

**DECLARATION OF  
EASEMENTS, COVENANTS, RIGHTS, AND RESTRICTIONS  
FOX RIDGE**

Executed this the 15<sup>th</sup> day of October, 2005 by HESS HOME BUILDERS, INC., a Pennsylvania corporation having its principal offices at 15 Meadow Lane, Lancaster, PA 17601 ("Declarant").

WHEREAS, the Declarant is the owner of real property (the "Property") in the Township of South Lebanon, Lebanon County, Pennsylvania more particularly described in Exhibit "A" hereto. The Property is the subject of a Preliminary Subdivision Plan for Fox Ridge (the "Community"), prepared by RGS Associates, dated December 16, 2004, last revised June 28, 2005, and the first phase of which has been finally approved and recorded in Book 61, Page 223 in the Office of the Recorder of Deeds for Lebanon County, Pennsylvania (as amended or supplemented by the recording of final subdivision plans for subsequent phases hereinafter referred to as the "Plan"); and

WHEREAS, the Declarant wishes to impose certain easements, covenants and restrictions on all the residential townhouse building lots within the Community (collectively the "Townhouse Lots" and individually a "Townhouse Lot") created out of the Property as shown in each phase of the Plan; and

WHEREAS, the Declarant wishes to impose certain easements and obligations upon, and grant certain rights to, lots 29 and 105 as shown in the Plan, upon which apartments are intended to be constructed (the "Apartment Lots");

NOW, THEREFORE, the Declarant, on behalf of itself and its successors and assigns hereby declares and imposes the following conditions, restrictions, and covenants upon all the Townhouse Lots created or to be created out of the Property and as shown in the Plan:

1. *Background.* The foregoing Background is incorporated herein by reference.

2. *Architectural Control and Design Criteria, Use and Other Restrictions.* All Townhouse Lots and the owners and occupants thereof shall be bound by and subject to the following restrictions and obligations:

(a) No building or structure upon any Townhouse Lot may be constructed, erected, maintained, or altered to be used for any other purpose other than that of a single family residence. A garage serving the occupants of the townhouse constructed on the Townhouse Lot will be considered part of a single family residence, provided that construction of the garage does not precede construction of the townhouse.

(b) No dwelling, house, garage, building or structure of any kind, nor any driveway or fence, may be erected, constructed or maintained on any Townhouse Lot, nor shall any addition, change or alteration thereof be made unless and until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color schemes, location, front and rear facings, roofing materials, elevations and costs of said improvements have been submitted to and approved by the Declarant. All the above items must be submitted at least two weeks prior to the planned

commencement of any improvements. The Declarant shall have the right to decline approval of any plans and specifications which are not suitable or desirable, in their opinion, for aesthetic or other reasons, taking into consideration the possible effect of the structure as planned on the adjacent or neighboring properties, and whether they are in keeping with the general harmony of the surroundings and the Community. Review and approval of any plans or specifications will be made on the basis of aesthetic considerations. Approval by the Declarant does not guarantee or otherwise ensure the physical or structural integrity of any building, structure, or other improvement. In no event will the Declarant bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, except for construction performed by Declarant. Further, under no circumstances will the Declarant or any employee or representative of the Declarant be liable for any injury, damages or loss arising out of the manner or quality of approved construction not performed by the Declarant.

(c) All plans and specifications submitted for approval to the Declarant, in addition to other information required by the Declarant, shall specify exterior facing materials (such as stone, brick, aluminum, masonite siding or other materials) to be installed above grade on all elevations and shall be subject to Declarant approval. All garages must be constructed of the same materials and conform with the design and construction of the dwelling it serves. In all cases, the construction contractor must be identified at the time plans and specifications are submitted. The Declarant retains the right, in its sole discretion, to approve all construction contractors, however, Hess Home Builders, Inc. shall be deemed to have been approved.

(d) All buildings or structures (the plans, specifications, and contractor which have been approved by the Declarant) must be constructed 100% in accordance with the approved plans and specification within nine months after construction has started. Completion requires finished grading and seeding.

(e) All roofs are to be fiberglass, slate, cedar shakes, asphalt strip shingles or built up.

(f) No boats, campers, motor homes or trailers may be stored within the minimum front setback or front yard of any Townhouse Lot (or by any owner or occupant of a Townhouse Lot on any street within the Community). The foregoing shall not preclude parking or maintaining a temporary construction trailer or temporary construction shed on a Townhouse Lot by the Declarant, or an approved construction contractor during normal construction periods and used in connection with constructing improvements on the Townhouse Lot.

(g) No structure on any Townhouse Lot, including the residence or dwelling and including any porch or bay window may be erected nearer to the street or front property line than the minimum building setback lines shown on the Plan. Minimum side and rear boundary clearance distance shall be in compliance with the applicable zoning ordinance and subdivision and land development ordinance.

(h) All earth excavated from a Townhouse Lot, in excess of the amount required for proper grading of the Townhouse Lot, must be deposited at a place specified by the Declarant within the Community or upon adjoining land owned by the Declarant, unless Declarant consents to or

requires its removal from the Community, and all such excavated earth shall become the property of the Declarant.

(i) No temporary structure, trailer, basement or garage or other outbuilding may be used on any Townhouse Lot at any time as a residence, either temporarily or permanently, except that a finished basement within the structure of the townhouse constructed on the Townhouse Lot may be used as part of the townhouse residence in the same manner as any other room.

(j) No obnoxious, dangerous or offensive activity shall be carried on or permitted upon any Townhouse Lot, as reasonably determined by the Declarant or other persons enforcing this restriction.

(k) All Townhouse Lots are encumbered by easements benefitting all other portions of the Community for public utilities, including but not limited to electric, telephone, cable television, natural gas, sanitary sewer, and potable water service, serving the Community and easements for installations and maintenance of storm water drainage and management as may be shown on the Plan. Furthermore, all Townhouse Lots shall be subject to, and benefit from, all easements and restrictions shown on the Plan.

(m) The owners of all Townhouse Lots that contain storm water drainage pipes, easements, or other storm water management facilities, including but not limited to open drainage swales, shall, at such owner's expense: (i) provide mowing and general lawn maintenance of all surface areas thereof, (ii) assure that the depth and breadth of such swales are maintained in conformity with the original design of the swale, (iii) keep all drainage swales and catch basins free and clean of trash and debris that could obstruct or alter the flow of storm water, (iv) keep all drainage swales and catch basins free from structures (whether permanent or temporary), trees and shrubbery, and free from all other things that could obstruct or alter the flow of storm water, and (v) not alter any swale, catch basin, or other storm water management device or facility.

(n) No animals, livestock or poultry of any kind may be raised, bred or kept on any Townhouse Lot. The foregoing notwithstanding, common household pets and guide animals for disabled occupants of a Townhouse Lot are permitted, provided they are kept and cared for in a manner that minimizes offensive odors and noise and provided they are not permitted to damage any other property within the Community.

(o) Except for privacy fences erected along paved patios adjoining the townhouse constructed on a Townhouse Lot, which privacy fences may be up to (but not in excess of) eight feet in height and up to (but not in excess of) ten feet in length (subject however to compliance with the applicable zoning ordinance), no fence may exceed four feet in height. Such permitted privacy fences may not be placed in the front yard of any Townhouse Lot and must be made of materials and be of a color and design that coordinates with the exterior color, design, and materials of the townhouse erected thereon as determined by the Declarant. Moreover, no fence shall be erected or constructed within the minimum front setback area of any Townhouse Lot except those of an ornamental nature and that are approved by Declarant, and no fence of any kind may be erected within the Maintenance Access Easement areas described in subparagraph (p) hereinafter. Finally, no solid board, wire or masonry fences may be erected or maintained on any Townhouse Lot unless approved in advance by the Declarant.

(p) There shall be and hereby is created a perpetual, nonexclusive easement (the "Maintenance Access Easement") five (5') feet in width along the rear property boundary of each Townhouse Lot and along the open side property boundary of each End-Unit Townhouse Lot. An End-Unit Townhouse Lot is a Townhouse Lot upon which is constructed (or is intended to be constructed) a townhouse residence as shown in the Plan and that has only one party wall. The open side property boundary of such an End-Unit Townhouse Lot is the side property boundary that is separated from the townhouse constructed or to be constructed thereon as shown in the Plan. The Maintenance Access Easement shall encumber each Townhouse Lot and benefit each Townhouse Lot in a Block and may be used solely to gain access to the rear yard and to the back and roof of the townhouse constructed on the benefitted Townhouse Lot by the owner thereof and such owner's family members, guests, invitees, licensees, invitees, and contractors who are performing yard or building maintenance, repair, and construction. A Block is a group of Townhouse Lots upon which adjoining townhouses are or are intended to be constructed as shown in the Plan. The surface of the Maintenance Access Easement shall be maintained by the owner of the Townhouse Lot over which it passes, provided, however, that if any owner of a Townhouse Lot, or his or her family members, guests, invitees, licensees, or contractors, utilizes a Maintenance Access Easement, such owner shall be responsible for promptly repairing all damage caused by such use.

(q) Each Townhouse Lot owner shall arrange for garbage, rubbish and trash pick-up service to such Townhouse Lot by a lawfully authorized municipal authority or commercial enterprise. Each Townhouse Lot must be kept free of unsightly weeds and rubbish. All Townhouse Lots, together with grass areas between the Townhouse Lot and the street must be mowed and kept free of weeds by the owners thereof.

(r) No mobile homes may be erected or maintained upon any Townhouse Lot. Moreover, storage sheds will be permitted but only in accordance with the following (otherwise storage sheds will not be permitted on any Townhouse Lot): (i) only one storage shed will be permitted on a Townhouse Lot, (ii) the storage shed may not be placed in the front yard and otherwise may be placed only in a location approved in writing by the Declarant, (iii) the shed floor space of the shed may be no larger than eight by ten feet, and (iv) the shed must be "cottage style," and have its exterior siding and roofing the same material and color as the townhouse.

(s) No television or radio antenna, towers, or other signal receiving equipment shall be permitted on any Townhouse Lot other than (i) those entirely within the townhouse constructed on the Townhouse Lot and (ii) other than a single outside television receiving device not to exceed 18 inches in diameter.

### *3. Apartment Lot Restrictions.*

(a) The Apartment Lots are hereby encumbered by easements benefitting all other portions of the Community for public utilities, including but not limited to electric, telephone, cable television, natural gas, sanitary sewer, and potable water service, serving the Community and easements for installations and maintenance of storm water drainage and management as may be shown on the Plan.

(b) The owners of the Apartment Lots that contain storm water drainage pipes, easements, or other storm water management facilities, including but not limited to open drainage

swales, shall, at such owner's expense: (i) provide mowing and general lawn maintenance of all surface areas thereof, (ii) assure that the depth and breadth of such swales are maintained in conformity with the original design of the swale, (iii) keep all drainage swales and catch basins free and clean of trash and debris that could obstruct or alter the flow of storm water, (iv) keep all drainage swales and catch basins free from structures (whether permanent or temporary), trees and shrubbery, and free from all other things that could obstruct or alter the flow of storm water, and (v) not alter any swale, catch basin, or other storm water management device or facility.

(c) Each Apartment Lot must be kept free of unsightly weeds and rubbish. All Apartment Lots, together with grass areas between the Apartment Lot and the street must be mowed and kept free of weeds by the owners thereof.

#### *4. Universal Application, Enforcement.*

(a) The covenants, easements, rights and restrictions herein contained in Section 2 hereof shall apply to all Townhouse Lots within the Community, and they shall insure to the benefit of all the Townhouse Lots and Apartment Lots and they shall be enforceable by the Declarant and by each owner of a Townhouse Lot or an Apartment Lot, and their respective legal representatives, heirs and assigns. Each person who accepts a deed to any Townhouse Lot specifically agrees to be bound by the restrictions, rights, covenants and easements set forth in Section 2 of this Declaration and agrees that a violation may be remedied by appropriate legal or equitable proceedings. In the event any such proceeding is commenced in order to abate any violation and such proceeding results in a final judicial determination requiring abatement or other action or ceasing of action by the violator, the violator, in addition to being liable for any damages that may be awarded, shall (upon demand) reimburse the person commencing such proceeding all his, her, or its reasonable attorneys fees and litigation costs incurred in taking such action.

(b) The covenants, easements, rights and restrictions herein contained in Section 3 hereof shall apply to the Apartment Lots within the Community, and they shall insure to the benefit of the Townhouse Lots and the Apartment Lots and they shall be enforceable by the Declarant and by each owner of a Townhouse Lot or an Apartment Lot, and their respective legal representatives, heirs and assigns. Each person who accepts a deed to an Apartment Lot specifically agrees to be bound by the covenants and easements set forth in Section 3 of this Declaration and agrees that a violation may be remedied by appropriate legal or equitable proceedings.

(c) Failure of any Townhouse Lot owner, Apartment Lot owner, or the Declarant to enforce or to restrain the breach of any provision hereof, shall in no way be deemed a waiver of the right to do so, or as a waiver of any restrictions, conditions or covenants set forth in this Declaration. Moreover, in no event shall the Declarant, its successors or assigns be responsible or liable, either personally or as fiduciary, for any persons violation of the covenants, restrictions, easements and rights set forth herein, nor for enforcing or failing to enforce any provision of this Declaration.

(d) No delay by any person in exercising or failure by any to exercise any rights, powers, or remedies as a result of violations of this Declaration shall be constructed as a waiver thereof or acquiescence therein.

(e) No right of action shall accrue nor shall any action be brought or maintained by

any one whatsoever against the Declarant, its successors or assigns, or the realtor acting as Declarant's broker or agent with respect to sales of Townhouse Lots, for or on account of its or their failure to bring or take any action in case of a breach of the provisions of this Declaration.

5. *Variance.* The Declarant reserves the right to grant a variance to any of the use restrictions and standards set forth in Sections 2 or 3, provided that the restriction as to which a variance is granted complies with all applicable ordinances, laws, and regulations, and provided further that no variance shall be effective unless approved by the Declarant in writing and recorded in the Office of the Recorder of Deeds for Lebanon County.

6. *Invalidity.* The invalidation of any of the restrictions, rights, easements or covenants herein set forth or the failure to enforce any of the restriction, rights, easements or covenants at the time of its violation, shall in no way affect validity or enforceability of any other restriction, right, easement, or covenant, and shall not be deemed a waiver of the right to enforce the same thereafter.

7. *Rights to Enter Townhouse Lots and Apartment Lots.* In addition to any easements shown in the Plan, the Declarant reserves an easement on, over and under all Townhouse Lots, Apartment Lots, and other portions of the Community for the purpose of constructing, modifying, and correcting drainage easements and storm water management facilities thereon. The easement hereby created expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil, or to take any other action reasonably considered by Declarant to be necessary. Furthermore, the Declarant hereby reserves the right to enter all Townhouse Lots, Apartment Lots, and other portions of the Community after conveyance thereof for the purpose of maintaining, repairing, replacing or reconstructing any and all improvements required to be made as a condition of approval of the Plan by the applicable approving governmental bodies.

8. *Binding Effect.* The covenants, easements, rights and obligations set forth herein shall run with the land and the benefits and burdens thereof shall be binding upon and shall inure to the benefit of the Declarant, its successors, assigns, and grantees, and upon and to the Townhouse Lots, the Apartment Lots, and all other portions of the Community, and owners thereof from time to time thereof. The foregoing notwithstanding, at any time after the twenty-fifth anniversary of the date of this Declaration, a majority of the owner's of the Townhouse Lots at such time may amend this Declaration in whole or in part, but only as to the Townhouse Lots.

9. *Assignment, Expiration of Consent, Action by Declarant.*

(a) Any provisions set forth in Section 2 of this Declaration requiring the consent of the Declarant shall terminate at the later of either five (5) years from the date these restrictions are recorded or the date when the Declarant conveys the last Townhouse Lot in the Community.

(b) By written instrument recorded in the Office of the Recorder of Deeds for Lebanon County, Pennsylvania, the Declarant may assign its rights and obligations under this Declaration, and upon any such assignment, the term "Declarant" shall thereafter refer to the assignee. In addition, and any provision of this Declaration to the contrary notwithstanding, at any time the Declarant, by instrument recorded in the Office of the Recorder of Deeds for Lebanon County, may abrogate all or any obligations and rights it may have to enforce this Declaration or to approve building, alteration, or other plans and specifications with respect to Townhouse Lots and

structures constructed or to be constructed thereon.

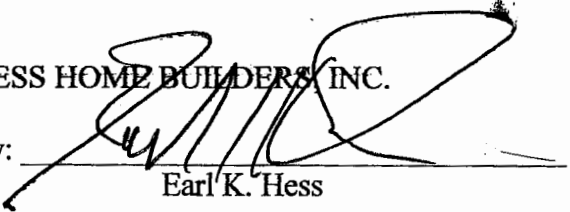
(c) Any action permitted to be taken by the Declarant in this Declaration may be taken by its authorized representative.

10. *Notices.* Notices to and communications with the Declarant by any Townhouse Lot owner shall be in writing and either hand delivered or sent by first class mailing to the Declarant at the address set forth in the heading to this Declaration or to such other changed address as the Declarant may establish by written instrument recorded in the Office of the Recorder of Deeds for Lebanon County, Pennsylvania.

IN WITNESS WHEREOF, the Declarant has set her hand and seal the day and year first above written.

HESS HOME BUILDERS, INC.

By: \_\_\_\_\_

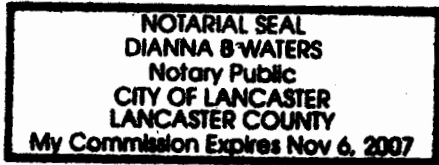
  
Earl K. Hess

Title: President

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF LANCASTER )

On this 17<sup>th</sup> day of October, 2005, before me, the undersigned officer, personally appeared Earl K. Hess, known to me (or satisfactorily proven to be such) who acknowledged himself to be the president of Hess Home Builders, Inc., a corporation, and he, as such president, being authorized to do so, signed the foregoing instrument in the name of Hess Home Builders, Inc. for the purposes therein contained and desired the same to be recorded as such.

In witness whereof, I hereunto set my hand and official seal.



*Dianna B. Waters*

Notary Public  
Lancaster, Lancaster County