

655.1

DECLARATION OF RESTRICTIONS

This Declaration, made this 23<sup>rd</sup> day of December, 1987, by Frank E. Acierno hereinafter referred to as the "Declarant".

WITNESSETH:

WHEREAS, the Declarant is the owner of that certain tract, piece or parcel of land with buildings situate thereon in Brandywine Hundred, New Castle County, State of Delaware, containing eight and twelve one hundredths acres, more or less, as more fully described in Exhibit "A" hereto attached (the "Property"); and

WHEREAS, Declarant executed a Declaration of Restrictions, dated September 10, 1985, and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware ("Recorder's Office"), in Deed Book 280, Page 40 (the "Prior Declaration") which Prior Declaration is presently binding upon the Property; and

WHEREAS, Declarant desires to amend, modify or alter the Prior Declaration by replacing it with this Declaration; and

WHEREAS, the Council of Civic Organizations of Brandywine Hundred, the Sharpley Civic Association, the Woodbrook Civic Association, the Edenridge Civic Association, the Tavistock Civic Association (collectively the "Associations") and Naamans Little League, Inc., do not object to the replacement of the Prior Declaration with this Declaration.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Declarant does hereby covenant and declare that he shall hold and stand seized of the Property under and subject nevertheless,

DOCUMENTARY  
SURCHARGE  
PAID \$3.00

to the following restrictive covenants, which it is hereby agreed shall be covenants running with the land and which shall be binding upon the Declarant, his heirs, successors and assigns, and all others who from time to time may acquire title or any interest in all or any part of the Property, but only upon the Property and upon no other lands, which restrictive covenants are hereby imposed for the benefit of New Castle County, a political subdivision of the State of Delaware, the Associations and their respective successors and assigns:

1. Building Height Restriction. The maximum height of any building constructed or reconstructed on the Property shall not exceed a maximum of 25 feet above the existing grade level of that part of Concord Pike immediately adjacent to the northern entrance to the Property from Concord Pike. No such building shall contain more than one story (i.e., one level or story of rental area plus pitched roof).

2. Floor Area Restriction. The total leaseable floor area of the building constructed on the Property shall not exceed as a maximum Eighty-six thousand (86,000) gross leaseable square feet. The total building cover area of said buildings shall not exceed 30% of the total area of the Property.

3. Building Extension Restrictions. No part of any building constructed or reconstructed on the Property shall be located within 20 feet of the south boundary of the Property, 20 feet of the west boundary of the Property, or 20 feet of the north boundary of the Property; provided however that if Declarant sells,

conveys, transfers or otherwise grants any interest in the Property to a third party prior to the completion of construction of the building referred to in Paragraph 7 of this Declaration, said third party shall not be entitled to construct or reconstruct a building on any part of the Property west of the most westerly part of the school building presently existing on the Property, without the prior written consent of the Association.

4. Ingress and Egress Restrictions. There shall be no access to the road south of the Property known as "Whitby Road" for the purpose of ingress or egress of motor vehicles, with the exception that such access may be allowed for emergency or public safety vehicles.

5. Restriction on Use of Land. The Property shall be used in accordance with Section 23-31 (C-1 Districts) of New Castle County Code, as a neighborhood shopping center provided however that no building erected or altered on the Property shall be used for:

(a) A free standing restaurant with drive-in or primarily fast food service; or

(b) An automobile service station and/or public garage.

6. Screening. Declarant shall provide appropriate screening of the Property consisting of (i) an eight foot high wood fence of the style known as T-111 and (ii) an evergreen buffer planted on the side of the wood fence away from the Property. The plants shall be of a type and shall be so planted as to assure

that they entirely conceal the fence on reaching maturity. Such screening shall be provided along the entire westerly line of the Property (i.e., the line adjacent to lands presently owned by Naaman's Little League, Inc.) and along the northerly and southerly line of the Property extending from the rear line in an easterly direction to points parallel to the east wall of the building to be constructed or reconstructed on the Property. Declarant shall keep and maintain the fence and landscaping in good order and repair. The fence and/or landscaping need not be installed in areas required by State or County agencies to be left open for reasons of public safety; provided however that such substitute screening as may be permitted by said agencies shall be installed in such areas. In addition, there may be breaks in the fence along the westerly line of sufficient size for pedestrian use as may be agreed to between Declarant and Naaman's Little League, Inc. Parking lot lighting shall be so designed as to be shielded from areas surrounding the Property.

7. Building. The building constructed or reconstructed by Declarant on the Property shall conform to the following requirements: (a) the exterior of all sides of the building shall be constructed of brick; (b) the building shall have a footprint as shown on the sketch attached hereto as Exhibit "B", subject to such alterations as may be required to accommodate the requirements of State and County agencies; and (c) the building design shall be of an architectural style as represented by the Wah Yee renderings, a copy of which is hereto attached as Exhibit "C".

8. Modification, Amendment or Alteration. The foregoing covenants shall not be modified, amended, or altered, in whole or part, except on the approval of the County Council of New Castle County, the Associations and their respective successors or assigns. The Associations shall not unreasonably withhold their consent to any such modifications, amendments or alterations of this Declaration. Declarant, his heirs, successors and assigns, shall give the Associations, or their respective successors, thirty days written notice of any application to the County Council or New Castle County, its successors or assigns, to modify, amend or alter, in whole or in part, the foregoing covenants. Proof of said notice shall accompany any application for change in the foregoing covenants.

9. Violation of Covenants. If Declarant or his heirs, administrators, successors or assigns, shall violate any of these restrictive covenants, any land owner with a common property line, or the government of New Castle County, its successors or assigns, or any of the Associations, or their respective successors, shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach of any of them. The failure to promptly enforce any of these restrictive covenants shall not bar their enforcement. The invalidation of any one or more of these restrictive covenants by any Court of competent jurisdiction or by any waiver (express or implied) shall in no way effect any of the other restrictive covenants, but they shall remain in full force and effect.

10. Binding Effect. The covenants contained herein shall be effective only if and when approved by the County Council of New Castle County and recorded in the Recorder's Office. Upon such approval and recordation, the Prior Declaration shall become void and of no effect.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal the day and year aforesaid.

Witness:

John G. Rich

Frank E. Acierno  
FRANK E. ACIERNO

STATE OF DELAWARE )  
NEW CASTLE COUNTY ) SS.

This instrument was acknowledged before me on December 23<sup>rd</sup>, 1987, by Frank E. Acierno.

July D. Shinn  
Notarial Officer