

THIS DECLARATION, Made this 2ND day of NOVEMBER  
A. D. 1960 by LAWRENCE F. TALLEY AND ESTHER J. TALLEY, of  
Brandywine Hundred, New Castle County and State of Delaware,  
hereinafter called "DECLARANTS".

WHEREAS, Declarants are the owners in fee simple of all that  
certain tract of land situate in Brandywine Hundred, New Castle  
County and State of Delaware as shown and laid out on a plan of  
WEST PEMBREY prepared by Howard L. Robertson, Civil Engineer and  
Surveyor of Wilmington, Delaware dated May 31, 1960 and intended  
to be recorded in the Office for the Recording of Deeds in and for  
New Castle County, Delaware under the provisions of the Regional  
Planning Act for New Castle County, said land being more particu-  
larly bounded and described by metes and bounds in Exhibit "A"  
attached hereto and by this reference made a part hereof; and,

WHEREAS, Declarants desire to make known and declare the  
covenants, agreements, conditions, easements, reservations and  
restrictions which shall be applicable to and bind the lands as  
shown and laid out on the aforesaid Plan of West Pembrey and as  
described in Exhibit "A" attached hereto:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That Declarants do hereby covenant and declare for them-  
selves, their successors and assigns, that it and they shall hold  
and stand seized of the land as shown on the aforesaid Plan and  
as described by metes and bounds in Exhibit "A" hereto:

UNDER AND SUBJECT, NEVERTHELESS, to the following covenants,  
agreements, conditions, easements, reservations and restrictions  
which it is hereby agreed shall be covenants running with the land  
included within the aforesaid Plan of West Pembrey and shall be  
binding upon Declarants, their successors and assigns, only upon  
the lands included within the aforesaid Plan which said covenants,  
agreements, conditions, easements, reservations and restrictions  
are hereby imposed for the equal benefit of each lot shown on the  
aforesaid plan:

1. **USE OF LAND:** The land in the entire tract shall be used for private residence purposes only and no building of any kind whatsoever shall be erected or maintained thereon, except private detached dwelling houses, private garages, either attached or detached, and other necessary outbuildings such as a toolhouse or a greenhouse, for the sole use of the respective owners, or occupants of the plots upon which such are erected. Each dwelling shall be designed and used for occupation by a single family, but may include a separate apartment for occupancy and use by a member or members of the immediate family of the occupant without the payment of rent.

2. **APPROVAL OF PLANS:** No building, fence, wall or other structure shall be commenced, erected or maintained, nor shall any addition to or exterior change or alteration therein be made until the plans and specifications, showing the nature, kind, shape, height, materials, floor plans, color scheme, location and approximate cost of such structure, the location of driveways, and the grading plan of the parcel of land to be built upon, shall have been submitted to and approved in writing by the within mentioned declarants and a copy thereof, as finally approved, lodged permanently with the said declarants. The said declarants shall have the right to refuse to approve any such plans or specifications or grading plan, which are not suitable or desirable, in their opinion, for aesthetic or other reasons; and in so passing upon such plans, specifications and grading plan, they shall have the right to take into consideration the suitability of the proposed building or other structure and of the materials of which it is to be built, to the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure, as planned, on the outlook from the adjacent or neighboring property.

3. **SET-BACK:** No building or part thereof, except as hereinafter provided, shall be erected or maintained on any part of said tract closer to any road, street, avenue or drive than 40 feet. Enclosed porches, steps, bay windows, etc. shall comply with the now existing Zoning Code of New Castle County.

4. **FREE SPACE:** The minimum width of side yards shall have a maximum aggregate of one-third of the length of the building set-back line measured between the two side lot lines, except that in no case need the maximum aggregate width of the two side yards be more than 40 feet. The minimum side line set-back shall be

12 1/2 feet. A detached garage or other accessory building may be constructed within a rear yard providing:

- (a) It may be constructed within a rear yard provided it is distant at least 5 feet from the side lot line.
- (b) In the case of a corner lot, it shall be distant at least 5 feet from the rear lot line, except that, if more than fifty per cent (50%) of a private garage extends within that half of the rear yard nearest the side street line, it shall set back from the rear lot line a distance equal to the required minimum width of a side yard.
- (c) Upon mutual agreement between property owners, party-wall private garages may be built across a common lot line.
- (d) An attached private garage shall be subject to the yard requirements of the principal building.
- (e) Excepting, however, that no garage or other accessory building shall encroach upon any utility easement or right of way.
- (f) No fence shall be erected or permitted on any residential building lot, except to the rear of the main house structure. If a lot owner elects to erect a fence to the rear of his home structure, it shall not be permitted to be over five (5) feet in height and the design of said fence must meet the approval of the Declarants.

5. NUISANCES: There shall not be erected, permitted, maintained or operated upon any of the land included in said tract any building or any other structure used for the purpose of carrying on any business, trade or calling; nor shall any noxious, dangerous, or offensive thing, trade or business whatsoever be permitted or maintained on said property; nor shall there be erected, permitted, maintained or operated upon any of the land included in said tract any graveyard, hospital, sanitarium or institution of like or kindred nature, stable of any kind, cattle yard, hog pen, fowl yard or house, cesspool, privy vault or any kind of privy, nor shall any plant or manufacturing establishment of any kind, nor billboard, nor live poultry, hogs, cattle or other livestock be kept thereon.

6. RIGHT TO MODIFY: The said declarants hereby expressly reserve the right at any time to annul, waive, change or modify any of the restrictions, conditions, covenants, agreements or provisions contained herein, as to any part of said tract then owned by the said declarants, and with the consent of the then owner as to any

other land included in said tract, provided such changes can be made without the objections of the owners of more than one-half of any frontage as being prejudicial to their welfare.

7. **RIGHT TO ABATE AND ENFORCE:** Violation of any restrictions or condition, or breach of any covenant or agreement, herein contained, shall give the said declarants, in addition to all other remedies, the right to enter upon the land upon which violation or breach exists, and summarily to abate and remove, at the expense of the owner thereof, any erection, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof; and the said declarants shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal.

Failure by the said declarants or any land owner to enforce any restriction, covenant or agreement herein contained shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or as to one occurring prior thereto.

8. **RIGHT TO ASSIGN:** Any of all of the rights and powers, titles and estates reserved or given to the said declarants in this declaration may be assigned to any one or more individuals, corporations or associations that will agree to assume said right, powers, duties and obligations and carry out and perform the same. Any such assignment or transfer shall be made by appropriate instrument in writing in which the assignee or transferee shall join for the purpose of evidencing its, his, her, their consent to the acceptance of such rights and powers; and such assignee or transferee shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the said declarants, the said declarants thereupon being released therefrom.

9. **EASEMENTS RESERVED:** Easements and rights of way are hereby expressly reserved in and over the rear ten feet of each plot and over the side yards thereof for a distance of five feet from the side property lines of each lot shown on said plot; such easements and rights of way shall have the following purposes: For the erection, construction and maintenance of poles, wires and conduits and the necessary or proper attachments in connection therewith for the transmission of electricity and for telephone and other purposes: For the construction and maintenance of storm water drains, public and private sewers, pipe lines for supplying of gas, water and heat and for any other public or quasi public utility or function, conducted, maintained,

furnished or performed by or in any method beneath the surface of the ground, The declarants or assigns shall have the right to enter upon said reserved strips of land for any of the purposes for which easements and rights of way are reserved.

10. RIGHT TO TERMINATE: These covenants shall be taken to be real covenants running with the land and shall be binding upon the heirs, executors, administrators and assigns of the grantee until December 31, A. D. 1965, at which time they shall be considered to be extended in their entirety for an additional period of ten years and thereafter for other successive periods of ten years unless, prior to December 31, A. D. 1965, or unless prior to the expiration of some one of the ten year extension periods, appropriate instruments in writing consenting to their termination in whole, or in part shall be filed of record, executed and acknowledged by the said declarants and by the owners of not less than two-thirds of all the frontage as being to their best interests.

11. SEWER CHARGE: The land hereby conveyed is also expressly charged with the payment of any sanitary district assessment of the McDaniel Heights Sanitary District and the sewer service charges set from time to time by the Levy Court of New Castle County; and said charge should be referred to in every conveyance of said land or any portion thereof during such time as said system or service charge shall continue.

IN WITNESS WHEREOF, the declarants, Lawrence P. Talley and Esther W. Talley, his wife, have hereunto set their hands and seals the day and year aforesaid.

Signed, sealed and delivered in the presence of:

*W. Corbally*  
Witness

*Lawrence P. Talley*  
Lawrence P. Talley Seal

*W. Corbally*  
Witness

*Esther W. Talley*  
Esther W. Talley Seal



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ALL that certain piece, parcel or tract of land situate in Brandywine Hundred, New Castle County and State of Delaware, being known as the real estate development West Pembrey and being more particularly bounded and described in accordance with a survey by Howard L. Robertson dated May 31, 1960 as follows, to-wit:

BEGINNING at a point in the Southwesterly side of West Pembrey Drive (at 50 feet wide), the said point of Beginning being the intersection thereof with the division line between Pembrey and West Pembrey; THENCE from the said point of Beginning along the division line between Pembrey and West Pembrey, S. 45° 35' 45" W., 284.77 feet to a point, a corner common to West Pembrey, Pembrey and lands of Robert M. McKinney; THENCE by the said lands of McKinney the following two courses and distances: (1) N. 74° 45' W., 288.8 feet to a point; and (2) N. 13° 09' 00" W., 505.76 feet, more or less, to a point in the center line of the East Branch of Shellpot Creek; THENCE by other lands of Frank D. Bonsall and Wife in an Easterly, Northeasterly and Southeasterly direction along the natural center line thereof and the relocated center line thereof as shown on the Final Plat of West Pembrey a distance of 950 feet, more or less, to a point in the division line between Pembrey and West Pembrey; THENCE thereby the following two courses and distances: (1) S. 46° 01' 45" W., 58.04 feet to a point; and (2) S. 45° 35' 45" W., 140.49 feet to the point and place of Beginning. Containing within the said bounds 4.80 acres of land, be the same more or less.

RECORDED. <sup>2</sup> 1960 JOSEPH A. BRADSHAW, RECORDER

"Exhibit A"