

**DECLARATION OF COVENANTS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS**

THIS DECLARATION, made this 23rd day of September, 1966 by LEVITT AND SONS, INCORPORATED, a New York corporation having its principal office at Marcus Avenue and Lakeville Road, Lake Success, New York, hereinafter referred to as "Developer".

WITNESSETH:

WHEREAS, Developer is the owner of the real property described in Exhibits "A" and "B" of this Declaration and desires to develop thereon a residential community, together with common lands and facilities for recreational purposes for the benefit of such community; and

WHEREAS, Developer desires to provide for the amenities in said community and for the maintenance of said common lands and facilities; and to this end desires to subject the aforesaid real property, hereinafter referred to in Article II as the "Existing Property", to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which will be delegated and assigned the powers of maintaining and administering the community facilities, administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the MONMOUTH HEIGHTS COMMUNITY ASSOCIATION is to be incorporated under the laws of the State of New Jersey, as a non-profit corporation, for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that the real property referred to in Article II hereof and more particularly described in Exhibits "A" and "B" attached hereto and forming a part hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

**ARTICLE I
DEFINITIONS**

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to the MONMOUTH HEIGHTS COMMUNITY ASSOCIATION.
- (b) "The Properties" shall mean and refer to all such existing properties and additions thereto, both Lots and Common Areas, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.

- (c) "Common Areas" shall mean and refer to those areas of land which, contingent upon the obtaining by Developer of any necessary zoning or other governmental approval(s), are intended to be devoted to the common use and enjoyment of the members of the Association as herein defined, rather than dedicated for use by the general public, and are described in Exhibit "B" attached hereto. Developer hereby reserves the right, in the event that it is unable to secure such necessary governmental approval(s), to substitute other land in place of that described in Exhibit "B", provided that any land so substituted shall be substantially the same in character and area as that described in Exhibit "B". In the event that it becomes necessary to substitute other land, as herein provided, the Developer, its successors or assigns may release and extinguish this Declaration, and all of the covenants, restrictions, easements, charges and liens created hereby, as to that property described in Exhibit "B", without the joinder or consent of any other person or entity.
- (d) "Lots" shall mean and refer to any plot of land intended and subdivided for residential use, shown upon any of the recorded subdivision plats of The Properties, but shall not include the Common Areas as heretofore defined.
- (e) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure.
- (f) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1, hereof.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Manalapan Township, Monmouth County, New Jersey, and is more fully described in Exhibits "A" and "B" attached hereto and forming a part hereof, all of which real property shall hereinafter be referred to as "Existing Property."

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

- (a) Additions by Developer. The Developer, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of the development as shown on a map entitled "Tentative Plat of Monmouth Heights" (4 sheets) dated November 8, 1965 and approved by the Township Committee of Manalapan Township, on December 20, 1965; plus other additional properties consisting of residential developments in which the Developer proposes to construct single-family houses in substantially the same price range as those to be constructed by it on the land described in Exhibit "A". Neither the Developer nor its successors and assigns, shall be bound to make such additions or to adhere to the aforesaid Tentative Plat in any subsequent development of the land shown thereon. The additions under this and the succeeding subsection shall be made by filing of record a Supplemental Declaration with respect to the additional property which shall extend the scheme of this Declaration to such property. Such Supplemental Declaration may contain such complementary additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplemental Declaration revoke, modify or add to the covenants established by this Declaration within the Existing Property.

- (b) Other Additions. Upon approval in writing of the Association pursuant to a vote of its Members, the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplemental Declaration of Covenants and Restrictions as described in subsection (a) hereof.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record Owner (as defined in Article I) of any Lot which is subject by this Declaration to assessment by the Association shall be a member of the Association.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class "A" Members shall be all Owners excepting the Developer and excepting any other person or entity which acquires title to all or a substantial portion of The Properties for the purpose of developing thereon a residential community. Class "A" Members shall be entitled to one vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. Class "B" Members shall be the Developer, its successors or assigns. The Class "B" Member shall be entitled to four votes for each Lot in which it holds the interest required for membership by Section 1 provided that upon the happening of either of the following events, whichever first occurs, the Class "B" Member shall be entitled to only one vote for each such Lot:

- (a) when the total votes outstanding in the Class "A" membership equal the total votes outstanding in the Class "B" membership; or
- (b) on December 31, 1971.

When a purchaser of an individual Lot takes title thereto from the Developer, he becomes a Class "A" Member and the membership of the Developer as to such Lot shall cease.

ARTICLE IV PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article IV, every Member shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title to Common Areas. The Developer may retain the legal title to the Common Areas until such time as it has completed improvements thereon and

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until such time as, in the sole opinion of the Developer, the Association is able to maintain the same. Notwithstanding any provision herein the Developer hereby covenants, for itself, its successors and assigns, that it will convey the Common Areas to the Association not later than December 31, 1971, subject, however, to the following additional covenants and conditions, which shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns:

- (a) The Common Areas shall be used exclusively for non-profit recreational purposes, and uses incidental thereto.
- (b) In order to preserve and enhance the property values and amenities of the Community, the Common Areas and all facilities now or hereafter built or installed thereon shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. Further, it shall be an express affirmative obligation of the Association to keep the swimming pool, and facilities appurtenant thereto, open, adequately staffed and operating during those months and during such hours as outdoor swimming pools are normally in operation in this locality.
- (c) For a period of fifteen (15) years from date of the conveyance to the Association, no site development work shall be done or changed, nor shall any building or structure be erected, reconstructed or altered (except for interior construction or alterations) without the prior, written approval by the Developer, its successors or assigns, of the plans and specifications for such work.
- (d) At least forty per cent (40%) of the land area of the Common Areas described in Exhibit "B" shall at all times remain unpaved and free of any buildings or other structures. No buildings, structures or paving (except for a driveway for access to and from the premises) shall be nearer than seventy-five (75) feet to the front line of the premises which abuts on Ryan Road and the seventy-five (75) feet front yard hereby established shall at all times be maintained as a landscaped area.
- (e) Wherever the Developer shall erect a fence or plant screening material on the Common Areas, such fence and screening shall be maintained intact at all times and shall not be removed; if such fence or screening becomes damaged or is destroyed it shall be repaired or replaced with fencing or screening material, as the case may be, of comparable size and style. However, such fence may be removed at such time as dense evergreen planting has been established, at least four (4) feet high, along the entire length of the fence line, provided that such planting shall be maintained at all times as hereinabove provided.
- (f) It shall be an express affirmative obligation of the Association to maintain in effect at all times public liability insurance, with a reputable company or companies authorized to do business in the State of New Jersey, in limits of not less than Five Hundred Thousand Dollars (\$500,000.00) per person and One Million Dollars (\$1,000,000.00) aggregate and for property damage of not less than Twenty-five Thousand Dollars (\$25,000.00) per accident and Fifty Thousand Dollars (\$50,000.00) aggregate.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Developer, and of the Association in accordance with its Certificate of Incorporation and By-laws, to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage said Common Areas. However, at any given time the total amount of the unpaid debts (including loans) incurred by the Association shall not exceed the total of the maximum annual assessments that may be levied for that year pursuant to this Declaration. In the event of a default under any such mortgage the lender shall have a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of such properties to a wider public (subject to applicable zoning laws and other governmental regulations) until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored; and
- (b) The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosure; and
- (c) The right of the Association, as provided by its By-laws, to suspend the use, enjoyment and voting rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations;
- (d) The right of the Association to dedicate or transfer all or any part of the Common Areas to an appropriate governmental body, agency or authority, to be devoted to purposes as nearly as practicable the same as those to which said Common Areas are hereby required to be devoted by the Association, provided that no such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication or transfer and unless written notice of the proposed agreement and action thereunder is sent to every Member at least sixty (60) days in advance of any action taken.
- (e) The right of the Developer, and of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Areas, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, fuel oil and other utilities.
- (f) The right of the Developer to grant, to a governmental body having jurisdiction, a "conservation easement" pursuant to the "New Jersey Green Acres Land Acquisition Act of 1961", L. 1961, c. 45, p. 481, Sec. 12 (N.J.S.A. 13:8A-12) or otherwise.

ARTICLE V
COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner (subsequent to the Developer) of any Lot, by acceptance of a Deed therefor, 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: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. All assessments, both annual and special, shall be uniform as to each Lot and, together with such interest

thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as are hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the management, operation, improvement and maintenance of the Common Areas and for the use and enjoyment thereof by the Members of the Association and their guests, and for the operating expenses of the Association.

Section 3. Basis and Maximum of Annual Assessments. Until the year beginning January, 1970, the annual assessment shall be not more than One Hundred Dollars (\$100.00) and after January 1, 1970 the maximum annual assessment may be increased only as hereinafter provided in Section 5. The Board of Trustees of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount, provided that it shall be an affirmative obligation to the Association, and its Trustees, to fix such assessment at an amount sufficient to maintain and operate the Common Areas and facilities in accordance with the standards set forth in Section 2 (b) of Article IV.

Section 4. Special Assessments for Capital Improvements. After January 1, 1970, in addition to the annual assessments authorized by Section 3 of this Article V, the Association may levy in any assessment year a uniform special assessment applicable to that year only, in an amount no higher than the maximum annual assessment then permitted to be levied hereunder, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement or a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and which shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments. Subject to the limitations of Section 3 of this Article V, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and which shall set forth the purpose of the meeting.

Section 6. Quorum for any Action Authorized Under Section 4 and 5. The quorum required for any action authorized by Sections 4 and 5 of this Article V, shall be as follows: At the first meeting called, as provided in Section 4 and 5 of this Article V, the presence at the meeting of Members, or of proxies, entitled to cast sixty (60) per cent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth in Sections 4 and 5, and the required quorum at such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that such subsequent meeting shall not be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments; Due Dates - The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Trustees of the Association to be the date of commencement. The assessments for any year, after the first year, shall become due and payable on the first day of March of said year. The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be that percentage of the annual assessment provided for in Section 3 hereof as is determined from the following table:

From	January 1	through	June 15:	100%
"	June 16	"	June 30:	85%
"	July 1	"	July 15:	70%
"	July 16	"	July 31:	50%
"	August 1	"	August 15:	35%
"	August 16	"	August 31:	20%
"	September 1	"	December 31:	—

The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is added to the properties subject to assessment at a time other than the beginning of any assessment period. The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Trustees. The Board of Trustees of the Association shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of Association. If any assessment is not paid on the date when due, then such assessment shall be deemed delinquent and shall, together with such interest thereon and cost of collection thereof as are hereinafter provided, thereupon become a continuing lien on the Lot which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of six (6) per cent per annum, and the Association may bring legal action against the Owner personally obligated to pay the same or may enforce or foreclose the lien against the property; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 11. Exempt Property. The following properties subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all properties dedicated to and accepted by a governmental body, agency or authority and devoted to public use; (b) all Common Areas as defined in Article I, Section 1 hereof.

ARTICLE VI GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, until December 31, 1999, unless otherwise expressly limited herein, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then-Owner of two-thirds (2/3) of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded two (2) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction, to restrain violation, to require specific performance and/or to recover damages; and against the land to enforce any lien created by these covenants; and failure by the Association or 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.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, LEVITT AND SONS, INCORPORATED has caused

**Exhibit "A" Attached To and Forming Part
of a Declaration of Covenants, Restrictions,
Easements, Charges and Liens Made By
Levitt and Sons, Incorporated on September 23, 1966**

All those certain tracts or parcels of land and premises situate lying and being in the Township of Manalapan, County of Monmouth and State of New Jersey and shown on the following final subdivision maps filed in the Office of the County Clerk of Monmouth County, New Jersey:

1. "Final Plat of Monmouth Heights, Section 1", filed March 23, 1966 as Sheet No. 26, Case 82.
2. "Final Plat of Monmouth Heights, Section 2", filed March 23, 1966 as Sheet No. 27, Case 82.
3. "Final Plat of Monmouth Heights, Section 3", filed March 23, 1966 as Sheet No. 28, Case 82.
4. "Final Plat of Monmouth Heights, Section 4", filed March 23, 1966 as Sheet No. 29, Case 82.
5. "Final Plat of Monmouth Heights, Section 5", filed March 23, 1966 as Sheet No. 30, Case 82.

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RECORDED MONMOUTH
COUNTY CLERK'S OFFICE

JAN 4 11 07 AM '67

RC 3504 FILE 100
[Signature]

15 City Hill, Inc Co
P.C.C. 73, Revision Parking
Levitts, Inc
1965

EXHIBIT "A"

**Exhibit "B" Attached To and Forming Part
of a Declaration of Covenants, Restrictions,
Easements, Charges and Liens Made By
Levitt and Sons, Incorporated on September 23, 1966**

BEGINNING at a point on the northerly side of Ryan Road as widened by the New Jersey State Highway Department and as shown on "General Property Map, U.S. Route 9, Section 23, Page 14 of 24" and dated November 1962, said point being distant N. 65° 23' 34" E. 181.93 feet from the easterly right-of-way line of U.S. Route 9 and at the southeast corner of the parcel of land conveyed by Quaker Holding Co. to Gulf Oil Corporation by Deed dated July 7, 1966,

- (1) running thence along the easterly line of said parcel of land conveyed to Gulf Oil Corporation N. 29° 16' 40" W. 220.01 feet;
- (2) thence with said easterly line produced N. 29° 16' 40" W. 397.42 feet;
- (3) thence for a new line N. 01° 39' 30" E. 437.96 feet to the south side of a Drainage Right-of-Way as shown on a map entitled "Final Plat, Monmouth Heights, Section 1" and filed in the Clerk's office of Monmouth County on March 23, 1966 in File Number 82, Map Number 26;
- (4) thence along the south side of said Drainage Right-of-Way easterly by a line curving to the left, with a radius of 700.00 feet, an arc length of 242.83 feet;
- (5) thence along same S. 76° 40' 32" E. 111.64 feet;
- (6) thence leaving said Drainage Right-of-Way for a new line S. 13° 19' 28" W. 168.00 feet;
- (7) thence for a new line S. 01° 39' 30" W. 209.49 feet;
- (8) thence for a new line S. 26° 21' 10" E. 434.28 feet to a proposed widening line of Ryan Road;
- (9) thence along same S. 63° 38' 50" W. 192.44 feet to said northerly side of Ryan Road as widened by the New Jersey State Highway Department;
- (10) thence along same S. 65° 23' 34" W. 18.57 feet to the point or place of **BEGINNING**.

Containing 5.5147 acres.