

DECLARATION OF CONDOMINIUM

FOR

EVERGREEN TOWNHOMES,
A Condominium

THIS DECLARATION made on the date hereinafter set forth by: CALVIN E. ZIMMERMAN and MARK C. BIGATEL t/d/b/a ZIMMERMAN & BIGATEL PARTNERSHIP (Declarant)

WITNESSETH

WHEREAS, Declarant is the owner of certain property known as

recorded in in Plat Book 30

Page 4 in the Recorders Office, Centre County, Pennsylvania, which is more particularly described in Article II, Section 2, herein and which Declarant declares to be of condominium use and ownership.

NOW, THEREFORE, Declarant hereby declares that it is the express purpose, desire and intention of the Declarant to submit and the Declarant hereby does submit said property, including the improvements thereon, to the provisions of the Pennsylvania Uniform Condominium Act (68 Pa. C.S. 3101, et seq.), and as may be amended from time to time (hereinafter called the "Act") for the specific purpose of creating and establishing a Condominium, and accordingly said property shall be used, held, sold and conveyed subject to (i) the provisions of the aforesaid Act, (ii) the provisions of this Declaration, (iii) attachments to the Declaration, (iv) the By-Laws, Rules, and Regulations, and subject also to: (v) such Rules and Regulations as the Condominium Executive Board may duly adopt, and each and all of the aforesaid five provisions being for the purposes of effecting this Condominium and of protecting the value and desirability of said property and of each part thereof, which provisions shall run with the real property and be binding on all parties having any right, title or interest in the property or any part thereof, and their heirs, successors, administrators and assigns, and shall inure to the benefit of each owner thereof.

Definitions

The following terms shall have the meanings herein ascribed to them, unless the context clearly indicates otherwise:

Section 1. "Building" means a sixteen (16) unit dwelling structure, as well as improvements comprising a part thereof, as are the subject hereof, and which has been constructed on the property.

Section 2. "By-Laws" mean those so designated under the Act, and as pertain to the subject property of this Declaration, and includes such amendments thereof as may be adopted from time to time, all of the same being deemed to be a part hereof as if attached hereto.

Section 3. "Common Elements" or "Common Areas" means and includes: (a) the land on which the building is located and those portions of the building as are not included in any Unit; (b) the yards; (c) insulation and systems as comprise all central services and utilities; (d) all apparatus and installations existing for common use; (e) all other elements of each building necessary or convenient to its existence, management, operation, maintenance and safety, and normally in common use; and (f) such areas and facilities as are so designated on the Declaration Plan; but does not include such, or such parts, or features of the foregoing as are of entirely private use within a Unit.

Section 4. "Limited Common Elements" or "Limited Common Areas" means all those areas designated in this Declaration or the Declaration Plan or by resolution of the Executive Board as reserved for the use of certain Unit or Units to the exclusion of other Units. Such right of use may be reserved as an interest appurtenant to a particular Unit or Units, but in all other respects shall be and remain Common Elements or Common Areas.

Section 5. "Common Expenses" means and includes: (a) expenses of administration, maintenance, repair and replacement of the Common Elements; (b) expenses agreed upon as common by all the Unit Owners; (c) expenses declared common by the provisions of the Act, or by this Declaration of the By-Laws, Rules, and Regulations; and (d) expenses duly declared common by the Executive Board of Directors pursuant to the provisions of this Declaration or of the By-Laws, Rules, and Regulations; and as provided under any amendments made to said Act or instruments.

Section 6. "Executive Board" as provided by said Act, means a group of natural individuals of the number stated in the By-Laws, Rules, and Regulations who are residents of Pennsylvania, who may or may not be Unit Owners, and who shall manage the business, operations and affairs of the Property on behalf of the Unit Owners and in compliance with the Act.

Section 7. "Declaration" means this instrument by which the Property is submitted to the provisions of the Act, and any amendments hereto.

Section 8. "Declaration Plan" means a professionally prepared plan of the property under Sections 3210 of the Act. Said plan is recorded or to be recorded, and a copy thereof is available for inspection at the office of Declarant.

Section 9. A "Condominium" or "Association" means all of the Unit Owners in the buildings, bound individually and as a group pursuant to this Declaration and to the By-Laws, Rules, and Regulations.

Section 10. "Majority" or "Majority of the Unit Owners" means the owners of more than fifty (50%) percent in the aggregate or ownership in the Common Elements, tabulated according to votes so based and assigned in Exhibit "B" under Article III, Section 4.

Section 11. "Person" means a natural individual, corporation, partnership, association, trustee or legal entity.

Section 12. "Property" means and includes the land, the building, all improvements thereon and therein, and all easements, rights and appurtenances belonging thereto, which are represented in the Declaration Plan and are declared by this instrument to be submitted to the provisions of the Act.

Section 13. "Recorded" means that an instrument has been duly entered of record in the Office of the Recorder of Deeds of Centre County, Pennsylvania.

Section 14. "Recorder" means the Recorder of Deeds of Centre County, Pennsylvania.

Section 15. "Revocation" means an instrument signed by all of the Unit Owners and by all holders of liens against the Units by which the property is removed from the provisions of the Act.

Section 16. "Unit" means a residence component as a part of a building designed and intended for independent private use, and designated as a Unit by the Declaration Plan, and the same shall include its assigned proportionate undivided interest in the Common Elements, and shall include also all of the rights, privileges, immunities, and obligation attaching thereto as is provided and referred to herein.

Section 17. "Unit Designation" means the number thereof used for designating each Unit in the Declaration Plan.

Section 18. "Unit Owners" means the person or persons owning a Unit by deed as provided in said Act.

ARTICLE II

Name and Description

Section 1. Identification of Units. The name by which the Property will be known is Evergreen Townhomes, a Condominium.

The name under which the business operation and affairs of the Property and Unit Owners shall be managed on behalf of the Unit Owners is Evergreen Townhomes, a Condominium Homeowners Association, a collectivity of Unit Owners under the Pennsylvania Uniform Condominium Act.

Section 2. Description of Property. The property herewith submitted to the condominium form of ownership under the Act is described on The Declaration Plan, and is also legally described as is set forth on Exhibit "A", attached hereto as a part hereof, including a description of the boundaries of each unit with the unit identification numbers. No unit may be subdivided.

In addition, common areas of this condominium are designated in Exhibit "A".

ARTICLE III

Units and Common Elements

Section 1. Identification of Units. The Property consists of Units and Common Elements shown on the Declaration Plan professionally verified in accordance with Section 3210 of the Act. Each Unit is numerically identified on the Declaration Plan by the Unit Designation assigned to each Unit. The Declaration Plan is or is to be recorded in the Office of Recorder concurrently with the recordation hereof. For any and all purposes, each Unit may be identified and shall be deemed fully and accurately described solely by reference to the letter and number designed on the Declaration Plan.

Section 2. Description of Units. Each Unit is intended for independent residence use and consists of the following portions of a building:

1. Interior portion enclosed within walls, ceilings and floors including all interior walls, floors and ceilings and their coverings;
2. All doors, windows, grills and vents together with all their hardware and their appurtenances and accessories;

3. All appliances, fixtures, electrical switches and receptacles, internal wiring common to the unit, tubs, faucets, hot and cold water systems, heating system, water closets, tubs, showers, sinks, cabinets, meters and similar accessories;
4. All that undivided proportionate interest in the Common Elements assigned to it.

The following portions of a building are not included in the above.

1. All pipes, ducts wires, cables, passageways or conduits as may be of service to more than one unit or to common elements.
2. All items of service, use or benefit to more than one unit.

Section 3. Description of Common Elements. The Common Elements are as defined above and consist of all parts and portions of the Property not included in Units, and not including such portions of the Property or rights therein as are otherwise owned and reserved. The Common Elements specifically include all items of service, use, or benefit to more than one unit and as so designed, installed, and provided by Declarant, or by the Executive Board.

Section 4. Interest in Common Elements. Each Unit Owner shall own an undivided one-sixteenth (1/16) interest in the Common Elements. Such ownership runs with title to each Unit and may not be separated therefrom; provided, however, that the proportionate undivided interest in the Common Elements (expressed as a percentage) may be altered by the recording of an amendment to this Declaration, duly executed by all Unit Owners affected thereby. The total of all such undivided interests shall be 100 percent in the aggregate.

Section 5. Special Uses. Certain parts or portions of the Common Elements may be specially assigned in writing by the Executive Board for use by particular Unit Owners, and such written assignments shall be reasonably made with consideration for such assignees as well as for others as may be concerned or affected.

Section 6. Easements:

a. Each Unit Owner shall have an easement in common with all other affected Unit Owners to use all pipes, wires, ducts, cables, conduits, utility lines and other Common Elements serving his Unit and to any extent located in any other Unit, and such easement shall include also having the facility in place, and the servicing, maintaining, and replacing of same, and each Unit shall be subject to like easement in favor of all other affected Unit Owners.

b. Each Unit shall have an easement to the extent necessary for structural support over every other affected Unit and over each to the extent necessary, shall be subject to such easement for structural support.

c. The Property and all parts thereof is subject to reservation of coal and mining rights, oil and gas leases, right of way, easements, covenants, restrictions or conditions as may be set forth in prior instruments of record, and to right of way for utilities now or hereafter established or granted by Declarant or by the Executive Board. The property is subject to perpetual rights of way over prescribed common roadways for ingress and egress to Common Elements and to Units as necessary and convenient, but which, unless and until dedicated and accepted as public roads, shall be subject to the regulations and control of the Executive Board for the good of the Unit Owners.

Section 7. Utilities: It is understood and agreed that all unit properties are under and subject to and Owners assume by acceptance hereof to abide by any and all agreements between the Developer and public utilities and/or utility authorities and grant such bodies easements in the common areas and over, into, and upon each and every unit for the purpose of access to any utility instrument for the purpose of repair, replacement, reading, removal, or shutoff of such utilities in and on the units.

Each Unit Owner shall be responsible for the payment of total charges incurred for his unit. The Developer will cause utility services to be emplaced and the same will be delivered to the Condominium Homeowners Association. The Condominium Homeowners Association shall be responsible for the maintenance and repair and/or replacement of said utility lines.

ARTICLE IV

Use, Purposes and Restrictions

The Property, including the building, the Units, and the Common Elements intended to be used for the following purposes, and their use is hereby restricted as follows:

Section 1. Unit Restrictions. No Unit may be divided or subdivided into a smaller unit, nor may any portion of any Unit be added to or incorporated into another Unit, nor any portion less than all thereof sold or otherwise transferred without first amending the Declaration to show the changes in the Units, to be affected thereby.

Section 2. Residential Use. Each Unit is hereby restricted to residential use by the Unit Owner thereof, his tenants, his immediate family, guests and invitees. Each of the Units is intended for independent use and shall be used only as a residence and for the purposes incidental to such uses. The Declarant however shall have the right to use any Units owned by it for rental units, models and for sales and administrative offices.

Section 3. Use with Care. No Unit Owner shall do or permit any act which is illegal or in violation of any law, statute ordinance, rule or regulation of any local, state or federal government or agency having jurisdiction. No Unit Owner shall do or permit any act which would jeopardize the soundness or safety of the Property, or of any part of it, or impair any easement or appurtenance or any rights of others, without the unanimous consent of the Unit Owners affected thereby.

Section 4. Leasing. A Unit may be rented for residential purposes by the owner thereof under a lease for a term of at least one month, providing that the lease is made subject to all provisions as affect the owner himself to the end that the tenant shall be bound at least as is the owner with reference to possession, use and occupancy, and in all ways pertaining thereto of the By-Laws, Rules and Regulations of the Condominium.

Section 5. Use of Common Elements. The Common Elements or Common Areas may be used by all Unit Owners and/or tenants, their families, guests, and invitees, subject to the By-Laws, Rules, and Regulations and such rules and regulations as may be established by the Executive Board. Each Unit Owner may use the Common Elements in accordance with the purposes for which the Common Elements are intended without hindering or encroaching upon the lawful rights of other Unit Owners, and subject to the provisions hereof, the By-Laws, Rules, and Regulations and the Rules of the Executive Board.

Section 6. Access to Public Roads. Under no circumstances shall any Unit Owner's right of ingress or egress to and from any public area, public roads, or over Common Areas and lands be impaired where the same has been designated for such use.

Section 7. Maintenance and Repair of Common Elements. The maintenance and repair of Common Elements and the making of additions or improvements thereto shall be carried out only as provided under the By-Laws, Rules, and Regulations, established and adopted pursuant to the provisions of Section 3307 of the Act and recorded or to be recorded, as aforesaid, and as the same may be duly amended from time to time.

Section 8. Use Restrictions.

a. Except as herein provided with respect to the uses permitted by the Developer, no Unit shall be used for any other purpose than as a private dwelling for a person and his immediate

family, or by not more than three (3) unrelated persons, including a member or persons to whom the member shall have leased his Unit subject to all provisions with respect to use and occupancy and presence on the Property applicable to the Unit Owner himself. No one may permit or suffer anything to be done or kept upon the Property which will increase the rate of insurance on the Property or in the contents thereof, or which will obstruct or interfere with the rights of others or annoy them by unreasonable noises or otherwise and no one may commit or permit any nuisance or commit or suffer any immoral or illegal act to be committed anywhere in or upon the Property.

b. Each owner shall maintain his Unit in good condition, order, and repair, at his own expense. No Unit Owner shall display hang, store, or use anything whatsoever on his stoop or outside his Unit other than as may be permitted in accordance with the By-Laws, Rules, and Regulations established by the Executive Board. No member may paint, decorate, or otherwise alter or modify in any way the outside of his Unit, or install outside of his Unit any canopy awning, covering, radio or television antenna, or structure or addition of any kind whatsoever without the prior written consent of the Executive Board.

c. Trash, garbage, and other waste shall be kept only in sanitary containers and shall be disposed of in such manner as may be prescribed from time to time in the By-Laws, Rules, and Regulations established by the Executive Board. No articles or personal property belonging to any Unit Owner shall be stored in any portion of the Common Elements without the prior written consent of the Executive Board.

d. No one may overload the electrical wiring in the building or operate any machinery, appliance, accessories, or

equipment in such a manner as to cause, in the judgment of the Executive Board any unreasonable disturbance, or make any alterations .

e. Uses and Structures. No Unit or any part thereof shall be used for any purpose except as set forth herein, nor shall any business of any kind be conducted therein. No motor vehicle other than a private passenger type shall be stored or parked in the parking area or parked on the Property. No Unit Owner shall have any additional motor vehicles on the premises for purposes of service or hobby such as tearing down or putting together motor vehicle other than changing the oil and washing of the same. There shall be no storing of any old or junked or hobby type car on the premises. No business or trade of any kind or noxious or offensive activity shall be carried on in any Unit nor shall anything be done thereon which may be or become an annoyance or nuisance to the occupants of other Units. No boat, trailer, tent, shack or other such structure shall be located, or erected or used on any part of the Property, temporarily or permanently other than what has been constructed for use of Unit Owners by the Developer.

f. Signs. No sign of any kind shall be displayed to the public view on any Unit except one temporary sign of not more than three square feet, advertising the Property for sale or rent. No such sign shall be illuminated.

g. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit on the Property except that dogs, cats or other domesticated household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose and provided that no more than (2) pets in the aggregate may be kept in any such Unit, and said pets must be housed indoors, and conform to all local ordinances and regulations.

h. Nuisances. No noxious or offensive activity shall be carried on upon any Unit, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. The decision as to whether any activity is noxious or offensive shall be decided exclusively by the governing body in such manner as it may elect to make such decision.

i. Mailboxes. Mailboxes shall be retained as the same nor are or, as designated by the Executive Board from time to time in the future. No Unit Owner shall keep or maintain a distinctive or different mailbox than as set forth herein.

j. Clotheslines. No outdoor clotheslines.

k. Fences. No fence of any kind, wall, hedge, or similar structure shall be placed, erected or maintained anywhere on the Property without the written consent of the Executive Board.

l. The Executive Board may adopt such rules and regulations concerning use, occupancy or other matter, including provisions for reasonably limiting or suspending certain rights and/or privileges as it deems appropriate; and may alter such By-Laws, Rules, and Regulations as from time to time it may determine.

m. Violation of any By-Law, Rule, or Regulation of the Executive Board and/or of any provision of the Declaration hereof shall give the Executive Board or any representative acting in its behalf in addition to any other rights, the rights also:

(1) To enter the Unit in which, or in connection with, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing, person creature, and/or condition that may exist therein contrary to the intent and meaning hereof without being guilty of trespass or wrong otherwise.

(2) To enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

(3) To levy as an assessment or charge as a Common Expense against any Unit Owner an amount equal to damages so sustained plus costs of suit and reasonable attorneys' fees by virtue of such Unit Owner's committing and/or permitting such violation upon finding thereof by the Executive Board.

n. The Executive Board shall maintain, repair and replace all Common Elements, wherever situate, except that in the event such maintenance, repair or replacement was caused by negligence or misuse of a Unit Owner, or of any other occupant of his Unit, such expense shall be charged to such Unit Owner. Each Unit Owner shall maintain, repair, and replace, at his own expense, all portions of his Unit as are separate and private to it and him. Each Unit Owner shall be responsible for damage to any other Unit and/or to any Common Elements caused intentionally, negligently, or by failure to properly take care of his own Unit, whether or not the fault is in him personally and/or in any other occupant of his Unit.

o. Anything herein or elsewhere to the contrary notwithstanding, the Developer shall have the right to utilize any Units owned by the Declarant as models or as general or sales offices for sale and promotion purposes including the sale and promotion of the property or projects other than the property and purposes and in such manner as the Developer deems it may reasonably require.

ARTICLE V

Common Expenses

Section 1. Condominium Expenses. The Declarant, for each Unit owned, hereby covenants with, and each subsequent Unit Owner(s) by acceptance of a deed thereof, whether or not it shall be

so expressed in such deed, is conclusively deemed to covenant and agree to pay to the Executive Board or its designee, as representative of Evergreen Townhomes, a Condominium, such assessments and/or charges as may be levied by the Executive Board to cover the reasonable share of Common Expenses incurred in maintaining, improving and managing Evergreen Townhomes, a Condominium. Such assessment and/or charges shall run with the land and shall be a continuing lien upon each Unit until paid. Such assessments and/or charges may be enforced in any court of law or equity having jurisdiction thereof, as provided for herein shall be subordinate to the lien of any first mortgage.

Section 2. Special Expenses. Where in the judgment of the Executive Board it is determined that an expense is peculiar to and of special benefit to only certain Units, one or more, and is not foreseeably to be repeated generally throughout the property, it shall make a special assessment on such account against only such Units as are so affected, and the same shall be subject to the foregoing provisions of Section 1, hereof, like any other assessment. The provisions hereof shall be applicable under Article VII, Section 1 (e) below.

ARTICLE VI

Encroachments

If any portion of a Unit or Common Element encroaches upon another Unit, a valid easement for the encroachment and the maintenance of same, so long as it stands, shall and does exist. In the event a building is partially or totally destroyed and then rebuilt, encroachments aforesaid may continue as a part of any restoration.

ARTICLE VII

Easements

Section 1. Unit Owners and Executive Board. (a) Each Unit Owner, as needed, shall have an easement in common with all other affected Unit Owners to have, use and repair, or to have repaired or replaced, as necessary, all pipes, wires, ducts, cable, conduits, chimneys, public utility lines and other elements in any way located in any Unit or forming any part of the Common Elements. In addition, each Unit shall be subject to, and shall have, such easements of support and shelter from, under, against and over such other Units, as may be necessary for the soundness and quiet enjoyment of each Unit, and as may be necessary for the soundness and needs of structural Common Elements. (b) The Executive Board shall have the right to reasonable access to each Unit to inspect the same, and to provide for removal of violations therefrom and generally to the extent set forth under the By-Laws, Rules, and Regulations, and to provide for service, maintenance, repair or replacement of Common Elements as necessary; and to service, maintain, repair, and replace such other equipment or elements as may be the responsibility of the Executive Board. (c) All repair work contemplated by this Article shall be performed solely through the Executive Board; provided, however, that nothing contained herein shall be construed to prevent the levying of a special assessment and/or charge on one or more Unit Owners for work performed in relation to the easements provided and referred to herein. (d) All such easements shall run with the land and inure to the benefit of and be binding upon the Executive Board, each Unit Owner and each mortgagee, lessee, occupant, or other person having any interest in any Unit or in Common Elements. (e) Assessments, as special assessments under Article V, Section 2, above, shall be made by the Executive Board after it determines that one or more Unit Owners are responsible for the problem or problems which necessitated the work performed.

ARTICLE VIII

Executive Board and Voting

Section 1. Unit Owners Association. A Unit Owners Association shall be organized contemporaneously herewith. Membership in the Association shall consist exclusively of all the Unit Owners.

Section 2. Powers of Unit Owners Association. The Association hereinabove described shall have all powers as set forth in Section 3302 of the Act.

Section 3. Executive Board Members and Officers. The Association shall elect an Executive Board who may act in all instances on behalf of the Association. The names of the first members of the Executive Board are, Calvin E. Zimmerman, President, Mark Begatel, Vice President and Secretary, and Michael Williams, Treasurer. The aforesaid first members shall serve until their successors have been elected by the Association pursuant to By-Laws, Rules, and Regulations and after deeds have been recorded placing title to at least seventy-five (75%) percent of the Units in the names of owners other than the Declarant.

Not more than sixty (60) days after conveyance of twenty-five (25%) percent of the Unit to Unit Owners other than Declarant, not less than twenty-five (25%) percent of the members of the Executive Board shall be elected by Unit Owners other than the Declarant.

Not later than sixty (60) days after conveyance of fifty (50%) percent of the Units to Unit Owners, other than a Declarant, not less than thirty-three and one-third (33 1/3%) percent of the members of the Executive Board shall be elected by Unit Owners other than the Declarant.

Section 4. Voting. Each Unit Owner is automatically a member of the Association. Upon termination of his ownership of a Unit, his membership thereupon automatically terminates and thereupon transfers and inures to the new Unit Owners, each Unit

Owner shall be entitled to the same number of votes as are assigned to his Unit hereunder and under any amendments hereto. All meetings of the Unit Owners shall take place in accordance with the Association By-Laws, Rules, and Regulations.

ARTICLE IX

Separate Mortgages, Taxes, Utility Charges

Section 1. Mortgages. Each Unit Owner shall have the right to mortgage or encumber only his own designated Unit together with only his proportionate undivided share in the Common Elements, and he shall have no right, power, or authority to in any way encumber or affect the title to any other part of or interest in the property.

Section 2. Taxes. It is understood that real estate taxes are to be separately taxed to each Unit Owner for his Unit and his undivided percentage of ownership in the Common Elements.

Section 3. Utilities. Each Unit Owner shall pay for his own telephone, electricity, and/or other utilities which are separately metered or billed to each user by the appropriate utility company. Utilities not separately metered or billed may be treated as part of the Common Expenses or in the event the said utility services are supplied to some Units but less than all Units, then Board may reasonably prorate these charges over the Units using such services, and require such Unit Owner to pay his prorata share of such charges, which shall become a charge or lien against the Unit, enforceable under Article V, Section 2, above. The decision of the Executive Board to prorate, and its determination of prorate shares and charges shall be final and binding on all.

ARTICLE X

Insurance

Section 1. Coverage. The Executive Board shall obtain and maintain, on behalf of and for the benefit of the Unit Owners,

insurance coverage as set forth in paragraphs 2 through 6 hereof. All insurance affecting the property shall be governed by the provisions of this Section.

Section 2. Physical Damage. All buildings and improvements (as defined in paragraph 3 hereof), and all of the personal property owed in common shall be insured, for the benefit of the Executive Board, the Unit Owners and mortgagees of Units, against risks of physical damage as follows:

(a) Amounts. As to real property, for an amount equal to its full insurable replacement cost; as to personal property, for an amount equal to its actual cash value. At time of obtaining any insurance on real property under this section, and at least annually thereafter, the Executive Board shall obtain an appraisal from a qualified appraiser for the purpose of determining the replacement cost of such real property.

(b) Risks Insured Against. The insurance shall afford protection against loss or damage by reason of:

- (i) Fire and other hazards covered by extended coverage endorsement;
- (ii) Vandalism and malicious mischief;
- (iii) Such other risks of physical damage as from time to time may be customarily covered with respect to buildings and improvements similar in construction, location, and use as those on the Property and;
- (iv) Such other risks of physical damage as the Executive Board may from time to time deem appropriate.

(c) Other Provisions. The insurance shall contain the following provisions:

- (i) Waivers by the insurer of rights of subrogation against the Executive Board and the Unit Owners;
- (ii) That the insurance shall not be affected or diminished by reason of any other insurance carried by any Unit Owner or mortgagee of a Unit;

(iii) That the insured shall not be affected or diminished by any act or neglect of any Unit Owner or any occupants or owners of any improvements when such act or neglect is not within the control of the Executive Board;

(iv) That the insurance shall not be affected or diminished by failure of any Unit Owner or any occupants or owners of any improvements to comply with any warranty or condition when such failure to comply is not within the control of the Executive Board;

(v) That the insurance may not be cancelled or substantially modified (except for the addition of property or increases in amount of coverage) without at least thirty (30) days prior written notice to the named insured, and to all mortgagees of Units;

(vi) Provisions for indemnification of mortgagees of Units and for the disbursement of their several interest to specific Units as they appear;

(vii) The standard mortgagee clause, except that any loss otherwise payable to named mortgagees shall be payable in the manner set forth in Subsection (c) or Paragraph 11, hereof;

(viii) Adjustment of loss shall be made with the Executive Board as the exclusive authority for the insured;

(ix) Proceeds for losses under \$10,000 shall be paid to the Executive Board and proceeds for losses over \$10,000 shall be payable to the Trustee (see paragraph 11, below);

(x) The named insured shall be the Evergreen Townhomes, Condominium Executive Board of Directors;

(xi) All policies shall be written with a company licensed to do business in the Commonwealth of Pennsylvania and holding a rate of "AAA" or better by Best's Insurance Reports, or by an equivalent rating bureau should Best's Insurance Reports cease to be issued;

(xii) The insurance policies to the Executive Board on behalf of the Unit Owners and covering the Condominium Property cannot be cancelled, invalidated or suspended on account of the conduct of any one cancellation, invalidation, or suspension for any reason be effected without at least thirty (30) days prior written notice to each Unit Owner and all holders of any mortgages permitted hereunder; and

(xiii) That all policies covering the Condominium Property cannot be cancelled, invalidated, or suspended on account of the conduct of any officer or employee of the Executive Board or any Owner without prior demand in writing that the Executive Board or such Owner cure the defect and without providing a reasonable period of time thereafter in which to cure same.

(xiv) If possible secure agreed amount clause or waiver of co-insurance.

Section 3. Casualty and Liability Insurance. To the extent available, the Executive Board shall obtain and maintain comprehensive general liability insurance in such limits as the Executive Board may from time to time determine insuring the Executive Board, the Officers, the Manager (at the discretion of the Executive Board), and each Unit Owner for claims arising out of or in connection with the ownership, operation, or maintenance of any of the Property, excluding however, Unit Owner liability coverage for claims arising in connection with that portion of the Property used and occupied exclusively by a particular Unit Owner. Such comprehensive general liability insurance shall also cover, to the extent such insurance is available, cross liability claims of one insured against the other. The Board shall review such limits once a year.

Section 4. Directors and Officers Liability Insurance. To the extent available the Executive Board shall obtain and maintain a comprehensive general liability insurance policy in such limits as the Executive Board may from time to time determine or in such limits as may be available, insuring the Executive Board members, the Officers, the Manager (at the discretion of the Executive Board), for claims arising out of or in connection with the management, operation or maintenance of any of the Property, such policy shall insure the Executive Board members and Officers against any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith.

Section 5. Workmen's Compensation Insurance. The Executive Board shall obtain and maintain Workmen's Compensation Insurance, if necessary, to meet the requirements of the laws of the Commonwealth of Pennsylvania.

Section 6. Other Insurance. The Executive Board is authorized to obtain and maintain such other insurance or bonds as it shall determine from time to time to be desirable.

Section 7. Insurance by Unit Owners. Unit Owners shall not be prohibited from carrying insurance for their own benefit provided that all such policies shall contain waivers of subrogation against all other parties insured by the comprehensive general liability insurance of paragraph 4, and further provided that the liability of the carriers issuing the insurance obtained by the Executive Board shall not be affected or diminished by reason of any such additional insurance coverage by any Unit Owner. In no event, however, shall the insurance coverage obtained and maintained by the Executive Board hereunder be brought into contribution with insurance purchased by individual Unit Owners of their mortgagees.

Section 8. Filing of Individual Policies. Each Unit Owner shall file any individual policies of insurance (excluding policies restricted to personal property) with the Executive Board within thirty (30) days after purchase thereof. The Executive Board shall maintain the file thereof.

Section 9. Premiums. Premiums upon insurance policies purchased by the Executive Board shall be paid as a Common Expense.

Section 10. Trustee. All insurance policies purchased by the Executive Board shall be for the benefit of the Executive Board, the Unit Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds covering property losses under \$10,000 shall be payable to the Executive Board and all proceeds covering losses in excess of that amount shall be paid to a bank with trust powers, insured by an agency of the United States,

or to such other person or entity as is acceptable to the Executive Board, and the insurance carrier, which trustee is herein referred to as the "Trustee". The Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of the policies, nor for the failure to collect any insurance proceeds. The duty of the Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Executive Board, the Unit Owners and their mortgagees in the following shares:

(a) Common Elements. Proceeds on account of damage to Common Elements as undivided share for each Unit Owner, such share being the same as the percentage of undivided interest of such Unit Owner as set forth in the Declaration.

(b) Units. Proceeds on account of damage to Units shall be held in the following undivided shares:

(i) When a building is to be restored--for the Owners of damaged units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Executive Board. (Damage suffered by a Unit Owner shall not be deemed to include damage to any items specifically excluded from insurance coverage, pursuant to the provisions of Section 2 hereof.)

(ii) When a building is not to be restored--an individual share for each Unit Owner, such share being the same proportion as the Unit's percentage of ownership of undivided interests as set forth in the Declaration, bears to the total percentage of ownership of the units not to be restored.

(c) Mortgagees In the event a mortgagee endorsement has been issued, with respect to a particular unit, the share of the Unit Owners shall be held in trust for the mortgagee and the Unit Owner as their interest may appear; provided, however, that no mortgagee shall have the right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired.

Section 11. Distribution of the Insurance Proceeds by Trustee. Proceeds of insurance policies received by the Trustee shall be distributed to or for the benefit of beneficial owners in the following manner:

(a) Expense of the Trust. All expenses of the Trustee shall be first paid or provisions made therefore.

(b) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof of consummating the full repair or reconstruction of the property to a condition substantially similar to that which existed immediately prior to the damage. Each unit owner shall personally assume the additional expenses of any improvements made which would restore the unit to a condition superior to that which existed immediately prior to the damage.

(c) Unit Owners Liability. In the event that the proceeds of insurance are not sufficient to repair or reconstruct the damaged portions of the property, then the repair or reconstruction shall be accomplished by the Association as a common expense, in proportion to the undivided percentage interests in the common elements. Unit owners may apply the proceeds from any individual insurance policies that may have been obtained to the share of such common expense as may be assessed against them.

(d) No Reconstruction or Repair. The damage shall not be repaired or reconstructed if the condominium is terminated or if eighty percent (80%) of the unit owners vote not to rebuild. If the unit owners so vote not to rebuild, the insurance proceeds shall be distributed to all the unit owners and lien holders, as their interests may appear, in proportion to their common element interests. If the condominium is terminated, then the proceeds shall be distributed as set forth in the uniform condominium act.

ARTICLE XI

MAINTENANCE AND ALTERATIONS

Section 1. Each unit owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own units. No alterations of any of the common elements, or any additions or improvements thereto, shall be made by any unit owner without the prior written approval of the Executive Board.

ARTICLE XII

UNIT SUBJECT TO DECLARATION

Section 1. By-Laws, Rules, and Regulations: All present and future unit owners, tenants, mortgagees, and occupants of units shall be subject to and shall comply with the provisions of this Declaration, with those of the By-Laws, Rules, and Regulations, and with the duly promulgated rules and regulations adopted by the Executive Board and with all amendments of the same. Acceptance of a deed of conveyance or the acceptance of inheritance or the entering into a lease, or the entering into occupancy of a unit, shall constitute an agreement to be so bound, and that the aforementioned instruments are accepted and ratified by each such unit owner, tenant, occupant, or mortgagee; and that all such provisions of the aforementioned instruments shall be deemed and taken to be covenants running with the land and shall bind every person at any time having any interest or estate in such unit as though all such provisions were set forth in full, in each and every deed, or inheritance, or lease, or any other relevant documents.

ARTICLE XIII

LIABILITY AND INDEMNIFICATION

Section 1. Liability of Members of the Executive Board and Officers: The members of the Executive Board and the officers and any assistant officers:

1. Shall not be liable to the unit owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or gross negligence;

2. Shall have no personal liability in contract to a unit owner or any other person or under any agreement, instrument or transaction entered into by them on behalf of the Executive Board or unit owners in their capacity as such;

3. Shall have no personal liability in tort to a unit owner or any other person or entity direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or gross negligence, or acts performed for them, in their capacity as such; and

4. Shall have no personal liability arising out of the use, misuse or condition of the property, or which might in any other way be assessed against or imputed to them as a result or by virtue of their capacity as such.

Section 2. Indemnification by Unit Owners: The unit owners shall indemnify and hold harmless any person, his heirs and personal representatives, from and against any and all personal liability, and all expenses, including counsel fees, incurred or imposed, or arising out or in settlement of any threatened, pending or completed action, suits or proceedings, whether civil, criminal, administrative or investigative, instituted by any one or more unit owners or any other persons or entities, to which he shall be threatened to be made a party by reason of the fact that he is or

was a member of the Executive Board or an officer or assistant officer, other than to the extent, if any, that such liability or expense shall be attributable to his willful misconduct or gross negligence, PROVIDED, in the case of any settlement that the Executive Board shall have approved the settlement, which approval shall not be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or vote of unit owners or of the Executive Board or otherwise. The indemnification by the unit owners set forth in this Section 2 of Article XIII shall be paid by the Executive Board on behalf of the unit owners and shall constitute a common expense and shall be assessed and collectible as such.

Section 3. Liabilities of Individual Unit Owners: The unit owners, any lessees or sublessees of a unit shall be jointly and severally liable for liabilities arising out of their own conduct arising out of the ownership, occupancy, use, misuse or condition (except when the result of a condition affecting all or other parts of the property) of that unit.

Section 4. Costs of Suit in Actions Brought by One or More Unit Owners on Behalf of all Unit Owners: If any action is brought by one or more but less than all unit owners on behalf of all unit owners and recovery is had, the plaintiff's expenses, including reasonable counsel fees, shall be a common expense, provided that if such action is brought against all unit owners or otherwise against all other unit owners or against the Executive Board, the officers, assistant officers, employees or agents in their capabilities as such, with the result that the ultimate liability asserted would, if proved, be born by all the unit owners, the plaintiff's expenses, including counsel fees, shall not be charged to or born by the other unit owners, as a common expense or otherwise.

Section 5. Notice of Suit and Opportunity to Defend:

Complaints brought against all unit owners or the Executive Board, or the officers, assistant officers, employees or agents thereof, in their respective capacities as such, or the property as a whole, shall be directed to the Executive Board, which shall promptly give written notice thereof to the unit owners and the holders of any Permitted Mortgages and shall be defended by the Executive Board, and the unit owners and such holders shall have no right to participate other than through the Executive Board in such defense. Complaints against one or more but less than all the unit owners or units alleging liabilities covered by Section 3 of this Article XIII shall be directed to such unit owners, who shall promptly give written notice thereof to the Executive Board and to the holders of any Permitted Mortgages effecting such units and shall be defended by such owners.

ARTICLE XIV

AMENDMENT

Section 1. This Declaration may be amended, subject to the restrictions of the Act, by the vote of the unit owners and the mortgagees of 75% of the common interests. No amendment shall be effective until properly recorded.

ARTICLE XV

TERMINATION

Section 1. The property may be removed from the provisions of the Act by a written ratification, duly recorded, and executed by all the unit owners, holders of all mortgages, judgments or other liens effecting the units. Once the property has been removed, and if it is not to be sold, the former unit owners shall become tenants in common with the property as provided by the Act.

ARTICLE XVI

INTERPRETATION

Section 1. Matters of dispute or disagreement between unit owners or matters which require interpretation of this Declaration or the By-Laws, Rules, and Regulations of the Executive Board, shall be determined by the Executive Board, whose determination shall be binding and final, on all unit owners.

ARTICLE XVII

SEVERABILITY

Section 1. If any of the provisions of this Declaration or of the By-Laws, Rules, and Regulations or of the Act are held invalid, the validity of the remaining provisions shall not be effected thereby.

ARTICLE XVIII

CAPTIONS

Section 1. The captions herein are inserted only as a matter of convenience and in no way define, limit or describe the scope of the Declaration nor the intention of any provisions hereof.

ARTICLE XIX

CONFLICTS

Section 1. This Declaration is set forth to comply with the requirements of the Act. In the event of any conflict between this Declaration and the provisions of the Act, the Act shall control.

ARTICLE XX

MEMBERSHIP IN ASSOCIATIONS

Each Unit owner shall become a member of the Evergreen Townhomes, Condominium Association, and a member of the Evergreen Townhomes, Condominium Association Homeowners Association, both being nonprofit corporations, one for the particular condominium and

one for the entire development respectively. One Unit as elected or appointed by the Executive Board of Directors will act as a representative to the Evergreen Townhomes Condominium Homeowners Association.

IN WITNESS WHEREOF, the Declarant has hereunto caused these presents to be executed and his seal to be hereunto affixed at State College, Pennsylvania, this 16th day of October, 1981.

Calvin E. Zimmerman (SEAL)
Calvin E. Zimmerman

Mark C. Bigatel (SEAL)
Mark C. Bigatel

COMMONWEALTH OF PENNSYLVANIA))
COUNTY OF CENTRE) SS:

Before me the undersigned personally appeared Calvin E. Zimmerman and Mark C. Bigatel, known to me or satisfactorily proven to be the person whose name is subscribed to the within Declaration and acknowledged that he executed the same for the purposes herein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and subscribed my seal the 16th day of October, 1981.

Daryl F. Rightmire

DARYL F. RIGHTMIRE, NOTARY PUBLIC
BELLEFONTE ZONE, CENTRE COUNTY
MY COMMISSION EXPIRES OCT. 4, 1984
Member, Pennsylvania Association of Notaries

All that certain tract of land situate in Ferguson Township Centre County, Pa., bounded and described as follows:

BEGINNING at an iron pin in the intersection of the easterly right-of-way line of Corl Road and the southerly right-of-way line of Circleville Road; thence along the southerly right-of-way line of Circleville Road north 33° 04' 30" East 478.54 feet to an iron pin, being the north-westerly corner of lands owned by the State College Joint School Authority (Deed Book 232, Page 417); thence along the lands of the State College Joint School Authority South 56° 55' 30" East 336.12 feet to an iron pin; thence continuing along lands of the State College Joint School Authority South 14° 12' 30" West 526.50 feet to an iron pin, being in the Easterly line of lands owned now or formerly by Walter T. McCormick (Deed Book 179, Page 260); thence along the lands of McCormick North 75° 47' 30" West 239.39 feet to an iron pin, being in the Easterly right-of-way line of Corl Road; thence along said right-of-way line North 37° 47' 30" West 296.20 feet to an iron pin, being the place of beginning. CONTAINING 5.20 acres.

BEING the same premises which Nittany Academy, Inc., and State College Children's House, Inc., by their deed dated June 2, 1981, and intended to be recorded herewith, granted and conveyed the same unto Mark C. Bigatel and Calvin E. Zimmerman, t/d/b/a Zimmerman and Bigatel, the Mortgagors herein.