

**DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS,  
EASEMENTS, CONDITIONS, CHARGES AND LIENS FOR SPICER ESTATES**

THIS DECLARATION is made on March 15, 2000, by **TUNLAW, INC.**, a New Jersey Corporation, whose mailing address is P.O. Box 597, Sewell, New Jersey, 08080 (hereinafter referred to as "Declarant").

WITNESS:

WHEREAS, Declarant is the owner of certain property in the Township of Harrison, County of Gloucester and State of New Jersey, which is more particularly described and designated on plans entitled "Walnut Glen, Block 57, Lot 22", and filed on \_\_\_\_\_, 2000, in the office of the Gloucester County Clerk as Map No. (hereinafter referred to as the "Final Map" of Spicer Estates), which includes Wetlands and Easements (hereinafter defined), which plan is attached hereto as Exhibit "A" and made a part hereof; and

WHEREAS, the property owned by Declarant is presently designated on the Harrison Township Tax Map as Block 57.12, Lots 1 through 104; Block 57.13, Lots 1 through 16; Block 57.14, Lots 1 through 33; Block 57.15, Lots 1 through 27; Block 57.16, Lots 1 through 21; Block 57.17, Lots 1 through 19; and Block 57.18, Lots 1 through 6; and

WHEREAS, Declarant proposes to develop an age-restricted, residential community upon said property which is to be known as **Spicer Estates**, and is intended to contain two hundred twenty-five (225) detached, single family, age-restricted residences, together with streets, two detention basins for the benefit of Spicer Estates and its residents; and

WHEREAS, Declarant has received final site plan approval for the age-restricted, residential community known as Spicer Estates. The development will be constructed in five phases. Phase 1 will consist of thirty-nine (39) residential lots and one (1) detention basin lot. Phase 2 will consist of eighty-three (83) residential lots and one (1) detention basin lot. Phase 3 will consist of fifty (50) residential lots. Phase 4 will consist of seventeen (17) residential lots. Phase 5 will consist of thirty (30) residential lots; and

WHEREAS, Declarant desires to provide for the preservation and maintenance of the aforesaid property, including the Common Area and Common Easements;

NOW, THEREFORE, the Declarant hereby declares that all of the property described in Exhibits "B-1" and "B-2" and shown on the Final Plan (Exhibit "A") shall be held, sold, conveyed, leased, mortgaged, aliened or transferred subject to the following easements, restrictions, covenants and conditions, all of which shall run with the land.

## ARTICLE I: DEFINITIONS

**Section 1. Definitions.** The following words and terms, when used in this Declaration or any amendment thereto, shall have the following meanings unless the context clearly shall indicate otherwise:

- (a) "**Annual Assessments**" shall mean and refer to those fees or charges levied by the Association upon the Owners of lots for the purpose of adequately meeting Common Expenses.
- (b) "**Association**" shall mean and refer to Spicer Estates Homeowners Association, Inc., a New Jersey non-profit corporation, its successors and assigns. Attached as Exhibit "C" is the Association's Certificate of Incorporation. Attached as Exhibit "D" is the Association's By-Laws. It shall have the duties and powers established in this Declaration and its Bylaws.
- (c) "**Builder**" shall mean Beazer Homes Corp., its successors and assigns or any other purchaser/builder of homes on the Lots, which are included in this Declaration.
- (d) "**Common Area**" shall mean and refer to the detention basin property owned by the Association, said detention basins being more particularly identified on the Filed Map.
- (e) "**Common Easements**" shall mean all easements for the installation and maintenance of utilities, drainage facilities, landscaping, storm sewer, potable water and sanitary sewer as are shown on the Filed Map.
- (f) "**Common Expenses**" shall mean and refer to all those costs and expenses which are incurred by the Association in fulfilling its lawful responsibilities, including, without limitation, those necessary for the improvement and maintenance of the Common Area and Common Easements and for the promotion and maintenance of the health, safety and welfare of the residents of the Properties. In addition it shall include expenses of administration, expenses or liabilities agreed upon as common by the Owners, expenditures made or liabilities incurred by or on behalf of the Association, together with any allocation to reserves.
- (g) "**Declarant**" shall mean and refer to Tunlaw, Inc., a New Jersey Corporation, its successors and assigns.
- (h) "**Living Unit**" shall mean and refer to all or any portion of a building situated upon the Properties designed and intended for use as a residence.
- (i) "**Lot**" shall mean and refer to any individual lot or plot of land shown upon the Final Map, together with improvements constructed thereon, but excepting therefrom the Common Area.

- (j) "**Maintenance**" shall mean the exercise of reasonable care to keep walkways, landscaping, berms, basins and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted, mowing of residential yards, and snow removal from driveways and sidewalks.
- (k) "**Member**" shall mean and refer to all Owners who, as hereinafter provided, automatically become members of the Association.
- (l) "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot situated upon the Properties, but excluding those having such interests merely as security for the performance of an obligation.
- (m) "**Properties**" shall mean and refer to that certain real property more particularly described in Exhibit "A" annexed hereto, including any Common Area conveyed to the Association.
- (n) "**Special Assessments**" shall mean and refer to those fees or charges levied by the Association upon the Owner of a Lot for the purpose of capital improvements or any other expenditure which the Association's Board of Trustees deems appropriate.

## **ARTICLE II: PROPERTY SUBJECT TO THIS DECLARATION**

**Section 1. Property Subject to Declaration.** All Properties, as more particularly described in Exhibit "A" attached hereto, including, without limitation, every Lot and the Common Area and Common Easements now or hereafter established, are and shall be, held, transferred, sold, conveyed, leased and occupied subject to this Declaration and all amendments thereto. Ownership or occupancy of any of the Lots or in the Property shall be conclusively deemed to mean that said Owner or occupant has accepted and ratified the governing documents and will comply with them.

## **ARTICLE III: PROPERTY RIGHTS**

**Section 1. Owner's Easements of Enjoyment.** Every Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, which right and easement shall be subject to the following provisions:

- (a) The right of the Declarant to convey, dedicate, grant or transfer those portions of the Common Area and Common Easements or other facilities pursuant to the requirements of the preliminary and final approvals of the Planning Board of the Township of Harrison;

- (b) The right of the Declarant to amend this Declaration pursuant to Article IX, Section 3 hereof;
- (c) The right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the Common Area for any period during which there is any unpaid assessment against his Lot; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations after a hearing by the Board of Trustees of the Association;
- (d) The right of the Declarant and/or Association to dedicate, grant, reserve or transfer all or any part of the Common Area or Common Easements to any public agency, authority or utility for any purpose, including but not limited to the purpose of installing, maintaining, repairing, replacing and inspecting all lines and appurtenances for water, sewer, drainage, fuel oil, gas and other utilities, with the right of the grantees to have access over and across such portions of the Common Area and Common Easements consistent with the full exercise of such grants;
- (e) The right of the Declarant and/or Association to borrow money for the purpose of improving the Common Area and Common Easements and, in furtherance thereof, to mortgage the Common Area;
- (f) The right of the Declarant and/or the Association to take such steps as is reasonably necessary to protect its property against foreclosure;
- (g) A blanket, perpetual and non-exclusive easement in, upon, over, across and through the Common Area and Common Easements for the purpose of the installation, maintenance, repair and replacement of all sewer, water, power and telephone lines, pipes, mains, conduits, waters, poles, transformers, master television antennas or cable television facilities and any and all other equipment or functioning of any utility systems serving the Properties, which easement shall be for the benefit of the Declarant or any governmental agency or utility company which requires the same for the purpose of furnishing one or more of the foregoing services;
- (h) A blanket and non-exclusive easement which will expire two years (2) from the date the last home is sold and conveyed in the normal course of business, but in no event more than ten years (10) from the date of recording of this Declaration, in, upon, through and over the Common Area and Common Easements for the purpose of construction, installation, maintenance and repair of any improvements on the Lots, Common Area or Common Easements, which easements shall be for the benefit of the Declarant, their employees and agents, engaged in the construction, development and sale of Living Units on the Properties;
- (i) A blanket, perpetual and non-exclusive easement of unobstructed ingress and egress in, upon, over, across and through the Common Area and Common Easements to the Township of Harrison, the Association, and their respective officers, agents and employees and to all policemen, firemen, ambulance personnel and postal employees in the proper performance of their respective duties;

- (j) The right of the Declarant and/or Association to grant any part of the Properties as a Common Easement; and
- (k) The right of the holder of any mortgage on any Lot or Living Unit or on the Common Area to enter it for the purposes of inspection.

**Section 2. Delegation of Use.** Any Owner may delegate, in accordance with the By-Laws of the Association, his right to use and enjoyment of the Common Area and Common Easements to members of his family, his tenants or contract purchasers who reside on the Lot of such Owner.

**Section 3. Title to Common Area.** Declarant may retain legal title to the whole or portions of the Common Area until such time as it has completed improvements thereon and until such time as, in the sole opinion of the Declarant, the Association is able to maintain the same. Such conveyance shall proscribe future development of the Common Area inconsistent with this Declaration so long as this Declaration remains in effect. The conveyance shall be made free and clear of the lien of any mortgage.

**Section 4. Rights of Mortgagees.** The rights and easements of use and enjoyment created hereby shall be subject to the right of Declarant and of the Association, in accordance with its Certificate of Incorporation and By-Laws, to borrow money for, among other things, the purpose of improving the Common Area and in aid thereof to mortgage the Common Area and such of the Properties as it owns. In the event of a default upon any such mortgage, among any other rights it may possess, the lender shall have the right, after taking possession of the Common Area, to charge admission and other fees as a condition to continued employment of the Common Area by the Members until the mortgage debt is satisfied, whereupon the possession of the Common Area shall be returned to the Association and all rights of the Association and Members shall be fully restored.

**Section 5. Sale, Lease or Other Disposition of Living Units or Lots.**

Each Unit Owner shall have the right to sell or lease his Living Unit or Lot to whomever he shall so desire, except as limited herein. An Owner intending to sell his Living Unit shall give written notice to the Association of such intention to sell at least thirty (30) business days prior to the transfer of title, stating the name and address of the new Owner. An Owner may lease his Living Unit for a term of six (6) months or longer, provided that he give written notice of such proposed lease to the Association. Such notice shall state the Owner's new address. Any tenant shall be subject to and governed by all provisions of this Declaration, the By-Laws pursuant thereto, and provided further that any failure of the tenant to fully comply with the terms and conditions of the Declaration, the By-Laws of the

Association, or any such rules or regulations, shall constitute a default under the lease. These provisions on leasing shall not apply to Living Units owned by the Declarant, and the Declarant shall have the right to lease each Living Unit for such term and subject to such provisions as Declarant, in its sole discretion, shall determine.

In the event a tenant of a Living Unit fails to comply with the provisions of this Declaration, the By-Laws of the Association or any rules or regulations promulgated thereunder, then, in addition to all other remedies which it may have, the Association shall notify the Owner of such violation(s) and demand that the same be remedied through the Owner's efforts within thirty (30) days after such notice. If such violation(s) is not remedied within said thirty (30) day period, then the Owner shall immediately thereafter, at his own cost and expense, institute and diligently prosecute an eviction action against his tenant on account of such violation(s). Such action shall not be compromised or settled without the prior written consent of the Association. In the event the Owner fails to fulfill the foregoing obligations, then the Board of Trustees shall have the right, but not the duty, to institute and prosecute such action as attorney-in-fact for the Owner and at the Owner's sole cost and expense, including all legal fees incurred. Said cost and expense shall be deemed to constitute a lien on the particular Lot involved, and the collection thereof may be enforced by the Board of Trustees in the same manner as such Board is entitled to enforce collection of Assessments. By acceptance of a deed to any Lot, each and every Owner does thereby automatically and irrevocably name, constitute, appoint and confirm the Board of Trustees of the Association as his attorney-in-fact for the purposes described in this Section.

**Section 6. Condemnation of Common Area.** If any part of the Common Area shall be taken by eminent domain, any damages for the taking shall be collected by, and belong to, the Association. All or any portion of a condemnation award may be applied by the Board of Trustees of the Association, in its sole discretion, toward the repair or restoration of any affected portion of the Common Area. If any excess condemnation proceeds remain after any such repair or restoration or otherwise, the Board of Trustees of the Association, in its sole discretion, may either (i) distribute such excess condemnation proceeds, pro rata, to all Owners or (ii) maintain or otherwise keep such excess proceeds for application against future costs and expenses incurred by the Association in the fulfillment of its responsibilities, in which latter case such excess condemnation proceeds shall be taken into account in the preparation of the next ensuing budget prepared on behalf of the Association.

## **ARTICLE IV: MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Association and Membership.** Every Owner of a Lot shall be a Member of the Association and such membership shall be appurtenant to and shall not be separated from ownership of such Lot.

**Section 2. Voting Membership.** The Association shall have one (1) class of voting membership:

(a) Members shall all be Owners, including the Declarant, and each shall be entitled to one (1) vote for each Lot owned. When more than one person holds any interest in any Lot, the vote for such Lot shall be exercised by the Owners as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to anyone Lot. (b) Within sixty (60) days after conveyance of twenty-five percent (25%) of the Living Units, not less than twenty-five percent (25%) of the members of the Board of Trustees shall be elected by the Members other than the Declarant.

(c) Within sixty (60) days after conveyance of fifty percent (50%) of the Living Units, not less than forty percent (40%) of the members of the Board of Trustees shall be elected by the Members other than the Declarant.

(d) Within sixty (60) days after conveyance of seventy- five percent (75%) of the Living Units, the Declarant's control of the Board of Trustees shall terminate; at which time the Members other than the Declarant shall elect the entire Board of Trustees. (e) Despite (b), (c) and (d) above, the Declarant may appoint one (1) member of the Board of Trustees so long as there are any Living Units remaining unsold in the regular course of business.

**Section 3. Powers of the Board of Trustees.** The Board of Trustees of the Association are hereby vested with the rights, powers, privileges and duties necessary to or incidental to the proper administration of the Association, including those rights, powers, privileges and duties expressly stated in this Declaration, the Association's By-Laws and the Association's Certificate of Incorporation.

The Board of Trustees of the Association shall have the power to make such rules and regulations as may be necessary to carry out the intent of this Declaration, the Association's By-Laws and the Association's Certificate of Incorporation and shall have the right to bring lawsuits to enforce the rules and regulations so promulgated.

The Board shall further have the right to levy fines for violations of this Declaration, the By-Laws and the Certificate of Incorporation, provided that the fine for a single violation may not, under any circumstances, exceed Fifty Dollars (\$50.00). Each day that a violation continues after receipt of notice by the Owner may be considered as a separate violation. Any fines so levied shall be considered as a Common Expense to be levied against the

particular Owner involved, and collection may be enforced by the Board in the same manner as the Board is entitled to enforce collection of Annual or Special Assessments.

## **ARTICLE V: COVENANT FOR MAINTENANCE ASSESSMENTS**

### **Section 1. Creation of the Lien and Personal Obligation of Assessments.**

Except as otherwise provided herein, each Owner by acceptance of a Deed or other conveyance of a Lot and Living Unit, whether or not it shall be so expressed in any such Deed or other conveyance, shall be deemed to covenant and agree to pay to the Association such sums by way of initial working capital, Annual or Special Assessments or charges as hereinafter more particularly described. At the time of acquiring title to a Lot and Living Unit from the Declarant or any subsequent owner, each owner acquiring such title shall pay the Association an amount equal to One Hundred Fifty Dollars (\$150.00), which shall be non-refundable, or any subsequent amount determined by the Association to provide for the initial working capital for maintaining the Association. The aforementioned payment shall in no way be considered a prepayment of the Annual Assessment fee. Each such assessment, together with such interest thereon and cost of collection thereof, including reasonable attorney's fees, shall be a continuing lien upon the Lot against which such assessment is made and shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The obligation for delinquent assessments shall pass to the Owner's successors in title, said assessments being a charge against the Lot in favor of the Association. The Association shall issue to every Owner or mortgagee, upon his request, a statement of such amounts due. A person other than an Owner may rely upon such statement and his liability shall be limited to the amounts set forth therein. Liability for the payment of said amount to the Association shall not attach to the Lot following a mortgage foreclosure sale, provided the Association has been joined as a party to the foreclosure suit. Such unpaid share of assessments shall be deemed to be expenses collectible from the remaining Owners, including the acquirer at the foreclosure sale. However, assessments falling due subsequent to a foreclosure sale shall become liens on the Lot as aforesaid.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purposes set forth in the Municipal Land Use Law and for the purpose of promoting the health, safety and welfare of the residents of the Properties and, in particular, for the improvement and maintenance of properties, services and facilities devoted to the purpose and related to the use and enjoyment of the Common Area



and Common Easements and of the Living Units (See Article VI, Section 1), including but not limited to the following:

- (a) The payment of Common Area taxes;
- (b) The payment of Common Area and Common Easement insurance, including comprehensive general and public liability insurance and fidelity bonds;
- (c) The payment of costs and expenses incurred by the Association in fulfilling its obligations set forth in Article VI;
- (d) Compliance with ordinances, regulations, government rules and regulations affecting portions of the Properties for which the Association is responsible;
- (e) Supervision and management costs for any activities or obligations of the Association;
- (f) Satisfaction of any obligations of the Association set forth in the Declaration, the Certificate of Incorporation of the Association or the By-Laws of the Association;
- (g) Landscaping services for mowing of Owners' lawns and the Common Area, Snow removal services from sidewalks and driveways;
- (h) Compliance with the Detention Basin Maintenance Plan (Exhibit "E" attached hereto);  
and
- (i) Maintenance of the Common Area.

**Section 3. Annual Assessments.** The amount of the Annual Assessments shall be fixed by the Board of Trustees of the Association on an annual basis in a sum sufficient to meet the Common Expenses, and shall be payable in advance in monthly installments due upon the first day of each month or in such other installments and upon such other due dates as it may establish. Each Lot, appurtenant to which is a voting right, shall be treated equally with regard to Annual Assessments, and each such Lot shall bear a pro rata portion of the total Annual Assessments. In the year of conveyance of a Lot and Living Unit by Declarant or Builder to a Lot Owner, such Lot shall be liable for a pro rata portion of the Annual Assessments. The amount of the Annual Assessments may be changed from time to time by action of the Board of Trustees, as circumstances warrant.

**Section 4. Date of Commencement of Assessments; Due Dates.**

Annual and Special Assessments provided for herein shall be pro-rated for payment by Owners on a monthly basis or on such other basis as determined by the Association. The Annual Assessment shall commence as to each Lot on the first day of the month following the conveyance of said Lot and Living Unit by the Declarant or Builder to the Owner. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates for payment shall be established by the Board of Trustees.

**Section 5. Assessment Not Made.** If an annual Common Expense Assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior year's assessment, but only after the Board is controlled by Lot Owners other than Declarant. Installments of such annual Common Expense Assessments shall be due upon the same installment payment date as the prior year's installments until a new annual Common Expense Assessment is made.

**Section 6. Emergency Common Expense Assessment.** In the event the annual Common Expense Assessment proves to be insufficient for an immediate need or emergency, the Board of Trustees of the Association may amend the budget and assessment and impose an emergency Common Expense Assessment. The determination of an immediate need or emergency shall be in the sole and absolute discretion of the Board of Trustees of the Association.

**Section 7. Special Assessments.** In addition to the Annual Assessments authorized above, the Board of Trustees of the Association may levy, in any assessment year, a Special Assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or Common Easements, including fixtures and personal property related thereto, or for any other purpose established by the Board, provided that before the Board levies such Special Assessment it shall have the vote or written assent of fifty-one percent (51%) of the Members. All Lots shall bear a pro rata share of such Special Assessments. While the Declarant maintains a majority of the Board of Trustees, it shall make no additions, alterations, improvements or purchases not contemplated in the Public Offering Statement which would necessitate a special assessment or a substantial increase in the annual assessment unless required by a government agency, title insurance company, mortgage lender or in the event of an emergency.

In order to implement effective insect and woods control, the Declarant and/or Association, its contractors, licensees, agents, successors and assigns, are hereby given the right, after ten (10) days written notice to the owner of any Lot, to enter upon said Lot, such entry to be made by personnel with tractors, trucks or other suitable devices, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth which, in the reasonable opinion of the Declarant and/or Association, detracts from the overall aesthetic setting or safety of the area. Such entrance for the purposes described herein shall not be deemed a trespass. The Declarant and/or Association, its contractors, licensees, agents, successors or assigns, may also enter upon such land to remove trash, which has collected on such lot. These provisions shall not be construed as an obligation on the part of the Declarant and/or Association to mow, clear, cut or prune any Lot, nor to

provide insect or woods control or trash or garbage removal services. The cost of any work done or service rendered to any Lot shall be assessed against the Lot and shall be a lien thereon by Special Assessment as provided for in this Declaration.

**Section 8. Computation of Assessment.** Annual, Special, Emergency and Maintenance Assessments shall be allocated equally among all Lots for which Certificates of Occupancy have been issued. Until this time, the Declarant shall be solely responsible for all Common Expenses. Builders shall be responsible for payment of Common Expenses assessed against Lots purchased by it and for which it has obtained a Certificate of Occupancy. Third party purchasers shall be responsible for payment of all Common Expenses assessed against their Lots.

### **Section 9. Effect of Non-Payment of Assessments; Remedies of the**

**Association.** If an Owner shall default in the payment of an installment of an Annual, Special or Maintenance Assessment, the Board of Trustees may accelerate the remaining installments of such Assessment upon notice to such Owner, and the then unpaid portion of the Assessment shall become due upon the date stated in the notice, but not less than five (5) days after delivery of the notice to the Owner, or not less than ten (10) days after the mailing of such notice to him by registered or certified mail, whichever shall first occur. If the default is not cured within thirty (30) days of the due date, the Assessment, if and as accelerated, shall bear interest from the due date at the rate of ten percent (10%) per annum or, at the discretion of the Board of Trustees, the highest rate allowable by law. After the aforesaid thirty (30) day period, the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot. If such default shall continue for a period of sixty (60) days, the Board shall be obligated to (i) accelerate the remaining installments of the Assessment; (ii) file a lien claim for such accelerated Assessment, together with such interest thereon and cost of collection thereof, including reasonable attorney's fees; and (iii) notify the mortgagee of the Lot affected of such default if such mortgagee has requested such notice from the Association in writing. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or Common Easements or abandonment of his Lot, nor shall the suspension of the voting or other rights of an Owner given the failure to pay any Assessment or an infraction of any rules and regulations promulgated by the Association constitute a waiver or discharge of such Owner's obligations to pay any and all outstanding Assessments. Liens for unpaid Assessments, including interest thereon, costs of collection and attorney's fees, may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property. The right of the Association to foreclose the lien shall be in addition to any other remedy which may be available to it

at law or in equity, including the right (without thereby waiving the lien) to proceed personally against the delinquent Owner for the recovery of a personal judgment. After the Declarant no longer maintains control of the Association, the Association shall have the power to bid on any Lot at foreclosure sale and thereafter to acquire, hold, lease, mortgage and convey such Lot.

**Section 10. Subordination of the Lien to Mortgages.** The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage upon any Lot and to any other liens, including municipal tax liens, which are superior as a matter of law. The sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure sale, or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessment thereafter becoming due or from the lien thereof.

## **ARTICLE VI: MAINTENANCE, UTILITIES AND REPAIRS**

**Section 1. Responsibilities of the Association.** The Association shall only be responsible for the following items of maintenance, repair, replacement and service, including but not limited to the following:

- (a) Landscaping and upkeep of the Common Area and Common Easements;
- (b) The installation and maintenance of all walkways and signs located on, and intended to service, the Common Area and Common Easements;
- (c) Mowing of yards on a regular basis as determined by the Association and driveway and sidewalk snow removal as required and as determined by the Association and (d) Basin maintenance as set forth in the Detention Basin Maintenance Plan.

Despite anything herein to the contrary, the Association shall not be responsible for the maintenance, repair, replacement and/or improvement of any portion of the Common Area, if any, or for the maintenance of utility services, if such portions of the Common Area or other facilities have been dedicated to and accepted by the Township of Harrison or any other governmental entity or municipal or public or private utility or such obligations of maintenance, repair and improvement are otherwise the responsibility of such Township or any other governmental entity or municipal or public or private utility.

## ARTICLE VII: PROTECTIVE COVENANTS

### Section 1. Restrictions on Use of Lots.

The following restrictions are imposed as a common scheme upon all Lots:

- (a) If the Owner elects to erect a wall, hedge or mass planting on the Lot, it must not be in conflict with any municipal ordinance(s);
- (b) No tank for storage of gas or liquids may be maintained on any Lot unless reasonable safety precautions are taken, and such tanks are hidden from external view of any other Lot;
- (c) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Living Unit or upon any Lot, except that dogs, cats or other domesticated household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose;
- (d) No garbage, refuse, rubbish or cutting shall be deposited on any Lot, street, sidewalk or parking area but shall be transported by the Owner to the sanitation area designated by the Association;
- (e) No commercial or other non-passenger vehicle of any type and no unlicensed motor vehicles of any type shall be permitted on the Common Area, other than as may be used by the Declarant or Builder, their employees or agents, in conjunction with building operations;
- (f) Motor vehicles shall be parked only in areas provided for that purpose. The parking facilities shall not be used for any other purpose. The Owners, their employees, servants, agents, visitors, licensees and the Owner's families will obey traffic regulations promulgated in the future for the safety, comfort and convenience of the Owners;
- (g) No boats, trailers, tractors, commercial vans, mobile homes, motor homes or campers shall be maintained or parked on any individual or Common Area Lot or street of the herein described Property, unless parked or stored in a closed structure and in accordance with municipal regulations;
- (h) No radio, television or other tower, or antenna or similar structure shall be erected on any part of any Lot covered hereby, except that a radio or television mast or antenna may be placed upon the roof or other part of any dwelling for the reception or transmission of radio or television, provided it does not protrude more than five (5) feet above the highest part of said roof. A "dish" may be installed, if and only if, such "dish" is properly shielded from public view and complies with all municipal ordinances and regulations;
- (i) No noxious, unsightly or offensive activity, including vehicle repairs, shall be conducted on a Lot or on the Common Area, nor shall anything be permitted to be done

thereon which may be or may become an annoyance or nuisance to the Owners or residents of other Lots;

(j) No sign of any kind shall be displayed to the public view on any Lot except one (1) professional sign of not more than (1) square foot, one (1) sign of not more than six (6) square feet advertising the property for sale or rent, signs used by a builder to advertise the property during the construction and sales period and an identity sign with building designation thereon;

(k) No building or structure shall be erected on a Lot, nor shall any alteration of or addition to a Living Unit be made unless such work shall be approved by the proper municipal authorities;

(l) No Owner shall bring any action for partition or division of the Common Area; (m) No Owner shall lease, sell or otherwise transfer his Lot or Living Unit without first complying with the provisions of Article III, Section 5 of this Declaration;

(n) No structure of a temporary character shall be permitted on any Lot or on the Common Area unless approved by the proper municipal authorities;

(o) No Living Unit shall be used except for residential purposes or accessory use as permitted by the applicable ordinance of the Township of Harrison;

(p) No fences of any kind or nature shall be erected;

(q) No aboveground swimming pools shall be permitted;

(r) As a condition of the Planning Board approval for Spicer Estates, street parking shall be limited to one side of the street, the side to be determined by the Township Engineer;

(s) As a condition of the Planning Board approval for Spicer Estates, the dead end future extension of Howey Drive between Lot 104, Block 57.12 and Lot 19, Block 57.17 will be tree-lined on both sides and revert back equally to the lot owners if, at the end of ten years, the right-of-way is not used by Declarant for future development;

(t) As a condition of the Planning Board approval for Spicer Estates, Lots 2 through 7, 34, 36, 41, 43, 47, 81 through 86, 89 and 95 through 104 in Block 57.12 have steep rear yards (greater than 10%), which could render the rear yards to have limited uses;

(u) As a condition of the Planning Board approval for Spicer Estates, the maintenance and repair of the five foot high wall along Lots 15, 16 and 17 in Block 57.12 shall be the responsibility of the homeowners of said lots;

(v) As a condition of the Planning Board approval for Spicer Estates, the reverse frontage lots on Howey Drive (Lots 1 through 6, Block 57.18) will have access restrictions to limit direct access onto Howey Drive from the rear of those lots;

## Section 2. Age Restrictions on Occupancy of Living Units.

Spicer Estates is an age-restricted community, and at least one (1) owner of record must be age fifty-five (55) or older at the time such owner acquires ownership of the unit.

For purposes of leasing or otherwise allowing occupancy of the unit, at least one (1) tenant or occupant must be age fifty-five (55) or older at the time such individual commences tenancy/occupancy of the unit. In no event shall a permanent resident, tenant and/or occupant be under the age of nineteen (19) years of age. For the purposes of this Section 2, residence at a Living Unit for a period of more than four (4) consecutive months shall be considered permanent residence. Full time occupancy in any event shall be limited to not more than four (4) eligible occupants to each Living Unit.

## **ARTICLE IX: GENERAL PROVISIONS**

**Section 1. Enforcement.** The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

In the event that the Common Area or the Common Easements are not being maintained in reasonable order and condition, then the Township of Harrison shall have the right, but not the obligation, to enter upon the Common Area or Common Easements and perform such maintenance or repair if, after thirty (30) days written notice, the Owners fail to take such action. In such event, any and all costs incurred by the Township of Harrison in connection with the enforcement of this provision shall be repaid to the Township by Owners immediately upon written demand, which cost shall include but not be limited to the actual maintenance expenses, reasonable attorney's fees, reasonable engineering fees and other administrative costs incurred by the Township of Harrison. Such payment shall be assessed pro rata against each of the Owners and shall be a lien and tax on the Lots and be added to and be part of the taxes to be levied and assessed thereon and enforced and collected with interest by the same officers in the same manner as other taxes. This provision may not be amended or modified without the expressed written consent of the Township of Harrison.

**Section 2. Severability.** The invalidation of any one of these covenants or restrictions by judgment or Court order shall in no way affect the validity or enforceability of any other provision set forth herein, which shall remain in full force and effect.

**Section 3. Amendment.** This Declaration shall run with and bind the Properties for a term of forty (40) years from the date this Declaration is recorded, after which time this

Declaration shall be automatically extended for successive periods of ten (10) years. Subject to Article IX, Section 5 of this Declaration, the Declaration may be amended only by the affirmative vote of not less than sixty-seven percent (67%) of the votes of the Members of the Association as calculated pursuant to the formula set forth in Article IV. No amendment shall be effective until recorded in the office of the Clerk/Register of Gloucester County, New Jersey.

**Section 4. Reservation by Declarant Regarding Improvements.** Declarant reserves the right prior to any conveyance of title to the Common Area or any Lot described on the Final Map to determine, in Declarant's sole discretion, the type of improvement(s) to be constructed upon the Common Area (or any portion thereof) and/or any such Lot; provided, however, that any such improvement(s) shall comply with the requirements of any governmental authorities having jurisdiction over the Common Area and/or any such Lot. Declarant further reserves the right, prior to the conveyance of the Common Area and/or any such Lot, to apply for and obtain additional governmental approvals affecting the Common Area and/or any such Lot, including but not limited to modifications of, supplements to, and amendments of prior approvals. The Declarant shall not be permitted to cast any votes held by it for unsold lots, parcels, units or interests for the purpose of amending the master deed, by-laws or any other document for the purpose of changing the permitted use of a lot, parcel, unit or interest, or for the purpose of reducing the Common Area or facilities.

**Section 5. Rights of Declarant or Builder.** Despite anything herein to the contrary, so long as the Declarant or Builder shall own at least one (1) Living Unit: (a) The Declarant or Builder shall have the right to transact any business on the Properties in connection with the sales promotion and exhibition of Living Units and the consummation of sales of Living Units, including, but not limited to, the right to maintain models, maintain signs identifying the Properties and advertising the sale of Living Units, maintain employees in any sales offices on the Properties, use the Common Area and show Living Units for sale or lease; (b) So long as the Declarant or Builder shall own at least one (1) Lot which is being offered for sale in the normal course of business, no amendment to the Certificate of Incorporation, By-Laws or any Rules or Regulations of the Association shall be adopted by the Association or the other Owners without the prior written consent of the Declarant or Builder, including without limitation any By-Law, Rule or Regulation interfering with or restricting the Declarant's or Builder's use of Living Units owned by it as model units for sales promotion and exhibition; and (c) Any or all rights conferred upon the Declarant under this Declaration may be exercised at Declarant's option by the Builder selling Living Units.



## Section 6. Changes in Documents; Power of Attorney.

A bank, mortgage banker or other institutional lender designated by the Declarant to make mortgage loans on the Properties or any portion thereof, or any entity, such as the Federal National Mortgage Association, which acquires or underwrites mortgage loans, or any governmental agency having regulatory jurisdiction over the Properties or the Association, or any title insurance company selected by Declarant to insure title to any Lot(s) or a portion of the Properties, may subsequently require other agreements, or amendments or supplements to this Declaration, the Certificate of Incorporation of the Association or the By-Laws of the Association. The Declarant hereby reserves for itself, its successors and assigns, for a period of five (5) years from the date the first Living Unit is conveyed to an individual purchaser, the right to execute on behalf of all contract purchasers, Owners, mortgagees, other lien holders or parties claiming a legal or equitable interest in the Properties or any portion thereof, any such agreements, and any such amendments or supplements to the above-described documents as may be required by any such lender, entity, governmental agency or title insurance company; provided, however, that no such agreement, amendment or supplement which (i) substantially increases the financial obligations of an Owner, or reserves any special additional privileges to the Declarant, shall be made without the prior written consent of the Owner and his mortgagee or (ii) adversely affect the priority or validity of a purchase money lien on a Living Unit sold hereunder shall be made without the prior written consent of the mortgagee or any institutional lender holding a first mortgage on such Living Unit.

By acceptance of a deed to any Lot or by the acceptance of any other legal or equitable interest in the Properties or any portion thereof, each and every contract purchaser, Owner or occupant, and the holder of any mortgage or other lien, does automatically and irrevocably name, constitute, appoint and confirm that (i) the Declarant, its successors and assigns, as attorney-in-fact for the purpose of executing any amended Declaration and any other instrument(s) necessary to effect any of the foregoing provisions of this Section 6 and (ii) the Association as attorney-in-fact to acquire title to or lease any Living Unit whose owner desires to surrender, sell or lease the same, in the name of the Association or its designees, corporate or otherwise, on behalf of all Owners and to convey, sell, lease, mortgage (but not to vote the votes appurtenant thereto) or otherwise dispose of any such Living Unit so acquired or to sublease any Living Unit so leased by the Association.

The powers of attorney aforesaid are expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all Lots and Living Units and be binding upon the heirs, personal representatives, successors and assigns of any of the foregoing parties. Further, said powers of attorney shall not be affected by the death or disability of any principal and are intended to deliver all right, title and interest of the principal in and to said powers.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this Declaration to be properly executed the day and year first above written.

Witness/Attest: **TUNLAW, INC.**

Kelly T. Young By: ----- Robert J. Pacilli, Pres.

STATE OF NEW JERSEY

: ss.

COUNTY OF CAMDEN

I CERTIFY that on March 15, 2000, Robert J. Pacilli personally came before me and this person acknowledged under oath, to my satisfaction, that:

(a) this person signed, sealed and delivered the attached document as President of the corporation named in the within document; (b) the proper corporate seal was affixed; and (c) the within document was signed and made by the corporation as its voluntary act and deed by virtue of authority from its Board of Directors.

*Revised 03/15/00*