

Prepared by:

Barry G. Joseph Construction Co.

6 Cooper Street

Georgetown, DE 19947

p/o Tax Parcel 1-3519-69.00

**DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS AND  
REMEDIAL CLAUSES FOR CINDERBERRY ESTATES, GEORGETOWN HUNDRED,  
SUSSEX COUNTY, DELAWARE**

Barry G. Joseph Development Corporation, a corporation of the State of Delaware, hereinafter referred to as Declarant, being the owner of real property located on the west side of North Bedford Street, in the Town of Georgetown, Sussex County, Delaware, and subdivided as set forth upon a revised plot dated April 12, 1998, entitled "Cinderberry Estates, Phase I", prepared by Adams-Kemp Associates, Inc., filed for record with the Office of the Recorder of Deeds in and for Sussex County at Georgetown, Delaware in Plot Book \_\_\_\_\_ at page \_\_\_\_\_, and for the purpose of insuring the use of the property for attractive residential purposes, to prevent nuisances, to prevent the impairment of the attractiveness and value of the property, and to maintain the desired tone and quality of the subdivision, and thereby to secure to each lot owner the full benefit and enjoyment of his home, with no greater restriction on the free and undisturbed use of said lots than is necessary to insure the same advantages to the other lot owners, hereby covenants, agrees and declares that all of the property and land areas shown on the above-mentioned subdivision plan, except as may be specifically herein exempted and excluded, are hereby subjected to the following restrictive covenants, conditions, and remedial clauses which shall run with the land and be binding against it, in perpetuity, unless the same be modified or amended as hereinafter provided.

Any deed, conveyance or contract made in violation of these restrictive covenants, conditions, and remedial clauses shall be voidable and may be set aside on petition of one or more of the parties hereto or any of their successors in interest or their heirs, executors, and assigns. All such successors shall be parties of the same effect as the original Declarant. In the event any such conveyance or other instrument is the subject of a suit to set it aside by decree of any court or arbitrator, all damages, costs and expenses of such proceedings to include reasonable attorney's fees of the prevailing party or parties.

This declaration and agreement constitutes a mutual covenant running with the land and all successive future owners shall have the same right to invoke and enforce its provisions as the original signers and Declarant hereof.

This declaration and agreement shall take effect and be in full force when placed of public record in the Office of the Recorder of Deeds, in and for Sussex County, Delaware. Any and all other lots or land areas in any other or future sections of the Cinderberry Estates Development may be, subjected, at the discretion of Declarant, to this Agreement by the recording of an amended declaration by the Declarant, without the consent of other owners of lots subject to this Declaration. If future lots are placed under the effect of these restrictions, owners of such lots shall be entitled to all of the privileges of the original Declarant or its grantees.

The land areas, lots or parcels shown on the Record Subdivision Plan or Plans as a utility lot, unplotted or open space areas, areas reserved for future development, or as recreation area, shall not be subject to these restrictions unless the Declarant amends these restrictions to specifically so provide.

The restrictive covenants, conditions, and remedial clauses for the Cinderberry Estates Subdivision and which shall be applicable to all of the aforesaid lots and land areas in said development, are as follows:

1. No Structure or other improvement, except as hereinafter provided, shall be erected, altered, placed, used or permitted to remain in the development. Nothing herein contained shall limit or restrict the right of the Declarant to use all or portions of lots or other lands in the subdivision which are not sold for residential purposes, as Declarant may see fit.

2. One (1) detached single family dwelling may be placed, erected, altered and occupied upon any numbered lot in the development. Each such dwelling shall not exceed thirty-five (35) feet in height and square footage of the finished living area thereof shall be not less than One Thousand Eight Hundred (1,800) square feet, exclusive of all porches, breezeways, carports, garages, terraces, stoops, or other attachments. A two-story dwelling shall have a minimum of One Thousand (1,000) square feet of finished living area, as defined above, on the ground floor level. One (1) attached or detached garage may be located on each lot, provided no garage shall be constructed for more than three (3) cars; all garage entrances must be approved by the Declarant, its successors or assigns and must conform in appearance to the style of the dwelling and must have the same exterior and roof colors as the dwelling. All permanent structure shall have brick foundations.

3. In addition to one (1) dwelling and one (1) attached or detached garage, one (1) accessory building, being a subordinate building, the use of which is customarily incidental to that of the principal building and is used for an accessory use and is located upon the same lot as the single family dwelling may also be constructed upon each numbered lot. The accessory building shall not exceed one (1) story in height and 400 square feet and shall be used solely in connection with a single family dwelling. The accessory building shall be located in the rear yard portion of the lot and shall comply with all of the following requirements:

(a) No metal building or structure is allowed.

(b) Shall be of the same general construction type and shall be compatible in appearance with the dwelling.

(c) Shall be enclosed and have the same exterior and roof colors as the dwelling.

(d) Construction plans or specifications must be approved by the Declarant before construction is commenced or the accessory building is placed upon any part of the lot within the development.

(e) Shall be permanently attached to the ground by means of a foundation or concert slab.

4. No lot within the development shall be resubdivided, sold, or otherwise alienated into a lesser or smaller parcel, except by being recorded as a revision or a plan of resubdivision of Cinderberry Estates, which revision or resubdivision shall bear the signature and approval of the Declarant herein, or its successors or assigns, and which shall have been duly approved and recorded by declarant in the Office of the Recorder of Deeds, in and for Sussex County. In the event of a violation of this provision, the Declarant, its successors or assigns shall be entitled to petition any court of competent jurisdiction to grant such injunctive or other relief as the court might consider appropriate under the circumstances and to award damages, costs, expenses and reasonable attorneys fees to the

party taking action to enforce the restrictions against the offending party or parties, as provided in the preamble to this Declaration.

5. A land area of not less than one (1) full lot has shown on the aforesaid plots shall be provided for each dwelling house places, erected, constructed, altered or used in the subdivision. If more than one (1) lot is to be used for one (1) dwelling and other permitted structures, specific approval for such use shall be obtained from Declarant.

6. The main dwelling erected and maintained upon any numbered lot in the development shall front or face toward the street providing vehicular access to their lot, unless the owner shall obtain prior written approval from Declarant for any other or different placement, and provided, further, that the Declarant shall not be required or obligated to approve any other or different placement of the main dwelling.

7. All setbacks for lot 1 must be specifically approved by developer. All other lots shall be subject to the following building set-back and no buildings or any part thereof shall be erected in viol

(a) The front yard set-back line shall be fifty (50) feet from the nearest street right of way of line.

(b) The rear set-back line shall be thirty-five (35) feet from the rear line of each numbered lot.

(c) There shall be two side yard set-back lines, each of which shall be twenty-five (25) feet from the respective sidelines of each lot.

8. No fuel tanks or similar storage receptacles may be exposed to view; but same may be installed within the main dwelling, or within an accessory building or buried underground or properly screened from view providing the method of screening is approved by Declarant, its successors or assigns. Receptacles for storage of trash, refuse, or garbage shall be kept inside one of the permitted structures on each lot, except on pick-up days. Trash put out for pick up must be in protected containers with lids.

9. No boundary fence, wall, hedge or other natural or man-made structure or object shall be constructed or grown to a height if more than four (4) feet, except however, that no fencing for purposes of privacy or around a swimming pool or other similar type of structure shall be constructed or grown to a height of more than six (6) feet, providing, however, that this privacy fencing shall not extend within any setback area. No boundary or perimeter fence may be chain link; no chain link fence may cover an area larger than 144 square feet. Written permission shall first be obtained from the Declarant, its successors or assigns prior to the placement, planting or construction of any fence, wall, hedge or other structure or object.

10 All lots within the development will be serviced by the town of Georgetown water and sewer systems. The cost of connecting to these systems will be at the expense of the individual lot owner, including any impact fees, hook-up fees and or any the town or local government assessment.

11. Each lot in the development will have only one vehicular accessway to be used for both ingress and egress onto the public streets located along each lots property lines. These driveway locations have been predetermined by the Declarant and the engineer of the Town of Georgetown; in order to protect the integrity of the swale storm water drainage system that has been designed for the development. Relocation of the said driveway entrances are restricted unless relocation has prior approval from the Town of Georgetown, its engineer, and the Declarant, its successors or assigns; and will be at the

expense of the individual lot owner. The elevation of any given lot or land area shall not be changed so as to affect materially the surface grade or drainage of the surrounding lots or land areas without first obtaining the written approval of the Declarant, its successors or assigns.

12. No structure of any temporary character and no tent, trailer, motor home, mobile home, travel trailer, shack or other outbuildings, shall be placed on any numbered lot at any time, except during periods of construction and for the storage of materials only; such temporary structures for material storage not to exceed four hundred (400) square feet and except that a motor home or travel trailer may be parked on any lot as it is not used for dwelling, living, visiting or residency purposes.

13. Nothing shall be done or maintained upon any lot, land area, road, drive, lane or other way which is or may become a nuisance to the Declarant or other lot owners.

14. No cattle, horses, swine, sheep, poultry, fowl, or goats shall be kept or maintained on any lot. Pets shall be strictly limited to domesticated dogs or cats with each lot owner being allowed no more than two (2) dogs and two (2) cats. All such pets shall be kept inside and improvement on the premises at all times unless accompanied by the owner or custodian and under his control on a leash. There shall be no commercial keeping, raising or breeding of dogs, cats or any other animal or creature within the development.

15. The following general prohibitions and requirements shall prevail during construction activities conducted on any lot in Cinderberry Estates:

(a) No outside toilet shall be constructed on any lot. This shall not prohibit placement of a self-contained toilet, of the Johnny-on the Spot type, provided it shall be maintained in an odor-free condition and provided that it shall be removed immediately at the end of the periods of active construction.

(b) Once construction of any building has been commenced, such construction shall proceed without delay until the same is completed, unless such delay is attributable to a cause of causes beyond the control of the owner, builder or contractor, as the case may be. Cessation of work before construction for a continuous period of sixty (60) days shall be prima facie evidence of an attempt to abandon the same in its partially completed state and the same shall be deemed to be a public nuisance. In the event there has been no substantial construction work on any building which has been started within the development for a continuous period of sixty (60) days, the Declarant, its successors or assigns shall have the right to require the owner or owners of said lot to obtain and post a completion bond with the Declarant, its successors or assigns, in the amount so required by the Declarant, its successors or assigns, said bond to be obtained at the expense of the lot owner and posted with the Declarant, its successors or assigns, within fifteen (15) days after the bond has been first requested. In the event a bond is requested but not posted as provided herein, the Declarant, its successors or assigns, may take action through any court of competent jurisdiction against the lot owner requiring the demolition and removal of the structure and also seeking an award of damages, court costs, expenses and reasonable attorneys fees, as provided in the preamble hereof.

(c) No residence shall be occupied until the same has been substantially completed in accordance with the plans and specifications and only after a proper occupancy permit has been issued to the lot owner and the house is properly served by water and sewer facilities.

(d) Driveways shall be improved by the use of concrete or paved surface

treatment no later than six (6) months following issuance of occupancy permit.

16. The following general requirements and prohibitions shall apply to all lots:

(a) No stripped down, inoperable, disabled or junk motor vehicles or any sizable part thereof, shall be permitted to be parked or maintained on any lot or on any street.

(b) No noxious, offensive or illegal activity shall be done on any lot.

(c) No signs, notices or advertising matter of any nature or description shall be erected, used or permitted upon any of the lots unless erected after securing the written permission of the Declarant, its successors or assigns, except that an individual lot owner may erect a for sale or for lease sign not exceeding 144 square inches in size. The Declarant, however, retains the right to erect signs of any size on any lot to advertise said lot for sale.

(d) Each main dwelling unit or lot shall have provided concrete or paved space for parking two (2) automobiles off the private roads of the subdivision prior to occupying any dwelling constructed on any lot.

(e) Exterior lights not attached to a permissible main structure placed or erected, and maintained on any lot set fourth on the recorded plot, shall not be in excess of five (5) feet in height above ground level. In no event shall any vapor or security exterior lights be placed on any lot in the subdivision, whether attached, or not attached, to any building permitted pursuant to these restrictions.

(f) No television or radio reception tower or satellite reception dish shall be erected upon any lot. Miniature satellite dish attached to the main dwelling may be permitted subject to prior approval of the Declarant, its successor or assigns.

(g) No farm machinery or implements shall be stored on any lot unless in a screened area not generally visible from an interior road, from an adjacent lot or from the pond.

(h) Only in-ground swimming pools shall be permitted.

(i) No vehicles shall be parked on the roads of the development.

17. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds upon a lot which shall tend to substantially decrease the beauty of the property as a whole, or the beauty of the specific area. No noxious or offensive activity shall be permitted upon any lot, nor shall anything be done thereon, tending to cause embarrassment, discomfort, annoyance or nuisance to the property. There shall not be maintained upon any lot any plant, animal, device, or thing of any sort, the normal activities of which is in any way noxious, dangerous, unsightly, unpleasant or of such nature as may diminish or destroy the enjoyment of the property. Specifically included in this section is the prohibition against any livestock being kept on any lots. The keeping of any non domestic animals shall be deemed a nuisance per se under this section; but the keeping of domestic cats and dogs, unless the activity of such pets is in any way noxious, dangerous, unsightly or unpleasant, shall not be prohibited under this section.

18. In order to insure the development of Cinderberry Estates, as a residential subdivision of high standards, the Declarant, herein and its successors or assigns, reserve the power to control the buildings, structures, improvements, landscaping, or planting

or trees and shrubs which may be placed upon each lot or given land area therein. Whether or not specific provision is made in any conveyance of any lot or given land area by the Declarant, its successors or assigns unto any person or persons, the owner or occupier of each and every lot or given land area in said Cindberberry Estates by acceptance of title thereto, or by taking possession thereof, covenants and agrees that no building, fence, wall, or other natural or manmade boundary structure shall be placed upon any lot unless and until the plans and specifications therefore and the placement plan thereof have first been duly approved in writing by the Declarant, its successors or assigns, or by a committee provided the Declarant, its successors or assigns. Each such building, fence, wall, or boundary structure, planting or obstruction, shall be placed upon its given lot or land area only in accordance with the plans and specifications and the placement plan so approved. Refusal to approve any such plans, specifications, or placement plans may be based upon any grounds, including purely aesthetic grounds which in the sole and uncontrolled discretion of the Declarant, its successors or assigns, or of any such committee, shall be deemed sufficient cause to refuse approval. Further, no alternations, additions or changes in or to the exterior appearance of any building, structure, fence, wall, or other improvement shall be made without first obtaining like written approval therefore. If the Declarant, its successors or assigns, or the committee, as the case may be, should fail to disapprove any such plans, specifications or plot plants within thirty (30) days after a properly prepared and documented written request therefore has been delivered to it, then such approval shall not be required; PROVIDED, HOWEVER, that in no event shall any building, structure, fence, wall, or other improvement be erected in any manner as to violate any other covenant, reservation or restriction set forth herein. In addition the following requirements shall be fully complied with:

(a) The Declarant shall have absolute discretion to regulate the placement, in relationship to each other, of dwellings or other improvements having the same exterior design, appearance, or color scheme.

(b) All exterior roof and wall colors on all structures within the development shall be approved by Declarant, its successors or assigns.

(c) No lot owner or owners shall be permitted to place on any lot within the subdivision any sectional dwelling, modular dwelling mobile home, motor home, dwelling having an A-frame type construction appearance, geodesic house or dome, nor any dwelling or other improvement having a hexagonal or octagonal shape. Further, no dwelling or other permitted structure shall have a flat roof pitch of less than 6 inches of roof elevation for each foot of roof span, otherwise known as a 6/12 pitch, nor shall any dwelling or other permitted structure have a side wall elevation of less than 8 feet. Further, no dwelling or other permitted structure shall have more than two (2) living levels.

(d) The elevation of no dwelling or other permitted structure shall exceed 35 feet in height measured from the centerline of the nearest street right-of-way at a point which would bisect the center of the lot.

(e) No landscaping, shrubs or trees to be placed on any lot in conjunction with the erection of any dwelling shall be planted, until complete and comprehensive landscaping plans shall be submitted to and approved in writing by the Declarant, its successors or assigns. The land area not occupied by structures, hard-surfaced, vehicular driveways or pedestrian paths shall be kept planted with grass, trees or shrubs or other ground covering or landscaping in conformance with standard set by the Declarant, its successors or assigns. Such standards will take into consideration the need for providing effective site development to:

1. Enhance the site building,

2. Screen undesirable area of reuse,
3. Establish acceptable relationships between buildings, parking in adjacent properties and ,
4. Control drainage and erosion.

19. In order to insure the wooded atmosphere of Cinderberry Estates, defoliation or deforestation will not be allowed without the prior written consent from the Declarant, its successors or assigns.

20. At any time prior to the sale of seventy-five (75) percent of the lots subject to these restrictions, Declarant, its successors or assigns may, in its discretion, appoint a Board of Directors of Cinderberry Estates Property Owners Association consisting of not less than three (3) nor more than five (5) members, as well as to appoint their respective successors. After the sale of seventy-five (75) percent of the lots subject to these restrictions have been sold to third party purchasers, Declarant, its successors or assigns, shall appoint a Board of Directors of Cinderberry Estates Property Owners Association consisting of not less than three (3) nor more than five (5) members, as well as to appoint their respective successors. Board members appointed by the Declarant may, but need not be, persons owning lots in Cinderberry Estates. However, after the Declarant, its successors or assigns has sold and disposed of not less than seventy-five (75) percent of the total number of the total number of lots subject hereto, successors to the Board of Directors appointed by the total number of the Declarant shall be elected by the vote, in person, of the owners of the majority of the lots located in Cinderberry Estates. Upon the establishment of any such Board, in any manner as aforesaid, such Board shall thereupon succeed to all the privileges, powers, rights and authority reserved by, vested in, and exercised by the Declarant, its successors or assigns, or any such appointed Board, as provided herein.

21. The Declarant, its successors or assigns, reserve unto themselves the exclusive right to grade, change the grade of, regrade, change the location of, close or partly close, any way, road, street, lane, means of ingress, egress and passage in said subdivision, PROVIDED, that such grading, regrading, change of location, changing or alteration shall not materially affect or interfere with the right of convenient ingress, egress and passage to or from any lot and shall not take any portion of any lot or land area sold or conveyed by the Declarant, its successors or assigns, unto any person before such change is affected.

22. Nothing contained herein shall be construed as an obligation of the Declarant, its successors or assigns, to remove underbrush or rubbish, or cut grass on any lots owned by Declarant, its successors and assigns. Individual owners of lots however, do hereby covenant and agree to be responsible for the appearance of such lots or lots sold or otherwise conveyed to them by cutting grass and brush and by removing trash and rubbish therefrom at all reasonable times. Individual owners of lots are at all times obligated to maintain any Storm water swale or ditch located on their lot, so as not to allow any impedance of the flow of storm water, not to allow soil erosion, and to limit any standing water. No grade of Storm water swales or ditches may be changed without written approval of the Declarant, its successors or assigns. Should such owners fail to maintain the appearance of such lots, and the integrity of storm water swales, as determined by the Declarant, its successors or assigns, the Declarant, for itself and for its successors or assigns, reserve the right and privilege to enter upon such property for the purpose of maintaining the appearance of any improved or unimproved lot, as well as the integrity of storm water swales and ditches of any improved or unimproved lot, the cost of which is to be borne by the lot owner or owners.

23. All streets and roads located within Cinderberry Estates shall be public streets, and shall be conveyed to the Town of Georgetown, pursuant to the terms of Town Ordinance No. 203, regarding subdivisions.

24. Each owner of property subject to this Declaration shall pay an annual assessment to the Cinderberry Estates Property Owners Association, which may be formed either as an unincorporated or an incorporated property owners association. Assessments levied by the Association shall be used to promote the recreation, health, safety and general welfare of the property owners of this subdivision and in particular for the improvement and maintenance of roads and construction and maintenance of other facilities devoted to the common use and enjoyment of the owners. The initial annual assessment shall be \$200.00 per lot and is subject to adjustment and shall be levied at a stipulated rate per lot. The annual assessment shall be paid in advance and the due date of the annual assessment for each lot shall be May 1 of each year. The annual assessment may be adjusted by the Declarant, its successors or assigns, until such time as seventy-five (75) percent of the lots subject to the restrictions have been sold. Thereafter, the basis and the amount of the assessment may only be increased or decreased by a two-thirds (2/3) affirmative vote of the property owners present and voting, either in person or by proxy, thirty (30) days after written notice has been sent to the owners, giving notice of the intended adjustment in the assessment and setting forth the purpose of such at a regular or special meeting of the Association. In order to be counted, a proxy must be received on or before the date of the stated meeting and prior to any vote and must be in compliance of Delaware law. At the time notice of said meeting is mailed to the property owners, information shall be included, showing a justification for any increase in the assessment and directly relating the increase to budgetary needs of the Association. Every person who acquires title, legal or equitable and any lot in Cinderberry Estates shall automatically become a member of the property owners association and shall be obligated to pay the assessments, provided for above, PROVIDED, HOWEVER, that such membership is not intended to apply to those persons who hold an interest in any such lot merely as security for the performance of an obligation to pay money, namely mortgages, deeds of trust or real estate contract purchases. However, if such person should realize upon his security and become the owner of the lot, such person will then be subject to all the requirements and limitations imposed in those restrictions on owners within the development and upon all members of the Association, including those provisions with respect to alienation and the payment of an annual assessment charge. The association shall also be the means for the promulgation and enforcement of all the regulations necessary to the governing of Cinderberry Estates. The Association shall have all the powers that belong to it by operation of law.

Assessments not paid when due shall be a continuing lien on the property and shall extend to each lot owned by a multiple owner and shall apply whether or not there is a dwelling erected on said lot or lots and shall bind the property in the hands of the delinquent owner, and any subsequent owner or holder of title. In order to assist in giving public notice of delinquent assessments to subsequent purchasers, grantees, or third parties, the Association may record a Statement of Assessments Due in the Court House in Georgetown, Delaware, if the assessment is not paid within sixty (60) days from the due date of May 1st of each year. Further, interest shall accrue on unpaid assessments at a rate equal to five (5) percentage points above the Federal Reserve Discount Rate in effect on the due date of the assessment. In addition to the interest, as provide herein, a delinquent payment penalty equal to ten (10) percent of the amount of the assessments shall be added and paid by the owner or owners. Interest shall accrue upon the amount of the assessments and not upon the amount of any additional penalty fee.

(a) In the event a lot owner conveys property to a subsequent purchaser without paying assessments owed the Declarant or the Association may proceed against both the seller of the property and the buyer, since the obligation for payment of assessments remains and obligation of the delinquent owner as well as the charge upon the hands in the hands of the subsequent purchaser. In the event legal action is necessary to collect the delinquent assessments, all land owners, present and future, are expressly put on notice that



Court costs and reasonable attorneys fees shall be added to and become part of court award judgment rendered to the association. Reasonable attorneys fees shall be defined as being fifteen (15) percent of the amount of the delinquent assessment. In the event a default judgment is taken against a delinquent owner, attorneys fees in that amount, may be added to the amount of the delinquent assessments, if requested in the Complaint.

(b) Lots which are titled in the name of the Declarant and held for sale or resale shall be exempt from the assessments or any charge or lien created as a result thereof, as long as so titled.

25. Whenever any owner of any lot or land area receives a bona fide offer to purchase their lot, which offer is acceptable to said owner, said owner shall give written notice of the offer to sell said lot (at the same price and on the same terms continued in the said bona fide offer) to the Board of Directors of the Cinderberry Estates Property Owners Association or until such Board of Directors is elected, to the Declarant, its successors or assigns. The Association or Declarant shall have thirty (30) days within which to notify the owner of its intent to accept or refuse such offer. Should the Association or the Declarant fail to exercise its rights and give such notice within thirty (30) from the time within which the notice is received by it or should the Declarant or the Association refuse to purchase said lot at the price and on the terms proposed by said owner, said owner shall be free, subject to the limitations contained in these restrictions to sell said lot to the party who shall have made the bona fide offer. If the thirty (30) day period shall expire on a Saturday, Sunday or a holiday, the expiration shall occur at the end of the next week day, which is not a holiday, according to Delaware Law. In each instance, the owner desiring to sell his lot shall provide the Declarant or the Association with a copy of the proposed contract or other written offer and with such other information as the Declarant or the Association may request. The thirty (30) day period shall not begin to run until sufficient information regarding the offer has been provided.

26. Nothing contained herein shall be construed in any manner so as to impose upon the Declarant, its successors or assigns, any liability for property damage and/or personal injury occurring to any person or persons whomsoever, for or by reason of the use of the ways, roads, streets, lanes, easement, areas devoted to common use of the owners, or lands owned by the Declarant in Cinderberry Estates. Any and all persons using such ways, roads, streets, lanes, easements, common areas or lands of the Declarant shall do so at their own proper risk without any liability whatsoever on the part of the Declarant, its successors or assigns.

27. The restrictions and agreements set forth herein are for the mutual and reciprocal benefit of each and every lot and are intended to create mutual, equitable servitudes upon each of said lots in favor of each and all lots therein; to create reciprocal rights between the respective owners of all the said lots; their heirs, executors, administrators and assigns and shall, to the owner or owners of each said lot, their heirs, executors, administrators and assigns, operate as covenants running with the land for the benefit of each and all other lots and their respective owners.

28. Any lot owner whose benefit these restrictions insure may proceed at law or in equity to prevent the occurrence, continuation, or violation of any of these restrictions and the Court in any such action may also award the successful party damages, reasonable expenses in prosecuting such action, including a reasonable attorneys fee. The remedies specified herein are cumulative and the specifications of them shall not be taken to preclude any aggrieved party from resorting to any other remedy at law or in equity or under any other statute. No delay or failure on the part of the aggrieved party to invoke an available remedy in respect to a violation to any of these restrictions shall be held to be a waiver of that party or any estoppel of that party to assert any right available to him under

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there occurrence or continuation of such violation or the occurrence of a different violation.

29 After the sale of seventy-five percent (75%) of the lots in Cinderberry Estates, these restrictions may be amended by and with the written consent or affirmative vote of no less than sixty (60) percent of the then owners of all lots. The owners of the various lots shall have the power to waive, abandon, terminate, modify, alter, change, amend or add to these restrictions or any of them at any time hereafter. Any such waiver abandonment, termination, modification, alteration, change, amendment, or addition shall take effect when a copy thereof executed and acknowledged by each of the lot owners who assent thereto in accordance with the usual form of execution and acknowledgment of deeds to land shall have been filed for record in the Office of the Recorder of Deeds, in and for Sussex County, and the same thereafter shall remain in effect in perpetuity unless the same shall be waived, abandoned, terminated, modified, altered, changed, amended or added to, as the case may be. In taking of any such vote or the obtaining of any such written consent of the lot owners in Cinderberry Estates each owner shall have as many votes or consents as he may own lots situate in Cinderberry estates, including the Declarant. Prior to the sale of seventy-five (75) percent of the lots, the Declarant reserves the right to amend these restrictions without the consent of the other lot owners.

30. Declarant reserves the right, but is not obligated, to convey to the Property Owners Association, title to any land area within the development which contains and area which either is or may later be devoted to the common use and benefit or all owners, such as a recreation area, streets, open space areas, or any such area. Any land area so conveyed by the Declarant shall be subject to such restrictions or conditions as may be provided in the deed or deeds.

31. The invalidating of any one of the foregoing restrictions by any Court of competent jurisdiction shall in no way affect or impair the full force and effect of all other restrictions set forth herein and in such event, all other restrictions not expressly invalidated hereby shall remain in full force and effect.

IN WITNESS WHEREOF, BARRY G. JOSPEH DEVELOPMENT CORPORATION, has caused this deed to be executed by its proper officers, and its corporate seal to be hereunto affixed , duly attested, this 9 day of June, A.D. 1998.

BARRY G. JOSEPH  
DEVELOPMENT CORPORATION

By \_\_\_\_\_  
President

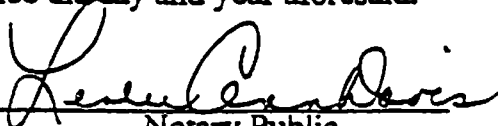
Attest \_\_\_\_\_  
Secretary

(Corporate Seal)

STATE OF DELAWARE :  
  : ss.  
COUNTY OF SUSSEX :

BE IT REMEMBERED, that on this 9<sup>th</sup> day of June, 1998, personally came before me, the subscriber, a Notary Public for the State and County aforesaid, Barry G. Joseph, President of Barry G. Joseph Development Corporation, a corporation organized and doing business under the laws of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed and the act and deed of said corporation; that the signature of the said official is in his own proper handwriting; that the seal affixed is the common and corporate seal of said corporation, and that his act of signing, sealing, executing, acknowledging and delivering said Indenture was duly authorized by a resolution of the Shareholders of said corporation.

GIVEN under my Hand and Seal of Office the day and year aforesaid.

  
\_\_\_\_\_  
Notary Public

LESLIE A. DAVIS  
NOTARY PUBLIC DELAWARE  
COMMISSION EXP. 2/28/2000