Fixtures, and all other mechanical equipment spaces;

(vii) All control equipment.

(viii) All tanks, pumps, motors, fans, compressors and control equipment and all other apparatus and installations existing for common use and for the service of the Common Elements;

(ix) All balconies and patio terraces; provided, however, that each

Unit having sole physical access to such balcony or terrace shall have an easement for the exclusive use thereof;

(x) All other parts or elements of the property necessary or convenient to its existence, management, operation, maintenance and safety, or otherwise normally in common use, or as are designated herein or in the Code as Common Elements;

(xi) All air space above the roof surfaces of the Buildings and all subsoil below its foundations.

E. The Limited Common Elements shall include those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of all other Units, including but not limited to chimneys and all other installations and/or systems to be used by a certain Unit or certain Units in common, which are reserved for the use of such Unit or Units to the exclusion of all other Units.

F. The maintenance and repair of the Common Elements and the Limited Common Elements and the making of any additions or improvements thereto shall be carried out only as provided in the Code of Regulations.

G. The undivided interest in the Common Elements shall not be separated from the Unit from which such interest pertains and shall be deemed to be conveyed, leased, or encumbered with the Unit even though such interest is not expressly referred to or described in the deed, lease, mortgage or other

conveyancing document. To the extent applicable, the same provisions shall apply to the Limited Common Elements.

H. Each Unit Owner shall have the right to use the Common Elements in common with all other Unit Owners as may be required for the use, occupancy, and enjoyment of such Unit Owners, except as limited herein or in the Code of Regulations or Declaration Plan. Such rights shall extend to the agents, servants, tenants, family members and invitees of each Unit Owner, except as such rights and uses may, from time to time, be limited by this Declaration or the Code of Regulations.

7. Proportionate Undivided Interest in Common Elements, Limited Common Elements, Common Profits and Expenses, Voting. The following proportionate undivided interests in the Common Elements and Limited Common Elements expressed as percentage are assigned to the Units:

BUILDING NO.	UNIT NO.	UNIT TYPE	PROPORTIONATE UNDIVIDED INTEREST IN COMMON ELEMENTS
Y	109	3 B.R.	4,25766
Y	110	3 B.R.	4,25766
Y	111	3 B.R.	4,25766
Y	112	3 B.R.	4,25766
Y	113	3 B.R.	4,25766
X	114	2 B.R.	2,52056
X	115	2 B.R.	2,52056
X	116	2 B.R.	2,52056
W	117	2 B.R.	2,94152
W	118	2 B.R.	2,52056
W	119	2 B.R.	2,94152
W	120	2 B.R.	2,52056
W	121	2 B.R.	2,94152
V	122	3 B.R.	4,25766
V	123	3 B.R.	4,25766
V	124	3 B.R.	4,25766
V	125	3 B.R.	4,25766
V	126	3 B.R.	4,25766
U	127	3 B.R.	2,94152
U	128	3 B.R.	2,94152
U	129	3 B.R.	2,94152
U	130	3 B.R.	2,94152
U	131	3 B.R.	2,94152
T	132	3 B.R.	4,25766
T	133	3 B.R.	4,25766
T	134	3 B.R.	4,25766
T	135	3 B.R.	4,25766
T	136	3 B.R.	4,25766

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A. The aforesaid proportionate interests in the Common Elements may not be altered except (i) by the recording of an amendment duly executed by all Unit Owners and mortgagees affected thereby; and (ii) as hereinafter expressly provided, and such interests as may be so amended are referred to in this Declaration and in the Code as the "Proportionate Interest". In the event such amendment pertains to a change in Proportionate Interest in connection with a division or a combination of a Unit or Units or any portion thereof owned by Declarant, then for the purposes hereof, no Unit Owner other than Declarant shall be deemed affected thereby and Declarant's subdivision or allocation of the Proportionate Interest shall be final and conclusive, provided the change in the Unit or Units does not result in (i) augmenting the area or the cost of the Common Elements; or (ii) changing the aggregate Proportionate Interest of the Unit or Units affected thereby.

B. Notwithstanding anything to the contrary contained in this Declaration or the Code,

(i) Common Expenses shall be deemed not to include the cost of any utility services separately metered for, and billed to, (all, but not less than all) Units, by the utility company providing such service, but shall be deemed to include taxes, assessments, water rents and sewer rents which may be levied against the Property as a whole before separate assessments

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396 188

for each Unit are made as provided in the Act; and any assessment made by the Community Association against the Property as a whole or Council pursuant to the Declaration of Community Restrictions.

(iii) Assessments against any Unit Owner under the Declaration of Community Restrictions which are not paid by such Owner, shall nevertheless bind and burden the Unit and its Owner hereunder (as if the covenants respecting the same were fully set forth herein) and upon the request and for the benefit of the party to whom such assessment is required to be paid by the applicable Declaration of Restrictions, as aforesaid, shall be enforced by Council hereunder as a special assessment against such Unit and Owner in the same manner and upon the same terms and conditions provided in the Code for a regular assessment by Council; conditioned, however, that any lien which the Association may have on any Unit in the Project for the payment of Common Expense assessments attributable to such Unit will be subordinate to the lien or equivalent security interest of any first mortgage on the Unit recorded

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396 189

prior to the date any such Common Expense assessments become due.

C. The Common Expenses (as that term is mentioned throughout the Condominium documents and specifically the Code of Regulations) shall be distributed among and shall be charged to the Unit Owners (as defined in Section 9 hereof) according to, and at any meeting of Unit Owners each Unit Owner shall be entitled to the same number of votes as his Unit's Proportionate Interest, all as more fully set forth in the Code of Regulations.

8. Amendment of Proportionate Interest. The Proportionate Interest assigned to Units in Section 7 hereof may be altered by duly entering of record, in the Office of the Recorder of Deeds of Chester County or any successor thereto, an amendment to this Declaration which has been duly executed by all the Unit Owners and mortgagees affected thereby.

9. Use of Units and of the Common Elements. Each of the Units is intended for use and shall be used only as a residence. The natural individual, corporation, partnership, association, fiduciary, or other legal entity at the time of reference owning a Unit in fee simple, or the group of two or more thereof then so owning a Unit as tenants in common, joint tenants or tenants by the entireties, is herein called the "Unit Owner". The Council (as defined in Section 22 hereof) when in title to a Unit pursuant to Section 7C (5) of the Code of Regulations, shall be deemed the Unit Owner thereof, subject to the provisions of Section 7C (5). No Unit Owner shall do or permit any act which would jeopardize the soundness or safety of the Property or impair any easement or hereditament without

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the unanimous consent of the Unit Owners affected thereby. Each Unit Owner or lessee or sublessee of any Unit may use the Common Elements in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the Unit Owners, subject to the provisions hereof and of the Code of Regulations and the Rules (as defined in Section No. 13 hereof).

10. Easements. Easements are hereby declared and granted (i) in favor of the appropriate utility companies for utility services in order to serve adequately the Land, Buildings, and all appurtenances thereto; including the right to install, lay, maintain, repair and replace water mains and pipes, sewer and drain lines, gas mains, telephone wires and equipment and the electrical wires and conduits over, under, through, along and on the Land, the Units and the Common Elements and Limited Common Elements; provided, however, easements through a Unit shall only be in accordance with the Declaration Plan or as the Buildings and the Units are actually constructed; (ii) in favor of Unit Owners, their invitees and agents of the Council for pedestrian traffic on, over, through and across sidewalks, paths, walks, lanes and courts as the same may from time to time exist, upon the Common Elements; (iii) in favor of each Unit Owner to use all pipes, flues, wires, ducts, cables, conduits, public utility lines and other Common Elements and Limited Common Elements where the same exist serving that Unit and located in any of the other Units. Each Unit shall be subject to an easement in favor of all other Unit Owners to use the pipes, flues, ducts, cables, wires, conduits, public utility lines and other Common Elements and Limited Common Elements serving such

other Units and located in such Unit; (iv) in favor of the Unit or Units benefited for structural support for the benefit of each other Unit and for the Common Elements; and (v) in favor of the Council for the entrance to any Unit to maintain, repair or replace the Common Elements as well as to make repairs to Units if such repairs are reasonably necessary for public safety or to prevent damage to other Units or to the Common Elements. All easements and rights described and mentioned herein are easements appurtenant, running with the Land, the Units and the Common Elements and Limited Common Elements and shall be in full force and effect for the life of this Declaration, as amended, and at all times shall inure to the benefit of and be binding upon Declarant, its successors and assigns, the Council and any Unit Owner, purchaser, mortgagee, lessee and other person having an interest in the Land or any Unit, Common Element, Limited Common Element or portions thereof.

11. Maintenance and Repair of Units.

A. No Unit Owner shall make any structural modifications or alterations within his Unit without the written consent of Council or its duly authorized representative, and no act shall be done under any circumstances which does or may tend to impair the structural integrity of the Building or adversely affect or jeopardize the soundness or safety of any part of the Property or impair any easement or right appurtenant thereto or affect the Common Elements without the unanimous written consent of all Unit Owners who might be affected thereby. No Unit Owner shall contract for or perform any maintenance, repair, replacement, removal, alterations, or modification of the Common Ele-

ments, except through the Council and its officers.

B. It shall be the responsibility of the Council to maintain, repair or replace:

(i) All portions of the Unit which contribute to the support of the individual Building, including main bearing walls, but excluding painting, wallpapering, decorating or other work on the interior surfaces of the wall, ceilings, or floors within the Unit.

(ii) All portions of the Unit (except window surfaces) which constitute a part of the exterior of the Building;

(iii) All Common Elements within the Unit; and

(iv) All incidental damage caused by work done at the discretion of the Council.

C. It shall be the responsibility of the Unit

Owner:

(i) To maintain, repair or replace at his own expense all portions of the Unit which may cause injury or damage to the other Units or to the Common Elements or Limited Common Elements except the portions thereof mentioned and described in Paragraph 11B hereof;

(ii) To paint, wallpaper, decorate and maintain the interior surfaces of all

walls, ceilings, doors, window frames and vents, floors, within the Unit.

(iii) To pay the expenses incurred by Council in making repairs or replacements of the Common Elements or Limited Common Elements necessitated by such Unit Owner's negligence, misuse or neglect;

(iv) To pay the expenses incurred by the Council in making repairs or replacements of the balcony or patio to which the Unit has exclusive access, caused or permitted by such Unit Owner's negligence, misuse or neglect;

(v) To perform his responsibilities in such a manner and at such reasonable hours so as not to disturb other Unit Owners residing in the individual Buildings or other buildings;

(vi) To refrain from repairing, altering, replacing, painting or otherwise decorating or changing the appearance of any portion of the Common Elements or Limited Common Elements without first obtaining the consent in writing of the Council and to refrain from repairing, altering, replacing, painting, decorating or changing any balcony, patio or other exterior appendages to the Unit whether

exclusively used by the Unit Owner or otherwise without obtaining the aforementioned consent; and

(vii) To promptly report to Council or his agent any work that he intends to perform that is the responsibility of Council. Any consent by the Council to the performance of such work by the Unit Owner shall not constitute an agreement by Council to pay the cost or expense thereof. The failure of the Council to respond to such notice shall not be deemed a waiver of its rights or constitute any consent or agreement by Council to pay for any work performed by the Unit Owner. Any consent given by the Council may set forth the terms of such consent and the Unit Owner shall be required to abide therewith.

D. Nothing in Paragraph 11 contained shall be construed to impose personal liability upon the Council or any of its members or officers, for the maintenance, repair or replacement of any Unit or Common Element or Limited Common Element or give rise to a cause of action against them. The Council, as such, shall not be liable for damage of any kind except for willful misconduct or bad faith.

12. Nature and Transferability of Units and of Interest in Common Elements; Sale and Lease of Units;

A. Each Unit, together with its proportionate

undivided interest in the Common Elements or in the Limited Common Elements, is for all purposes real property and the ownership of each Unit, together with its proportionate undivided interest in the Common Elements and Limited Common Elements is for all purposes the ownership of real property. Units may be sold, conveyed, mortgaged, leased (within the limitations hereinafter set forth) or otherwise dealt with in the same manner as like dealings are conducted with respect to real property and interest therein. No Unit Owner may dispose of his Unit, except by complying with the provisions of this Paragraph. As used herein, the following terms shall have the meanings ascribed to them below:

- (1) "Unit" shall encompass all interests appurtenant thereto and to its ownership as hereinbefore described, including without limitation,
 - (i) Membership in the Community Association;
 - (ii) The interest of such Unit and its Owners and any Units theretofor acquired by the Council or its designee, on behalf of all Unit Owners or the proceeds of the sale or lease thereof, if any; and
 - (iii) Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, the Code, the Declaration of Community

Restrictions and the Rules and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease.

(iv) All leases shall be required to be in writing and executed with the formality of all other contracts.

C. If the disposition involves the leasing of any Unit, the offering Unit Owner shall execute and deliver to the Council, or to its designee, a copy of the executed lease between the Unit Owner, as landlord and the lessee, as tenant, covering such Unit.

D. Any deed to an outside party shall provide that the acceptance thereof by the grantees shall constitute an assumption of the provisions of the Declaration and the Code, as the same may be amended from time to time.

E. The provisions of this Paragraph shall not apply with respect to any Deed transfer by a Unit Owner of his Unit to his spouse or to any of his children or to his parent or parents or to his brothers or sisters or any one or more of them, or to a Unit owned by the Declarant, or to the acquisition or sale of a Unit by a holder of a Permitted Mortgage who shall acquire title to such Unit by foreclosure or by deed in lieu of foreclosure. However, the provisions of this Paragraph shall apply with respect to any purchaser of such Unit from the holder of such mortgage. The Unit Owner shall be free to convey or transfer his Unit by gift, or to divide this Unit by Will, or to pass the same by intestacy, without restriction.

F. No Unit Owner shall be permitted to convey, mortgage, pledge, hypothecate, sell or lease this Unit unless and until he shall have paid in full to the Council and/or the Community Association all unpaid assessment theretofore assessed by the Council and/or the Community Association against his Unit and until he shall have satisfied all unpaid liens against such Unit, except Permitted Mortgages.

G. The undivided interest of each Unit Owner in the Common Elements or the Limited Common Elements and the easements and rights pertinent to a Unit may not be separated from the Unit from which such interest or easement or right pertains and shall be deemed to be conveyed, leased, or encumbered with the Unit, even though such interest or easement or right is not expressly referred to or described in the deed, lease, mortgage or other instrument.

13. Units Subject to Declaration, Code of Regulations, and Rules. All present and future Owners, lessees, occupants and mortgagees of Units shall be subject to, and shall comply with the provisions of the Act, this Declaration, the Declaration Plan, Declaration of Community Restrictions, the Code of Regulations and the Rules governing the details of the use and operation of the Property and the use of the Common Elements and Limited Common Elements duly adopted pursuant thereto, as they may be amended from time to time (the "Rules") and with the covenants, conditions, and restrictions set forth in the aforesaid Declaration, Declaration of Condominium Restrictions, the Code of Regulations, the Rules and the deed to each Unit and in the aforesaid Declaration Plan. The acceptance of a deed or a conveyance or mortgage, or the entering into of a lease or the

entering into occupancy of any Unit shall constitute an agreement that the provisions of the Act, this Declaration, the Declaration Plan, the Code of Regulations, the Rules, and the covenants, conditions and restrictions set forth in the deed to each Unit are accepted and ratified by such Owner, lessee, mortgagee, or occupant and all of such provisions shall be covenants running with the Land and shall bind any person having any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

14. Provisions Applicable to Declarant. Notwithstanding any other provisions herein contained for so long as Declarant continues to own any of the Units, the following provisions shall deem to be in full force and effect.

A. Declarant for itself and its employees and agents reserves the right (i) to maintain general and sales offices in or about the Property; (ii) to maintain model condominium Units in such Building or Buildings as Declarant may select or elsewhere on the Property; and (iii) to enter upon the Property to show the Units, to use the Common Elements or Limited Common Elements and to do any and all things deemed necessary or appropriate by Declarant to sell or rent the Units, all without charge.

B. Declarant reserves the unrestricted right to sell, lease and/or mortgage any Units which it continues to own after the recording of this Declaration.

C. Declarant reserves the right to amend this Declaration in accordance with the provisions of Paragraph 18 hereof.

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D. Subject to the right of the Unit Owner to the continued use of its condominium name in connection with the Property that shall not be transferable to delegable by them and/or the Council, Declarant reserves the exclusive right, title and interest in and to the name or names "Caine's Creek" or "Caine's Creek Condominium" (or any name similar thereto) for use in whole or in part and/or in conjunction with the designation, title and/or naming of the Additional Projects and such other areas and developments that from time to time may be made subject to the Declaration of Community Restrictions.

E. The Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Property or this Declaration except as specifically set forth herein or in any agreement of sale for a Unit, and no person shall rely upon warranty or representation not so specifically made therein.

15. Termination. This Declaration, the Declaration Plan, the Code of Regulations and the Rules shall terminate and the Act shall cease to apply to the Property if:

A. A revocation expressing the intention to remove the Property from the provisions of the Act, is duly executed by all Unit Owners and the holders of all mortgages, judgments or other lien against the Unit;

B. The Buildings are damaged or destroyed and (i) if the Council shall determine that such damage or destruction is substantially total, meaning four (4) or more Buildings are destroyed or (ii) if the Council shall determine that such damage or destruction is substantial but less than substantially

total and if seventy-five (75%) percent or more of the Unit Owners thereafter duly resolve not to proceed with repair or restoration, all in accordance with procedures therefore specified in the Code of Regulations; (iii) notwithstanding the foregoing, it shall be necessary to notify and receive prior written approval of each institutional holder of a first mortgage lien in the event of substantial destruction by fire or other casualty; (iv) in the event of substantial damage to or destruction of any Unit or any part of the Common Elements or Limited Common Elements, the institutional holder of any first mortgage on a Unit will be entitled to thirty (30) days written notice of any such damage or destruction and notwithstanding anything to the contrary herein or any other document establishing this community, no Unit Owner or other party shall be entitled to priority over such institutional holder with respect to the distribution to such Unit of any insurance proceeds.

C. All or part of the Property is permanently taken, injured or destroyed by the power of or a power in the nature of eminent domain or by an action or deed in lieu of condemnation and (i) if the Council shall determine that such taking, injury or destruction is substantially total meaning four (4) or more Buildings are taken or (ii) if the Council shall determine that such taking, injury or destruction is substantial but less than substantially total and if seventy-five (75%) percent or more of the Unit Owners thereafter duly resolve that a termination shall result hereunder, all in accordance with procedures therefore specified in the Code of Regulations; (iii) notwithstanding the foregoing it shall be necessary to notify and receive prior written approval of each institutional holder of a

first mortgage lien in the event of a taking by condemnation or eminent domain.

D. A revocation pursuant to Clause A shall be effective upon its recording in the Recorder of Deeds of Chester County or any successor thereto. In the case of either of the events specified in Clauses B and C, the Council after receiving prior written approval of each institutional holder of a first mortgage lien, shall promptly cause its proper officers to prepare, execute, acknowledge and so record a certificate reciting the pertinent facts in respect of that event and that fact of such termination and that the Act, this Declaration, the Declaration Plan, the Code of Regulations and the Rules shall so cease to apply, and such termination and cessation and the application thereof shall be effective upon such recordation.

E. If any Unit or portion thereof or the Common Elements or Limited Common Elements for any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the institutional holder of any first mortgage on a Unit will be entitled to thirty (30) days written notice of such proceeding a proposed acquisition and no provision of any document establishing the community will entitle the Owner of a Unit or other party to priority over such institutional holder with respect to such Unit of the proceeding of any award or settlement.

F. Upon the effectiveness of any termination pursuant to Clause A, the former Unit Owners shall become tenants in common of the Property with undivided interest therein equal

to the proportionate interest owned immediately prior to that effectiveness.

G. Upon the effectiveness of any termination pursuant to Clauses B and C, (i) the salvage value of the Property, if any, shall be subject to partition at the suit of any Unit Owner, and (ii) the aggregate of the net proceeds of any sale, upon partition, the net proceeds of insurance policies, and the net proceeds of any taking, injury or destruction pursuant to any of the events specified in Clause C, whether held by the Council, or by the Insurance Trustee (as defined in the Code, or both), if any, shall be considered as one fund and shall be divided among all the affected Unit Owners in proportion to their respective proportionate interest after discharging, out of the respective shares of Unit Owners, to the extent sufficient for the purpose, all liens against the Units of such Unit Owners in order of their priority.

The provisions of the preceding two paragraphs of this Section 14 are subject to the provisions of Section 7B and 10 of the Code of Regulations.

H. Upon the effectiveness of any termination pursuant to the foregoing provisions or otherwise pursuant to law, any mortgage or other lien theretofore relating to a Unit and to the related undivided interest in the Common Elements or in the Limited Common Elements shall thereafter relate only to the rights and interests of the former Unit Owner which shall arise upon the effectiveness of such termination.

I. Any termination pursuant to this Section 14 shall not take away or impair any Property right, tangible or intangible, including any right of action, of the Unit Owner

or of the Council except as herein specifically provided, and following such termination the members of the Council and the officers of the Unit Owners shall, notwithstanding the happening of such termination, have all the powers appropriate to enforce any right, to distribute the salvage value of the Property, the net proceeds of any taking, injury or destruction, or of any sale, and the net proceeds of insurance policies as aforesaid, and to execute certificates and take any other appropriate action to reflect such termination of record in the Recorder of Deeds in Chester County or any successor thereto and to wind up the affairs of the Unit Owners and the Council.

16. Partition of Common Elements and Units. The Common Elements shall remain undivided and no Unit Owner may exempt himself from liability with respect to the common expenses by waiver of the enjoyment of the right to use any of the Common Elements or by the abandonment of his Unit or otherwise. There shall be no partition or division of any part of the Common Elements through judicial proceedings or otherwise except as provided in Section 14 hereof or as otherwise may be permitted by the Act; provided, however, that if any Unit is held in joint tenancy or tenancy in common, nothing herein contained shall be deemed to prohibit a voluntary or judicial partition of said Unit ownership. Notwithstanding the foregoing, no Unit in the Community may be partitioned or subdivided without the prior written approval of at least the holder of any first mortgage lien on such Unit. To the extent applicable, the foregoing shall also apply to Unit Owners of Limited Common Elements.

17. Division and Combination of Units. So long as Declarant owns one or more Unit not theretofore sold by it

to another, it may divide any such Unit into two or more Units and may combine all or part of two or more of such Units into one or more Units. Any Unit Owner or Unit Owners of Units following the initial sale thereof by Declarant may similarly divide a Unit or combine all or part of two or more Units, following approval thereof by the holders of a majority of a proportionate interest and the mortgagees affected thereby. In either case the proportionate interests of any Unit divided or combined shall be fully allocated among the Unit or Units resulting therefrom, shall be divided or combined and appropriately redesignated with the Unit designation of the resulting Unit or Units, as the Unit holders of the Unit or Units involved in such division or combination shall agree, so that the proportionate interest of all other Units shall not be affected thereby. The prior written approval of each institutional holder of a first mortgage lien on affected Units will be required for a material amendment to the Declaration including but not limited to any amendment which would change the percentage interests of the Unit Owners involved. The division or combination shall be effective upon the recording of appropriate amendments to the Declaration and the Declaration Plan, reflecting the Unit or Units resulting therefrom and the proportionate interest so allocated thereto, pursuant to Section 16 hereof, except that (i) in cases covered by the first sentence of this Section 16, the approval of Unit Owners other than Declarant shall not be required and Declarant shall execute and acknowledge the amendments, and (ii) in cases covered by the second sentence hereof, the amended Declaration shall be additionally executed and acknowledged by each Unit Owner of any Unit or Units involved in the division or combination.

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396 205 -29-

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18. Taxation.

A. Each Unit Owner's proportionate undivided interest in the Common Elements shall be assessed and taxed for all purposes as a separate parcel of real estate entirely independent of the Building or the Property of which the Unit is a part, and each Unit Owner is solely responsible for the payment of all taxes, municipal claims and charges assessed against such Unit and interest. To the extent applicable, the foregoing shall also apply to the Limited Common Elements.

B. In the event that for any year, such taxes are not separately taxed for each Unit but are taxed on the Property as a whole, each Unit Owner shall pay a proportionate share thereof in accordance with such Unit's proportionate undivided interest in the Common Elements and Limited Common Elements. The Council shall determine the amount due and notify each Owner in writing as to the proportionate share thereof due for each Unit.

19. Amendments.

A. Amendment to this Declaration and/or the Declaration Plan may be effected solely upon the due execution and acknowledgment of an Amended Declaration and/or Declaration Plan by Declarant, notwithstanding the procedures provided in succeeding paragraphs hereof, and with the need for the joinder by any other party by filing such additional documents and plans as may be required:

- (1) To describe adequately the completion of the improvements; and
- (2) To reflect an alteration of the design of the Units or any part thereof,

including their division or combination, or their number and boundaries and a reallocation of the proportionate interest otherwise assigned to such Unit or Units in the Common Elements or Limited Common Elements as hereinbefore set forth as long as (i) Declarant owns the Unit or Units so altered; (ii) the proportionate interest of any Units divided or combined shall be fully allocated among the Unit or Units resulting therefrom; and (iii) no material augmentation shall have resulted therefrom in the area or costs of the Common Elements and Limited Common Elements.

B. Subject to the other provisions of this Declaration, the Code and the Act, this Declaration and the Declaration Plan may be amended:

(1) By Council, if in its judgment such amendment is necessary to cure any ambiguity or to correct or supplement any provision of the Declaration or of the Code which is defective or inconsistent with any provision hereof or thereof or with the Act, or to change, correct or supplement anything appearing or failing to appear in this Declaration or in the Declaration Plan which is incorrect, defective, or similarly inconsistent provided that Council shall not promulgate

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any corrective amendment hereunder unless and until it receives an opinion from independent counsel to the effect that the proposed amendment is permitted by the terms of this subparagraph together with a like opinion from an independent registered architect or licensed professional engineer in the case of any amendment to the Declaration Plan;

(2) By vote of the Unit Owners holding a majority of the proportionate interests cast in person or by proxy at a meeting duly held in accordance with the provisions of this Declaration and the Code. Provided that if any amendment made pursuant to the foregoing terms hereof shall make any change that would in any way, diminish any of the rights, privileges, powers and options of the Declarant either under this Declaration or under the Declaration of Community Restrictions, such an amendment shall require the joinder of Declarant.

(3) Notwithstanding anything to the contrary herein, the prior written approval of each institutional holder of a first mortgage lien on Units will

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-32-

396 208

be required on any material amendment to this Declaration, including but not limited to, any amendment which would change the percentage interest of the Unit Owners in the Community.

20. Provisions pertaining to Declarant. Anything herein or in the Code of Regulations to the contrary notwithstanding, the Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Property or the Condominium Documents except as specifically set forth therein and no person shall rely upon any warranty or representation not so specifically made therein. All rights, privileges, powers, authority and options of the Declarant, as set forth herein and in the exhibits hereto, shall inure to the benefit of, and may be asserted and exercised by, the successors, grantees and assigns of the Declarant.

21. Miscellaneous.

A. The invalidity in whole or in part of any covenant or restriction or any paragraph, subparagraph, sentence, clause, phrase, or word or other division of this Declaration, any any exhibits attached hereto, shall not affect the remaining portions hereof.

B. The headings herein are for reference purposes only and shall not affect the meaning or interpretation of this Declaration.

C. The fact that some or all of the officers, directors, or employees of the Council and the Declarant are identical or related, and the fact that the Declarant or its nominees have heretofore or will hereafter enter into agreements

with the Council or with third parties, will not violate any such agreements, and the Council and the Unit Owners, from time to time, will be obligated to abide and comply with the terms and conditions thereof. The purchase of any Unit, the acceptance of the deed therefor any party shall constitute the ratification, confirmation and approval by such purchaser, his heirs, legal representatives, successors and assigns, of the propriety and legality of said agreement or said agreements, or any other agreements authorized or permitted by the Act, this Declaration and the Code.

22. Lien and Mortgage Encumbrance Limitations.

A. A Unit Owner may not voluntarily encumber or subject his Unit to any lien other than the lien of (i) a first mortgage to a bank, trust company, bank and trust company, savings bank, savings and loan association, insurance company, pension fund or like institutional investor (but no other lender unless approved in recordable form by Council in advance of the imposition of any lien by such party); or (ii) a purchase money mortgage to Declarant. In either event, each mortgage and obligation secured thereby shall provide, generally, the mortgage of the rights and obligations of the parties thereto shall be subject to the terms and conditions of the Act, the Declaration and the Code and, specifically but without limitation, that the mortgagee shall have no right (a) to participate in the adjustment of losses with insurers or in the decision as to whether or not or how to repair damage to or destruction of Property, (b) to receive or apply the proceeds of insurance to the reduction of the mortgage debt or otherwise, except in the event and to

the extent of the distribution thereof to Unit Owners pursuant to the Act or of the insurance proceeds being received in excess of the costs of repair or restoration, or (c) to accelerate the mortgage debt or to have any other remedies by virtue of waste or alleged waste or other conditions incurring anywhere on the Property other than within the affected Unit.

B. No Unit Owner or prospective purchaser of a Unit shall deliver any mortgage; or any obligation to be secured thereby, unless it has first notified the Council of the name and address of the proposed mortgagee and the amount of the debt proposed to be so secured, and unless the forms thereof have been then or theretofore submitted to and approved by the Council as complying with the provisions of this paragraph, which approval shall be promptly given or denied and shall not be unreasonably withheld (the instrument so approved being sometimes in this Declaration referred to as the "Permitted Mortgage" or "Permitted Mortgages"). When a Permitted Mortgage is delivered to the mortgagee, the Unit Owner shall simultaneously provide executed or conformed copies to the Council. The Secretary shall maintain a register of Permitted Mortgages, showing the name and address of the mortgagee and amount secured thereby. At the time the mortgage forms are submitted to the Council for approval, each mortgagee shall designate in writing an agent which will act on its behalf for all matters on which the Declaration, the Code, or any Insurance Trust Agreement requires the consent of the holder or holders of Permitted Mortgages. Whenever the Declaration, the Code or the aforesaid Insurance Trust Agreement requires the consent of the designated agent shall constitute the consent of such holder or holders of Permitted Mortgages.

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-33-

390 211

C. Any holder of a Permitted Mortgage who makes a request in writing to the Council for the items provided in this paragraph shall have the following rights:

- (1) To receive from the Council a written statement of any delinquent assessments and of any defaults by the Unit Owner (which are not covered within thirty (30) days) and copies of any notices of default sent to the Unit Owner.
- (2) To inspect the books and records of the Council and/or Community Association during normal business hours.
- (3) To be furnished, within ninety (90) days following the end of each calendar year, with a copy of the annual financial statement and report of the Council, prepared by the certified public accountant designated by the Council, including a detailed statement of annual carrying charges or income collected and operating expenses.
- (4) To receive written notice by the Council of the call of a meeting of the membership; to receive written notice of all meetings of the Community Association and/or Council and be permitted to designate a representative to attend all such meetings.
- (5) To receive an endorsement to the policies covering the Common Elements re-

quiring that such holder of a Permitted Mortgage be given any notice of cancellation provided for in such policy.

D. The Property is subject to the first lien of a construction mortgage (the "Construction Mortgage") and for all purposes hereunder, such mortgage and any modifications thereof that may be required from time to time by the holder or holders thereof, shall be deemed a Permitted Mortgage against the Unit or Units not released from the lien of such mortgage. This Declaration, the Declaration Plan and the Code are and shall be subject and subordinate to the lien and operation of said mortgage until such time as the holder of the Construction Mortgage subordinates the Construction Mortgage to the said Condominium Instruments, pursuant to the terms of said Construction Mortgage which provides inter alia, (i) Declarant shall execute and deliver to the holder of said Mortgage, in recordable form and in full force and effect, irrevocable power of attorney of Declarant permitting the holder of the Construction Mortgage to act on behalf of Declarant and otherwise exercise rights of Declarant including, by way of illustration and not limitation, the right to vote for or to designate members of the Council pursuant to the Code, the Act, and this Declaration; and (ii) that the holder of the Construction Mortgage shall receive the resignations of the first members of Council and their respective successors, as additional collateral security.

23. Code of Regulations; Council; First Members Thereof.

A. The administration, regulation and management of the Property shall be governed by, and the maintenance

and repair of the Common Elements and the making of any additions or improvements thereto shall be carried out only as provided in the Code, and adopted pursuant to the Act and to contain the provisions therein specified, by the first members of the Councils designated below and to be duly entered of record with the Recorder of Deeds of Chester County contemporaneously with the recording hereof and of the Declaration Plan, as the same may be amended from time to time pursuant to the Act or in the Code of Regulations.

B. A board of natural individuals of the number stated in the Code, each of whom must be a resident of Pennsylvania but need not be a Unit Owner, shall be known as the Council and shall manage the business, operation and affairs of the Property on behalf of the Unit Owners in compliance with and subject to the provisions of the Act and the Code. The names of the first such members of the Council are:

John E. Leo

Mary M. Leo

Elliott D. Goldberg, Esquire

Thomas Wisneski

Thomas Paige

C. This Declaration shall become effective when it, and the Declaration Plan and the Code of Regulations have been duly entered of record in the Office of the Recorder of Deeds of Chester County.

IN WITNESS WHEREOF, CHARLESTOWN ARMS CORPORATION, has caused this Declaration to be executed in its Corporate name by its duly authorized officers and its Corporate Seal shall

CHARLESTOWN ARMS CORPORATION
A Pennsylvania Corporation

ATTESY

John L. Soc'y By: John L. Soc'y

On this 20th day of December, A.D. 1977,
before me the undersigned officer, personally appeared
George S. Lee who acknowledged himself to be President
of CHARLESTOWN ARMS CORPORATION, and that he as such President
being authorized to do so, executed the foregoing Declaration
for the purposes therein contained by signing the name of the
Corporation by himself as President.

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

Sugunan P. Desai
NOTARY PUBLIC

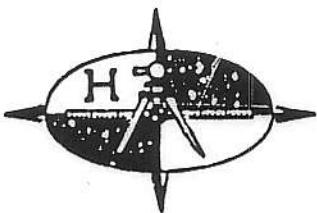
SUZANNE P. BERNETT, Notary Public
Phoenixville Boro, Chester Co.
My Commission Expires Aug. 8, 1988

Recorded in the Recorder of Deeds Office of Chester
County in Deed Book , Page , this day of
, A.D. 197 .

LOS ANGELES
HOPE, PORTHORN
AND GRANT, LPS
PAUL, POMER 1000

-19-

396 215



HOPKINS & SCOTT, INC. • REGISTERED SURVEYORS

KIMBERTON, PA. 19442

PHONE 215-933-1754

December 6, 1977

Description of Phase III of property of Caines' Creek situate in the Boro of Phoenixville, Chester County, Pennsylvania, as shown on a plan dated September 20, 1974 and last revised December 5, 1977, said property being more fully described as follows to wit:

Beginning at a point on the center line of Pothouse Road, a corner of Phase V, said point being measured N. 45°-36' W. 622.04 feet along said center line from the northerly right of way line of the Penn Central Railroad; Thence from said beginning point, being along the center line of Pothouse Road, N. 45°-36' W. 475.00 feet to a point, a corner of Phase I; Thence leaving Pothouse Road and being along Phase I the two (2) following courses and distances:

1. N. 44°-24' E. 170.00 feet to a point.
2. N. 79°-54' E. 303.36 feet to a point in line of Phase II.

Thence along Phase II S. 17°-30' E. 73.00 feet to a point, a corner of Phase II and Phase V; Thence along Phase V the three (3) following courses and distances:

1. S. 11°-31' E. 178.15 feet to a point.
2. S. 01°-59' E. 120.00 feet to a point.
3. S. 44°-24' W. 200.00 feet to the first mentioned point and place of beginning.

CONTAINING 3.40 ACRES

396 216

EXHIBIT "B"

GENERAL DESCRIPTION

This is a general description only of the condominium structures that collectively comprise the Building intended to be submitted hereunder to the provisions of the Unit Property Act.

The Buildings are to be of masonry and frame construction. There shall be a concrete block foundation with the outer walls of the first floor to be of frame construction with stucco and Texture III exterior finish. The second floor outer walls will be frame construction of Texture III wood, pre-stained at the factory, and stucco.

The inner walls of the Units will be studded with 1/2 inch gypsum wall board, painted on the outer surface.

The outer front door of the Unit will be of the metal-insulated type, the sliding patio doors will be aluminum frame insulated glass type and the inner Unit doors will be mahogany venire hollow core.

The patio of the Units will be a poured 4-inch concrete pad.

All windows will be carado wood sliders.

Glenn D. Hunt
RECODER OF DEEDS

LOD 00000000
NOTE: PORTIONS ARE IN CHESTER CO. PA. IN
RECEIVED
FILE NO. 396 Page 176 396 217