

Tax I.D. #10-65-3135878

Our File #99-1660

Title Insurer: First American Title Insurance Company

2 of 3

0017118 336

② CP ②

I:\forms\realstate\settlement\rapley\clients\declaration\lot 77form1.doc  
(INDIVIDUAL PURCHASER - BUILDER OTHER THAN NCLP)

**DECLARATION AND RESTRICTION (LOT 77)**

**THIS DECLARATION AND RESTRICTION** (this "Declaration"), made on the date hereinafter set forth, by **ROCK RUN LIMITED PARTNERSHIP**, a Maryland limited partnership (hereinafter referred to as the "Declarant") and **JEONG KIM and CYNTHIA KIM** ("Original Purchasing Owner").

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference (the lot(s) constituting such real property herein referred to collectively as the "Property"); and

WHEREAS, Original Purchasing Owner is the contract-purchaser (or assignee thereof) of the Property; and

WHEREAS, Declarant wishes to subject the Property to the effect of certain covenants, conditions and restrictions ("Covenants") set forth in this document, which Covenants are intended to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential properties within the Property.

NOW THEREFORE, the Declarant does hereby subject the Property to the effect and operation of the Covenants. The Covenants are for the purpose of protecting the value and desirability of the Property and shall run with the Property. The Covenants shall be binding on all parties having any right, title or interest in the Property, their heirs, successors, successors in title and assigns.

**DEFINITIONS**

- "Approved Builder" shall mean and refer to either (i) a builder selected by an Owner from a list of no less than five homebuilders selected and pre-approved by Declarant for the construction of residences in Rapley Preserve at Avenel (each, a "Pre-Approved Builder") which list may change from time to time in Declarant's sole discretion; provided, however, that once an Owner has contracted for construction of such Owner's residence on such Owner's Lot with a Pre-Approved Builder, Declarant's removal of such builder from the list shall not affect such Owner, or (ii) another builder selected by an Owner for construction of such Owner's residence on such Owner's Lot which Declarant has approved in Declarant's sole discretion and for which Declarant has received from such Owner a premium payment in the amount of Fifty Thousand and 00/100 Dollars (\$50,000.00); herein called a "One-Time Approved Builder". Declarant's consent to a One-Time Approved Builder for one Owner shall not make such builder either a Pre-Approved Builder or a One-Time Approved Builder for any other Owner. Declarant agrees that it has approved Bradbern Construction Co., Inc. as a "Pre-Approved Builder" for the Property.
- "Approved Plans" shall mean and refer to the site plans, elevations, materials and colors that have been approved by the Committee for the home an Owner intends to build on such Owner's Lot.
- "Association" shall mean and refer to the Avenel Community Association, Inc.
- "Buyback Option" shall have the meaning given such term in paragraph 1.1 hereof.

IMP. FD. SURE \$	2.30
RECORDING FEE	20.00
TOTAL	22.30
NO. OF PAGES	11
NO. OF LINES	115

02/29 P 2:15 P

Remember to show letter & folio

AFTER RECORDING RETURN TO:

BANNER TITLE COMPANY  
11140 ROCKVILLE PIKE, SUITE 450  
ROCKVILLE, MD 20852  
ATTN: POST CLOSING DEPT

2020

LF 17040.285

0017118 337

- 5 "Committee" shall mean and refer to the Rapley Preserve Architectural Review Committee.
- 6 "Construction Commencement" shall have the meaning given such term in paragraph 2.3 hereof.
- 7 "Construction Requirement" shall have the meaning given such term in paragraph 2.1 hereof.
- 8 "Declarant" shall mean and refer to Rock Run Limited Partnership, a Maryland limited partnership, and its successors and assigns to whom the special rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant hereunder are specifically assigned or transferred in writing.
- 9 "Lot" shall mean and refer to each platted lot, regardless of size, whether vacant or improved, comprising the Property.
10. "Option Notice" shall have the meaning given such term in paragraph 1.1 hereof.
11. "Original Purchasing Owner" shall mean an Owner who purchased its Lot directly from Declarant under a purchase contract between Owner and Declarant, whether Owner was the original "Purchaser" signatory thereunder or succeeded to the rights and obligations of "Purchaser" thereunder with respect to the Lot pursuant to an assignment and assumption agreement consented to and executed by Declarant (a purchase contract between Declarant and Owner by reason of such an assignment and assumption by Owner, an "Assumed Purchase Contract").
- 12 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers but excluding those having such interest merely as security for the performance.
13. "Permitted Exceptions" shall, for each Lot, mean and consist of (i) the lien of current general real estate taxes, front-foot benefit charges, and installments of special assessments for public improvements which are not yet due and payable as of the date of settlement on such Lot; (ii) zoning and applicable laws and regulations; (iii) such facts as an accurate survey or personal inspection of such Lot would disclose; and (iv) covenants, easements, rights-of-way, conditions, agreements, reservations, and restrictions of record as of the date hereof.
- 14 "Property" shall mean and refer to the real property described in Exhibit "A" attached hereto and made a part hereof.
15. "Purchase Contract" shall, (i) with respect to each Original Purchasing Owner or a Lot held by an Original Purchasing Owner, mean and refer to the purchase contract for the Lot between Owner and Declarant and (ii) with respect to each Owner that is not an Original Purchasing Owner or a Lot held by such an Owner, mean and refer to the most recent purchase contract pursuant to which such Owner's Lot was purchased from Declarant.
16. "Purchase Price" shall, with respect to each Lot, mean and refer to the gross sales price paid for such Lot under its Purchase Contract.
17. "Subdivision" shall mean and refer to the Rapley Preserve at Avenel Subdivision in Potomac, Montgomery County, Maryland.

LF 17040.286

0017118 338

18 "Substantial Completion" shall have the meaning given such term in paragraph 1.2 hereof.

**PROPERTY SHALL ONLY BE HELD AND SOLD SUBJECT TO COVENANTS**

The Property shall only be held, conveyed, transferred and sold subject to the conditions, restrictions, covenants and charges hereinafter set forth.

**REQUIREMENTS AND RESTRICTIONS**

The Covenants set forth herein are intended to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Owners in order to enhance the value of the residential real property investments made by the Owners. Declarant intends that the Subdivision be a first-class community of substantial, well built and attractive homes. In furtherance of this objective, Declarant has an important interest in being in contractual privity with the parties that will construct homes or have homes constructed in the Subdivision and ensuring that a well built and attractive home is constructed on each Lot in a timely fashion. Thus, the requirements and restrictions hereinafter set forth shall apply.

**1. RESTRICTIONS ON RECONVEYANCE, BUYBACK OPTION.**

- 1.1. Except as provided below or as otherwise provided in the applicable Purchase Contract, no Owner shall sell or transfer any Lot prior to Substantial Completion of a residence thereon by an Approved Builder in accordance with Approved Plans without first offering to Declarant the right to repurchase such Lot for a cash purchase price equal to the Purchase Price for such Lot (the "Buyback Option"). Owner shall offer the Buyback Option to Declarant by notifying Declarant, in writing (the "Option Notice"), of Owner's desire to transfer such particular Lot, the name of the proposed buyer, and the intended sales price for such Lot. Declarant shall have a period of ninety (90) days following the receipt of the Option Notice to exercise the Buyback Option at the Purchase Price by notifying Owner of such election to exercise in writing. Settlement on Declarant's repurchase of a Lot shall occur within thirty (30) days of Declarant's election to exercise. At settlement, Owner shall reconvey such Lot to Declarant by special warranty deed free of liens and encumbrances other than the Permitted Exceptions. Declarant shall tender the purchase price to Owner in immediately available funds. All transfer, recordation and other closing costs shall be the sole responsibility of Owner. In the event Declarant elects not to exercise the Buyback Option, then, following the end of said ninety day period, Owner may proceed to sell such Lot to the proposed purchaser at the price stated in the Option Notice. Any transfer of the Lot to a purchaser other than such named purchaser or at a price greater or lesser than such stated price by more than 10% of said stated price shall require Owner to first again offer to Declarant the Buyback Option in accordance with the procedure set forth above. The Buyback Option shall expire on April 26, 2019.
- 1.2. For purposes of the foregoing, construction shall be deemed substantially completed ("Substantial Completion") as of the first to occur of (x) full time residence has commenced on Owner's Lot or (y) all governmental approvals required for occupancy of the residence on Owner's Lot have been obtained and all exterior construction details of the residence have been completed including landscaping; provided, however, that if "Substantial Completion" would occur during the months of November through February except for the completion of landscaping, then "Substantial Completion" shall be deemed to have occurred without completion of landscaping but landscaping must then be completely installed by the following

LF 17040.287

0017118 339

May 31 (failing which, Declarant shall have the right to enter upon the Property and complete the landscaping at Owner's cost and expense).

- 1.3. Declarant shall not have the right to the Buyback Option if any sale or transfer of the Property is made: (i) to a bona fide lender in connection with a land, development or construction loan with respect to the Lot, (ii) to a corporation, joint venture or partnership in which Owner exercises voting and managerial control; or (iii) if Owner is a natural person, to a beneficiary or legal representative of Owner in the case of Owner's death or incompetency.

2. CONSTRUCTION OF IMPROVEMENTS.

- 2.1. Each Owner must commence construction of a residence on such Owner's Lot by an Approved Builder in accordance with Approved Plans within three (3) years following settlement on such Lot under such Lot's Purchase Contract and Substantial Completion must occur within one (1) year after commencement of construction (together the "Construction Requirement").

- 2.2. If Owner shall breach the Construction Requirement, Declarant shall have the immediate and ongoing right, by written notice to Owner, to exercise the Buyback Option for such Lot at any time prior to Construction Commencement. If, following commencement of construction, Owner shall breach the intent of the Construction Requirement by engaging a builder other than an Approved Builder for any phase of construction of the residence on Owner's Lot, Declarant shall have the immediate and ongoing right, by written notice to Owner, to exercise the Buyback Option for such Lot at any time following Owner's engagement of such builder.

- 2.3. For purposes of the foregoing, construction shall be deemed commenced as of the date Owner has poured the foundation for the residence ("Construction Commencement").

3. WSSC DISCLOSURE.

Owner is aware that a portion of the Avenel Farm, immediately contiguous to the Avenel Subdivision (of which the Subdivision and thus the Property is a part), has been designated by the Washington Suburban Sanitary Commission as the proposed site for the Rock Run Sewage Treatment Plant. No representation is made by Declarant as to whether this plant will ever be built, the location of the plant, the amount of land that may be used to buffer the plant, activities that may be ongoing in that buffer area, or the quality of the operations of that plant, if built. Owner shall repeat this subparagraph in every contract into which Owner enters with any person or entity for the sale or lease of any part of the Property, whether improved or not.

GENERAL PROVISIONS

- 1. This Declaration shall be recorded in the Land Records of Montgomery County, Maryland.
- 2. Subject to the limitations and conditions herein contained, the Covenants shall be covenants running with the land and shall be binding on the Owners and shall inure to the benefit of Declarant, its successors and assigns.
- 3. Enforcement of these Covenants shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any of the Covenants, either to restrain violation or to recover damages. Declarant shall have the right to enforcement of these Covenants, and in the event such party seeking such enforcement shall be upheld by the Courts, the defendant or

LF 17040.288

0017118 340

defendants in such case shall be liable for the reasonable attorney fees sustained by the plaintiff, together with court costs of such action, and the same shall, to the extent permitted by law, constitute a lien upon the property of such defendant.

- 4 Each of the provisions hereof shall be deemed independent of the others, and invalidation of any one of these Covenants, or any part or parts thereof, by judgments or court order, shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.
- 5 As used herein, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
- 6 This Declaration may be amended by Declarant, at any time and from time to time, in Declarant's sole discretion and without the consent of Owner so long as such amendment poses no additional requirements or burdens on Owner or the Property (if such is not the case, then Owner's written consent would be required).

IN WITNESS WHEREOF, Declarant and Original Purchasing Owner have caused this instrument to be signed and sealed on this 24 day of April, 1999.

**DECLARANT:**

ROCK RUN LIMITED PARTNERSHIP

By: Potomac Investment Associates  
Limited Partnership, general partner

By: A. M. Natelli (SEAL)  
A. M. Natelli,  
general partner

**ORIGINAL PURCHASING OWNER:**

Jeong H. Kim  
By: Cynthia H. Kim, POA  
Jeong Kim

Cynthia H. Kim  
Cynthia Kim

LF 17040.289

0017118 341

STATE OF MARYLAND

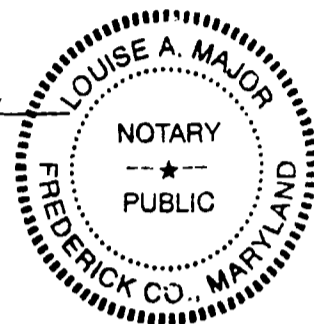
to wit:

COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this 23rd day of April, 1999, before me, the undersigned officer, personally appeared A. M. Natelli, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged himself to be a general partner of Potomac Investment Associates Limited Partnership, a Maryland limited partnership and a general partner of Rock Run Limited Partnership, a Maryland limited partnership and signatory to the foregoing instrument, and that he, being authorized to do so, executed the foregoing instrument in such capacity in the name of and on behalf of said signatory for the purposes therein set forth.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal the day and year first above written.

Louise A. Major  
NOTARY PUBLIC



My Commission Expires: 9-1-2001

STATE OF MARYLAND

to wit:

COUNTY OF Montgomery

I HEREBY CERTIFY that on this 26th day of April, 1999, before me, the undersigned officer, personally appeared Jeong Kim known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged himself to be an "Original Purchasing Owner" as of the date hereof of the property made subject to the foregoing instrument, and that he executed the foregoing instrument in such capacity.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal the day and year first above written.

\* by Cynthia Kim, attorney in fact

Seth T. Stark  
NOTARY PUBLIC

My Commission Expires: 4/01/02



LF 17040.290

0017118 342

STATE OF MARYLAND

to wit:

COUNTY OF Montgomery

I HEREBY CERTIFY that on this 26th day of April, 1999, before me, the undersigned officer, personally appeared Cynthia Kim, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged herself to be an "Original Purchasing Owner" as of the date hereof of the property made subject to the foregoing instrument, and that she executed the foregoing instrument in such capacity.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal the day and year first above written.

Jeth T. Stank  
NOTARY PUBLIC

My Commission Expires: 4/01/02

수령인  
사본  
영수증  
확인

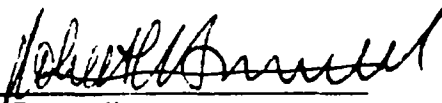
0017118 343

LF 17040.291

## EXHIBIT "A"

The parcel of real property designated as Lot 77, Block C, in the Subdivision known as "Avenel" as per plat thereof recorded among the Land Records of Montgomery County, Maryland in Plat Book 179 at Plat 20054.

This is to certify that this document was prepared under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

  
Robert L. Brownell

PARCEL ID #: 10-65-3135878

PARCEL ADDRESS: 8535 Rapley Preserve Circle  
Potomac, MD 20854

DECLARANT: **ROCK RUN LIMITED PARTNERSHIP**  
806 West Diamond Avenue, Suite 300  
Gaithersburg, MD 20878

GRANTEE: N/A

TITLE COMPANY: N/A