

RECORDER OF DEEDS
CHESTER COUNTY, PA

2001 JAN 25 AM 10: 29

Pursuant to the provisions of 68 P.S.C.A Section 5201
this Declaration shall be recorded
in the Office of the Recorder of Deeds
in and for Chester County, Pennsylvania
and is to be indexed in the same records
as are notarized for the recording of a deed
and shall identify **Fallowfield Development Corp.** (Declarant)
as the **grantor**, and
Branford Village, a Planned Community (Name of Planned Community)
as the **grantee**.

All of the real property made subject to this Declaration
is located in
East Fallowfield Township,
Chester County,
Pennsylvania

**DECLARATION
OF COVENANTS, RESTRICTIONS, EASEMENTS
AND ESTABLISHMENT OF HOMEOWNERS ASSOCIATION
FOR BRANFORD VILLAGE, A PLANNED COMMUNITY
IN EAST FALLOWFIELD TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA**

TABLE OF CONTENTS

PREAMBLE	1
ARTICLE I DEFINITIONS	3
ARTICLE II DESCRIPTIONS	8
2.1. Property subject to this Declaration	8
2.2. Name, location and dimensions of Community	8
2.3. Plats and Plans	8
2.4. Units	9
2.5. Common Elements	9
2.6. Limited Common Elements or Limited Facilities	9
2.7. Convertible, Withdrawable, and Additional Real Estate	9
2.8. Uncompleted Improvements and Common Elements	10
2.8.1 Common Authority and Responsibility	10
2.8.2 Completion by Phase	10
2.8.3 Responsibility prior to completion	10
2.8.4 Financial security for completion	11
2.8.5 Completion	11
ARTICLE III PROPERTY RIGHTS AND RESPONSIBILITIES	12
3.1. Common Elements	12
3.1.1 Common Facilities	12
3.1.2 Disposition of Common Facilities	12
3.1.3 Use of Common Elements	12
3.1.4 Owner's Easement of Enjoyment	13
3.1.5 Delegation by Owner	13
3.2 Deed Restricted Common Open Space	13
3.3 Limitation of Easements, Rights and Privileges	13
3.4 Easements and Licenses	14

ARTICLE IV	BRANFORD VILLAGE HOMEOWNERS ASSOCIATION	16
4.1.	The Association	16
4.1.1.	Powers and Duties of the Association	16
4.2.	Maintenance Responsibilities of the Association	17
4.2.1.	Common Elements	17
4.2.2.	Landscaping within Branford Boulevard	18
4.3.	Insurance to be carried by association	18
4.4.	Membership and Voting Rights	18
4.4.1.	Exercise of vote	19
4.5.	Executive Board	19
4.5.1.	Powers and Duties of the Executive Board	19
4.5.2.	Right and Limitation of Declarant to appoint Members of the Executive Board	19
4.5.3.	Indemnification of Officers, Executive Board and Committee Members	20
ARTICLE V	ASSESSMENTS	21
5.1.	Creation of the Lien and Personal Obligation of Assessments	21
5.2.	Estoppel Certificate	22
5.3.	Purpose of Assessments	22
5.4.	Annual Assessments	22
5.5.	Special Assessments for Capital Improvements	23
5.6.	Notice and Quorum for any Action Authorized Under Section 5.5	23
5.7.	Payments of Assessments	23
5.8.	Effect of Non Payment of Assessments: Remedies of the Association	23
5.8.1.	Enforcement by Suit	24
5.8.2.	Enforcement by Lien	24
5.9.	Exempt Property	24
5.10.	Enforcement by East Fallowfield Township and Assessments Therefor	25
ARTICLE VI	RESTRICTIVE COVENANTS	26
6.1.	In Compliance with Zoning Ordinance of East Fallowfield Township	26
6.2.	Single Family Residences Only	26
6.3.	Prohibition Against Water Wells and Sewage Treatment (Septic System)	27
6.4.	Temporary Facilities	27
6.5.	Business Use	27
6.6.	Prohibition Against Bed and Breakfast Facilities	27
6.7.	Animals	28
6.8.	Nuisances	28
6.9.	Vehicles	28
6.10.	Fences	28
6.11.	Swimming Pools	29
6.12.	Surface Water Flow	29
6.13.	Signs	29
6.14.	Antennas	29

ARTICLE VII SPECIAL DECLARANT RIGHTS 30

 7.1. Right to subject Property to Easements 30

 7.2. Exercise of Rights 30

 7.3. Right to Use of Easements 30

 7.4. Exception for Development and Sales 30

ARTICLE VIII SECURED LENDERS 31

 8.1. Rights of Secured Lenders 31

 8.2. Obligations of Association to Secured Lenders 31

ARTICLE IX GENERAL PROVISIONS 33

 9.1. Enforcement 33

 9.2. Severability 33

 9.3. Amendment 33

 9.4. Conflict 34

 9.5. Interpretation 34

DECLARATION
OF COVENANTS, RESTRICTIONS, EASEMENTS
AND ESTABLISHMENT OF HOMEOWNERS ASSOCIATION
FOR BRANFORD VILLAGE, A PLANNED COMMUNITY
IN EAST FALLOWFIELD TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA

This Declaration is made this 21st day of December, 2000 by Fallowfield Development Corp., a Pennsylvania corporation, (herein referred to as "Declarant").

PREAMBLE

WHEREAS, Declarant is the owner of all of the real property described in Exhibit "A" attached to and made a part of this Declaration (herein referred to as the "Subject Property"); and

WHEREAS, the Subject Property has been approved for subdivision by East Fallowfield Township, Chester County, Pennsylvania as shown on that certain plan identified as *Over-all Subdivision Plan for Branford Village* prepared by Brandywine Valley Engineers, a Division of Vollmer Associates LLP, Kennett Square, Pennsylvania dated 7/19/99 last revised 12/20/2000 (herein referred to as "Subdivision Plan") which such Subject Property has been subdivided by the recordation of said Subdivision Plan subject as aforesaid in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania on JAN 25, 2001 as Plan 9015651 and

WHEREAS, development and improvement of the Subject Property has been approved by East Fallowfield Township, Chester County, Pennsylvania pursuant to the provisions of the East Fallowfield Zoning Ordinance as amended including, *inter alia*, the provisions of Article 1100 thereof, and pursuant to the terms and conditions of 1) the Decision and Order of the Board of Supervisors of East Fallowfield Township dated March 10, 1999 *in re: Application of Fallowfield Development Corp.*, attached hereto as Exhibit "B", and 2) that certain letter dated March 10, 2000, attached hereto as Exhibit "C", memorializing the decision rendered by the East Fallowfield Township Board of Supervisors conditionally approving the Subdivision Plan (herein collectively referred to as "Development Conditions"), which such subdivision, improvement and development of the Subject Property pursuant to the Subdivision Plan and to the Development Conditions is herein referred to as "Approved Development"); and

WHEREAS, Declarant desires to develop and improve the Subject Property according to the Subdivision Plan, as amended if amended, and pursuant to all requirements of all governmental entities having jurisdiction thereof including, without limitation the Development Conditions, with common authority and responsibility, with the intent that the Owners of the Residential Dwelling Unit Lots and the owners and occupants of the dwellings constructed on the Subject Property and their invited guests may have the benefit, use and enjoyment of certain portions and improvements to the Subject Property which shall include all those certain portions of the Subject Property referred to in this Declaration and/or designated on the Subdivision Plan as "Open Space" together with all improvements to such Open Space including, but not limited to, certain portions of the Subject Property designated for the

purpose of storm water drainage management detention and retention together with certain improvements to the Subject Property, including but not limited to certain basins, pipes, swales, inlets, systems and other components and facilities appurtenant thereto as are constructed for the purpose of storm water drainage management (herein such portions and improvements are collectively referred to as "Storm Water System"), subject to the obligation of each Owner of any part of the Subject Property to contribute to the cost of maintenance and improvement of the Open Space, improvements thereto, and Storm Water System (herein such Open Space, improvements thereto and Storm Water System are referred to collectively as the "Common Elements") and all other obligations of the Association all as more fully set forth in this Declaration; and

WHEREAS, the Declarant desires to provide for the preservation and enhancement of the property values, amenities, and opportunities in the Subject Property contributing to the personal and general health, safety and welfare of residents and for the maintenance of the Common Elements, and to this end desires to make the Subject Property subject to the terms and provisions of the Pennsylvania Uniform Planned Community Act (68 P.S.C.A. §5101, *et seq.*) (herein referred to as the "Act") and pursuant to the provisions of said Act, to make provision for the maintenance and administration of the Common Elements, the performance of all other obligations of the Association, the enforcement of covenants and restrictions set forth in this Declaration or in any document or plan referred to in this Declaration, and the method by which assessments and charges shall be made and enforced against each parcel of land which has been made subject to this Declaration and the Owner thereof for the aforesaid purposes and to subject the Subject Property to the covenants, restrictions, easements, charges and liens set forth in this Declaration, each and all of which is and are for the benefit of the Subject Property and for each Owner of a part thereof; and

WHEREAS, to provide a means for meeting the purposes and intents set forth in this Declaration, the Act, and the requirements of the Township of East Fallowfield, Chester County, Pennsylvania, the Declarant has incorporated, under the laws of the Commonwealth of Pennsylvania, the "Branford Village Homeowners Association, Inc.," a non-profit corporation in which each Lot Owner in the Subject Property shall be a Member and which such Membership shall run with and be inseparable from ownership of a Lot in the Subject Property.

NOW, THEREFORE, Declarant hereby declares that the Subject Property and each part of, or Lot in, the Subject Property (excepting any part thereof, if any, Conveyed or to be Conveyed to Governmental/Public Service Entities) is and shall be held, transferred, sold, conveyed and occupied subject to the easements, covenants, conditions, restrictions, charges and liens set forth in this Declaration.

AND FURTHER, the Subject Property is, by this Declaration, made a Planned Community (as such term is defined by the Act) in accordance with the provisions of the Act.

AND FURTHER, Declarant hereby delegates and assigns to the "Branford Village Homeowners Association, Inc." the power and duty of maintaining and administering the Common Elements, administering and enforcing the covenants and restrictions set forth in this Declaration, collecting and disbursing the assessments and charges hereinafter set forth in this Declaration, and promoting the recreation, health, safety, and welfare of the residents of the Community of Branford Village.

ARTICLE I

DEFINITIONS

In addition to the terms set forth in this Article I, words and terms in this Declaration shall be defined pursuant to the provisions of the Act unless inconsistent therewith, in which case this Declaration shall control.

- 1.1. "Act" shall mean and refer to the Pennsylvania Uniform Planned Community Act, 68 P.C.S.A. §5101, *et seq.*
- 1.2. "Approved Development" shall mean and refer to the development and improvement of the Subject Property pursuant to and in accordance with
 - 1.2.1. the Subdivision Plan, as the same may be modified, as approved by East Fallowfield Township; and
 - 1.2.2. the East Fallowfield Zoning Ordinance of 1990, as the same may be amended; and
 - 1.2.3. that certain *Decision and Order* of the East Fallowfield Township Board of Supervisors dated March 10, 1999, attached hereto as Exhibit "B", as the same may be modified by the East Fallowfield Township Board of Supervisors; and
 - 1.2.4. that certain letter dated March 10, 2000, attached hereto as Exhibit "C", memorializing the decision rendered by the East Fallowfield Township Board of Supervisors conditionally approving the Subdivision Plan.
- 1.3. "Assignee Declarant." See Declarant.
- 1.4. "Association" shall mean and refer to the Branford Village Homeowners Association, Inc., a Pennsylvania non-profit corporation, its successors and assigns as organized pursuant to the provisions of the Act and with, except as specifically granted or limited as set forth in this Declaration, all powers described in the Act.
- 1.5. "Association Interest" shall mean and refer to the relative interest in the Association of each Residential Dwelling Unit Lot. The Association Interest of each Residential Dwelling Unit Lot shall be $405/1000^{\text{ths}}$ of one percent (.00405).
- 1.6. "Common Elements" shall mean and refer to the Common Facilities and the Controlled Facilities.
 - 1.6.1. "Common Facilities" shall mean all real property interest (including all of the improvements thereto) of all of the Subject Property not designated as Residential Dwelling Unit Lots, including therein lands designated as "Open Space" and "Common Open Space" (but shall not include portions of Lots designated as "Deed Restricted Common Open Space") on the Subdivision Plan and the Storm Water System, excluding areas and improvements Conveyed or to be Conveyed to any Governmental/Public Service Entity.
 - 1.6.2. "Controlled Facilities" shall mean and refer to those portions of the Storm Water System that are not located within the Common Facilities. The Controlled Facilities shall be maintained, improved, repaired and replaced by the Association.

- 1.7. "Common Expense Liability" shall mean and refer to liability of each Residential Dwelling Unit Lot for a proportionate share of General Common Expenses and Special Allocation Expenses. The Common Expense Liability of each Residential Dwelling Unit Lot each year is the product of the Association Interest of such Residential Dwelling Unit and the General Common Expense Budget together with the Special Allocation Expense Assessment against such Residential Dwelling Unit Lot all as duly adopted pursuant to the provisions of Section 5.4 of this Declaration.
- 1.8. "Common Open Space." See Common Elements
- 1.9. "Common Facilities." See Common Elements.
- 1.10. "Community" or "Community of Branford Village" shall mean and refer to the Subject Property as developed in accordance with the Approved Development, if and as modified, into Residential Dwelling Unit Lots, Common Elements, and areas Conveyed or to be Conveyed to Governmental/Public Service Entities.
- 1.11. "Controlled Facilities." See Common Elements.
- 1.12. "Convey" or "Conveyance" shall mean and refer to the act of conveyance, dedication, lease, grant of easement or license, or any other similar grant of an interest in real property, together with the acceptance thereof by the grantee.
- 1.13. "Declarant" shall mean and refer to Fallowfield Development Corp., its successors and assigns for the purpose of development, who shall, unless such is expressly delegated and assumed in writing with notice to East Fallowfield Township pursuant to Section 2.8.1 of this Declaration, have "common authority and responsibility" (as such term is used in the Zoning Ordinance of East Fallowfield Township, as amended) for development of the Subject Property. Declarant may assign the rights and delegate the duties of Declarant herein in whole or in part to one or more assignees, who shall, unless expressly assuming, in writing, such "common authority and responsibility" for development of the Subject Property, be (an) Assignee Declarant(s). There is no limit to the number of persons or entities who may become Assignee Declarants, but Declarant shall retain such "common authority and responsibility" for development of the Subject Property unless expressly delegated and assumed in writing with notice to East Fallowfield Township pursuant to Section 2.8.1 of this Declaration.
- 1.14. "Declaration" shall mean and refer to the terms, easements, covenants, conditions, restrictions, charges and liens set forth in this Declaration and all other provisions set forth in this entire document, as they may be duly amended from time to time.
- 1.15. "Deed Restricted Common Open Space" shall mean and refer to the portion of any Lot shown, designated and depicted on the Subdivision Plan as "Deed Restricted Common Open Space," which such portion shall be subject to the easement provisions and use restrictions set forth in Section 3.2 of this Declaration.

- 1.16. "Development Period" shall mean and refer to the time period commencing on the date of the first conveyance of a Unit to a person other than a Declarant or Assignee Declarant and continuing until the earliest of the following events:
- 1.16.1. Sixty days after conveyance by Declarant to persons other than a Declarant or Assignee Declarant of one hundred eighty six (186) Units (being 75% of the Units which may be created pursuant to the terms of this Declaration), or
 - 1.16.2. Seven (7) years from the date hereof, or
 - 1.16.3. Two (2) years after all Declarant(s) and/or Assignee Declarant(s) have ceased to offer Lots for sale in the ordinary course of business; or
 - 1.16.4. The date designated, by notice in writing, from the Declarant to the Executive Board of the Association as the date of termination of the Development Period.
- 1.17. "Executive Board" shall mean and refer to the body of persons, duly elected or appointed pursuant to the provisions of Section 4.5 of this Declaration and the Bylaws of this Association, designated and empowered by this Declaration to act on behalf of the Association and which shall manage the business and affairs of the Association in compliance with, and subject to, the provisions of the Act..
- 1.18. "Financing Agencies" shall mean and refer to those federal, state, local and private agencies and entities which regulate, participate, or otherwise have an interest in the financing, whether the primary or secondary mortgage market, security, title, or conveyancing or real property interests in the Community including but not limited to the Department of Housing and Urban Development, Federal Housing Administration, Federal Home Administration, Veterans Administration, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association and other similar entities.
- 1.19. "Governing Documents" shall mean and refer to this Declaration, the Articles of Incorporation of the Association, and the Association Bylaws as all may be duly amended from time to time.
- 1.20. "Governmental/Public Service Entity" shall mean and refer to the public, any governmental or quasi-governmental entity, public corporation, agency or authority, public or private utility, or similar entity acting on behalf of, or in service to, the public.
- 1.21. "Institutional Lender" shall mean and refer to one or more lenders regularly engaged in financing the purchase, construction, or improvement of real estate including but not limited to commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including but not limited to real estate investment trusts; or any assignee of loans made by such lenders; or any governmental or private institution which insures the loans of such lenders; or any combination of the foregoing entities.

- 1.22. "Improvements" shall mean and refer to all those changes, items and facilities set forth on Exhibit "D" hereto which shall be made to, constructed on, or placed within the Subject Property including without limitation all of the same as defined as "Improvements" in Section 201 of the *East Fallowfield Township Subdivision and Land Development Ordinance of 1982* as amended.
- 1.23. "Lot," "Residential Dwelling Unit Lot," and "Unit" are synonymous and each shall mean and refer to each and every one of those certain parcels of land, shown on the Subdivision Plan as numbered lots or parcels, upon each of which one single-family dwelling is or may be erected. The term "Lot," "Residential Dwelling Unit Lot," or "Unit" shall not be construed to include Common Facilities or lands Conveyed or to be Conveyed to Governmental/Public Service Entities.
- 1.24. "Lot Owner." See Owner
- 1.25. "Member" or "Membership" shall mean and refer to members of the Association. The owner, or owners collectively if more than one, of each individual Residential Dwelling Unit Lot shall constitute one Member of the Association. Each Member shall hold one Membership in the Association. The Association shall have two hundred forty seven (247) Memberships.
- 1.26. "Open Space." See Common Elements.
- 1.27. "Open Space Management Plan" shall mean and refer to the development, management and maintenance of conservation, land management in accordance with the Approved Development and agricultural techniques and practices which shall be used to conserve and perpetually protect the Common Facilities and the Deed Restricted Common Open Space
- 1.28. "Owner," "Lot Owner," and "Unit Owner" are synonymous and each shall mean and refer to the record owner, whether one or more persons and/or entities, of a Residential Dwelling Unit Lot which is a part of the Subject Property, excluding those having such interest, however described, merely as security for the performance of an obligation. Provided, however, a mortgagee in possession shall be deemed an Owner during the time of possession.
- 1.29. "Residential Dwelling Unit Lot." See Lot.

- 1.30. "Storm Water System" shall mean and refer to the Storm Water Facilities and the Storm Water Easements and shall mean and refer to all those certain rights in, and improvements to, *inter alia*, the Subject Property designated for the purpose of storm water drainage detention, retention and/or control of the volume and/or rate and/or the direction of storm water.
- 1.30.1. "Storm Water Facilities" shall mean and refer to all basins, pipes, swales, inlets, outfalls, dissipaters, spreaders, systems and other components and facilities appurtenant thereto as are constructed for the purpose of storm water drainage management, (but excluding therefrom any such facilities, such as roof drain infiltrator systems, which are located entirely within, and for the sole purpose of storm water management within, the boundaries of a single Lot).
- 1.30.2. "Storm Water Easements" shall mean and refer to the perpetual easement rights and privilege of access for ingress, egress, and regress on, over, through, under and within all those certain portions of the Subject Property depicted and shown on the Subdivision Plan as "Storm Sewer Easements," "Basin Easements," and "Basin Access Easements" for the purpose of installing, operating, inspecting, replacing, adding to, maintaining and repairing the Storm Water Facilities as necessary or desirable in connection with operation of the Storm Water Facilities.
- 1.31. "Subdivision Plan" shall mean and refer to that certain set of plans, comprised of sheets numbered 1-30, 30A, and 31, collectively identified as *Preliminary/Final Subdivision Plans for Branford Village*, prepared by Brandywine Valley Engineers, a Division of Vollmer Associates LLP, Kennett Square, Pennsylvania dated 7/19/99 last revised 12/20/2000 as approved by, and on file with, East Fallowfield Township, Chester County, Pennsylvania pursuant to the provisions of the East Fallowfield Zoning Ordinance as amended and pursuant to the terms and conditions of 1) the Decision and Order of the Board of Supervisors of East Fallowfield Township dated March 10, 1999 in re: Application of Fallowfield Development Corp., attached hereto as Exhibit "B", and 2) that certain letter dated March 10, 2000, attached hereto as Exhibit "C", memorializing the decision rendered by the East Fallowfield Township Board of Supervisors conditionally approving the Subdivision Plan, a portion of such *Preliminary/Final Subdivision Plans for Branford Village* being recorded in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania on JAN 25 2001 as Plan 9015651
- 1.32. "Subject Property" shall mean and refer to that certain real property described in Exhibit "A" attached hereto and made a part hereof.
- 1.33. "Township" shall mean and refer to the Township of East Fallowfield, Chester County, Pennsylvania, a township of the second class, duly and properly constituted as a political subdivision of the Commonwealth of Pennsylvania.
- 1.34. "Unit." See Lot.
- 1.35. "Unit Owner." See Owner

ARTICLE II

DESCRIPTIONS

2.1. Property subject to this Declaration

The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is the Subject Property, located in East Fallowfield Township, Chester County, Pennsylvania, as described in Exhibit "A" attached hereto and made a part hereof.

There is no real estate in which the unit owners will own only an estate for years, and there are no noncontiguous parcels of real estate comprising the Community. There are no encroachments by or upon any portion of the Community.

2.2. Name, location, and dimensions of Community

The name of the community to be developed pursuant to the terms of this Declaration is "Branford Village, a Planned Community." The location and dimensions of the community to be developed pursuant to the terms of this Declaration are shown and depicted on the Subdivision Plan.

2.3. Plats and Plans

Pursuant to the provisions of § 5210(i) of the Act, the Subdivision Plan, having been filed with, and approved by, the Township as "Final Plans," and the Subdivision Plan having been recorded, all as set forth in Section 1.31 of this Declaration, the Subdivision Plan shall be the plats and plans as required by § 5210 of the Act, and the Subdivision Plan is hereby incorporated herein and made a part hereof.

The Certification required by §5210(i)(3) of the Act is attached hereto as Exhibit "E."

There are no existing improvements to the Subject Property. All Improvements (as such term is defined in Section 1.22 of this Declaration) shown on the Subdivision Plan **MUST BE BUILT** and the intended location and dimensions of all such Improvements (the location and dimensions of which are capable of being shown on a plan) are shown on the Subdivision Plan.

The location and dimensions of all easements serving or burdening any portion of the Subject Property (the location and dimensions of which are capable of being shown on a plan) are shown on the Subdivision Plan.

2.4. Units

Each Unit is defined and described as being a Lot as shown on the Subdivision Plan upon which one single-family dwelling is or may be erected, excepting therefrom any Lot or Lots Conveyed or to be Conveyed to Governmental/Public Service Entities. The terms Unit and Lot are synonymous. The identifying number of each Unit is the Lot Number for such Lot as shown on the Subdivision Plan. The horizontal boundaries of each Unit are the Lot boundaries as shown on the Subdivision Plan. There are no vertical boundaries to any Unit and there are no horizontal boundaries of any Unit which are not shown on the Subdivision Plan.

There are no buildings that contain or comprise all or part of any Unit nor located within nor must be built within any portion of the Subject Property.

There are two hundred forty seven (247) Units in the Subject Property.

No Unit may be subdivided into two or more Units.

2.5. Common Elements

The Common Elements are comprised of both Common Facilities and Controlled Facilities.

The Common Facilities are defined in Section 1.6.1 of this Declaration

The Controlled Facilities are defined in Section 1.6.2 of this Declaration

The description of the obligations of the Association for the maintenance, improvement, repair, replacement, regulation, management and control of the Controlled Facilities is set forth in Section 4.2.1 of this Declaration.

2.6. Limited Common Elements or Limited Facilities

There are no Limited Common Elements, Limited Common Facilities or Limited Controlled Facilities created by the provisions of this Declaration. There are no time-share estates created by the provisions of this Declaration.

2.7. Convertible, Withdrawable and Additional Real Estate

There is no Convertible Real Estate or Additional Real Estate in which additional Units, Common Elements, and Limited Common Elements or any combination thereof may be created.

There is no Withdrawable Real Estate which may be withdrawn from the Community.

2.8. Uncompleted Improvements and Common Elements

2.8.1. Common Authority and Responsibility

All of the Subject Property shall be developed and all public improvements and improvements to Common Elements shall be completed according to the Approved Development, under Declarant's common authority and responsibility. Declarant may assign the rights and delegate the duties of common authority and control herein to an assignee, subject, however, that no such assignment shall be valid unless in writing and notice thereof shall have been given, in writing, to the Township

After the Development Period, and after the completion of all Improvements pursuant to the provisions of Section 2.8.5 of this Declaration, the Association shall have common authority and responsibility for the Common Elements.

2.8.2. Completion by Phase

The public improvements to the Subject Property and all Common Elements are planned to be constructed in Five Phases as shown and depicted on the Subdivision Plan.

All public improvements to each Phase of the Subject Property and Common Elements within such Phase shall be completed within one year after commencement of construction of such improvements and Common Elements, or within such additional time as shall be agreed to between Declarant or Assignee Declarant and Township.

Declarant or Assignee Declarant(s) are required to complete all improvements to the Subject Property and the Common Elements by the later of a) the date of the conveyance by the Declarant or Assignee Declarant(s) of all Units in the Subject Property to third parties, or b) or the date of the expiration of the Development Period as such Development Period is defined in Section 1.16 of this Declaration.

2.8.3. Responsibility prior to completion

Until improvements to the Subject Property and Common Elements shall be completed, the Declarant shall be solely responsible for real estate taxes assessed against or allocable to the improvements to the Subject Property or the Common Elements and for all other expenses in connection with the improvements to the Subject Property or Common Elements.

2.8.4. Financial security for completion

2.8.4.1. For the Benefit of the Association

Declarant or any Assignee Declarant, upon provision to the Township of financial security for the construction of public improvements to any Phase of the Subject Property pursuant to the provisions of Section 2.8.4.2 of this Declaration, shall be deemed to have guaranteed to the Association that all improvements to such Phase of the Subject Property and the Common Elements within such Phase of the Subject Property shall be completed. No third-party guarantee, bond, escrow, letter of credit or other mechanism shall be provided by the Declarant or any Assignee Declarant to the Association to assure, for the benefit of the association, completion of the improvements and the Common Elements. Only the Declarant's or Assignee Declarant's own guarantee is provided to the Association to assure completion of the improvements and the Common Elements.

2.8.4.2. For the Benefit of the Township

If, as and when Declarant or any Assignee Declarant shall commence construction of public improvements and/or Common Elements in any Phase of the Subject Property, such Declarant or Assignee Declarant shall post, prior to the commencement of such construction, with the Township, financial security in the form of a third party guarantee, bond, escrow, letter of credit or other mechanism, in addition to the Declarant's or Assignee Declarant's own guarantee of completion, to assure, for the benefit of the Township, completion of public improvements to such Phase of the Subject Property and Common Elements, in accordance with the provisions of the Pennsylvania Municipalities Planning Code (53 P.S. §10101, *et seq.*) There shall be no time limit of the term of the financial security posted with the Township.

2.8.5. Completion

Any portion of the community, improvement to the Subject Property, or Common Element will be deemed to be completed upon the recording of a certificate executed by an independent registered surveyor, architect or professional engineer stating that the portion of the community, improvement to the Subject Property, or Common Element is substantially completed in accordance with the descriptions set forth in this Declaration, the plats and plans and the public offering statement and so as to permit the use of such portion of the community, improvement to the Subject Property or Common Element for its intended use.

ARTICLE III

PROPERTY RIGHTS AND RESPONSIBILITIES

3.1. Common Elements

3.1.1. Common Facilities

All of the Subject Property which is neither a part of any Residential Dwelling Unit Lot, nor Conveyed nor to be Conveyed to a Governmental/Public Service Entity, is a Common Facility.

3.1.2. Disposition of Common Facilities

The Association may not be dissolved nor dispose of the Common Facilities, nor any portion thereof, by sale or otherwise, except upon Conveyance of the Common Facilities to a Governmental/Public Service Entity or other organization which such other organization has been organized for, or has adopted the purpose of, ownership of the Common Facilities and performance of the duties and obligations of the Association as set forth in the Governing Documents, subject to the provisions of §5318 of the Act and subject to 1) the provisions of the Zoning Ordinance of East Fallowfield Township, as amended, and 2) written notice thereof to all Owners.

3.1.3. Use of Common Elements

The Common Elements shall remain in perpetuity reserved and restricted to use for Storm Water Facilities, as open space, undeveloped land and/or space for recreational facilities, accessways, utility and other easements and servitudes and such other uses as are consistent with the Governing Documents. Unless and until any Common Elements are used for recreational facilities, Storm Water Facilities, or accessways, such Common Elements, whether subject to easement or other servitude or unencumbered, shall be designated as "Undeveloped Common Land". Such Undeveloped Common Land shall be graded and landscaped or shall be left in its natural state where appropriate such as where such Undeveloped Common Land is wetlands or woods, tree stands or other vegetation which serves as a visual barrier, nature preserve or other beneficial function.

The Common Elements may not be further subdivided.

3.1.4. Owner's Easement of Enjoyment

Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to and be unseverable from each Lot, subject to the following provisions:

3.1.4.1. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situate upon the Common Elements.

3.1.4.2. The right of the Association, upon determination, after notice and opportunity for a hearing, of nonpayment of assessments or violation of Governing Documents by an Owner, to suspend the rights of any Lot Owner to the use and enjoyment of Common Elements.

3.1.5. Delegation by Owner

Every Owner shall have the right to delegate, in accordance with the Governing Documents, his or her right of enjoyment in and use of the Common Elements to the members of his or her family, guests, tenants, or contract purchasers who reside in the Subject Property.

3.2. Deed Restricted Common Open Space

The portion of any Lot shown, designated and depicted on the Subdivision Plan as "Deed Restricted Common Open Space" shall be maintained by the Owner of such Lot but such portion shall be held by the Owner of such Lot and shall be occupied and enjoyed subject to 1) the use restrictions for lands designated as "Open Space, Restricted" in the East Fallowfield Zoning Ordinance as amended, including without limitation Section 1105.4.H thereof and 2) pursuant to the terms and conditions of the Decision and Order of the Board of Supervisors of East Fallowfield Township dated March 10, 1999 *in re: Application of Fallowfield Development Corp.*, attached hereto as Exhibit "B."

3.3. Limitation of Easements, Rights and Privileges

The easements, rights and privileges granted by this Declaration shall be for the benefit of and be restricted solely to the Declarant, the Township, the Association and the Owners from time to time of all or any portion of the Subject Property, and such Owners may grant the benefit of such easements, rights and privileges to such Owner's tenants for the period of such tenancy, but the same is not intended to create, and shall not be construed as creating any rights in and for the benefit of the general public.

3.4. Easements and Licenses

- 3.4.1. The Storm Water Easements as defined in Section 1.30.2 of this Declaration are hereby granted to the Association as easements in gross and further hereby made subject to a continuing and irrevocable offer of dedication to East Fallowfield Township which such offer may be accepted by a resolution of the Board of Supervisors of East Fallowfield Township.
- 3.4.2. Each Unit Owner shall afford to the Association and to its agents or employees access through the Unit reasonably necessary for the purposes of maintenance, repair and replacement of the Common Elements.
- 3.4.3. There is hereby reserved, and any Governmental/Public Service Entity is hereby granted the right to use, an easement and a right-of-way in perpetuity for free and uninterrupted right of entry, ingress, egress and regress upon, over, under, through and across the all of the Common Facilities, for the placing and maintaining of utility service equipment, facilities and components on the Common Facilities, whether for the purpose of serving the Subject Property or any other property or properties, and for access for the installation, removal, maintenance, repair or replacement of any utility or service conduits, lines and systems, including, but not limited to, those providing water, sanitary sewer, storm water management (including but not limited to storm water drainage swales, culverts, piping, discharge outlets, basins and similar improvements), electric, telephone, gas, television cable, communication or any other such service, subject to the condition that upon any use of the Easements or Right-of-Way reserved by this Section for the purposes of such Easements or Right-of-Way, upon the completion of any work performed, including, but not limited to, the construction, repair, rebuilding, relocation, or removing of all, or any portion, of any of the aforesaid service components pursuant to the Easements hereby granted, the user shall, at user's sole cost and expense, restore any part of the land disturbed by such work to approximately the same condition as existed prior to the commencement of work.
- 3.4.4. For so long as the Declarant or successor to or assign of Declarant is engaged in developing or improving any portion of the Subject Property, there is hereby reserved to Declarant and to any and all Assignee Declarant(s), which Declarant and Assignee Declarant(s) may assign to designees of Declarant or Assignee Declarant(s), an unlimited blanket easement and a right-of-way for free and uninterrupted right of entry, ingress, egress and regress upon, over, under, through and across the entire Subject Property for the purpose of Declarant's or Assignee Declarants' discharge of all of Declarant's or Assignee Declarants' obligations or of Declarant's or Assignee Declarants' exercise of the rights of Declarant or Assignee Declarant(s) as set forth in this Declaration, any and all development activities including without limitation erection and maintenance of directional and promotional signs, conduct of sales activities including maintenance of any office or model homes, storage, movement and use of building and construction materials, equipment and personnel, construction and modification of structures including residential dwelling units, Community Facilities including Storm Water Facilities, vehicle and pedestrian areas and utility services, and grading and regrading, including removal of existing vegetation including trees, all to the extent Declarant or Assignee Declarant(s) shall, in Declarant's or Assignee Declarants' sole judgment, deem appropriate or necessary in the development of the Subject Property.

3.4.5. Some or all of the Subject Property is subject to recorded restrictions, easements and licenses. As of the date of this Declaration, the following restrictions, easements or licenses appurtenant to or included in the Subject Property are recorded in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania as follows:

- 3.4.5.1. Covenants and Restrictions as set forth in Record Book F-24, Page 503
- 3.4.5.2. Covenants and Restrictions as set forth in Record Book H-24, Page 207
- 3.4.5.3. Covenants and Restrictions as set forth in Record Book Y-29, Page 91
- 3.4.5.4. Set-back lines, easements, requirements, conditions, and notes as shown on plan recorded as Plan 15038.
- 3.4.5.5. Rights granted to Philadelphia Electric Company and The Bell Telephone Company of Pennsylvania as set forth in Record Book Misc. 71, Page 132
- 3.4.5.6. Water rights as set forth in Misc. Book 38, Page 64 and in Misc. Book 78, Page 257
- 3.4.5.7. Rights granted to Philadelphia Electric Company as set forth in Record Book Misc. 94, Page 193
- 3.4.5.8. Easements, wetland areas and general notes on plan identified as *Over-All Subdivision Plan for Branford Village* as in Plan 9015651 (Subdivision Plan)
- 3.4.5.9. Declaration of Covenants, Restrictions, Easements and Establishment of Homeowners Association for Branford Village, a Planned Community in East Fallowfield Township, Chester County, Pennsylvania (this Declaration) to be recorded
- 3.4.5.10. Rights granted to PECO Energy Company to be recorded
- 3.4.5.11. Rights granted to Verizon Pennsylvania to be recorded

3.4.6. There is hereby explicitly reserved to the Declarant, during and only during the Development Period as such Development Period is defined in Section 1.16 of this Declaration, the unrestricted option to subject the Subject Property to easements or licenses in favor of Governmental/Public Service Entities as are required for the provision of public utilities to and through the Subject Property and/or as are reasonably required for the construction of improvements to the Subject Property in accordance with all laws, ordinances and regulations of all governmental entities having jurisdiction thereof. The grant by the Declarant of such easements and/or licenses shall effect the Association not greater than a) the effects of the easements and licenses set forth in Article III, Section 3.4.5 of this Declaration together with b) the effects of development and improvement of the Subject Property in accordance with the Subdivision Plan. Further, the grant by the Declarant of such easements and/or licenses shall not, individually, result in a greater than ten percent (10%) increase or decrease in the annual General Common Expenses Budget of the Association.

ARTICLE IV

BRANFORD VILLAGE HOMEOWNERS ASSOCIATION

4.1. The Association

The Association is a non-profit, non-stock corporation organized and existing under the laws of the Commonwealth of Pennsylvania and charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as such may be amended from time to time, provided no other Governing Documents other than this Declaration shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

4.1.1. Powers and Duties of the Association

The Association shall have all powers necessary to enjoy the rights of the Association and to perform the duties of the Association all as set forth in this Declaration and as set forth in the Act, including, but limited to, the power, right, and duty to:

- 4.1.1.1. Adopt and amend bylaws and rules and regulations.
- 4.1.1.2. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from Unit Owners.
- 4.1.1.3. Hire and terminate managing agents and other employees, agents and independent contractors.
- 4.1.1.4. Transfer or convey to East Fallowfield Township such storm water management and/or access maintenance easement(s) as shall be reasonably required by East Fallowfield Township for the purpose of the maintenance, repair and replacement of Storm Water Facilities.
- 4.1.1.5. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Community.
- 4.1.1.6. Make contracts and incur liabilities.
- 4.1.1.7. Regulate the use, maintenance, repair, replacement and modification of Common Elements.
- 4.1.1.8. Cause additional improvements to be made as a part of the Common Facilities and, to the extent permitted by this Declaration, the Controlled Facilities.
- 4.1.1.9. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, but Common Facilities may be conveyed or subjected to a security interest only pursuant to the provisions of the Act and to the provisions of the Governing Documents.
- 4.1.1.10. Grant easements, leases, licenses and concessions through or over the Common Facilities and, only to the extent permitted by this Declaration, the Controlled Facilities.
- 4.1.1.11. Impose and receive payments, fees or charges for the use of the Common Elements.
- 4.1.1.12. Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of this Declaration, and the bylaws and rules and regulations of the Association.

- 4.1.1.13. Impose reasonable charges for the preparation and recording of amendments to this Declaration, resale certificates required by section 5407 of the Act (relating to resales of units).
- 4.1.1.14. Provide for the indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance.
- 4.1.1.15. Exercise any other powers conferred by the Act, this Declaration or the bylaws.
- 4.1.1.16. Exercise all other powers that may be exercised in this Commonwealth by legal entities of the same type as the Association.
- 4.1.1.17. Exercise any other powers necessary and proper for the governance and operation of the Association.
- 4.1.1.18. Assign its right to future income, including the right to receive common expense assessments, without limitation.

- 4.1.2. Any exercise of a power under the above §§4.1.1.8, 4.1.1.9, or 4.1.1.10 which would materially impair quiet enjoyment of a Unit shall require the prior written approval of the Owner of that Unit.

4.2. Maintenance Responsibilities of the Association

4.2.1. Common Elements

The Association shall have the obligation to make adequate provision for the maintenance, repair and replacement of, and to maintain, repair or replace as and when in the sole judgment of the Executive Board required, any and all buildings, structures, facilities (including without limitation any and all walks, walking trails and/or pedestrian paths), wetlands, lawn, trees, shrubs, landscaping, land comprising the Common Elements, including open spaces, but excluding therefrom any portion of any Lots regardless of the designation of such portion as Deed Restricted Open Space, and the Storm Water Facilities, as defined in Section 1.30.1 of this Declaration:

- 4.2.1.1. in accordance with the provisions of the Zoning Ordinance of East Fallowfield Township, as amended, including without limitation Sections 1105.4 and 1105.5 thereof; and
- 4.2.1.2. in accordance with the Open Space Management Plan portion of the Subdivision Plan; and
- 4.2.1.3. in a manner which preserves, keeps functional, complies with all applicable Township, County, State and Federal regulations, ordinances and laws and retains the functional condition thereof.

4.2.2. The Association shall have the obligation to make adequate provision for the maintenance, repair and replacement of, and to maintain, repair or replace as and when in the sole judgment of the Executive Board required, any and all lawn, trees, shrubs, landscaping, within the right of way of Branford Boulevard and within the rights of way of Buck Run Road and Youngsburg Road adjacent to the Common Facilities in a manner which preserves, keeps functional, complies with all applicable Township, County, State and Federal regulations, ordinances and laws and retains the functional condition thereof.

4.3. Insurance to be carried by association

The association shall maintain such insurances as are required by, and such insurance coverage shall be maintained and administered in accordance with, the provisions of § 5312 of the Act including:

- 4.3.1. comprehensive general liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than in the amount of \$500,000.00, covering all occurrences commonly insured against for death, bodily injury and property damage, arising out of or in connection with the use, ownership or maintenance of the Common Elements; and
- 4.3.2. any other insurance deemed appropriate by the Executive Board to protect the Association or the Unit Owners.

4.4. Membership and Voting Rights

The conditions of membership in the Association are such that the Members shall be those Owners and only those Owners from time to time of Residential Dwelling Unit Lots in the Subject Property.

Membership in the Association is coextensive with, and indivisible from, ownership of a Residential Dwelling Unit Lot in the Subject Property. Each and every Owner of a Residential Dwelling Unit Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of a Residential Dwelling Unit Lot.

The Owner, or owners collectively if more than one, of each individual Residential Dwelling Unit Lot shall constitute one Member of the Association. Each Member shall hold one Membership in the Association. The Association shall have such number of Memberships as there are Residential Dwelling Unit Lots in the Subject Property.

Each Membership shall have one vote in the Association. The total number of votes in the Association shall be two hundred forty seven (247).

4.4.1. Exercise of vote

If any Membership is comprised of two or more persons (that is, if any individual Residential Dwelling Unit Lot is owned by two or more persons), all such persons shall be entitled to the benefits of, and responsible jointly and severally for the obligations of, membership in the Association. The vote for such Membership shall be cast as such owners shall decide amongst themselves and the vote may be exercised by any one of them, unless any objection or protest by any other of them is made prior to the completion of a vote, in which case the vote for such Membership shall be cast in accordance with the majority vote of such owners and if no majority vote of such owners shall be attainable, the vote of such Membership shall be cast as an abstention. In no event, however, shall more than one vote be cast with respect to any Membership.

Cumulative voting shall be permitted only for the purpose of electing members of the Executive Board. Cumulative voting shall not be permitted for any other purpose.

4.5. Executive Board

The affairs of this Association shall be managed by an Executive Board, the members of which shall be elected by the Members in accordance with the Bylaws of this Association. The Executive Board shall be constituted and organized, and shall operate, in accordance with the Bylaws of this Association.

4.5.1. Powers and Duties of the Executive Board

The Executive Board shall have the powers to do all things necessary or appropriate to carry out the duties and obligations imposed upon it by the Governing Documents or otherwise by law and such powers shall include that the Executive Board may act in all instances on behalf of the Association.

4.5.2. Right and Limitation of Declarant to appoint Members of the Executive Board

During and only during the Development Period as such Development Period is defined in Section 1.16 of this Declaration, Declarant shall have the right to appoint and to remove at will, and, in the event of removal, resignation, death, termination, absenteeism or other event resulting in vacancy, to reappoint, at will, replacements for, no fewer than such number of members of the Executive Board as shall comprise a majority of the number of members of the Executive Board. Subject to the right of the Declarant, in Declarant's sole judgment, at will, to remove and replace such Declarant appointed members, with or without cause, the terms of such appointed members of the Executive Board shall be for the period from appointment until the termination of the Development Period.

Notwithstanding the right of Declarant to appoint members of the Executive Board pursuant to this Section 4.5.2 of this Declaration:

- 4.5.2.1. not later than sixty (60) days after conveyance by Declarant to persons other than a Declarant or Assignee Declarant(s) of sixty two (62) Units (being 25% of the Units), the greater of one (1) or such number of members of the Executive Board as shall comprise a minimum of 25% of the number of members comprising the whole Executive Board shall be elected by Unit Owners other than the Declarant; and
- 4.5.2.2. not later than sixty (60) days after conveyance by Declarant to persons other than a Declarant or Assignee Declarant(s) of one hundred twenty four (124) Units (being 50% of the Units), the greater of one (1) or such number of members of the Executive Board as shall comprise a minimum of 33% of the number of members comprising the whole Executive Board shall be elected by Unit Owners other than the Declarant.

4.5.3. Indemnification of Officers, Executive Board and Committee Members

The Association shall indemnify every Executive Board member, officer and committee member, his or her heirs, executors and administrators, against all loss, cost and expenses, including attorneys' fees, reasonably incurred by him or her in connection with any action, suit or proceeding to which he or she may be made a party by reason of his or her being, or having been, an Executive Board member, officer or committee member, except as to matters as to which he or she shall be finally adjudged in such action, suit or proceeding, to be liable for gross negligence or wilful misconduct. All liability, loss, damage, cost and expense incurred or suffered by the Association by reason, or arising out of or in connection with, this indemnification provision shall be treated by the Association as General Common Expenses.

ARTICLE V

ASSESSMENTS

5.1. Creation of the Lien and Personal Obligation of Assessments

The Grantee of each Residential Dwelling Unit Lot in the Subject Property, by the acceptance of a deed to said Lot, whether or not it shall be so expressed in such deed, including without limitation any purchaser at judicial sale or heir or devisee of a deceased Owner obligates and binds himself, herself, his or her heirs and assigns, to become a Member of the Association and to be bound by all of its rules and regulations and to be subject to all of the duties and obligations imposed by ownership of, and membership in, said Association and is deemed to covenant and agree to pay to the Association an annual assessment equal to the Common Expense Liability allocated to such Residential Dwelling Unit Lot, and, subject to the provisions of §5314 of the Act, such assessments shall be established and collected as hereinafter provided.

Subject to the provisions of §5315 of the Act, all assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of each person who was the Owner of such property at the time when the assessment or installment thereof became due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them, but nothing herein contained shall be deemed to discharge the lien of the assessment upon the land, the subject thereof. No Owner may waive or otherwise escape liability for the assessments provided for herein by non use of the Community Facilities nor by abandonment of the Lot owned.

Any amounts received by the Association from the payment of General Common Expenses assessments and Special Allocation Expenses assessments in excess of the amount required for actual General Common Expenses and reserves for future General Common Expenses and Special Allocation Expenses shall be credited to each Residential Dwelling Unit in accordance with each Residential Dwelling Unit's Association Interest and such credits shall be applied to the next annual General Common Expenses assessment against each Residential Dwelling Unit Lot.

5.2. Estoppel Certificate

Within ten (10) days of the request therefor, the Executive Board of the Association shall cause to be provided an Estoppel Certificate which shall set forth any assessments and charges, or installments thereof, due upon such Lot as of the date of issuance and shall certify as to whether or not there are violations of the Governing Documents remaining on the Lot known to the Association as of the date of issuance. A reasonable fee may be established from time to time for the cost of preparation of such certificate and shall be paid at the time of request for such certificate. A properly executed certificate of the Association as to the status of assessments or installments thereof on a Lot is binding upon the Association as of the date of its issuance as to any purchaser or mortgagee relying thereon in good faith, but shall not relieve the Owner of personal liability.

5.3. Purpose of Assessments

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Subject Property and for the improvement and maintenance, repair and replacement of the Common Elements and for the performance of the obligations of the Association. In addition, the assessments may be used for the creation, maintenance and enhancement of reserves, and the maintenance of appropriate policies of insurance, and for the payment of all obligations required of the Association created by its own acts or imposed upon it by law or by the terms of the Governing Documents.

5.4. Annual Assessments

On or before sixty (60) days prior to the end of each Fiscal Year of the Association, the Executive Board shall adopt Annual General Common Expenses and, if required, Special Allocation Expenses Budgets in amounts deemed appropriate, in the sole judgment of the Executive Board, for the purposes set forth in the Governing Documents.

The Executive Board shall, at least thirty (30) days in advance of each annual assessment period, fix:

An annual assessment against each Residential Dwelling Unit Lot for such Residential Dwelling Unit Lot's Common Expense Liability in an amount equal to the amount of the Annual General Common Expenses Budget multiplied by such Lot's Association Interest; and

if required, an annual special allocation assessment against each Residential Dwelling Unit Lot in an amount proportionate to the benefit to such Residential Dwelling Unit Lot of the Special Allocation Expenses Budget.

Written notice of the adopted budgets and Annual Assessments against each Lot shall be sent to every Lot Owner subject thereto. Unless objection to any Budget or Annual Assessment is made by not less than fifty-one (51%) percent of the Lots subject to such Assessments within thirty (30) days after the date of mailing of such notice, the same shall be deemed adopted and shall be binding on all Members of the Association as provided in this Declaration.

In the event that the Executive Board shall fail to fix any annual assessments for any fiscal year, then each assessment established for the prior fiscal year shall be continued until such time as the Executive Board shall act.

5.5. Special Assessments for Capital Improvements

In addition to the annual assessments authorized in the Governing Documents, the Executive Board may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of a part of the Common Elements including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of Members voting at a meeting duly called for such purpose.

5.6. Notice and Quorum for any Action Authorized Under Section 5.5

Written notice of any meeting called for the purposes of taking any action authorized under Section 5.5 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty (60%) percent of all of the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called for a date not later than sixty (60) days following the preceding meeting, subject to the same notice requirement, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

5.7. Payments of Assessments

The Executive Board may authorize, in its discretion, any assessment to be paid in installments thereof on an annual, quarterly or monthly basis.

5.8. Effect of Non Payment of Assessments: Remedies of the Association

Any assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of fifteen (15%) per cent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien of such assessment or installment thereof against the Lot.

Each Owner on becoming an Owner of any Lot shall be deemed to covenant and agree to the enforcement of all assessments in the manner specified in this Declaration and in the Act. Each Owner agrees to pay reasonable attorney's fees as established from time to time by the Executive Board and costs incurred in the collection of any assessment against such Owner and/or such Owner's Lot, whether by suit or otherwise, or in enforcing compliance with or specific performance of the terms and conditions of the Governing Documents as against such Owner and/or such Owner's Lot.

Any assessment or installment thereof not paid within fifteen (15) days after the due date shall be delinquent. Thereupon the Association may exercise any one or more of the following remedies, after notice of such delinquency to the Lot Owner, which are all declared to be cumulative and not exclusive. The selection of a single remedy or multiple remedies shall not be deemed an election thereby excluding any other remedies, but the Association may exercise any and all remedies singularly, consecutively, or concurrently: (a) declare the entire balance of such annual or special assessment due and payable in full; and (b) charge a late fee in the amount to be set by the Executive Board; and (c) upon notice to the Owner suspend the right of such Owner to vote and/or to use the Common Elements until the assessment and accrued charges are paid in full; and (d) employ any other remedies available at law or in equity which, without limitations of the foregoing, shall include either of the following procedures:

5.8.1. Enforcement by Suit

The Association may commence and maintain a suit by law against any Owner or Owners for such delinquent assessments as to which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of fifteen (15%) per cent per annum from the due date, costs of collection, court costs, and reasonable attorney's fees. Suit to recover any money judgment for any unpaid assessments shall be maintainable without foreclosing or waiving the lien hereinafter provided for.

5.8.2. Enforcement by Lien

The Association may foreclose the lien imposed by §5315 of the Act and perfected by the recordation of this Declaration in accordance with, and subject to, the provisions of §5315 of the Act.

5.9. Exempt Property

All property Conveyed to any Governmental/Public Service Entity shall be exempt from assessments pursuant to this Declaration.

5.10. Enforcement by East Fallowfield Township and Assessments Therefor

In the event that the Association or any successor organization, shall at any time after the end of the Development Period, fail to maintain all or any portion of the Common Elements in a reasonable order and condition in accordance with the Approved Development in a manner which preserves, keeps functional, complies with all applicable Township, County, State and Federal laws, rules, and regulations and retains the functional condition thereof, the Board of Supervisors of East Fallowfield Township may serve written notice upon the Association or upon the Owners of the Lots in the Subject Property setting forth the manner in which the Association has failed to maintain the Common Elements in such condition, and said notice shall include a demand that such deficiencies of maintenance be corrected within thirty (30) days thereof and shall state the date and place of a hearing thereon, which shall be held within fourteen (14) days of the notice.

At such hearing, East Fallowfield Township may modify the terms of the original notice as to the deficiencies and may give an extension of time within which said deficiencies shall be corrected. If the deficiencies set forth in the original notice or in the modifications thereof shall not be corrected within thirty (30) days or any extension thereof, East Fallowfield Township, in order to preserve the taxable value of the premises and to prevent the Common Elements from becoming a public nuisance, may enter upon such portions of the Subject Property as are necessary to maintain and may thereafter maintain the same for such period of time as the Board of Supervisors of East Fallowfield Township shall determine. Said maintenance by East Fallowfield Township shall not constitute a taking of said Common Elements, nor vest in the public any rights to use the same except when the same is voluntarily dedicated to the public by the Association pursuant to the terms of this Declaration and the Act and such dedication is acceptable to East Fallowfield Township. Before the expiration of said period, East Fallowfield Township shall, upon its initiative or upon the request of the Association or of the Lot Owners in the Subject Property, call a public hearing to be held by the Board of Supervisors or by its designated agency upon notice to the Association or the Owners, at which hearing the Association or the Owners of Lots in the Subject Property shall show cause why such maintenance by East Fallowfield Township shall not, at the option of said Township, continue. If the Board of Supervisors, or its designated agency, shall determine that the Association is ready and able to maintain said Common Elements in the conditions as hereinabove set forth, East Fallowfield Township shall cease to maintain the Common Elements at the end of said period. If the Board of Supervisors, or its designated agency, shall determine that the Association is not ready and able to maintain said Common Elements in the conditions as hereinabove set forth, East Fallowfield Township may, in its discretion, continue to maintain said Common Elements for an additional period of time and, subject to a similar hearing and determination, in each time period thereafter. The decision of the Board of Supervisors, or its designated agency, shall constitute a final administrative decision subject to judicial review.

The cost of such maintenance and the hearing and enforcement procedure referred to above, including reasonable attorney, engineering and like fees and costs, shall be assessed ratably, in accordance with tax assessments, against the Lots within the Subject Property that have a right of enjoyment of the Common Elements and shall become a lien on said Lots. East Fallowfield Township, at the time of entering upon the portions of the Subject Property required to maintain for the purpose of maintenance, shall file a notice of lien in the Office of the Prothonotary of Chester County upon the Lots within the Subject Property affected by the lien.

ARTICLE VI

RESTRICTIVE COVENANTS

6.1. In Compliance with Zoning Ordinance of East Fallowfield Township

The use of all Lots and all Common Elements shall comply with the use regulations set forth in Articles 1500 and 1600 of the East Fallowfield Township Zoning Ordinance, as the same may be amended, regulating accessory uses, home occupations, outdoors storage of man-made materials, kennels and similar land uses, minimum square footage of floor area in a dwelling unit, and projections into required yard areas subject however, to exceptions as set forth in that certain *Decision and Order* of the East Fallowfield Township Board of Supervisors dated March 10, 1999, attached hereto as Exhibit "C", as the same may be modified by the East Fallowfield Township Board of Supervisors.

6.2. Single Family Residences Only

Unless otherwise hereinafter expressly provided, all Lots shall be used solely for private, single family residential purposes.

No buildings or other improvements shall be constructed, placed or maintained on any Lot except detached, single family residential dwelling houses with customary appurtenant structures, including but not limited to, garages, greenhouses, sheds and play structures, subject to the following restrictions.

No structure placed or maintained on any Lot, which such structure is appurtenant to the detached, single family residential dwelling house on said Lot, and which such appurtenant structure shall require the obtaining of a Building Permit for the construction thereof, shall exceed two hundred forty (240) gross square feet in overall size of the structure as calculated from a horizontal plan view of the entire structure, nor shall such structure exceed an overall height of twenty (20) feet at any point thereof.

No more than one detached, single family residential dwelling with appurtenant structures shall be constructed, placed or maintained on each Lot, and the dwelling and structures appurtenant thereto shall be occupied by no more than one family as such term is defined in the Zoning Code of East Fallowfield Township, Chester County, Pennsylvania.

No single family home on any Lot may be converted so as to allow a multiple family residence.

Every garage, shed or other storage facility constructed, placed or maintained on a Lot shall be used exclusively by the owners or occupants of the Lot on which it is located.

Any addition, enclosure, garage, appurtenant building, fence, wall, planting or other improvement or modification erected, placed or maintained on a Lot shall be harmonious in design with the single family residential dwelling on the Lot.

The landscaping and maintenance thereof shall be in accordance with the residential character of the community. No hedges or mass groupings of shrubs and/or trees which could be a visual barrier comparable to a fence shall be placed or maintained closer to the street than the building set-back line established by zoning ordinance.

6.3. Prohibition Against Water Wells and Sewage Treatment (Septic System)

With the exception that such prohibition shall not apply to any portion of the Subject Property Conveyed to any Governmental/Public Service Entity, no water well and no sewage treatment (septic) system may be installed, maintained, or utilized on any Lot.

6.4. Temporary Facilities

No temporary structure, trailer, garage, tent or other similar facility shall be used at any time for residential purposes.

Nothing herein shall prohibit the placement on any Lot or Common Facility of temporary construction trailers, sheds, portable toilets or similar items during construction, repair of, or addition to, any improvements on a Lot or to the Common Elements.

6.5. Business Use

No trade, business or profession, except customary home occupations clearly incidental to the residential use of the dwelling on a Lot and subject to compliance with and approval of all governmental agencies having jurisdiction thereof, shall be regularly conducted or pursued on any Lot or within or without any structure on any Lot.

Notwithstanding the foregoing, no Lot shall be used for the care and/or keeping (including but not limited to "day-care" or "babysitting") of more than three (3) persons, regardless of age, which such persons are not members of the one family (as such term is defined in the Zoning Code of East Fallowfield Township, Chester County, Pennsylvania) residing on the Lot.

No vehicle, equipment, or structure shall be placed, maintained, constructed or operated, temporarily or permanently, on any Lot or Common Land for any trade, business, or other commercial purpose.

6.6. Prohibition against Bed and Breakfast facilities

No bed or breakfast facilities are permitted within the Subject Property.

6.7. Animals

Except for animals commonly recognized as domestic house pets, not to exceed three such pets on any Lot, no animals of any kind, whether mammal, bird, reptile or other, shall be at any time kept on any Lot.

Pets shall be maintained and controlled at all times so as not to offend or disturb other Owners or occupants of Units by noise, elimination, odor, intrusion, destruction of property or otherwise.

6.8. Nuisances

No nuisance, or noxious, offensive, or dangerous activity or thing shall be created, permitted or conducted on or about any Lot including but not limited to open or smoking fires, and uncovered refuse.

6.9. Vehicles

No mobile home, bus, house car, motor home, camper, trailer, commercial vehicle, airplane, boat, unlicensed motor vehicle, snowmobile or other specialized recreational vehicle, or any inoperative vehicle shall be placed, used, operated, maintained or stored on or in the Subject Property including the Common Land nor upon any other part of the Subject Property nor parked on any vehicular area within the Subject Property except for such time as is necessary to load or unload same, or pickup or discharge passengers therefrom. The Association may remove such vehicles at any time after three (3) days after notice has been given to the Owner or posted on the vehicle.

Nothing herein shall prohibit the storage of any of the aforesaid vehicles provided such storage is completely within a garage and out of sight.

6.10. Fences

No "chain link" or other wire or metal construction fence shall be placed, erected or maintained on any Lot at any time.

No fence shall be erected or maintained closer to the street than the building set-back line established by zoning ordinance.

No fence, wall, or similar structure in excess of eight (8) feet in height shall be erected, placed or maintained on any Lot.

No fence in excess of four (4) feet high shall be erected or maintained on any Lot excepting only fences enclosing a patio, storage, swimming pool, or similar area provided that such fence shall be permitted only:

- a) within twenty five (25) feet of the principal building on the Lot; and
- b) shall not be erected or maintained within ten (10) feet of the property lines of any Lot.

6.11. Swimming Pools

No swimming pool shall be constructed, placed or maintained upon any Lot unless such swimming pool shall be constructed such that when the pool has been filled with water, the surface of the water shall be lower than the grade of the soil of the Lot surrounding the pool on all sides thereof, it being the intent that no "above-ground" swimming pools be permitted on any Lot at any time.

6.12. Surface Water Flow

After the completion of the construction thereon of a residential dwelling and the establishment of grades for the flow of surface water, the grading of any Lot shall not be changed or modified so as to impede, redirect, accelerate or otherwise change or modify the flow of surface water to, over or from the Lot.

6.13. Signs

No signs, billboards, notices, advertising, displays, or other attention attracting devices shall be erected or maintained on any Lot excepting only small signs not exceeding one (1) square foot in size identifying the occupant, address and home occupation, if applicable, and further excepting temporary real estate signs not exceeding eight (8) square feet in size advertising the sale or lease of the property.

6.14. Antennas

No antenna and no exposed electrical or electronic wires or lines shall be erected or maintained on the outside of a structure on any Lot, including without limiting the generality thereof, any television receiving antenna, satellite receiving antenna, radio receiving antenna or radio or television transmitting antenna, excepting only satellite television receiving antennas not exceeding 36" in diameter. Satellite television receiving antennas not exceeding 36" in diameter shall not be erected or maintained closer to the street than the building set-back line established by zoning ordinance and Satellite television receiving antennas not exceeding 36" in diameter shall not be erected nor maintained more than ten (10) feet above ground level.

**EAST FALLOWFIELD TOWNSHIP
BOARD OF SUPERVISORS**

RE: APPLICATION OF FALLOWFIELD DEVELOPMENT CORP.
Conditional Use Application, filed pursuant to Article 1100
of the East Fallowfield Township Zoning Ordinance

DECISION AND ORDER

Introduction

This Decision and Order pertains to an application filed by Fallowfield Development Corp. for conditional use approval of a residential housing development, invoking the provisions of Article 1100 of the East Fallowfield Township Zoning Ordinance, Sections 1101, et seq. After the provision of public notice, as required by the Pennsylvania Municipalities Planning Code, a public hearing was timely commenced on November 2, 1998, and reconvened for the purpose of receiving additional evidence on December 14, 1998, January 13, 1999, and February 2, 1999. While only one member of the Board of Supervisors was able to attend the first hearing, the transcript of the proceedings during the first night of the hearing was made available to the other two members of the Board. Further, the Applicant agreed that the full complement of the Board of Supervisors could participate in the deliberations and the rendering of a decision, given the availability of the stenographic transcription of the evidence presented during the first night of the hearing. At the hearing, the following exhibits were introduced into the record by the Township Solicitor, on behalf of the Board of Supervisors:

- B-1 Proof of Publication of notice of the commencement of the hearing, in the Daily Local News.
- B-2 Facsimile transmittal of the Application (with the original to be submitted as part of the record in the event of an appeal).
- B-3 Certificate of property posting with notice of the hearing by Township Zoning Officer, Thomas Lowry.
- B-4 (By reference) The Zoning Ordinance of East Fallowfield Township (or such portions of such Ordinance as may be pertinent and as must be provided to the Court of Common Pleas, pursuant to Chester County Rule of Civil Procedure 5002(b)(2).
- B-5 (By reference) The East Fallowfield Township Zoning Map.
- B-6 Proof of Publication in the Daily Local News of notice of the re-convening of the proceedings for the second night of the hearing.
- B-7 Proof of property posting with notice of the reconvened hearing by Township Zoning Officer, Thomas Lowry, with notice of the re-convening of the proceedings for the second night of the hearing.
- B-8 Correspondence of John J. Mahoney, Esquire, Township Solicitor, dated December 18, 1998, including the documentation forwarded with said correspondence,

EXHIBIT

B

consisting of: (1) correspondence dated October 12, 1998, from Dennis F. O'Neill, Chairman of the East Fallowfield Township Planning Commission; (2) correspondence dated June 10, 1998, from Mr. O'Neill, concerning the Planning Commission's recommendations with respect to the Township's acquisition of approximately 66 acres of land titled in the name of Fallowfield Development Corp.; (3) correspondence dated June 30, 1998, from the Commonwealth of Pennsylvania, Department of Environmental Protection, addressed to Janet S. Kole, Esquire, an attorney for Fallowfield Development Corp.

- B-9 Correspondence from Yerkes Associates, Inc. per Albert J. Giannantonio, P.E., pertaining to a review of the remedial investigation/risk assessment report prepared by Penn Environmental & Remediation, Inc. (said report dated May 12, 1998).
- B-10 Correspondence from Yerkes Associates, per Albert J. Giannantonio, P.E., pertaining to the calculation of the properly permitted number of homes on the tract, as proposed in the conditional use plan, pursuant to the open space design option criteria set forth in Article 1100, and particularly Section 1104.1, et seq. of the East Fallowfield Township Zoning Ordinance.
- B-11 Planning Commission correspondence dated January 13, 1999.
- B-12 Correspondence from Garth and Susan Monaghan, dated September 15, 1998.

During the course of the proceedings, the following exhibits were introduced into the record by the Applicant:

- A-1 Resume of Robert R. Heuser, President of HeuserDESIGN.
- A-2 Conditional use application narrative for Country Field Residential Development, East Fallowfield Township, prepared by HeuserDESIGN, dated November 2, 1998, consisting of a narrative orientation of the nature of the zoning authorizations requested, information responsive to the conditional use general standards and criteria, descriptions of surrounding properties, and three separate plans: a Site Features Plan, a Conceptual Site Plan and a Subdivision Plan (in non-detailed or "sketch" format), Exhibits A-2-A, A-2-B and A-2-C, respectively. This exhibit indicates that the proposed development of approximately 144 acres of the parcel titled in the name of Fallowfield Development Corp. would be devoted to development involving 250 single-family detached residential lots, respectively, with a minimum lot size of 10,000 square feet, and 72 acres of open space (for a more detailed delineation of the area of open space, refer to Exhibit A-13, introduced into the record on February 2, 1999, together with the oral testimony provided on that night, concerning the corrected calculation of open space provided, consisting of 73.4 acres). According to the narrative description, the Applicant proposes to supplement that landscaping which may be required by the Subdivision and Land Development Ordinance by installing landscape planting and a berm along the property's Buck Run Road frontage, and landscape planting buffering along the property line which abuts the adjacent area which is within the Township's Mobile Home zoning district. The Applicant proposes to provide parking which complies with Section 1606 of the Zoning Ordinance as well as any applicable regulations set

forth in the Township's Subdivision and Land Development Ordinance. Signage for the proposed development is proposed to be compliant with Article 1400 of the Zoning Ordinance. Details concerning parking and signage will be submitted during the review process pertaining to the subdivision and land development application to be hereafter submitted. The Applicant's narrative indicates that "the proposed subdivision" (construed in this Decision and Order to be mean a reference to and to include the subdivision and land development plans to be hereafter reviewed for approval) will comply with the performance standards set forth in Article 1611 of the Zoning Ordinance. Of further significance is the narrative indication that the development encroaches on approximately 40.2 acres of prime agricultural soils (as defined by the United States Department of Agriculture as being Capability Class I and I); however 19.6 acres of the "prime agricultural soils" within the site are to be reserved as permanent open space. The Environmental Impact Assessment contained in Exhibit A-4, includes a reference to Site Features Plan, as well as a narrative description of the character of the site features and a visual analysis of significant view sheds, as well as available community resources and impacts upon the features described herein. In conclusion, the narrative indicates that the use of the Open Space Design Option "will actually ameliorate any adverse impact which would occur in a normal R-3 Subdivision in the following ways:

- Preserves 50% of the Tract in Open Space
- Minimizes woodland and other environmentally sensitive land disturbance
- Lessens the linear feet of internal roadways
- Lessens impervious coverage
- Preserves view corridors and lessens visual impact from surrounding properties and roadways"

Finally, a number of color reproductions of original photographs are included in the exhibit.

- A-3 Draft Declaration of Conditions, Covenants, Restrictions and Easements for the proposed development, including provisions creating a homeowners association. This exhibit is considered to be an orientation to the format of a Declaration to be hereafter recorded, after review and approval by the Township Solicitor, so that it is determined to be consistent with the terms of the conditional use approval and any subdivision and land development approval hereafter issued.
- A-4 Architectural renderings of representative appearances of homes to be constructed on the lots in the residential development.
- A-5 Correspondence from the City of Coatesville Authority, dated October 28, 1998, pertaining to the availability of public water and wastewater service (indicating, generally, the availability of a source of public water supply and wastewater or sanitary sewer disposal service). Significantly, the correspondence indicates the need to perform investigations to determine if a pump station or other service systems would be required to convey the wastewater from the site to the treatment plant/center maintained by CCA. Also, the correspondence indicates that East Fallowfield Township and CCA would have to enter into an inter-municipal

agreement whereby a water and sewer district would be created for this area, as has been done for other areas of the Township serviced by CCA. Further, the required escrow deposit for administrative, legal and engineering expenses is specified, and the correspondence indicates that treatment capacity is not guaranteed until the appropriate tapping fees are paid.

- A-6 Resume of Louise M. Lamb, a traffic engineer and consultant.
- A-7 Traffic impact study issued by Caruolo Associates, Inc., dated November 27, 1998.
- A-8 Resume of Michael A. Christie, P.G., Vice President of Penn Environmental & Remediation, Inc.
- A-9 Report prepared by Penn Environmental & Remediation, Inc., dated May 12, 1998.
- A-10 Correspondence from the Commonwealth of Pennsylvania, Department of Environmental Protection, issued by Kathy Lyn King and James Burke, P.G., addressed to Janet S. Kole, Esquire, an attorney for Fallowfield Development Corp., constituting a review of a Remedial Investigation/Risk Assessment (RI/RA) Report, dated May 12, 1998, which report was submitted in accordance with the Land Recycling & Remediation Standards Act (Act 2).
- A-11 Report prepared by Penn Environmental & Remediation, Inc., dated January 13, 1999, entitled "Final Report for Former Strunk Farm, East Fallowfield Township, Chester County, Pennsylvania", which report was prepared for review by the Southeast Regional Office of the Department of Environmental Protection. The subject tract was known as the Strunk Farm, prior to the acquisition by Fallowfield Development Corp.
- A-12 Full and complete copy of the final report identified above as Exhibit A- 11, with all supplements, indexes and attachments in the form as it was to be delivered to the Department of Environmental Protection.
- A-12 (Duplicate exhibit number). Supplemental traffic impact study prepared by Caruolo Associates, Inc., dated February 2, 1999, including an analysis of the following:
 - Impact of a secondary site access on Youngsburg Road.
 - Study area with the development at full build-out after 5 years (the year 2003).
 - Study area , based upon projected traffic generation, with assumed background growth and projected traffic generated by the proposed 250 home development (at full "build-out") at 10 years in the future.
- A-13 Final Conceptual Site Plan: "Country Field - Open Space Design Option", prepared by HeuserDESIGN, last revised January 31, 1999, depicting, *inter alia*:
 - Two areas of open space to be devoted for active recreation, primarily for children up to 10 years of age (consisting of 2 acres in total size, and denoted by two large asterisks on the plan).
 - Representative or possible location of a proposed walking trail, which is to be maintained by the developer until it is turned over to the homeowners association for maintenance.
 - Calculation of total tract area and minimum open space required, together with a highlighted (in green) depiction of areas in which additional reserved (and deed restricted) open space may be located,

in order to comply with the 50% (of gross tract area) minimum open space requirement imposed by Article 1100 of the Zoning Ordinance.

A-14 Correspondence issued by Thomas D. Cordrey, Ph.D., Wetland Scientist, dated February 2, 1999, indicating that DeVal Soil & Environmental Consultants, Inc. has field verified the wetland delineation line for the subject tract.

While quite a number of individuals participated in the proceedings by asking questions and providing commentary, no individual or organization participated as a party to the proceedings, other than the Applicant and the Township. As will be seen from a review of the Order set forth below, the zoning authorization requested in this application will be granted. There are numerous conditions attached to the issuance of the conditional use approval. It is anticipated that the developer will not contest the imposition of these conditions. Nonetheless, these conditions must be accepted, through submission of appropriate confirmatory correspondence, within seven (7) days of the date of this Decision. In the absence of such an agreement, a supplement to this Decision and Order may be issued, with specific findings of fact and conclusions, as contemplated by the Pennsylvania Municipalities Planning Code. Further, in the absence of written notice of the Applicant's agreement to the conditions of approval set forth herein, the application for conditional use approval is hereby denied, due to deficiencies in the plan and the evidence submitted in support of the application, including, but not limited to the following:

(1) The failure to demonstrate compliance with the 20% maximum impervious coverage limitation of Section 1104.4.C, and

(2) The failure to demonstrate compliance with the minimum restricted open space requirement of Zoning Ordinance Sec 1104.1, which requires that a development plan invoking the Open Space Design Option must provide open space in the amount of the greater of: (a) 50% of the gross acreage of the tract, or (b) 75% of the open space resources listed in this ordinance provision. Section 1104.1.A,B,C,and D. The evidence does not support the inference that the plan reserves 75% of the delineated open space resources. Further, since the "development" part of the tract (parcel "B" as depicted in Exhibit A-13) has not been subdivided from the balance of the tract, and the plan fails to provide 109+ acres of open space, less than 50% of the total tract area of 218.07 acres has been reserved as open space.

ORDER

Conditional use approval is hereby granted to Fallowfield Development Corp. for the parcel of ground comprised of 218.07 acres (as measured to the title line of the property), which tract is identified as Tax Parcel Nos. 47-4-92 and 47-4-149, bounded by Strasburg Road, Youngsburg Road and Buck Run Road, located in the R-3 Zoning District, pursuant to the East Fallowfield Township Zoning Ordinance and Map. More specifically, the zoning authorization is hereby granted for a development of the portion of the tract identified as "Development Parcel B", comprised of 146.86 acres (in gross), as depicted on Exhibit A-13. This zoning authorization constitutes conditional use approval for a development of the specified portion of the tract for 250 separate lots or parcels, on each of which a single-family detached dwelling unit may be constructed, provided subdivision and land development approval is hereafter obtained, and the approved plan is recorded in the Chester County Office of the Recorder of Deeds. Additionally, the roadway system, pedestrian walking path, common open space, reserved open space and other proposed improvements and components of the Applicant's proposal, as depicted on Exhibit A-13 are hereby given conditional use approval. This conditional use order is issued and the zoning authorization contained herein is granted pursuant to Article 1100 of the East Fallowfield Township Zoning Ordinance, entitled Open Space Preservation Design Option, expressly conditioned upon the Applicant fully and effectively complying with the terms stated herein, as set forth below.

1. The Applicant and its successors and assigns are hereby required to abide by all representations or agreements set forth in the transcriptions of the conditional use hearings (consisting of four volumes of testimony), and the exhibits introduced into the record, including, but not limited to, the conceptual site plan identified as Exhibit A-13, the conditional use application narrative incorporated into the record as Exhibit A-2, as well as the agreements and representations of Robert E. Heuser (the Applicant's planning consultant/witness) and the Attorney for the Applicant.

2. Each single-family detached home is to be provided with a source of public water and sanitary sewage disposal, through the City of Coatesville Authority (CCA) or its successor, or another appropriate source of public water supply and sanitary sewage disposal capacity. All necessary water and sewer disposal lines are to be installed at the Applicant's expense, either directly or through reimbursement to CCA, its successor or another appropriate source of public water supply and sanitary sewage disposal capacity. During the course of the subdivision or land development process, appropriate proof must be submitted of the establishment of legal access for the purpose of installing and thereafter maintaining such lines (i.e., the obtaining of approval through the Commonwealth of Pennsylvania, Department of Transportation, for the installation of water and/or sewer lines in the right-of-way of all public roads serving the site). Additionally, water lines must be installed, so as to provide sufficient fire suppressant water capacity, both in terms of volume and pressure, as is determined to be necessary during the course of the subdivision and land development approval process.

3. No more than 250 separate single-family detached dwellings shall be located on the subject parcel. Each dwelling unit shall be located on one subdivided parcel of ground. Additionally, the areas of common open space, together with a restricted open space and other undeveloped areas, will be in the locations and of the dimensions substantially as depicted in Exhibit A-13. Minor modifications will be permitted, through adoption of an appropriate resolution or motion memorialized in writing (e.g., meeting minutes) by the Board of Supervisors, in order to effectuate the terms and conditions specified herein. By way of illustration and not by way of limitation, lot lines for individual parcels may be adjusted so that a "run-around" lane, left-turn lane or deceleration lane may be created on or along Buck Run Road, near the proposed main access way. Further, slightly different or additional areas of restricted open space, as that term is defined in the Zoning Ordinance, may be established through the recording of an appropriate approved subdivision and land development plan, in order to assure compliance with the minimum open space area required by the Zoning Ordinance. In the event that an individual homeowner or the developer seeks permission to install decking, sheds or other structures accessory to the main residential use on a subdivided parcel, an area of restricted open space may be permitted for such use, through the adoption of an appropriate resolution or the issuance of some other form of approval by the Board of Supervisors. This Decision and Order shall not be construed as requiring East Fallowfield Township to acquire any area of land, through condemnation or otherwise, for the installation of any roadway improvements, including a "run-around" lane, dedicated left turn lane, or deceleration lane on Buck Run Road.

4. Access to Youngsburg Road must be provided through the installation of either a full service intersection or a "right-turn in/right-turn out only" limited service intersection. This intersection shall be in substantial conformity to the depiction identified as "Youngsburg Road Entry Alternative", appearing on Exhibit A-13.

5. The Applicant will fund an engineering study analysis, to be undertaken by the Township Engineer with the assistance and cooperation of the Commonwealth of Pennsylvania, Department of Transportation, to determine what improvements can and should be undertaken at the intersection of Buck Run Road, Youngsburg Road and Upper Gap Road. This study is to be conducted during the subdivision and land development approval process, and must be completed prior to the issuance of any subdivision and land development approval. This condition does not require the Applicant to pay for or install any intersection improvements, but requires the Applicant to pay such reasonable engineering fees as may be incurred by the Township to conduct a study of the intersection to determine whether any traffic control devices or alterations (i.e., cutting back of earthen banks or other means of increasing sight distance) can and should be undertaken.

6. The Applicant, or its successor(s), will pay for or install any proposed traffic control devices, acceleration lanes, deceleration lanes, "runaround" lanes (i.e., additional roadway provided so as to enable vehicles to drive around to the right of a vehicle which is stopped prior to taking a left-turn into the development), or dedicated left-turn lanes, which may be necessary in order to provide safe access to the development. This condition is not to be construed as relating to any "off-site" improvements, but relates to roads and intersections within or abutting the development tract title line boundaries.

7. If the installation of a deceleration lane or a change of location of any paved cart way portion of Buck Run Road or Youngsburg Road is to occur, pursuant to any approved subdivision and land development plan, and if any portion of the development parcel must be made available to accommodate any such roadway improvement, a recalculation of the open space (both common open space and restricted open space) must be submitted to the Board of Supervisors. Any reduction in the amount of open space provided may result in a reduction in the number of housing units which may be approved, if additional open space cannot be provided and depicted in a recordable subdivision and land development plan. No deed-restricted open space (i.e., located within a subdivided parcel) in addition to that which is depicted in green highlighting on Exhibit A-13, will be permitted, in order to establish compliance with the common open space minimum requirement of Section 1104.1.

8. As contemplated by Section 1702.A.9 of the Zoning Ordinance, the two access points for the site (the boulevard entrance/exit at Buck Run Road and the entrance/exit on Youngsburg Road) shall be designed so as to yield a level of service of "C" or better, as defined in the Transportation Research Board, in the Highway Capacity Manual, Special Report 209, 1985, or any similar "grading" system currently utilized by the Institute of Traffic Engineers.

9. In accordance with a consultation with the Township Engineer, a good faith estimate of the maximum anticipated cost of conducting a traffic study analysis of possible safety and/or efficiency-enhancing intersectional improvements is \$3,500.00. This is the sum estimated to be necessary to comply with condition #5, above. This sum must be deposited concurrently with the submission of an application for subdivision and land development approval, with any unused portion thereof being refunded to the Applicant or other depositor, following completion of review of the study by the Board of Supervisors (including any requests to the Township Engineer to study the feasibility of obtaining necessary permits from the Pennsylvania Department of Transportation for the installation of intersectional improvements). Further, the Applicant is expected to cooperate with the Township Board of Supervisors in developing an appropriate condition of approval of a subdivision and land development plan by which any available roadway equipment to be utilized in the construction or installation of improvements may be utilized (by the developer's subcontractors) to improve the land immediately adjacent to the paved cart ways of the intersections of Youngsburg Road, Upper Gap Road and Buck Run Road.

10. The subject tract must be subdivided in a manner consistent with the depiction set forth on Exhibit A-13. That is, the development area, identified as "Parcel B", comprised of 146.86 acres of land, as measured to the title line (including the triangular common open space area to the east of Youngsburg Road) must be subdivided from the balance of the tract. Further, the 62.1 acre parcel of ground identified as "Reserve Area A-1" and the 5 acre (as measured to the street right-of-way line) tract identified as "Reserve Area A-2" must be made into a separate parcel or parcels, through the subdivision process and the recording of an appropriate plan.

11. The subdivision and land development plan to be submitted hereafter must depict all setback requirements imposed by Section 1104.5, and must establish strict compliance with this

provision, unless variance relief is sought through the Zoning Hearing Board, and not opposed by the Board of Supervisors.

12. The subdivision and land development plan to be hereafter provided must incorporate a 50 foot setback from any pre-development perimeter boundary.

13. No building shall be constructed which exceeds 35 feet in height.

14. The use of all the subdivided parcels, as well as the common open space and other lands within the development parcel (i.e., the development parcel comprised of 146.86 acres, in gross) will comply with the use regulations set forth in Article 1500 of the East Fallowfield Township Zoning Ordinance, regulating accessory uses, home occupations, outdoor storage of man-made materials, kennels and similar land uses. Further, no bed or breakfast facilities will be permitted in any building or land within the development tract. Similarly, no conversions of single-family detached homes will be permitted, which would allow multiple family residences on any lot.

15. All homes and lots will comply with the applicable provisions of Article 1600, in terms of the minimum square footage of floor area in a dwelling unit and further restrictions pertaining to projections into required yard areas. Provided, however, that this Order shall not be construed as eliminating any permissible exceptions to such yard area projection prohibition, as provided by Section 1603 of the East Fallowfield Township Zoning Ordinance, or any subsequently enacted amendment pertaining thereto, or through the issuance of other authorization, such as the adoption of a resolution issued by the Board of Supervisors.

16. The subdivision and land development plan which is submitted for recording in the Office of the Recorder of Deeds must specify that areas of common open space, as depicted in the plan incorporated into the record and identified as of Exhibit A-13, are restricted against further subdivision. Further, the 250 subdivided parcels of ground, on each of which may be constructed a detached dwelling unit, are to be restricted against further subdivision.

17. No more than 4 lots may have access (i.e., driveways providing access onto the paved cart way of a public street or privately maintained paved cart way or roadway) at the turnaround area of a cul-de-sac street.

18. Each residential housing lot will be not less than 10,000 square feet, as measured to the title line.

19. All publicly dedicated roadways must comply with all applicable subdivision and land development regulations, and must be offered for public dedication, under terms consistent with the directives of the Pennsylvania Municipalities Planning Code, including the provision of a maintenance bond.

20. As part of the subdivision and land development approval process, completion of all proposed public improvements must be secured through the provision of an appropriate

development agreement with the Township, and the provision of a performance bond or other security which may be invoked and utilized by the Township in the event of a default in completion of the contemplated public improvements.

21. During the course of the subdivision and land development approval process, appropriate documentary proof must be submitted establishing that the Applicant has permission to install a roadway crossing within any identified wetland area.

22. Driveways providing service to each home must be of such a length so that, in addition to any parking provided within a garage, not less than two off-street parking spaces are provided for each home.

23. The decision as to whether the roadways will be curbed (with rolled or upright curbing) is deferred to the subdivision and land development approval process. However, the Board of Supervisors' decision in this regard will be final. Further, the type of material to be used in the installation of the walkway system as depicted in Exhibit A-13 will be determined by the Board of Supervisors, in the course of the subdivision and land development approval process. In the event that the development proceeds in construction stages, an appropriate portion of the walkway system must be completed at an appropriate stage of development, to be determined by the Board of Supervisors in the course of the subdivision and land development approval process. By way of explanation, the Board of Supervisors may require that one-third of the linear feet of the walkway system (in a location to be selected by the Board of Supervisors) is to be completed prior to the issuance of a building permit for the 50th home to be constructed. The latter sentence merely expresses an example of the options which the Board of Supervisors may elect, so as to assure that a usable portion of the trail way system is completed during the early phases of home construction in the development.

24. In the event that a pump station is necessary to insure the proper flow of effluent to the treatment plant maintained by CCA (or its successor), the location of the pump station must be in compliance with all applicable Zoning Ordinance and Subdivision and Land Development Ordinance regulations.

25. In the event that a water tank or tower is necessary in order to provide a source of potable drinking and residential use/water supply, the tank or tower must be located on the development tract, as described herein and as depicted in Exhibit A-13, or on some tract of land other than the portion of land currently titled in the name of Fallowfield Development Corp, and designated as parcels "A-1" or "A-2" on Exhibit A-13 (one or both of which the Township is seeking to purchase for use as a public park). Whether the location of such a structure will reduce the open space provided, and the eligibility of the tract for development pursuant to Article 1100 (i.e., whether the Applicant's plan will then provide the required minimum of open space of 50% of the total tract area, as required by §1104.5) is a decision to be deferred. The Applicant is hereby advised that the location of the water tower on the development tract is not approved by this Decision and Order, and such a proposal will required the re-opening of the conditional use process, and a supplement to this Order.

26. In the event that the development and construction of homes is to proceed in phases, the recorded subdivision and land development plan must indicate a phase line, the location of which must be mutually acceptable to the Applicant and the Township Board of Supervisors. Further, specific conditions will be placed on any recorded plan, concerning the establishment of open space areas which are to be created, in the first and any subsequent phase of the development, including the means by which any such area of common space is to be preserved. In the event that the development proceeds in phases, and a temporary cul-de-sac or temporary paved cartway terminus is created, all agreements of sale entered into by the Applicant or any successor developer and the buyer of any lot or home must include language notifying the prospective purchaser that the cul-de-sac or terminus is temporary in nature; additionally, the buyer must be provided with a reasonably accurate drawing depicting the temporary cul-de-sac and the proposed continuation of the street which is to occur during the building of subsequent phases of the residential development. Upon request, the Applicant and any successor developer must submit appropriate documentary proof of compliance with this requirement.

27. A storm water management plan must be submitted in the course of the subdivision and land development approval process, to establish compliance with the Pennsylvania Storm Water Management Act and any applicable zoning or subdivision or land development regulations imposed by East Fallowfield Township or any other government entity exercising proper authority and jurisdiction.

28. Any storm water management access and maintenance easements must be transferrable to the Township, through the recording of a continuing offer of public dedication of such storm water management easement, by which the Township may invoke the right to (but is not legally obligated to) accept dedication and maintain storm water drainage swales, culverts, piping, discharge outlets, basins and similar improvements. The Township must be provided with an access easement for maintenance purposes, pertaining to these improvements and facilities. The easements are to be recorded concurrently with the recording of any approved subdivision and/or land development plan.

29. A detailed engineering plan be prepared and submitted during the course of the subdivision and land development approval process, demonstrating compliance with all applicable regulations imposed by the Pennsylvania Storm Water Management Act, and all Township regulations pertaining to the management of storm water. To this end, in the event that storm water discharge to a stream is to occur, appropriate proof must be submitted during the subdivision and land development approval process, indicating that storm water discharge easements (together with the appropriate access and maintenance provisions) have actually been recorded. To the extent possible, "sheet flow" of storm water must be minimized, in favor of the installation of necessary piping, trenches or other means of facilitating storm water discharge into a nearby stream, or ground water recharge methods must be utilized.

30. A detailed landscaping plan will be submitted for review and must be approved (which approval will not be unreasonably withheld) during the course of the subdivision and land development process; the type of information to be submitted will be such as is contemplated and

described in Section 1608 of the Zoning Ordinance. At the discretion (within reasonable limitations) of the Board of Supervisors, landscaping screening or buffering may be required between any proposed homes and existing residences on adjacent parcels. A reasonably detailed delineation of existing tree masses (as opposed to individual trees) must be submitted in the course of the subdivision and land development approval process. The landscaping plan must confirm that not more than 35% of the total tree mass area is to be disturbed by construction of homes or other improvements, as contemplated by Section 1005.3.F.

31. During the course of obtaining approval of a subdivision and land development plan, the Applicant must submit a landscaping plan consistent with the requirements of Article 1100 of the Zoning Ordinance, as well as Section 1608 of the Zoning Ordinance. This landscaping plan must be substantially consistent with the depictions of wooded areas and trees planted, as shown on Exhibit A-13, including the provision of buffering between the subject development tract and any adjacent areas zoned for or utilized as a mobile home park.

32. A Declaration of Covenants, Easements and Restrictions must be developed by the Applicant, to be reviewed by the Township's Solicitor, and approved during the course of the subdivision and land development review process, for recording in the Office of the Recorder of Deeds. The Declaration must specify the means by which areas of open space (including, but not limited to deed-restricted open space) are to be maintained. Further, the Declaration must establish that one entity (i.e., the developer and, thereafter, a homeowners association) is vested with "common authority and responsibility" for development and completion of improvements, as contemplated by Section 1103.E of the Zoning Ordinance. The homeowners association is to be formed and empowered to carry out responsibilities necessary to effectuate the terms of this Order, including, but not limited to, providing for proper insurance pertaining to common open space areas, proper maintenance and grass mowing of open space areas, and private enforcement of the terms and conditions of the Declaration. Further, the Declaration must specify that no home will be served by an on-site septic system or water supply (i.e., an on-lot well). The homeowners association must be empowered and required to transfer to East Fallowfield Township any storm water management or access maintenance easement, upon written request by the Board of Supervisors. Further, the homeowners association is to be empowered to raise funds sufficient to properly maintain the walking trail depicted in the plan introduced into the record and identified as Exhibit A-13. The homeowners association must be empowered to raise such funds as may be necessary to preserve and maintain common amenities and must be required to maintain the landscaping to be installed at the entrance of the development, and along adjacent roadways.

33. The Declaration must make appropriate provisions for the creation of a municipal lien for an amount of the pro-rata share of any costs of Township maintenance of areas for which the Homeowners Association is to assume primary responsibility.

34. The Declaration of Covenants, Restrictions and Easements shall comply with the provisions of the Pennsylvania Uniform Planned Communities Act, 68 Pa.C.S. Section 5101, and must also comply with Section 1521.B.5 of the Zoning Ordinance. The Declaration must further provide for the necessary information to be submitted to the Township, as required by Section

1521.C.1 of the Zoning Ordinance, and make those provisions and authorize the Township with the authority specified in Section 1521.C.2 of the Zoning Ordinance, with the means to establish and collect assessments for the cost of maintenance and enforcement proceedings compliant with Section 1521.C.3 of the Zoning Ordinance.

35. The Declaration to be prepared and thereafter recorded is to include appropriate means of assuring compliance with the management standards pertaining to open space set forth in Section 1105.4 of the Zoning Ordinance, and implementation of the open space management plan contemplated by Section 1105.5 of the Zoning Ordinance. Finally, an open space performance bond must be submitted and determined to be acceptable to the Board of Supervisors and to the Township Solicitor, as required by Section 1105.6 of the Zoning Ordinance.

36. The details pertaining to signage (if any) and landscaping at the entrance to the development will be considered and made the subject of approval by the Board of Supervisors, during the subdivision and land development review process. At present, no variance from the signage requirements of Article 1400 has been submitted, and none must be requested by the Applicant, during the subdivision and land development approval process, unless the Board of Supervisors elects to not object to the grant of such relief.

37. In all areas in which the Applicant is to install or cause to be installed a water or sanitary sewer line, the Applicant must agree to allow a lateral sewer line and/or water line to be installed to serve adjacent property owners (i.e., properties immediately adjacent to the subject tract), provided that City of Coatesville Authority, its successor, or another source of sanitary sewage disposal capacity agrees to provide water and/or sewer service to the adjacent property. The Applicant may seek reimbursement or any other payment which may be available under Act 209, as such payments are determined to be proper by governmental agencies or utilities exercising proper jurisdiction.

38. A contribution may be required, as determined during the course of the subdivision and land development review process, for the purpose of funding active recreation areas in another area of the Township, as these funds are or may be required to be paid pursuant to Section 503(11) of the Pennsylvania Municipalities Planning Code, and Township Ordinance(s) implementing this statutory authorization. It is hereby provided, however, that the Applicant and any successor developer may object to or challenge any contribution or assessment under the provisions of this paragraph of the Order, if the amount is considered to be confiscatory, or in violation or not authorized by Section 503(11) of the MPC. Further, in the event that the Township acquires the land designated as parcels "A-1" or "A-2" on Exhibit A-13, the Applicant will be given credit toward any such required contribution in an amount equal to the difference between the Township's purchase price of either or both parcel(s) and the appraised value of the Township-acquired land. The amount of this contribution, if any is to be assessed, is to be determined during the subdivision/land development process; the Applicant may file an appeal from any subdivision/land development decision, challenging the amount or the assessment of the contribution specified by this paragraph of this decision and order (rather than filing an appeal from the imposition of this condition of the conditional use order).

39. Prior to the grant of subdivision or land development approval, a release of liability must be obtained by the Applicant, issued by the Commonwealth of Pennsylvania, Department of Environmental Protection, pursuant to Land Recycling & Environmental Remediation Standards Act ("Act 2"), 35 P.S. §6026.101, *et seq.* This clearance certificate must pertain to the entire tract, including both the portion scheduled to be developed and that which is separately subdivided.

40. The subdivision and land development plan to be hereafter approved and recorded must provide a setback distance of 225 feet from Buck Run Road, to preserve the view shed, in accordance with the testimony/representation of Mr. Heuser.

41. All areas of common open space must be compliant with the dimensional requirements of Article 1100.

42. The individual dwelling unit lots, comprised of not less than 10,000 square feet, will be not less than 75 feet in width. The location of a home or accessory building will yield a front yard of not less than 20 feet, a side yard of not less than 5 feet (with two side yards totaling not less than 20 feet) and a rear yard of 35 feet.

43. The construction of homes, location of roadways and all other improvements shall comply with Section 1105.3.B and Article 1200 of the Zoning Ordinance, pertaining to the Steep Slope Conservation (Overlay) District. By way of illustration but not by way of limitation, the maximum impervious coverage of precautionary steep slopes is 6% and no structure may be located within 25 feet of the Steep Slope Conservation District. Section 1204.1.A(3), (4). Homes may not be constructed within 50 feet of a prohibitive slope district, and no driveway is to be constructed which will exceed 15% grade, or resulting in cut and fills that exceed a 3 to 1 ratio, as prescribed by Section 1204.1.B and Sections 1204.1.A.(5) and B(3), of the Zoning Ordinance.

44. The construction of homes and accessory driveways shall proceed in accordance with Section 1520 of the Zoning Ordinance, pertaining to limitations on the removal of topsoil.

45. Reasonable engineering review fees pertaining to a site analysis and environmental impact assessment information required by Section 1522 of the Zoning Ordinance must be paid by the Applicant as required by Section 1103.2 of the Zoning Ordinance.

46. The entranceway onto Buck Run Road will be of a "boulevard" type, with a landscaped median strip extending to the first intersecting street (i.e., a perpendicular roadway), as depicted in Exhibit A-13. The exiting lane of the boulevard will be constructed so as to accommodate two lanes of travel, one dedicated to right-turning movements only and the other dedicated to left-turning movements only. Appropriate pavement markings are to be provided, indicating these limitations on directions of permitted vehicular travel. A deceleration lane must be provided so as to accommodate traffic proceeding in a southwesterly direction from Youngsburg Road into the development using the Buck Run Road access way. The exact dimensions of the deceleration lane will be determined during the course of the subdivision and land development approval process.

47. Appropriate documentary evidence must be submitted in the course of the subdivision and land development process to confirm compliance with the maximum tract coverage limitation imposed by Section 1104.4.C, limiting the impervious coverage to 20% in the R-3 Zoning District.

48. If the tract of land is to be developed by more than one entity (i.e., if there is more than one builder constructing homes and associated improvements, including road, whether consecutively or concurrently), the development shall occur according to a single subdivision and land development plan, with one entity assuming authority and ultimate responsibility for the completion of public and private improvements and the posting of security for public improvements and the submission of the open space performance bond, as required by Sections 1102.E and 1105.6 of the Zoning Ordinance.

49. Any areas devoted to recreational use within the proposed common open space (e.g., the active recreation areas denoted with a large asterisk on Exhibit A-13, and any swimming pool, tennis court, basketball court, or similar active recreation amenities which the developer or its successor may decide to incorporate into the land development plan) shall comply with Section 1516 of the Zoning Ordinance...

50. A final subdivision and land development plan must be approved and recorded within three (3) years of the date of this Decision. Thereafter, the zoning authorization granted by the issuance of this conditional use approval will expire.

51. A copy of this decision and order will be recorded in the Office of the Recorder of Deeds, concurrently with the recording of any approved subdivision and land development plan. All deeds to subdivided and conveyed parcels are to make reference to this recorded Decision and Order.

BY THE BOARD OF SUPERVISORS:

3/19/99
Date

Earl Emel
Earl Emel, Chairman

Sharon Scott
Sharon Scott, Vice Chairman

R. A. Sparr
Robert Sparr, Member

LAW OFFICES OF

SAUL, EWING, REMICK & SAUL LLP

PHILADELPHIA, PENNSYLVANIA
BALTIMORE, MARYLAND
HARRISBURG, PENNSYLVANIA

1055 WESTLAKES DRIVE, SUITE 150
WESTLAKES OFFICE PARK
BERWYN, PA 19312

NEW YORK, NEW YORK
PRINCETON, NEW JERSEY
WILMINGTON, DELAWARE

(610) 251-5050
Fax: (610) 651-5930
Internet E-Mail: berwyn@saul.com
World Wide Web: <http://www.saul.com>

JOHN J. MAHONEY
Direct Dial: (610) 251-5758
Direct Fax: (610) 408-4419
Internet E-Mail: jmahoney@saul.com

Date of Mailing of Notice of Decision:
March 10, 2000

Edward Callahan
Fallowfield Development Corp.
100 Abbey Drive
Royersford, PA 19468

*Re: Branford Residential Subdivision
East Fallowfield Township
Final Subdivision and Land Development Application/Approval*

Dear Mr. Callahan:

As required by Section 508 of the Pennsylvania Municipalities Planning Code, this correspondence will serve to memorialize the decision rendered by the Board of Supervisors on Thursday, February 24, 2000, conditionally approving the final subdivision and land development application for a tract of land bounded by Strasburg Road, Youngsburg, Road and Buck Run Road. As you know, the land which is the subject of your subdivision and land development application is part of a larger tract of land, which was the subject of a subdivision approval previously issued, in 1999. Prior to that subdivision approval, and thereafter the recording of a subdivision plan, the land owned by Fallowfield Development Corp. was comprised at 218.07 acres, which tract was identified as tax parcel numbers 47-4-92 and 47-4-149. For the sake of convenience, of the land formerly comprising the 218.07 acres, this letter will refer to 3 currently existing sub-divided parcels of ground, as follows:

1. Land comprised of approximately 66 acres, which was conveyed to East Fallowfield Township, in 1999;
2. A 5.5 acre parcel of ground, surrounded on 3 sides by land which is currently titled in the name of East Fallowfield Township, which tract is roughly rectangular in shape and is located on Strasburg Road;

3. The balance of the land, which is the "subject tract", for the purpose of your approved subdivision and land development application, and is the subject of this letter memorializing the conditions imposed with respect to that approval.

This correspondence will further memorialize and confirm the decision of the Board of Supervisors to grant waivers of certain subdivision and land development ordinance (SALDO) regulations, which waivers were requested through incorporation of appropriate notations on the plan prepared by Brandywine Valley Engineers, entitled "Branford" and last revised on or about February 7, 2000 (hereafter referred to as "the Plans"). The waivers granted include relief from the sections of the SALDO identified herein, based on and consistent with the narrative description of such waiver requests as is set forth in a review letter dated March 2, 2000, issued by East Fallowfield Township's consulting civil engineers, Yerkes Associates, Inc., and as depicted on the Plans: Section 502.A.2, 612.C.1, 612.D.3, 613.B, 615.A and B, 617.G, a copy of which is attached hereto, marked as Exhibit "B". The grant of the waivers incorporated into an appropriate notation on the plan, with the incorporation of a signature line for use by the Board of Supervisors of East Fallowfield Township, signifying the grant of the waivers.

The conditions of the final subdivision and land development approval are set forth below. Preliminarily, as to each of these conditions, it is the understanding of the Board of Supervisors and the Township Solicitor that each of these conditions is fully acceptable to Fallowfield Development Corp., based upon communications and discussions which occurred during the meeting of the Board of Supervisors, at which the decision was rendered, approving the subdivision and land development plan. The terms and conditions of the approval are as set forth below.

1. The Township Solicitor must be afforded an opportunity to review and must approve the form and content of the Homeowner's Association documentation, prepared pursuant to the Pennsylvania Uniform Planned Communities Act, 68 Pa. C.S. Section 5101, and Section 1521.B.5 of the East Fallowfield Township Zoning Ordinance ("ZO").

2. A sanitary sewer lateral must be incorporated into the Plans, and installed at the expense of Fallowfield Development Corp. (and/or its successors and assigns), in order to make available sanitary sewage disposal for the adjacent Township park land. The final determination as to the location of the sanitary sewage line will be made by the Township Engineer, with the approval of the Township Board of Supervisors. Preliminarily, the approximate linear distance of the sewer line extension is 120'.

3. A copy of the Conditional Use Decision and Order dated March 10, 1999, a true and correct copy of such Decision and Order, which is marked Exhibit "A", is attached hereto and incorporated herein by reference, is to be recorded concurrently with the Plans, and a reference to the Conditional Use Decision and Order is to be incorporated in/on a prominent location on the Plans. Further, as required by the Conditional Use Order, all

recorded deeds by which title to any subdivided parcel is conveyed must make reference to the recorded Conditional Use Decision and Order.

4. A water main extension by which a source of potable water is to be provided to the adjacent Township park land, must be installed at the expense of Fallowfield Development Corp. (and/or its successors and assigns).

5. All comments identified in a review letter issued by the Township's consulting civil engineers, dated March 2, 2000, a true and correct copy of said letter is attached hereto and marked Exhibit "B", must be addressed to the satisfaction of the Board of Supervisors.

6. All necessary governmental reviews are conducted and thereafter approvals obtained from all entities exercising proper jurisdiction, including, but not limited to, the Commonwealth of Pennsylvania Department of Environmental Protection, as well as the City of Coatesville Authority, its successors and assigns, with respect to the design of sewage disposal methodologies, including planning modules and sewer extension agreements.

7. A favorable recommendation is issued by the East Fallowfield Township Planning Commission and approval thereafter is issued by the Board of Supervisors, confirming that an adequate source of public water is to be provided, from a source satisfactory to the Township Board of Supervisors.

8. A Highway Occupancy Permit is issued by the Commonwealth of Pennsylvania, Department of Transportation, with respect to any proposed access ways. Further, all road improvements referenced in the Conditional Use Decision and Order, and the Township engineering review letters, each of which is attached hereto, must be permitted by the appropriate governmental agency and installed in accordance with all applicable Commonwealth of Pennsylvania and East Fallowfield Township roadway regulations.

9. A continuing offer of dedication is submitted which must not expire prior to the conveyance of the final subdivided tract of land, or 10 years from today's date, whichever date is later, of the 5.5 acre parcel of land identified above. This offer of dedication is to be at no cost to the Township. Further, a Certificate must be issued, pursuant to the Land Recycling and Environmental Remediation Standards Act ("Act 2") 35 P.S. Section 6026.101, et seq., confirming that the Commonwealth of Pennsylvania will require no further environmental remediation with respect to the 5.5 acre tract of land to be conveyed to the Township. Additionally, the Act 2 Clearance Certificate must also apply to the subject tract.

10. Upon the issuance of a Use and Occupancy Permit for each of the 247 lots hereby approved, Fallowfield Development Corp. (its successors and assigns) must make an unrestricted gift to East Fallowfield Township in the amount of \$200. For informational

purposes only, the current intention of the Board of Supervisors is to utilize these funds for recreational purposes. However, the funds are not to be considered as having been deposited subject to the restrictions of the Pennsylvania Municipalities Planning Code, 53 Pa. C.S.A. Section 10503(11).

11. Compliance with the terms of the Conditional Use Decision and Order.

12. Compliance with the requirements of Section 407.C of the East Fallowfield Township Subdivision and Land Development Ordinance, pertaining to the provision and execution of a subdivision and land development agreement, in accordance with Section 410 of the SALDO, the submission of appropriate performance, maintenance and/or escrow guarantees and agreements, in accordance with Sections 411, 412 and 805 of the SALDO, the submission of a deed of dedication for proposed public improvements, including paved cartways, waterlines, sanitary sewer lines, storm sewers, street paving, sidewalks, fire hydrants and similar public improvements, the recording of a Declaration against further subdivision, restricting the number of sub-divided parcels on the subject tract to 247, and restricting each said parcel and all areas of open space (whether restricted or otherwise) from further subdivision, and similar documentation.

13. The provision of all necessary permits from any governmental or quasi-governmental jurisdiction exercising proper jurisdiction over ancillary matters, such as the Commonwealth of Pennsylvania, Department of Transportation and Department of Environmental Protection. Further, the issuance of an NPDES permit from the Chester County Soil Conservation District, and highway occupancy permits, as noted above.

Please confirm in writing your acceptance of the terms set forth herein, within 15 days of the date of this correspondence.

Very truly yours,

John J. Mahoney

JJM/mlh

Enclosures

cc: Thomas F. Oeste, Esquire
Thomas Lowry
Al Wright, P.E.
East Fallowfield Township Board of Supervisors

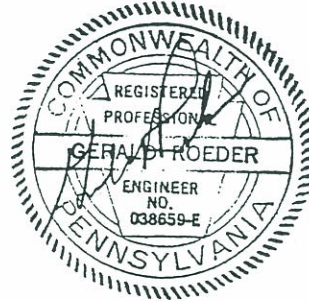
CERTIFICATION

I, Gerald Roeder, hereby certify that:

1. I am an independent Pennsylvania registered professional engineer.
2. I am aware of the requirements of § 5210 of the Pennsylvania Uniform Planned Community Act, 68 P.C.S.A. §5101, *et seq.* (the "Act"), relating to the contents of plats and/or plans.
3. The *Declaration of Covenants, Restrictions, Easements and Establishment of Homeowners Association for Branford Village, a Planned Community in East Fallowfield Township, Chester County, Pennsylvania* (the "Declaration"), together with the Subdivision Plan (as such term is defined in Section 1.31 of the Declaration, including recording information), contain all information required by § 5210 of the Act.

Dated this 18th day of January, 2001.





ARTICLE VII

SPECIAL DECLARANT RIGHTS

7.1. Right to subject Property to Easements

Declarant shall have the full power and authority to exercise Declarant's right to subject the Subject Property to Easements pursuant to the provisions of Section 3.4.6 of this Declaration.

7.2. Exercise of Rights

Declarant shall have the full power and authority to exercise Declarant's right to appoint members of the Executive Board pursuant to the provisions of Section 4.5.2 of this Declaration.

7.3. Right to Use of Easements

Declarant shall not be denied the use of, and Declarant shall have the full, continuous, and uninterrupted right of use of Easements as set forth in this Declaration, including but not limited to such as set forth in Section 3.4.4 of this Declaration.

7.4. Exception for Development and Sales

Notwithstanding anything in this Declaration to the contrary, nothing herein shall prohibit the use of any portion of the Subject Property, including any Lots or any other portion of the Subject Property, for the development, construction, and sales of the Lots, with or without Residential Dwelling Units thereon, and/or the sale of or contracting for construction of residential dwellings and appurtenant structures.

No prohibition against business use, prohibition against signage, or prohibition against other uses of the Lots or other portions of the Subject Property shall prohibit the seller of Lots and/or residential dwellings thereon from placing, constructing, installing and maintaining such sales offices, signs, temporary structures and facilities, business activities and similar things and activities as such seller shall deem appropriate for the purposes of such sales, construction and related activities.

ARTICLE VIII

SECURED LENDERS

8.1. Rights of Secured Lenders

In order to induce Secured Lenders to make loans secured by liens upon Lots or lands within the Community of Branford Village, subject to the provisions of §5221 of the Act, the Association shall not, without the prior written consent of at least whatever percent of first mortgagees of individual Lots as is required by Financing Agencies having jurisdiction thereof and two-thirds (2/3) of Owners other than the Declarant:

- 8.1.1. by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any of the Common Facilities owned directly or indirectly excepting, however, Conveyances to Governmental/Public Service Entities consistent with common property use are excepted;
- 8.1.2. change the method of determining the obligation, assessments, dues or other charges which may be levied against an Owner;
- 8.1.3. by act or omission, change, waive or abandon regulations or enforcement pertaining to restrictive covenants, the maintenance of the Common Elements, or the upkeep of lawns and plantings;
- 8.1.4. fail to maintain fire and extended coverage on insurable property on a basis as required by Financing Agencies; and
- 8.1.5. use hazard insurance proceeds for losses to Common Elements for other than the repayment for, replacement or reconstruction of such Common Elements.

8.2. Obligations of Association to Secured Lenders

As further inducement to Secured Lenders, subject to the provisions of the Act, the Association shall:

- 8.2.1. not make liable any mortgagee who obtains title to a Lot, pursuant to the remedies provided in the mortgage, for such Lot's unpaid assessments, installments thereof or charges which accrue prior to the acquisition of title to such Lot by the mortgagee;
- 8.2.2. allow mortgagees of Lots to, jointly or singly, pay taxes or other charges against the Common Elements and pay overdue premiums on hazard insurance policies, or secure new hazard insurance policies on the lapse of a policy for such Common Elements and mortgagees making such payment shall be owed immediately reimbursement therefor from the Association;

8.2.3. give written notification, upon written request, to any first mortgagee, at the address designated in the request, of any default in the performance by any individual Lot mortgagor or such individual Lot mortgagor's obligations pursuant to the terms of the Governing Documents;

8.2.4. limit any agreement for professional management or any contract providing for services from or by the Declarant to that required by any federal agencies having jurisdiction thereof and provide for termination in accord with standards of federal agencies. Any management agreement shall remain consistent with the Governing Documents.

ARTICLE IX

GENERAL PROVISIONS

9.1. Enforcement

The Association, the Board of Supervisors of East Fallowfield Township, the Declarant, or any Owner shall have the right to enforce, by any proceedings at law or in equity, either to restrain violation or to recover damages, all violations or attempts to violate any restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Governing Documents.

Failure to enforce any restrictions, covenants or agreements contained in the Governing Documents shall in no event be deemed a waiver of the rights to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto.

9.2. Severability

Invalidation of any one of the conditions, covenants or restrictions of this Declaration by judgment or court order shall not affect any other provisions, all of which shall remain in full force and effect.

9.3. Amendment

Subject to the provisions of §5219 of the Act, the conditions, covenants and restrictions of this Declaration shall run with and bind the land in perpetuity and may be changed, altered, modified or extinguished in whole or in part, at any time, by an instrument, in writing, signed by not less than the record owners of seventy-five percent (75%) of the Lots within the Subject Property, which such Amendment shall be recorded in the office of the Recorder of Deeds, Chester County, State of Pennsylvania.

No provisions of this Declaration pursuant to which any special Declarant rights have been reserved to a Declarant shall be amended without the express written joinder of the Declarant in such amendment.

9.4. Conflict

In the event of irreconcilable conflict among the Governing Documents, ordinances, statutes, rules and regulations, the conflict shall be resolved in favor of the requirements of the respective documents in order of their hereinafter stated priority, to wit:

- 9.4.1.1. The Act;
- 9.4.1.2. The Subdivision Plan, as the same may be modified, as approved by East Fallowfield Township;
- 9.4.1.3. That certain letter dated March 10, 2000, attached hereto as Exhibit "C", memorializing the decision rendered by the East Fallowfield Township Board of Supervisors conditionally approving the Subdivision Plan;
- 9.4.1.4. The *Decision and Order* of the East Fallowfield Township Board of Supervisors dated March 10, 1999, attached hereto as Exhibit "B", as the same may be modified by the East Fallowfield Township Board of Supervisors;
- 9.4.1.5. The East Fallowfield Zoning Ordinance of 1990, as the same may be amended;
- 9.4.1.6. This Declaration;
- 9.4.1.7. Articles of Incorporation of the Association;
- 9.4.1.8. Bylaws of the Association;
- 9.4.1.9. Book of Resolutions of the Association.

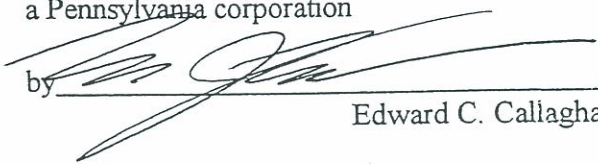
Anything above to the contrary notwithstanding, in all cases the requirements of all regulatory statutes shall control.

9.5. Interpretation

Unless the context otherwise requires the use herein, the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including without limitation." The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

IN WITNESS WHEREOF, the said Fallowfield Development Corp., a Pennsylvania corporation, has caused its name by Edward C. Callaghan, its President, to be hereunto set, and the common and corporate seal of said corporation to be hereunto affixed, the day and year first above written.


FALLOWFIELD DEVELOPMENT CORP.
a Pennsylvania corporation

by 
Edward C. Callaghan, President

COMMONWEALTH OF PENNSYLVANIA)
) SS.
MONTGOMERY COUNTY)

BE IT REMEMBERED that on this 21ST day of December, 2000, personally appeared before me, the Subscriber, a Notary Public for the Commonwealth of Pennsylvania, Edward C. Callaghan, President of Fallowfield Development Corp., a corporation existing under the laws of the Commonwealth of Pennsylvania, party to this Declaration, known to me personally to be such, and acknowledged this Declaration to be his act and deed and the act and deed of said corporation, that the signature of the President thereto is in his own proper handwriting and the seal affixed is the common and corporate seal of said corporation, and that his act of sealing, executing and delivering this Declaration was duly authorized by a resolution of the Board of Directors of said corporation.

GIVEN under my hand and seal of office, the day and year aforesaid.


NOTARY PUBLIC
My Commission expires:

NOTARIAL SEAL

