

Tax Map Parcel Numbers: See Exhibit "B" attached  
hereto for list of Tax Parcel Numbers

~~Prepared by and Return to:~~

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MASTER DECLARATION OF COVENANTS,  
CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR THE COMMUNITY OF  
"BREAKWATER"  
LEWES, SUSSEX COUNTY, DELAWARE

**AMENDED AND RESTATED**  
**MASTER DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS**

THIS DECLARATION is made on the date hereinafter set forth by the MASTER HOMEOWNERS ASSOCIATION OF BREAKWATER, a nonstock Delaware corporation BREAKWATER L.L.C., a Delaware limited liability company, hereinafter referred to as the "Declarant Association" in this Declaration.

**WHEREAS**, pursuant to the Deed recorded in the Office of the Recorder of Deeds in and for Sussex County, Delaware (the "Recorder's Office") at Deed Book 3061, Page 294, BREAKWATER L.L.C., a Delaware limited liability company ("Declarant") ~~is~~ ~~was~~ the owner of those certain lots, pieces or parcels of land, comprising of approximately 61.5 acres, more or less (the "Property"), being more particularly bounded and described on the Record MR-RPC Plat for Breakwater prepared by Meridian Architects & Engineers, dated March 29, 2006, and last revised on November 8, 2006, said plan being recorded in the Recorder's Office at Plat Book 110, Page 186, as it may be amended from time to time (the "Master Plan"), which Property ~~is currently designated for the construction of~~ was constructed as a residential community ~~project to be~~ known as "Breakwater" consisting of three (3) integrated development areas or communities consisting of approximately (i) eighty (80) single family subdivided dwelling lots (individually a "Single Family Lot" and collectively the "Single Family Lots"); (ii) sixty-nine (69) subdivided twinhome dwelling lots (individually a "Twinhome Lot" and collectively the "Twinhome Lots"); and (iii) thirty-six (36) townhome style condominium units (individually a "Unit" and collectively the "Units") and appurtenant common elements ~~that shall be submitted~~ subject to the provisions of the Unit Property Act of the State of Delaware (25 Del C. §§ 2201 et seq.) (collectively the "Project").

**WHEREAS**, after completion of the Project and sale of all Single Family Lots, Twinhome Lots and Units to respective Owners, Declarant, pursuant to Section 4.2 hereof, assigned all of its privileges, rights, powers, duties and authority to the Association. The Association, by a vote of 67% of its Members, amends this Declaration to delete reference to Declarant and make other changes deemed necessary.

**WHEREAS**, the Association desires to ~~further~~ control and restrict ~~both the construction of original structures and~~ improvements on the Property as generally depicted on the Master Plan as the same may be amended, as well as any modification to the original residential dwellings and other improvements that shall be built in accordance with and subject to the terms and conditions of those certain Design Guidelines and Procedures, as the same may be amended from time to time (the "Design Guidelines"), the terms of which are more fully set forth in **Schedule "A"** attached hereto and made a part hereof, together with the use to which all dwellings, structures, and improvements in the Project, as more fully described below, are put so as to promote and facilitate the development of a healthful, safe, harmonious, attractive and valuable residential community and for the preservation of the values and amenities in the Project. Towards this end, ~~Declarant~~ the Association desires to subject the Property and Project to certain covenants, restrictions and agreements as hereinafter more particularly set forth, all of which ~~Declarant~~ the Association deems to be for the benefit of the Property, Project and each Owner thereof.

**WITNESSETH:**

NOW, THEREFORE, ~~Declarant~~ the Association and each Owner hereby declares that the Property and Project shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, conditions, restrictions and easements set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and Project and be binding on all parties having any right, title or interest in all or any portion of the Property and Project, and any other real property annexed within the jurisdiction of the Association (as

defined below) in accordance with Article 2 hereof, their heirs, personal representatives, successors, transferees and assigns, and which shall inure to the benefit of each Owner thereof.

## **ARTICLE 1** **DEFINITIONS**

*Section 1.1. "Association"* shall mean and refer to Master Homeowners Association of Breakwater, a nonstock Delaware corporation, its successors and assigns.

*Section 1.2. "Common Areas"* shall mean all real property owned, leased or maintained by the Association (and expressly including the Community Facilities as defined below) for the common use and enjoyment of the Owners consisting of all areas of the Property and Project other than the individual Lots and the Units and appurtenant common elements that are solely and exclusively for the use and benefit of the Owners of Units under the Condominium Documents. Notwithstanding the foregoing, in the event the Association maintains all or any portion of any Lot(s) or Units and appurtenant common elements, such property shall not be considered Common Areas.

*Section 1.3. "Common Expenses"* shall mean and refer to the actual and estimated expenses of operating the Association, including, without limitation, a reasonable reserve and expenses for the maintenance of the Common Areas in accordance with Article 9 hereof, all as may be found to be necessary or appropriate by the Board of Directors of the Association (the "Board") pursuant to this Declaration and the Bylaws and Certificate of Incorporation of the Association.

*Section 1.4. "Community Facilities"* shall mean all improvements, structures and facilities or other betterments located within the Common Areas, including, by way of illustration and not limitation, (i) private streets, parking areas, sidewalks, active and passive recreational facilities (including, but not limited to, any trails, tot lots and walkways, the fitness center and pool facilities), the Irrigation Facilities located on or under Common Areas, entrance features or improvements that serve and/or benefit the Association, the Property, or other property intended for or available for use of the residents of the Project and street lighting, if any, (ii) any and all storm water management facilities, including, but not limited to, the stormwater management facility located on the Condominium, and utility services (including, but not limited to, the private community sewer system) to the extent that Sussex County, Delaware, or other governmental agency or other third party does not assume responsibility for the maintenance, repair and replacement of the storm water management facilities, including, without limitation, drainage pipes, infiltration trenches, ponds, basins, swales, berms, out-flow control devices, drainage areas, filters, inlets, oil/grit separators and underground facilities, if any, whether such storm water management facilities are located within the Property or not, as long as such storm water management facilities are designed to benefit or serve any portion of the Property, or are required or intended to be maintained by the Association pursuant to any easement, agreement or the direction of any governmental authority or agency, (iii) any rights-of-way, swales, culvert pipes, entry strips, signage, and entrance features or improvements that are situated within or that are appurtenant to and serve the Project, including, without limitation, any landscaping and other flora and improvements situated thereon, and (iv) any other real and personal property, facilities and equipment, including, but not limited to, the fitness center and pool facilities, that the Association is obligated or elects to maintain pursuant to this Declaration, or any lease, easement or agreement, or the direction of any governmental authority or agency.

*Section 1.5. "Community-Wide Standard"* shall mean the standard of conduct, maintenance or other activity generally prevailing in the Project. Such standard may be more specifically determined and set forth by the B o a r d .

*Section 1.6. "Condominium Documents"* shall mean the Declaration Establishing A Plan For Condominium Ownership of Premises Situate In Lewes And Rehoboth Hundred, Sussex County,

Delaware, Pursuant To The Unit Property Act Of The State Of Delaware To Be Known As "Breakwater" Condominium (the "Enabling Declaration"), Code of Regulations For Breakwater Condominium (the "Code of Regulations"), and Declaration Plan (the "Condominium Plan") ~~to be~~ prepared by Declarant, and all amendments thereto that shall be recorded ~~by Declarant~~ in the Recorder's Office in connection with the submission of the portion of the Property that will comprise the Units and the appurtenant common elements, all of which shall be submitted to the provisions of the Unit Property Act of the State of Delaware (25 Del. C. § 2201, et seq.) (the "Unit Property Act").

*Section 1.7. "Condominium"* shall mean that portion of the Property and Project shown on the Master Plan that will be submitted to the provisions of the Unit Property Act and includes the Units and appurtenant common elements.

*Section 1.8. "Declarant"* shall be Breakwater L.L.C., a Delaware limited liability company, its successors and assigns, but only to the extent that any of the rights, reservations, easements, interests, exemptions, privileges or powers of the Declarant are specifically assigned or transferred to any such successors or assigns by an instrument in writing.

*Section 1.9. "Development Plans"* shall mean and refer collectively to the approved site plan and plats for the Property and Project, including the Master Plan and Condominium Plan, including all amendments, modifications and extensions thereof as may be made from time to time.

*Section 1.10. "Eligible Mortgage Holder"* shall mean a holder, insurer or guarantor of a First Mortgage on a Lot or Unit who has submitted a written request for notice from the Association of amendments to this Declaration, the Bylaws and Certificate of Incorporation of the Association, or other significant matters which would affect the interests of the mortgagee.

*Section 1.11. "Emergency"* and its various derivations shall mean any event, circumstance or condition created or arising out of the use, operation, or occupancy of any portion of the Property or Project, including, but not limited to, any Lot, Unit, the Condominium, or the Common Areas, including, but not limited to the Common Facilities, which may, in the absence of immediate action by ~~the Declarant,~~ an Owner or the Association, as applicable, and as otherwise provided under this Declaration (i) pose an immediate threat or irreparable harm to any Owner, Member or the Association and their respective tenants, subtenants, agents, officers, directors, employees, agents, contractors, customers, visitors, licensees, invitees, guests, members and concessionaires or other third party or (ii) pose an immediate threat or irreparable harm or significant property damage to any portion of the Property or Project (including, but not limited to, any Lot, Unit, the Condominium, or the Common Areas) or to any property adjacent to the Property or Project or (iii) violate or result in the revocation of any and all authorizations, approvals, certificates or permits or other instruments or documents that are issued by and from any local, county, state or federal agency or body which govern the occupancy, use and operation of the Property or Project (including, but not limited to, any Lot, Unit, the Condominium, or the Common Areas) or (iv) invoke, create or impose civil or criminal liability upon any Owner, Member, the Condominium or the Association by any governmental authority or third parties as a result of the acts or omissions of any Owner, Member, the Condominium, or the Association or (v) as reasonably determined by ~~Declarant~~the Association.

*Section 1.12. "Irrigation Facilities"* shall mean and refer to any above or below ground infrastructure installed by the Declarant and designed and intended to be used for the purpose of watering the landscaping located on the Property, including, but not limited to, trees, shrubs, lawns, and other vegetation located on the Lots, Common Areas, and Condominium.

*Section 1.13. "Laws"* shall mean all statutes, laws, rules, regulations, ordinances and similar enactments or promulgations, by and from any local, county, state or federal agency or body, including,

but not limited to environmental laws and regulations and applicable zoning, subdivision, health and building codes and any and all authorizations, approvals, certificates or permits or other instruments or documents that are issued by and from any local, county, state or federal agency or body which govern the ownership, occupancy, use, or operation (including, but not limited to, any maintenance, repair and or replacement) of the Property or Project, including, but not limited to, the Common Areas, Lots, Units and Condominium.

*Section 1.14. "Lot"* shall mean any one of the Single Family Lots, any one of the Twinhome Lots and shall not include the Common Areas, Condominium or other property dedicated for public use.

*Section 1.15. "Member"* shall mean and refer to every person, group of persons, associations, limited liability company, corporation, partnership, trust, or other legal entity, or any combination thereof, who holds ~~any class of~~ membership in the Association.

*Section 1.16. "Mortgagee"* shall mean the holder of any recorded mortgage encumbering one or more of the Lots. "First Mortgage", as used herein, shall mean a mortgage with priority over all other mortgages. As used in this Declaration, the term "mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration, the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), all corporations and any agency or department of the United States Government or of any state or municipal government, or any other organization or entity which has a security interest in any Lot or Unit. In the event any mortgage is insured by the Federal Housing Administration ("FHA") or guaranteed by the Department of Veterans Affairs ("VA"), then as to such mortgage the expressions "mortgagee" and "institutional mortgagee" include the FHA or the VA as the circumstances may require, acting, respectively, through the Federal Housing Commission and the Secretary of Veterans Affairs or through other duly authorized agents.

*Section 1.17. "Owner"* shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot or Unit which is a part of the Property or Project, but excluding those having such interest merely as security for the performance of an obligation.

~~*Section 1.18. "Participating Builder" refers to a person or entity other than the Declarant that, in the ordinary course of such person's or entity's business, constructs residential structures on any portion of the Property or Project, including, but not limited to, the Lots and Units for sale or lease to others, including, but not limited to, Schell Brothers, LLC.*~~

*Section 1.1918. "Project"* as used in this Declaration shall mean and refer to the residential community project, together with the improvements erected and maintained thereon, to be known as "Breakwater" consisting of three (3) integrated development areas or communities consisting of (1) the Single Family Lots, (2) Twinhome Lots, (3) Units and appurtenant common elements that shall be submitted to the Unit Property Act, and (4) the Common Areas, including but not limited to the Common Facilities; all to be built on the Property.

*Section 1.2019. "Property"* shall mean and refer to that certain real property described on **Exhibit "A"** hereto.

*Section 1.2120. "Recorder's Office"* shall mean and refer to the Office of the Recorder of Deeds, in and for Sussex County, Delaware.

Section 1.22. "Unit" shall mean any one of the thirty-six (36) townhouse style condominium units created under the Condominium Documents.

## ARTICLE 2

### DECLARANT'S RIGHT TO SUBJECT PROPERTY SUBJECT TO DECLARATION

Section 2.1. Property Subject to this Declaration. The Property shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to all of the covenants, conditions and restrictions of this Declaration.

## ARTICLE 3

### PROPERTY RIGHTS

Section 3.1. Owners' Easements of Enjoyment. Every Owner shall have a non- exclusive right and easement (in common with others entitled thereto) of enjoyment in and to the Common Areas, including, without limitation, an easement for the use and enjoyment of private streets, parking areas, sidewalks, active and passive recreational facilities (including, but not limited to, any trails and walkways, the fitness center and pool facilities), if any, within the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot and Unit, subject to the following provisions:

- (a) the right of the Association to charge reasonable and uniform admission and other fees for the use of the Common Areas;
- (b) the right of the Association to suspend an Owner's voting rights and right to use the Common Areas (i) for any period during which any assessment under this Declaration or under the Condominium Documents against such Owner's Lot or Unit remains unpaid and (ii), after notice and an opportunity for a hearing, for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; provided, however, that the obligation of such Owner to pay such assessments shall continue unabated during such period of suspension of voting rights or right to utilize the Common Areas;
- (c) the right of the Association to dedicate, sell or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, sale or transfer shall be effective without the consent of Declarant (for so long as the Declarant shall own any portion of the Property or Project) and two-thirds (2/3) of the total votes of the Members;
  - (i) ~~The Declarant shall retain control of the Common Areas until such time as the Declarant decides to transfer control of the Association to the Owners. The transfer shall occur no sooner than such time as fifty percent (50%) of the Lots and the Units have been conveyed by the Declarant to third party purchasers and no later than such time as all of the Lots and Units have been conveyed by Declarant to third party purchasers. Such transfer shall be evidenced by a deed to be recorded in the Recorder's Office.~~
- (d) the right of the Association to limit the number of guests, visitors, licensees, invitees, or lessees of Owners utilizing the Common Areas;
- (e) the right of the Association to establish uniform rules and regulations pertaining to the use of the Common Areas;

(f) the right of the Association to provide for the exclusive use by specified Owners of certain designated parking spaces within the Common Areas;

(g) the right of the Association, ~~the Declarant,~~ utility companies and other Owners with respect to the easements established by this Declaration;

(h) the right of the Association, in accordance with its Certificate of Incorporation and Bylaws, and with the consent of ~~the Declarant (for so long as the Declarant shall own any portion of the Property or Project)~~ and two-thirds (2/3) of the total votes of the Members, to borrow money for the purpose of improving the Common Areas in a manner designed to promote the enjoyment and welfare of the Members and in aid thereof to mortgage any portion of the Common Areas;

(i) the right of the Association to take such steps as are reasonably necessary to protect the property of the Association against mortgage default and foreclosures; provided, however, that the same are in conformity with the other provisions of this Declaration;

~~(a) (j) the right of the Declarant, as more fully set forth in Section 8.1 of this Declaration, to grant easements, to utilize reserved rights and easements, and to otherwise utilize the Common Areas as it deems appropriate in connection with the development of the Property and Project;~~

(j) the right of the Association, acting by and through the Board, to grant easements, licenses, or other rights of use of the Common Areas to persons or entities that are not Members of the Association for such consideration and on such terms and conditions as the Board may from time to time consider appropriate or in the best interest of the Association, Property, or Project;

(k) the right of the Association to be the lessee of any portion or all ~~of~~ the Common Areas and the right of the Association to enforce the terms of the lease with respect to the Common Areas against such property and the Owners and their guests, visitors, licensees, invitees, or lessees; and

(l) the right of the Association, acting by and through the Board, to transfer or convey portions of the Common Areas for purposes of adjusting the boundary lines of one or more Lots, the Condominium and/or the Common Areas; provided, however, that such transfer or conveyance has been approved, as necessary, by applicable local governmental authorities or agencies, or is otherwise in conformance with applicable law, local zoning and subdivision ordinances, governmental guidelines, or restrictions.

*Section 3.2. Limitations.* Notwithstanding any other provision of this Declaration to the contrary, the Association shall have no right to suspend the right of any Member of the Association to use the Common Areas for necessary, ordinary and reasonable vehicular and pedestrian ingress and egress to and from such Owner's Lot or Unit, or to suspend any easement, license or other property interest over the Common Areas for storm water drainage, electrical energy, water, sanitary sewer, natural gas, telephones, or similar services or utilities to the Lots, Units or Condominium. The Common Areas will be available for the type of active and passive recreational and open space uses contemplated under the Development Plans and the Laws. All Owners shall have the non-exclusive right (in common with others entitled thereto) to access and make reasonable use of the Common Areas as described in the approved Development Plans and the Laws ~~both before and after they are conveyed to the Association,~~ with the exception of those ~~areas as may be reasonably and necessarily restricted for access because of temporary safety reasons in connection with the development of the Property or Project~~ Owners subject to restriction under Section 3.1(b).

*Section 3.3. Delegation of Use.* Any Owner may delegate, in accordance with the Bylaws and rules and regulations of the Association, such Owner's right of enjoyment to the Common Areas to such Owner's family members, guests, visitors, licensees, invitees, or lessees, but only for so long as such family members, guests, visitors, licensees, invitees, or lessees, with Owner's permission, occupy or reside on the Owner's Unit or Lot. An Owner will be responsible under this Declaration for any actions of the Owner's family members, guests, visitors, licensees, invitees, or lessees.

## **ARTICLE 4**

### **MEMBERSHIP AND VOTING RIGHTS**

*Section 4.1. Membership.* Every Owner of a Lot and Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Unit.

*Section 4.2. Voting Rights.* ~~The Association shall have two (2) classes of voting membership:~~

~~Class A. — With the exception of the Declarant (until expiration of the Class B memberships as provided below), e~~Every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who is an Owner of any Lot or Unit which is part of the Property and Project shall be a ~~Class A~~ Member of the Association; provided, however, that any such person or group of persons, association, corporation, limited liability company, partnership, trust or other legal entity, or any combination thereof, who holds such interest solely as security for the performance of an obligation shall not be a ~~Class A~~ Member solely on account of such interest. When more than one (1) person or entity are Owners of any Lot or Unit, all such persons and entities shall be Members. The vote for such Lot or Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot or Unit owned by a ~~Class A~~ Member. In the event that Owners, who hold title to any Lot or Unit either by the entireties, or as joint tenants, or as tenants in common, attempt to cast the vote for such Lot or Unit in conflicting ways, such vote shall be recorded as a fractional vote.

~~Class B. — There shall be Five Hundred Fifty Five (555) Class B memberships in the Association. The Class B Member shall be the Declarant, its nominee or nominees, and shall include every person, group of persons, association, corporation, limited liability company, partnership, trust or other legal entity, or any combination thereof, who shall obtain any Class B membership by specific assignment in writing from the Declarant. The Class B Member shall be entitled to one (1) vote for each Class B membership. Each Class B membership shall cease and be converted to Class A membership on the first to happen of the following events:~~

~~(a) — When the total votes outstanding in the Class A membership equal one hundred eighty five (185); or~~

~~(b) — When, in its sole and absolute discretion, the Class B Member elects to convert its Class B memberships into Class A membership(s).~~

~~Within a reasonable time (not to exceed ninety (90) days) after the first of the preceding three (3) events to occur (the "Conversion") the Declarant will call~~ an organizational meeting of the Association ~~in September, 2014, if the same has not previously occurred. At the time of the Conversion, during which Declarant assigned all of its~~ privileges, rights, powers, duties and authority of the Declarant with respect under this Agreement and this Agreement to the Association ~~shall automatically become assigned to and vest in the Association.~~



*Section 4.3 Proxies.* Each Owner entitled to vote at a meeting of the Association, is entitled to vote in person or by proxy, in a writing signed by him and provided to the Association, but no proxy shall be voted after one (1) year from its date, unless it provides for a longer period. Every proxy shall be revocable and shall automatically cease upon conveyance of the Lot or Unit owned by the Owner executing the proxy. Such right to vote shall be subject to the right of the Board to close the transfer books or to fix a record date for voting Owners as hereinafter provided and if the Board shall not have exercised such right, no vote shall be cast at any election for Directors of the Board by anyone who shall have accepted membership in the Association within ten (10) days of such election.

## **ARTICLE 5**

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

*Section 5.1. Creation of the Lien and Personal Obligation for Assessments.* There are hereby created assessments for Common Expenses as may be from time to time specifically authorized by the Board to be commenced at the time and in the manner set forth in this Article 5. Each Owner of any Lot or Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments and (ii) special assessments. The annual and special assessments, together with interest, costs, late fees and reasonable attorneys' fees, shall be a charge on the Lot or Unit (including all improvements thereon), and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, late fees and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot or Unit at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to a prior Owner's successors in title unless expressly assumed by such successors.

*Section 5.2. Purpose of Assessments.*

(a) The assessments levied by the Association shall be used exclusively to (i) promote the recreation, health, safety, and welfare of the residents in the Property and Project; for the improvement, maintenance, repair, and replacement of the Common Areas; (iii) for the payment of real estate taxes, assessments and utility services for the Common Areas; and (iv) for management fees, administration expenses, insurance and all other costs and expenses incurred by the Association in the proper conduct of its activities, including, without limitation, reserves for replacements or contingencies and charges accruing under any cross-easement or other agreement (including, without limitation, any such agreement for the maintenance of any Community Facilities). The assessments may also be used for the maintenance, repair and replacement of any property or facilities serving or appurtenant to the Property or Project which the Association is obligated or elects to maintain whether or not such property or facilities are owned by the Association or are located within the Property or Project (including, without limitation, any property or facilities which the Association is authorized to maintain pursuant to this Declaration).

(b) The assessments levied by the Association with respect to the Common Areas shall also be used for maintenance, repair and replacement (including reserves) of any and all storm water management facilities to the extent that Sussex County, Delaware does not assume responsibility for the maintenance, repair and replacement of the storm water management facilities, including, without limitation, drainage pipes, infiltration trenches, ponds, basins, swales, berms, out-flow control devices, drainage areas, filters, inlets, oil/grit separators and underground facilities, if any, whether such storm water management facilities are located within the Property or Project or not, as long as such storm water management facilities are designed to benefit or serve any portion of the Property or Project, or are required or intended to be maintained by the Association pursuant to any easement, agreement or the direction of any governmental authority or agency. The Association shall not

refuse to accept the conveyance of any such facilities from the Declarant. Such storm water management facilities may also benefit property not within the jurisdiction of the Association and the maintenance of such facilities may be set forth in a cross-easement or other agreement, in which event the Association shall maintain the facilities pursuant to such agreement.

*Section 5.3. ~~Annual Assessments~~ Budgets.*

(a) ~~Until January 1 of the year immediately following the first conveyance of a Lot or Unit to a Class A Member, the applicable annual assessment shall be the amount established by the Declarant in its sole discretion. Thereafter,~~ The Board shall from time to time set the annual assessment at an amount sufficient to meet the Common Expenses of the Association. Without limiting the generality of the foregoing, the Association shall, at all times, levy and collect annual assessments in sufficient amounts to (i) maintain the Common Areas in accordance with sound property and facility management standards and (ii) establish necessary reserves for the future repair and replacement of any capital improvements compromising the Common Areas, including, but not limited to, the Community Facilities. The Board shall determine the amount of the annual assessment before the beginning of each fiscal year in connection with preparation of the Association's annual budget, and may do so at more frequent intervals should circumstances so require. Upon resolution of the Board, installments of annual assessments may be levied and collected on a monthly, quarterly, semi-annual or annual basis. Any ~~Class A~~ Member may prepay one or more installments of any annual assessment levied by the Association without premium or penalty.

(b) The Board shall make a reasonable effort to prepare a budget at least thirty (30) days before the beginning of each fiscal year. The Board shall make a reasonable effort to cause a copy of the budget, and the amount of the assessments to be levied against each Lot or Unit for the following year, to be delivered to each Owner at least thirty (30) days prior to the commencement date of the new assessments. The budget shall be approved by majority vote of the Board; provided, however, that ~~(after the lapse of all of the Class B memberships)~~ any budget under consideration by the Board pursuant to this Section 5.3 that (i) would result in an increase in the Common Expenses of the Association in excess of fifteen percent (15%) of the budgeted amount for Common Expenses set forth in the budget for the immediately preceding fiscal year, or (ii) would result in an increase in the annual assessments payable by the Members in excess of thirty percent (30%) of the budgeted amount for annual assessments set forth in the budget for the immediately preceding fiscal year, shall be approved by the affirmative vote of Members entitled to cast not less than sixty-seven percent (67%) of the votes of the Members present, in person or by proxy, and voting at any meeting of the Association duly called for this purpose. Subject to the foregoing, all budgets approved by the Board shall become effective unless a special meeting of the Association is duly held and at such special meeting the budget is disapproved by a vote of Members entitled to cast not less than sixty-seven percent (67%) of the votes of Members present, in person or by proxy, and voting at such meeting. Notwithstanding the foregoing, however, in the event that the membership disapproves the budget or the Board fails for any reason to determine the budget for any fiscal year of the Association, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding fiscal year shall continue for the succeeding fiscal year.

*Section 5.4 ~~Initial~~ Working Capital and Operations Contribution.* The ~~Declarant~~ Association shall establish working capital and operations accounts for the initial and ongoing operations of the Association, which shall include, but shall not be limited to, a capital replacement reserve account as well as an operating account for ongoing maintenance, repairs and other operations of the Association (the "Accounts"). Such Accounts shall be funded, in part, by a one-time assessment of three quarters of one percent (.75%) of the gross purchase price of each Lot or Unit, as applicable,

and shall be payable by the initial purchaser of each Lot or Unit at the earlier of settlement or occupancy of such Lot or Unit. A contribution to the Accounts equal to three quarters of one percent (.75%) of the gross purchase price of each Lot or Unit, as applicable, shall also be payable to the Association by each subsequent purchaser upon each resale of any Lot or Unit at the time of settlement and transfer of title of such Lot or Unit<sup>+</sup>.

*Section 5.5. Special Assessments. Budget Amendments.*

(a) In addition to the annual assessments authorized by this Article, the Association may levy, in any assessment year, a special assessment or special assessments applicable to that year only for such purposes as the Board may deem appropriate, including, without limitation, for purposes of funding, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement located upon the Common Areas, including, but not limited to, the Community Facilities and all fixtures and personal property related thereto, and to meet unforeseen or special expenditures as well as any budget deficit; provided, however, that ~~(after the lapse of all of the Class B memberships)~~ any such assessment shall be approved by Members entitled to cast not less than sixty-seven percent (67%) of the votes of Members present, in person or by proxy, and voting at any meeting of the Association duly called for this purpose; provided, further, that any special assessment required because of conditions which, if not corrected, could constitute an Emergency or reasonably result in a threat to the health or safety of the Members or a significant risk of damage to the Common Areas may be approved by the Board without the foregoing vote of the Members.

(b) The Association may also levy a special assessment against any Owner to reimburse the Association for costs incurred in bringing the Owner and/or such Owner's Lot or Unit into compliance with the provisions of this Declaration, or the Certificate of Incorporation, Bylaws and rules and regulations of the Association, or any applicable Laws; provided, that such special assessment may only be levied upon the affirmative vote of a majority of the Board, after notice and an opportunity for a hearing has been provided to the Owner.

(c) Any amendment to a previously approved budget shall be approved by majority vote of the Board; provided, however, that ~~(after the lapse of all of the Class B memberships)~~ any amendment to a budget for the then current fiscal year previously approved in accordance with Section 5.3 hereof that (i) would result in an increase in the Common Expenses of the Association in excess of fifteen percent (15%) of the budgeted amount for Common Expenses set forth in the budget for the immediately preceding fiscal year (including any increase in Common Expenses adopted in the budget for the then current fiscal year previously approved in accordance with Section 5.3 hereof), or (ii) would result in an increase in the annual assessments payable by the Members in excess of thirty percent (30%) of the budgeted amount for annual assessments set forth in the budget for the immediately preceding fiscal year (including any increase in assessments adopted in the budget for the then current fiscal year previously approved in accordance with Section 5.3 hereof), shall be approved by the affirmative vote of Members entitled to cast not less than sixty-seven percent (67%) of the votes of Members present, in person or by proxy, and voting at any meeting of the Association duly called for this purpose.

*Section 5.6. Notice and Quorum.* Written notice of any meeting called for the purpose of establishing a special assessment or budget amendment in accordance with Section 5.5 hereof or to approve a budget increase or Special Action in accordance with Section 5.3 or Section 5.13 hereof, shall

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<sup>+</sup> Add by Third Amendment July 29, 2013

be sent to all Members not less than ten (10) days nor more than thirty (30) days in advance of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of the votes of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than ninety (90) days following the preceding meeting.

~~(a) — *Initial Meeting of Members.* Notwithstanding any contrary provision in this Declaration, quorum requirements for nomination and election of the first Board consisting of Owners shall be duly satisfied if the meeting is properly noticed in conformance with the provisions of the Bylaws and the Certificate of Incorporation of the Association.~~

*Section 5.7. Uniform Rate of Assessment.*

(a) Except as otherwise provided in this Declaration, both annual and special assessments must be fixed at a uniform rate for all Lots and Units, and may be collected in advance on a monthly, quarterly, semi-annual, or annual basis, or upon such other basis as may be determined by the Board.

(b) In the event that the actions or activities of any Owner causes or results in increased expenses for the Association, the Board may assess such increase in expenses against the Owner and such Owner's Lot or Unit, after notice to such Owner and an opportunity for a hearing. For example, and for purposes of illustration only, the Board may assess the amount of any insurance deductible paid by the Association against any Owner and such Owner's Lot or Unit if the Association is required to pay such deductible as a result of the misuse or neglect of the Owner. Such assessment shall be a lien against the Owner's Lot or Unit and shall be payable and collectible in the same manner as any other assessments required to ~~be~~ paid to the Association; provided, however, that the Declarant shall not ~~be~~ subject to any assessment based on this Section 5.7(b).

~~*Section 5.8. Declarant's Exemption from Annual and Special Assessments. Any provision hereof to the contrary notwithstanding, Lots or Units owned by the Declarant or leased by Declarant as a model or sales home from on a Lot or Unit owned by a third party, shall not at any time be subject to any annual assessments, special assessments, fees or other charges levied by the Association, and the Declarant shall not have any obligation whatsoever to pay any such annual assessments, special assessments, fees or other charges.*~~

*Section 5.98. Date of Commencement of Annual Assessments; Due Dates; Lien Docket. The annual assessments provided for herein shall commence and be payable as to each Lot and Unit upon the conveyance of title to such Unit or such Lot, ~~or the occupancy of such dwelling by a party other than the Declarant.~~ The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall make reasonable efforts to fix the amount of the annual assessment against each Lot or Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board. The Association shall keep an assessment lien docket (the "Docket") at ~~the registered office of the Association, which, at the date of recording hereof, is at the Homeowners Association of Breakwater, 55 Cascade Lane, Suite A, Rehoboth Beach, DE 19971 or such other~~ a location as the Association may determine from time to time. Immediately upon an assessment becoming delinquent as herein above provided, the Treasurer of the Association or his designee shall cause an entry thereof to be made in the Docket, which entry shall disclose the date the entry is made, the names of the Owners of the Lot or Unit as shown in the Association's records, the*

number of the Lot or Unit, the amount of the delinquent assessment, and the due date and the assessment period of the delinquent assessment. Upon written inquiry of any Owner or any attorney-at-law who certifies to the Association that he or it represents either an Owner of a Lot or Unit or a prospective purchaser or mortgagee thereof, the Treasurer or his designee, upon receipt of a reasonable service charge (as established by the Association from time to time), shall certify to the inquiring Owner, attorney-at-law, prospective purchaser or mortgagee as to the assessment status of the Lot or Unit which is the subject of the inquiry, stating:

(a) Whether the current assessment(s) is paid; and/or

(b) If there are any delinquent assessments or late fees, interest or costs, all of the information entered in the Docket with respect to the Lot or Unit which is the subject of the inquiry, together with the per diem interest thereon, to be computed on each delinquent assessment from its respective due date to the date of receipt by the Association of payment thereof in full. Upon receipt by the Association of payment of any delinquent assessment, with late fees, interest and costs, if applicable, as herein above provided, the Treasurer or his designee shall enter in the Docket the date and amount of the payment received, together with the notation "Paid in Full." A properly executed certificate of the Association setting forth the status of assessments on a Lot or Unit shall be binding on the Association as of the date of its issuance.

*Section 5.109. Effect of Non-Payment of Assessments; Remedies of the Association.* Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date until paid at a rate determined by the Board, up to the maximum rate of interest permitted under the laws of the State of Delaware. The Association may also charge a reasonable late fee, not to exceed any limit established under applicable Laws, against any Owner (and/or such Owner's Lot or Unit) who is more than fifteen (15) days delinquent in the payment of any assessment. Additionally, the entire balance of the unpaid annual assessments for the remainder of the fiscal year may be accelerated at the option of the Board and be declared due, payable and collectible in the same manner as the delinquent portion of such annual assessment. By his acceptance of title to any Lot or Unit, each Owner shall be held to vest in the Association the right and power in its own name, to take and prosecute all actions or suits, legal, equitable, or otherwise, which may be, in the opinion of the Association, necessary or advisable for the collection of such assessments. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the Lot or Unit (and all improvements thereon). No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of such Owner's Lot or Unit. The Owner shall also be obligated to pay all attorneys' fees, court costs and administrative costs incurred in connection with the collection of assessments if not paid when due. This Section shall not be deemed to limit or waive, and shall be without prejudice to, any and all rights, remedies, or recourses as may be available to the Association for non-payment of assessments.

*Section 5.110. Subordination of the Lien to Mortgages.* The lien of the assessments provided for herein shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot or Unit shall not affect the assessment lien. However, the sale or transfer of any Lot or Unit pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, except for liens or claims for a pro-rata share of such assessments resulting from a pro-rata reallocation of such assessments to all Lots and Units, including the mortgaged Lot or Unit. No sale or transfer shall relieve such Lot or Unit from liability for any assessments thereafter becoming due or from the lien thereof. No amendment to this Section shall affect the rights of the holder of any First Mortgage on any Lot or Unit (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured

thereby) shall join in the execution of such amendment. ~~Except where an Emergency requires an expenditure to prevent or minimize loss from further damage to, or deterioration of, the Common Areas, reserves accumulated for one purpose may not be expended for any other purpose unless approved by the Board and by the affirmative vote of Members entitled to cast not less than sixty-seven percent (67%) of the votes of all Members present, in person or by proxy, and voting at a meeting of the Association duly called for this purpose.~~

*Section 5.1211. Reserve Fund Budget and Contribution.* The Board shall annually prepare a reserve fund budget which shall take into account the number and nature of the replaceable assets of the Association, the expected life of each asset, and the expected repair or replacement cost of each asset. The Board shall set the required reserve fund contribution in an amount sufficient to meet the projected reserve needs of the Association, as shown on the reserve fund budget, with respect both to amount and timing by the imposition of annual assessments over the period of the budget. The reserve fund contribution shall be fixed by the Board and included within the budget and assessment, as provided in Section 5.3. Such reserve fund contribution shall be payable as part of the general assessment, applicable to all Lots and Units (except as otherwise provided with respect to Lots and Units owned by the Declarant in Section 5.8), to the extent such reserve fund will be utilized to replace assets which are determined by the Board to benefit substantially all Owners. Reserves may also be maintained for operating contingencies and insurance deductibles. A separate, interest-bearing reserve fund account shall be established and maintained by the Association. A copy of the reserve fund budget shall be distributed to each Owner in the same manner as the operating budget. Except where an Emergency requires an expenditure to prevent or minimize loss from further damage to, or deterioration of, the Common Areas, reserves accumulated for one purpose may not be expended for any other purpose unless approved by the Board and by the affirmative vote of Members entitled to cast not less than sixty-seven percent (67%) of the votes of all Members present, in person or by proxy, and voting at a meeting of the Association duly called for this purpose.

*Section 5.1312. Special Actions.* Any provision of this Declaration or the Certificate of Incorporation and Bylaws of the Association to the contrary notwithstanding, ~~after the lapse of all of the Class B memberships,~~ the Board shall not be authorized to take any "Special Actions" (as defined below) without the affirmative vote of Members entitled to cast not less than sixty-seven percent (67%) of the votes of all the Members present, in person or by proxy, and voting at a meeting of the Association duly called for this purpose. As used herein, the term "Special Actions" shall mean any and all actions taken by or on behalf of the Association, including, without limitation, commencing or maintaining any litigation, arbitration or similar proceeding, which would reasonably require the expenditure of funds in excess of Ten Thousand Dollars (\$10,000.00) in the aggregate during any fiscal year of the Association; provided, however, that the term "Special Actions" shall not be deemed to include (i) routine assessment collection actions under Article 5 of this Declaration, (ii) routine actions required to enforce the architectural controls set forth in Article 6 of this Declaration, use restrictions set forth in Article 7 of this Declaration, or any rules and regulations of the Association adopted by the Board, or any expenditure made by the Association in accordance with any budget or budget amendment duly adopted in accordance with Article 5 of this Declaration, or ~~(iviii)~~ any special assessment duly adopted in accordance with Article 5 of this Declaration. Each such planned expenditure of more than Ten Thousand Dollars (\$10,000.00) shall require the prior approval of the Members in accordance with this Section. Any meeting of the Association held to approve any Special Actions under this Section shall be subject to the notice and quorum requirements set forth in Article 5, Section 5.6 of this Declaration. The Association shall not borrow against or encumber any portion of the Common Areas nor use any funds from reserves of the Association to pay for such Special Actions, but the same shall be paid from and limited to the amounts provided in the annual budget for such expenditures for the fiscal year and shall be raised by special assessment levied against the Members for such purpose. If such Special Actions are not

concluded within one (1) year of the date of such resolution, the continued prosecution of such Special Actions beyond such period must be reaffirmed annually at a special meeting held for such purpose by the percentage vote of the Association as was required to adopt the original resolution. If the continued prosecution of such Special Actions are not reaffirmed, the Special Actions shall be discontinued and the Association shall have no further authority to act as the attorney-in-fact for the Association in the further prosecution or defense of such Special Actions but may, with the affirmative vote of Members entitled to cast not less than sixty-seven percent (67%) of the votes of all Members present, in person by proxy, and voting at a meeting of the Association duly called for this purpose, act as its attorney-in-fact with respect to any settlement or compromise of such Special Actions; provided the same is completed within six (6) months thereafter. If the Members, by resolution approved in accordance with this Section, authorizes the Association to initiate any Special Actions, then the decisions relating to the conduct of the Special Actions shall be made by the Association and its legal counsel, consultants and others engaged or retained by the Association for such purposes.

## **ARTICLE 6**

### **ARCHITECTURAL CONTROL**

*Section 6.1. General Provisions.* In order to encourage harmonious architectural design and to protect the visual integrity, architectural spirit and long-term property values of the Property and Project, including, without limitation, the Lots, Condominium, and Common Areas, the ~~Declarant Association~~ has ~~established-adopted~~ the Design Guidelines and Procedures in Schedule A attached hereto. No dwelling, structure, improvement, landscaping or other man-made object, including, but not limited to, buildings, tennis courts, basketball courts, ~~children's~~ recreation equipment or other recreational or sporting facilities, decks, patios, porches, pool houses, below ground swimming pools, greenhouses, tool sheds, ponds, gardens, driveways, paved areas, satellite dishes, radio antennas, communications equipment or facilities, fences, walls, together with all forms or types of landscaping (collectively the "Improvements") located on any portion of the Property or Project, including, without limitation, the Lots, Units, Condominium and Common Areas shall be designed, constructed, maintained, altered, extended, added to, removed or otherwise modified without the expressly written consent and approval of the Breakwater Architectural Review and Design Committee (the "ARC"). In addition, no Improvements, once approved by the ARC shall be altered, extended, added to, removed or otherwise modified, nor shall any additional structures of any nature be erected, used or maintained nor shall any exterior change or alteration be made (including, but not limited to, exterior facade color changes or change in grade or drainage) to the Improvements except in accordance with the Design Guidelines and this Declaration, as applicable. ~~Notwithstanding anything contained herein to the contrary, any Improvements marketed or sold by Declarant or Schell Brothers, LLC or their respective assignees shall be deemed to have complied with the Design Guidelines and are presumed to have been pre-approved by the Declarant and the ARC, without the need or obligation to obtain any approvals or authorizations from either the Declarant or the ARC (the "Pre Approval").~~

*Section 6.2. Design Committee.* The ~~Declarant has established the~~ ARC ~~which~~ shall consist of three (3) members ~~elected staggered three-year terms by the Association. The Declarant shall appoint the initial three (3) members during the first three (3) years that the ARC is in existence. Thereafter, the Declarant shall appoint two members (for so long as Declarant still owns a Lot or Unit) and the Association shall elect one (1) member (until such time as Declarant no longer owns any Lot or Unit, whereupon the Association shall elect all three (3) members).~~ ARC members may be either individuals or any form of entity, including, but not limited to, a corporation, limited liability company, partnership or trust, provided all such members shall be either an Owner, ~~a designee of the Declarant,~~ or an architect licensed in the State of Delaware (individually an "ARC Member" and collectively the "ARC Members"). The regular term of office for each ARC Member shall be ~~one three (13) years,~~ measured from the date of such ARC Member's ~~appointment and/or election,~~ provided the Association may elect an ARC Member

~~to one and two-year terms to achieve three-year staggered terms. Declarant may remove with or without cause any ARC Member appointed by the Declarant at any time by written notice to such appointee'. A successor or successors appointed to fill such a vacancy shall serve the remainder of the term of the former ARC Member.~~ Any ARC Member elected by the Association may be removed only in accordance with the Bylaws of the Association. The ARC shall select its own Chairman and he, or in his absence the Vice Chairman, shall be presiding officer at its meetings. The ARC shall meet at least once in each calendar month if there are matters to be reviewed or upon call of the Chairman ~~when~~ everwhenever he deems necessary in order to discharge its obligations and responsibilities hereunder, including rendering any decisions specified in this Article 6 or the Design Guidelines. All meetings shall be held at the offices of the Association or at such other reasonable place as may be designated by the Chairman. A majority of the ARC Members shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the ARC Members shall constitute the action of the ARC on any matter before it. The ARC shall operate in accordance with its own rules of procedure, and these rules shall be filed with the Association. The ARC ~~shall be authorized (but not obligated ) to~~ may retain the services of consulting architects, landscape architects, community planners and/or attorneys to advise and assist the ARC in performing the design review functions herein prescribed, provided the costs thereof are offset by a Review Fee paid under Section 6.3(e). Any such professional must be licensed to practice its profession in the State of Delaware. The ARC shall keep accurate records of its membership and actions and shall from time to time, as warranted, ~~notify~~ all Owners of any change in the membership of the ARC as a result of resignations and replacements of ARC Members. The ARC may establish its own rules for the conduct of its meetings and its ~~decision-making~~ decision-making process which shall ~~which shall~~ be adopted, promulgated, applied and enforced in a uniform and non-discriminatory manner among the Owners.

*Section 6.3. ~~Criteria For~~ Submission. Review and Decisions or Plans.*

(a) Any request from an Owner for any Improvements shall be in writing and shall be submitted to the ARC in accordance with and pursuant to the Design Guidelines.

(b) In passing upon any plans and specifications submitted by an Owner, the ARC, in accordance with the provisions of this Declaration and the Design Guidelines, shall consider the aesthetic suitability and harmony of the Improvements to be constructed, to and with that portion of the Property and Project on which it is proposed to be located; the comparability of the height, profile and color scheme with neighboring residences whether existent, under construction, or approved for construction; the impact of the item to be constructed on the environment, including, but not limited to, the preservation of trees and open spaces, and surface water drainage; the effect of the proposed Improvement and its planned usage and purpose, on the outlook of neighboring Lots and the Condominium and Common Areas; and the quality of the materials to be used in construction and the proposed method of construction including but not limited to the effect of lighting and signage upon neighboring Lots and the Condominium and Common Areas. The terms "aesthetic suitability and harmony" shall be interpreted to encourage the use of traditional architecture and materials set forth in Schedule A. No exterior colors or materials installed or approved by the ARC shall be changed through replacement, repair, redecoration, repainting or otherwise, except upon prior submission to and approval by the ARC, which approval may be withheld in the ARC's reasonable discretion. With respect to Improvements such as, but not limited to, driveways and turnarounds, fences, walls, recreational facilities, barbeques and patios, the ARC shall have the right in its absolute and sole but good faith discretion to prohibit such Improvements altogether if in the opinion of the ARC the construction and use of such Improvements will necessitate the removal of valuable trees, cause drainage problems, or have a detrimental effect on the outlook from or use of neighboring Lots or the Condominium or Common Areas.



(c) In the event that repair, replacement or other work on Improvements becomes necessary, or the erection of any additional structures is necessary, then any such work shall, to the extent practicable, be performed so that the condition and appearance is equal to and identical to the condition and appearance of the dwelling, building, structure or ~~improvement~~ Improvement as originally constructed, or with respect to additional structures, the construction and appearance is in architectural harmony with the Improvements as originally built and developed under this Declaration.

(d) The ARC reserves the right to approve in advance proposed architects, builders and landscape designers.

(e) Review Fee. ~~Except for Improvements to be constructed by Declarant or its preferred builder, Schell Brothers, LLC, any application to the ARC for review shall be accompanied by~~ may impose on any application submitted to it a reasonable application fee (as determined and published to the Owners from time to time by the ARC) to defray the cost of professional services that the ARC may reasonably incur to properly evaluate the plans and specifications (the "Plans and Specifications") provided by an Owner with respect to the Improvements which such Owner requests approval of pursuant to this Declaration and the Design Guidelines (the "Review Fee"). The ARC may waive the Review Fee on a case by case basis if the application for any such Improvements does not require the ARC to incur any professional fees or services in connection with its review and evaluation of the Plans and Specifications. The Review Fee shall be non-refundable unless the applicant withdraws its application prior to the ARC incurring any professional fees or expenses in connection with its review and evaluation of the application. All Plans and Specifications submitted to the ARC shall be retained by the ARC and shall not be returned to the applicant, unless the ARC elects to do so.

(f) Review and Decision Process. ~~The ARC shall publish its procedures which must be consistent with this Section.~~ Within ~~sixty-thirty (6030)~~ days after the Owner has submitted all the required Plans and Specifications to the ARC, the ARC shall notify the Owner in writing whether such Plans and Specifications are either approved or disapproved. Any disapproval or objections shall be in writing and shall be detailed and shall include an explanation for the basis or reason for such disapproval or objections, together with such reasonable changes, modification or other alterations and recommendations as appropriate or practicable that would render the Plans and Specifications acceptable to the ARC and in compliance with the review and approval criteria established under this Declaration. In the event ~~Declarant~~ ARC fails to approve or disapprove an Owner's submission of the Plans and Specifications in writing within the aforementioned ~~sixty-thirty (6030)~~ day period, then the ARC's approval shall be conclusively presumed to have been granted, provided, however that the aforesaid presumption shall not be deemed a waiver of the applicable provisions of this Declaration or be deemed to be the prior written approval of the ARC under any specific provision herein. No construction of the Improvements provided for in the submitted Plans and Specifications shall be commenced until the expiration of the aforementioned ~~sixty-thirty (6030)~~ day period or the receipt of the ARC's written approval of the Plans and Specifications, whichever occurs first.

(g) Time for Review of Revised Plans and Specifications. In the event the ARC ~~shall~~ disapproves any part of the Plans and Specifications as submitted in accordance with this Article, then the Owner shall have the opportunity to revise its Plans and Specifications to incorporate such changes, modifications, additions or deletions, as applicable, and ~~shall~~ may resubmit the revised Plans and Specifications to the ARC, if the Owner so chooses, together with an additional Review Fee (if required) and the ARC shall have twenty (20) days within which to review such revised Plans and Specifications

and to determine the Owner's compliance with the ARC's designated changes. In the event the ARC fails or neglects to advise the Owner in writing of whether or not such revised Plans and Specifications are in compliance (or non-compliance) within the aforementioned twenty (20) day period, then ~~Declarant's the~~ ARC's approval shall be conclusively presumed to have been granted subject to the conditions provided for in paragraph (f) above applicable to such presumption. Any disapproval by the ARC of such revised and resubmitted Plans and Specification shall be communicated to the Owner in a written response in accordance with the details required for the ARC's approval as provided in paragraph (f) above.

(h) Changes in Approved Plans and Specifications. Once the ARC has approved an Owner's Plans and Specifications and the Improvements, then the Owner shall not change, revise or otherwise modify the approved Plans and Specifications or the Improvements without first securing the ARC's written approval in the manner prescribed under this Article. ~~Declarant The ARC~~ shall endeavor to review such changes, revisions or other modifications within a shorter period of time than the aforementioned ~~sixty-thirty (6030)~~ day period but shall not be required to do so.

(i) Approval for Landscaping Plans. Landscaping shall be approved by the ARC in the same manner as set forth above. In addition to all applicable foregoing guidelines, no excavation shall be made, or fill, sand, gravel, crushed stone, brick, asphalt, concrete or the like be placed, set or poured on any portion of the Property or Project, including, without limitation, the Lots, Condominium, or Common Areas, so as to cause any blatant and material change in the appearance of such portion of the Property or Project from the street or from any neighboring portion of the Property or Project, unless the ARC shall first have consented in writing. No fences, walls, hedges or other barriers shall be erected on any portion of the Property or Project without the approval of the ARC, and no existing fences, hedges or barriers shall be removed without the approval of the ARC.

(j) Dispute Resolution Process. If any Owner believes that either the disapproval of any Plans and Specifications submitted by the Owner to the ARC or the ARC's proposed changes to such Plans and Specifications that may be required for the ARC's approval, ~~or any of the Pre-Approvals~~ are arbitrary and capricious, then any such Owner may, as its sole and exclusive remedy, submit such dispute to final and binding arbitration in accordance with the provisions of the Delaware Uniform Arbitration Act (the "Arbitration Act") and the rules of the American Arbitration Association applicable to such disputes, to the extent such rules are not inconsistent with the Arbitration Act. The fees of such arbitrator and all reasonable costs and expenses incurred by the ARC in defending its decision(s) shall be paid by the Owner, unless the arbitrator specifically finds and rules that the ARC acted in an arbitrary, capricious and meritorious manner, in which event the Owner shall not be required to reimburse the ARC for its reasonable costs and expenses. In determining any question, matter, or dispute before such arbitrator, the arbitrator shall apply the provisions of this Declaration without varying therefrom in any respect, and shall not have the power or authority to add, modify, or otherwise change any of the provisions of this Declaration. The parties to any such arbitration agree to reasonably cooperate; to obtain the cooperation of their employees, agents and contractors, as applicable; to use reasonable efforts to supply as witnesses such employees, agents and contractors, as applicable; and to produce any relevant documents that may be required.

(k) Approvals/Disapprovals. Neither the ARC, nor the ARC Members, its agents, employees, representatives, and its successors and assigns shall be liable or responsible for any damages to any Owner or to any other person submitting Plans and Specifications to the ARC for approval or to any third party by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval, or failure to approve any Plans and Specifications. Every person who submits Plans and Specifications to the ARC for approval, as provided herein, agrees, by submission of such Plans and Specifications, and every Owner or person claiming by or through the Owner agrees, by

acquiring title to any Lot or Unit or any interest in any Lot or Unit, that it shall not initiate, commence or prosecute any action, claim or suit against the ARC, the ARC Members, its agents, employees or representatives to recover any such damages, including, but not limited to, special, consequential or punitive damages with respect to any approval, denial or failure to approve any Plans and Specifications and such Owner shall indemnify and hold the ARC and the ARC Members harmless from and against any and all such damages.

## **ARTICLE 7** **USE RESTRICTIONS**

In addition to all other covenants contained herein, the use of the Property and Project, including, but not limited to, the Lots, Condominium and Common Areas, is subject to the following:

*Section 7.1. Permitted Uses.* All buildings located or erected on any portion of the Property or Project shall be used for residential purposes exclusively, and no building shall be erected, altered, placed or permitted to remain on any portion of the Property or Project other than one used for residential purposes, except that a home-based business may be maintained within such a building, provided that (i) such maintenance and use is limited to the person actually residing in such building; (ii) no employees or staff other than a person actually residing in such building are utilized; (iii) no clients or customers of such business visit such building; the number of persons, other than clients or customers, that shall visit such business and the frequency of such visits shall be kept to a reasonable minimum, as determined in the sole discretion of the Board; (v) such maintenance and use is in strict conformity with the provisions of any applicable Laws; ~~(vi) the person utilizing such business maintains a principal place of business at a location other than such building;~~ (vi) such business uses no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable by neighbors and does not cause an increase of Common Expenses that can be solely and directly attributable to the business; and (viii) such business does not involve the use, storage or disposal of any materials that the United States Secretary of Transportation or the State of Delaware, Sussex County or any local governing body designates as hazardous material. ~~Nothing contained in this Article, or elsewhere in this Declaration, shall be construed to prohibit the Declarant or a Participating Builder from using any portion of the Property or the Project, or any improvements thereon, for promotional or display purposes, as "model homes," as sales and/or construction offices, or the like.~~

*Section 7.2. Prohibited Uses and Nuisances.* Except ~~for the activities of the Declarant and Participating Builder during the construction and development of the Property and Project, or except~~ with the prior written approval of the Board ~~and the Declarant~~, or as may be necessary in connection with reasonable and necessary repairs or maintenance to any building or the Common Areas:

(a) No noxious or offensive trade or activity shall be carried out upon any portion of the Property or Project, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or other Members. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any building or other improvements constructed upon any portion of the Property or Project.

(b) The maintenance, keeping, boarding or raising of animals, livestock, or poultry of any kind, regardless of number, shall be and is hereby prohibited on any portion of the Property or Project or within any building or other improvement located thereon, except that this shall not prohibit the keeping of a reasonable number of dogs, cats, caged birds or other small domestic animals as pets not to exceed four (4) provided (i) they are not kept, bred or maintained for commercial purposes; (ii) such domestic pets are not a source of annoyance or nuisance to the neighborhood or other Members; and (iii)

such pets are maintained in strict conformance with all Laws. The Board shall have the authority, after a hearing, to determine whether a particular pet is a nuisance or a source of annoyance to other Members, and such determination shall be conclusive. Pets shall be attended at all times and shall be registered, licensed and inoculated as may from time to time be required by all Laws. Pets shall not be permitted upon the Common Areas unless accompanied by a responsible person and unless they are carried or leashed. The Board shall have the right to adopt such additional rules and regulations regarding pets as it may from time to time consider necessary or appropriate.

(c) No burning of any trash and no accumulation or storage of litter, lumber, scrap metals, refuse, bulk materials, waste, new or used building materials, or trash of any other kind shall be permitted on any portion of the Property or Project. Firewood shall be neatly stacked in the rear yard areas of the Lots. ~~This subsection (c) shall not be applicable to the Declarant or any Participating Builder during the construction and development of the Property or Project.~~

(d) Except for parking within garages, and except as herein elsewhere provided, no junk vehicle, commercial vehicle (including vans used for commercial use and vehicles displaying commercial signage), truck, unlicensed or inoperable motor vehicle (which shall include, without limitation, any vehicle which would not pass applicable state inspection criteria), trailer, mobile home, camp truck, house trailer, off-road vehicle, recreational vehicle, boat or other similar vehicles, machinery or equipment of any kind or character (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any dwelling and except for such equipment and machinery as the Association may require in connection with the maintenance and operation of the Common Areas) shall be kept upon the Property or upon the public or private streets within or adjacent to the Property, nor (except for bona fide Emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. Golf carts may be kept on the Property provided they are parked in garages when not in use, are used only on the private streets within the Property, and are operated solely by adults licensed to operate motor vehicles. ~~This subsection (d) shall not be applicable to the Declarant or any Participating Builder during the construction and development of the Property or Project.~~

(e) Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection and the evening prior to such days of trash collection. No incinerator shall be kept or maintained upon any portion of the Property or Project. No garbage or trash containers shall be kept on the front or side yard of any Lot or Unit and garbage and trash containers kept or maintained in the rear yard of any Lot or Unit shall be screened from public view at all times.

(f) No Lot or Unit shall be further divided or subdivided and no portion of any Lot or Unit (other than the entire Lot or Unit) shall be transferred or conveyed for any purpose. The provisions of this subsection shall not ~~apply to the Declarant and, further, the provisions hereof shall not~~ be construed to (i) prohibit the granting of any easement or right-of-way to any municipality, political subdivision, public utility or other public body or authority, or to the Association, ~~the Declarant~~, or any other individual or entity for any purpose, or (ii) prohibit minor boundary line adjustments between adjoining Owners if done in accordance with applicable Laws. Further, the provisions of this subsection shall not be deemed to preclude any Owner from granting an easement or right-of-way to any municipality, political subdivision, public utility or other public body or authority, or to the Association, to serve necessary public purposes, or from dedicating or conveying a portion of such Owner's Lot or Unit for such purposes.

(g) No tree, hedge or other landscape feature shall be planted or maintained in a location which obstructs sight-lines for vehicular traffic on public streets or on private streets and roadways. Without limiting the generality of the foregoing, no wire or other lawn edging, fencing or other treatment shall be placed or maintained on any portion of the Property or Project which would impede the Association's ability to perform its obligations as set forth in this Declaration, or which would be inharmonious with the aesthetics of the Property and Project.

(h) No decorative lawn ornament, no structure of a temporary character, and no trailer, tent, shack, barn, pen, kennel, run, stable, or other similar building shall be erected, used or maintained on any portion of the Property or Project at any time. A storage shed may be erected, constructed or placed on a Lot provided that such shed (i) is approved, in writing, with respect to design (including, but not limited to color and materials), location and construction pursuant to Article 6; (ii) if constructed, such shed must conform to the architectural style and materials of the dwelling unit situated on the Lot; and (iii) any shed must be properly maintained at all times by the Owner of the Lot upon which it is located.

(i) Except for entrance signs, directional signs, signs for traffic control or safety, community "theme areas" and such sales and promotional signs as may be maintained by or with the written consent of the ~~Declarant or the~~ Association, or except as may be expressly permitted pursuant to applicable law, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any portion of the Property or Project; provided, however, that one temporary real estate sign not exceeding twelve inches by eighteen inches (12" x 18") in area may be erected upon any Lot or Unit or attached to any dwelling placed upon the market for sale or rent. ~~Notwithstanding the foregoing, no such temporary real estate sign may be erected on any Lot or Unit for two (2) years after the sale of the first Lot or Unit or until seventy-five percent (75%) of the Lots and Units are sold, whichever ever comes first.~~ Any such temporary real estate sign shall be removed within seven (7) days ~~of~~ after the sale or rental of such dwelling. The provisions and limitations of this subsection shall not apply to any institutional first mortgagee of any Lot or Unit who comes into possession of the Lot or Unit by reason of any remedies provided by law or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, assignment or deed in lieu of foreclosure. ~~This subsection (i) shall not be applicable to the Declarant or any Participating Builder during the construction and development of the Property or Project.~~

(j) No water pipe, sewer pipe, gas pipe, drainage pipe, cable or other similar transmission line shall be installed or maintained upon any portion of the Property or Project above the surface of the ground and no wire, cable or other similar transmission line may be attached to the exterior of any structure on any portion of the Property or Project; provided, however, that such transmission lines, wires or cables providing utility services to any portion of the Property or Project (including, but not limited to, electricity, telephone, gas, water and cable television) shall be permitted. Except during periods of actual use, no hose shall be stored or placed in the front or side yard of any dwelling unless screened from public view.

(k) No play equipment, including, without limitation, basketball backboards, basketball hoops and other equipment associated with either adult or juvenile recreation, shall be attached in any manner to the exterior of any dwelling without obtaining prior written approval pursuant to Article 6 hereof. If approved in accordance with this Declaration, such play equipment must be properly maintained at all times.

(l) No structure, planting or other material shall be placed or permitted to remain upon any portion of the Property or Project which may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, obstruct or retard the direction or flow of any drainage channels.

(m) Vegetable gardens shall be maintained only within the rear yard of any Lot or Unit, and shall be maintained in a neat and attractive manner. No composting activities of any kind or nature shall be permitted on any portion of the Property or Project, including but not limited to natural composting activities. In addition, no Owner shall erect or maintain any composting piles or receptacles or containers on any portion of the Property or Project.

(n) Lawn furniture shall be used and maintained in rear yards or decks only, unless otherwise determined by the Board, and shall be maintained in a neat and attractive manner.

(o) No equipment or machinery (including, without limitation, equipment or machinery for use in connection with the maintenance of any dwelling) shall be stored in the front, rear or side yard of any Lot or Unit.

(p) No Member shall make any private, exclusive or proprietary use of any of the Common Areas and no Member shall engage or direct any employee of the Association on any private business of the Member during the hours such employee is employed by the Association, nor shall any Member direct, supervise or in any manner attempt to assert control over any employee of the Association.

(q) No fence shall be permitted to be erected, constructed, maintained, repaired or replaced on any Lot or Unit closer to the front of any such Lot or Unit than the mid-way plane of the main portion of the dwelling and shall otherwise be in compliance with all applicable Laws. No fence shall be constructed or maintained upon a Lot or Unit until the plans for the same have been approved in writing in accordance with the provisions of Article 6 herein. No fence shall be more than six feet (6') in height or such shorter height as prescribed by any applicable Law. Such fences shall be constructed of aluminum, vinyl or wood and shall be white, black or natural in color. Chain link fencing is specifically prohibited. The foregoing restrictions shall also be applicable to fences required to enclose any swimming pools within the Property or Project (subject to obtaining prior written approval pursuant to Article 6 hereof), subject to any additional requirements imposed under any applicable Laws. ~~Notwithstanding the foregoing, this Section 7.2(q) shall not apply to fences installed by or on behalf of the Declarant or a Participating Builder during the construction and development of the Property or Project, which in the sole opinion of the Declarant or Participating Builder, as applicable, shall be required, convenient or incidental to the Declarant's or Participating Builder's, as applicable, construction, development, marketing, leasing and sales activities within the Property or Project.~~<sup>2</sup>

(r) Bed sheets, plastic sheets, newspapers, plastic storm windows or other similar window treatments shall not be hung or placed in or on any window on any dwelling located on any Lot or Unit.

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<sup>2</sup> ~~Added by Third Amendment July 29, 2013~~

(s) Children's play and similar equipment, including but not limited to portable basketball hoops, shall not be allowed to remain overnight within any front yard of any Lot or Unit or within the Common Areas.

(t) Children's outdoor permanent playhouses and swinging or climbing apparatus or equipment shall be permitted within the rear yard of a Lot or Unit; provided, however, that prior written approval is obtained pursuant to Article 6 and that such equipment, playhouse(s) and/or apparatus is properly maintained at all times.

(u) All on-Lot and on-Unit lighting shall be designed and mounted in accordance with the terms of the Design Guidelines and as otherwise provided under this Declaration. Any such lighting shall be generally directed in such a manner to enhance the immediate area around any dwelling on a Lot or Unit and shall not be directed toward other dwellings on adjacent Lots or Units or properties surrounding the Property or Project, so as to be a nuisance to adjacent Owners or landowners outside of the Property or Project.

(v) No drying or airing of any clothing or bedding shall be permitted outdoors and within any Lot or Unit other than within rear yards, and clothes-hanging devices such as lines, reels, poles, frames, etc., shall be stored out of sight when not in use.

(w) Above ground pools shall not ~~be~~ permitted.

(x) No garage or outbuilding properly erected on a Lot or Unit shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation. No garage may be altered, modified or changed in any manner which would inhibit or in any way limit its function as a parking area for vehicles without obtaining prior written approval pursuant to Article 6 of this Declaration. ~~Notwithstanding the foregoing, any Lot or Unit owned by the Declarant upon which is situated a dwelling in which the garage has been modified to serve as living area shall be exempt from this paragraph and any grantee of the Declarant, and such grantee's successors and assigns, shall also be exempt until such time as the garage is restored or a garage is constructed on such Lot or Unit.~~ Except when being used as an entrance or exit, garage doors shall be maintained in a closed position at all times.

(y) Yard, lawn, garage or similar types of sales events or activities (collective a "Yard Sale") by individual Lot or Unit owners or groups thereof are expressly prohibited; provided, however the Board shall have the right and option (but not the obligation) to arrange and organize no more than two (2) community wide Yard Sales during each calendar year, subject to reasonable guidelines and procedures adopted (and as amended or changed from time to time) by the Board regarding the conduct of any community wide Yard Sales, including, but not limited to such matters concerning the date(s), commencement time and duration, advertising, parking and traffic related considerations.<sup>3</sup>

*Section 7.3. Satellite Dishes.* Installation of antennas, including satellite dishes, shall be governed by this Section and such other additional reasonable rules and regulations regarding the location and

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<sup>3</sup> ~~Added by Third Amendment July 29, 2013~~

screening of any such items that the Board shall impose from time to time. The Federal Communications Commission (the "FCC") adopted a rule effective October 14, 1996 (the "FCC Rule"), preempting certain restrictions concerning the installation, maintenance, and use of direct broadcast satellite, television broadcast, and multipoint distribution service antennas (collectively, "Antennas"). The requirements set forth in this Section are generally consistent with the FCC Rule; however, because the FCC Rule is subject to change or modification, the Board reserves the right to amend and modify any requirements governing installation, maintenance, and use of Antennas, which may be more restrictive than as set forth herein and which may, in the discretion of the Board, be applied retroactively. Antennas not covered by the FCC Rule, including satellite dishes in excess of one (1) meter in diameter, shall not be installed on the exterior portions of any Lot, Unit, or dwelling without prior written approval as required by Article 6. Antennas situated entirely within a dwelling, and not visible from the exterior are permitted. Antennas covered by the FCC Rule, including satellite dishes of one (1) meter or less in diameter, are permitted within a Lot or Unit, provided such Antennas shall not be visible from the front elevation of the Lot or Unit; provided, however, that nothing herein requires installation of such an Antenna in a location from which an acceptable quality signal cannot be received, as certified in writing by a licensed installer or which causes an unreasonable delay or cost increase in such installation.

*Section 7.4. Leasing and Transfers.*

(a) No portion of a dwelling unit, other than an entire dwelling unit or any Lot or Unit, may be leased or rented unless the prior written approval of the Board is obtained. All leases shall be on forms approved by the Association and shall (i) contain provisions advising the tenant of his or her obligation to comply with all provisions of this Declaration, the Certificate of Incorporation, Bylaws and rules and regulations of the Association, and (ii) provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Certificate of Incorporation, Bylaws or rules and regulations of the Association, or of any other document, agreement or instrument governing the dwelling units Property or Project. The Owner(s) of a leased dwelling unit, Lot or Unit shall notify the Association in writing of the Owners' current address. The Owner(s) of a leased or rented dwelling unit, Lot or Unit shall be jointly and severally liable with his tenant(s) to the Association to pay any claim for injury or damage to persons or property caused by any action or omission, including, without limitation, the negligence of the tenant(s). Every lease shall be subordinate to any lien filed by the Association, whether before or after such lease was entered into. The minimum term any dwelling unit, Lot or Unit may be rented or leased shall be one (1) year, and in no event may a transient or seasonal tenant be accommodated in any dwelling unit, Lot or Unit.

(b) Prior to the sale, conveyance or transfer of any dwelling unit, Lot or Unit to any person, the Owner shall notify the Board in writing of the name and address of the person to whom the proposed sale, conveyance or transfer is to be made (the "Transferee") and provide to it such other information as the Board may reasonably require in order to obtain the required initial capital contribution from the Transferee. Failure to comply with the provisions of this Section 7.4(b) shall not void, prohibit or otherwise invalidate the sale, conveyance or transfer of any dwelling unit, Lot or Unit nor may it have any affect upon any mortgage or deed of trust thereon.

~~(c) The Declarant, each Participating Builder, and their successors, assigns, and nominees and any agents, servants and/or employees thereof shall be exempt from the provisions of this Section 7.4.~~

*Section 7.5. Parking.* Parking within the Property and Project shall be subject to the following restrictions:



(a) The Association shall be entitled to establish supplemental rules concerning parking and traffic control on any portion of the Property or Project, including, without limitation, providing for reserved parking which allows the exclusive use of one or more Common Areas parking spaces by one or more Owners and/or the involuntary removal of any vehicle violating the provisions of this Declaration and/or such rules.

(b) Each Owner shall comply in all respects with such supplemental rules which are not inconsistent with the provisions of this Declaration which the Board may from time to time adopt and promulgate with respect to parking and traffic control within the Property and Project, and the Board is hereby authorized to adopt such rules.

(c) Parking shall be prohibited in the turn-arounds, fire lanes and cul-de-sacs as provided on the Development Plans.

*Section 7.6 House Rules, Etc.* All Owners, Members, authorized tenants, and anyone using the Common Areas shall observe all reasonable rules for the use of the Property and Project or "house rules" or other community rules and regulations, not inconsistent with the provisions of this Declaration, which may from time to time be adopted by the Board under Section 3.1(e), 7.2(b) or 7.5(a) and promulgated among the membership by the Board in writing, and the Board is hereby and elsewhere in this Declaration authorized to adopt such rules and regulations. Owners shall be responsible for the actions of their tenants and guests within the Property and Project. The Members, by two thirds vote of all Members, may modify any house rule or community regulation adopted by the Board that is not specified in this Declaration or the Association Bylaws.

*Section 7.7. Exemptions.* None of the restrictions and provisions set forth in Sections 7.1 through 7.6 above shall be applicable ~~(i) to any portion of the Property or Project owned by the Declarant or a Participating Builder or to the activities of the Declarant or a Participating Builder, and their officers, employees, agents and assigns, in their development, marketing, leasing and sales activities within the Property and Project or (ii)~~ to the Association, its officers, employees and agents, in connection with the proper maintenance, repair, replacement and improvement of the Common Areas. The provisions and restrictions contained in this Article 7 shall govern and control those restrictions and provisions contained in the Condominium Documents regarding the use of the Units and appurtenant common elements and Condominium. To the extent of any ambiguity or inconsistency between the restrictions and provisions in this Article 7 and restrictions and provisions regarding the use of the Units and appurtenant common elements and the Condominium, the restrictions and provisions contained in this Article 7 shall govern and control with respect to the use of the Units, appurtenant common elements and Condominium.

*Section 7.8. Notice of Special Provisions Regarding the Property and Project.*

(a) *Notice of Agricultural Use.* The Property and Project are located in the vicinity of land used primarily for agricultural purposes on which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of the Property and Project is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities.

(b) *Notice of Private Streets.* The streets designated on the Development Plans shall be private streets and shall be maintained by the Association and not by the State of Delaware and do not qualify for assumption of maintenance by the Delaware Department of Transportation, State Highway Division. The streets must be improved to State Highway standards if they are to be maintained by the State of Delaware (at the discretion of the State Highway Division) and the ~~Declarant and/or~~ the Association reserves the right to dedicate any and all such private streets to public use and convey any and all such private streets to the State of Delaware or other applicable governmental authority. A disclosure regarding such private streets shall also appear in each deed to any Lot or Unit in accordance with 9 Del. C. § 9623 relating to private streets.

(c) *Forested Buffer Maintenance.* ~~The Part of the boundary of the~~ Property is ~~to be bounded by a~~ thirty-five foot (~~30'~~15') forested buffer (the "Forested Buffer") in accordance with the provisions of Chapter 99 of the Sussex County Code. The Forested Buffer shall be considered part of the Common Facilities. The perpetual maintenance of the Forested Buffer shall be the responsibility of the Association in accordance with the provisions of this Declaration, the Certificate of Incorporation and the Bylaws of the Association, and the provisions of the Sussex County Code.

## **ARTICLE 8**

### **DECLARATION OF EASEMENTS AND RIGHTS**

*Section 8.1. Declaration of Easements and Rights.* The following easements and rights are hereby declared or reserved:

~~(a) — For so long as Declarant owns any Lot or Unit, Declarant reserves the right to grant easements, both temporary and permanent, to all public authorities and utility companies over any part of the Common Areas.~~

~~(b)~~(a) Each Lot, ~~and~~ the Condominium, and the Common Areas are hereby declared to have an easement, not exceeding one foot (1') in width, over all adjoining Lots and the Condominium and Common Areas for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhangs, gutters, architectural or other appendages, draining of rainwater from roofs, or any other similar cause, there shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of any Owner if said encroachment occurred due to the willful misconduct of said Owner. In the event a structure on any Lot or the Condominium or Common Areas is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot and Unit agree that minor encroachments over adjoining Lots, the Condominium, or Common Areas shall be permitted and that there shall be easements for the maintenance of said encroachments so long as they shall exist.

~~(c) — There is hereby reserved unto the Declarant (and its successors and assigns to whom such easement has been specifically assigned in writing), for the benefit of the real property shown on the Development Plans, and for the benefit of the Declarant and its agents, a non-exclusive, perpetual blanket easement upon, across and under the Property and Project (provided such easement does not encroach upon any building within the Property or Project or unreasonably interfere with the use and enjoyment of the Property or Project), for vehicular and pedestrian ingress and egress, curb cuts, slope, and grading easements, as well as for the installation, replacement, repair and maintenance of all utilities,~~

~~including, but not limited to, water, sewer, drainage, storm water detention and/or siltation, gas, cable television, telephones and electricity, and further including the right to connect to and use any such utilities which may exist or be located upon the Property or Project from time to time. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary poles, pipes, lines, service boxes, and other equipment on the Property or Project, to affix and maintain electrical or telephone wires and conduits, sewer and water drainage lines, on, above, or below any portion of the Property or Project, including any improvements constructed thereon, and to have construction vehicles, equipment and the like exercise the aforesaid right of ingress and egress over the Property or Project. There is further reserved unto the Declarant the right to erect entry features, promotional and other similar items within the Property or Project provided they do not unreasonably interfere with the use, operation and enjoyment of the Property or Project. There is further reserved unto the Declarant the right to grant specific easements, both temporary and permanent, to any person or entity, including all public authorities and utility companies, over any part of the Property or Project in furtherance of the blanket easement created by this subsection. Further, without limiting the generality of the foregoing, the Declarant reserves the right to unilaterally execute and record such additional easements and agreements as may be necessary in order to give effect to the foregoing easements and other rights, which additional easements and other agreements need not be consented to or joined in by any party having an interest in the Property or Project; provided, however, that if requested by the Declarant, any party having an interest in the Property or Project shall promptly join in and execute such confirmatory easements and other agreements.~~

~~(d)~~(b) The Property is hereby subject to a non-exclusive, perpetual easement and right of passage, for the benefit of the Members of the Association, for ordinary and reasonable pedestrian ingress and egress over, across and upon any sidewalk, trail or walkway (or the replacement thereof) constructed within the Property ~~by the Declarant~~ that may reasonably be deemed to have been constructed or intended for pedestrian use.

~~(e) — An easement is hereby reserved to Declarant to enter the Lots, the Condominium and Common Areas during the period of construction and sale on the Property and Project, and to maintain the Community Area and perform such operations as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction of the Community Facilities and for the construction and sale of residences, including, without limitation, a business office, sales/leasing office, storage area, construction yards, signs, displays and model units.~~

~~(f) — An easement is hereby reserved to Declarant and the Participating Builder to enter the Lots, the Condominium and Common Areas for the purpose of carrying out any obligations it may have, or assume, with respect to the curing of any defects in workmanship or materials in the Property, Project, Condominium, Common Areas or the improvements thereon. There is further reserved unto the Declarant and the Participating Builder and their agents a non-exclusive easement over, across and through all of the Property and Project for the purpose of access, the storage of building supplies and materials and equipment and, without any limitation, for any and all purposes reasonably related to the completion of the development, construction, rehabilitation and repair of the Property or Project.~~

~~(g) — The Declarant reserves a perpetual blanket easement and right on, over and under the Property and Project to establish, maintain, change and correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Any provision hereof to the contrary notwithstanding, the Declarant shall have no obligation whatsoever to perform any work or to take any action regarding drainage of surface water within the Property or Project. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action as may be reasonably necessary, following which the Declarant shall restore the affected property to~~

~~its original condition as near as practicable. The Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Declarant an Emergency exists which precludes such notice. There is further reserved unto the Declarant the right to grant specific easements, both temporary and permanent, to any person or entity, including all public authorities and utility companies, over any part of the Property or Project in furtherance of the blanket easement created by this subsection.~~

~~(c)~~(c) The rights and duties of the Association and the Owners with respect to all public and/or private utilities serving and/or benefiting all or any portion of the Property or Project, including, without limitation, water, sewer, gas, electricity, cable television, telephones, storm drains, down spouts, yard drains, and all pipes, wires, cables, conduits, transmission lines and other related facilities and equipment (collectively, the "Utilities") shall be governed by the following:

(i) Each Lot and the Condominium is hereby subject to a non-exclusive perpetual easement and right of passage upon, across and under such Lot and Condominium, for the benefit of the Association and the Owners of all other Lots and the Condominium for the installation, maintenance, repair, replacement, inspection, operation and use of all Utilities. The Owner of any Lot or Unit and the Association shall have the right, and they are hereby granted an easement and right of passage to the extent necessary therefor, to enter upon or have a utility company enter upon any portion of the Property or Project in which the Utilities lie, to inspect, repair, replace and generally maintain such Utilities.

(ii) The right granted in subsection (i) above shall be only to the extent necessary to entitle the Owner of the property serviced by the Utilities (including the Association as the owner of the Common Areas and the Council on behalf of the Condominium) to their full and reasonable use and enjoyment of such property, and provided further that anyone exercising such right shall be responsible for restoring the surface of the easement area so used to its condition prior to such use.

~~(d)~~(d) Each Lot and Unit is hereby subject to an easement and right of passage upon, across and under such Lot or Unit for the drainage and discharge of water from any storm drain, down spout or yard drain situated on another Lot or Unit or the Common Areas and the Owner of such Lot or Unit may not alter or obstruct such drainage or flow of water to the detriment of any Lot, the Condominium or Common Areas.

~~(e)~~(e) The Association shall have an easement to enter any portion of the Property or Project for the performance of its duties hereunder, including, without limitation, fenced, or other similar areas of the Property or Project.

(f) With respect to any step, patio, deck, downspout or yard drain or other similar structure that may benefit any Lot or Unit and is constructed by the Declarant and which may encroach upon any portion of the Common Areas, there is hereby reserved for the benefit of the Lot or Unit that such step, patio, deck, downspout, drain or other structure serves, a perpetual easement for the location, maintenance, repair and use of such structure or items within the Common Areas, but only to the extent that the ~~Declarant's~~ original construction thereof encroaches within the Common Areas. The Owner of the Lot or Unit benefiting from such easement agrees to maintain such structure or item and to indemnify and

hold the Association harmless from any loss, liability or damage arising out of or resulting from the use, enjoyment and benefit of the easement granted hereby.

(g) There is hereby created for the benefit of each Lot and Unit, which is enclosed, in whole or in part, by any wooden, brick, stone or other similar fence and/or wall constructed by the Declarant, a perpetual easement to use any portion of the Common Areas that may be located between such fence and/or wall and the record platted lot line for such benefited Lot or Unit. The obligation to maintain such portion of the Common Areas shall be that of the Owner of the benefited Lot or Unit, and the obligation to maintain such portion of the wooden, brick, stone, or other similar fencing as is located within the Common Areas, and which encloses the benefited Lot or Unit, in whole or in part, shall be that of the Association. The Owner of any Lot or Unit benefiting from the foregoing easement agrees to indemnify and hold the Association harmless from any loss, liability or damage arising out of or resulting from the use, enjoyment and benefit of the easement rights provided for herein.

(h) A mutual right and easement for utility services is hereby established for the benefit of all Owners, such that no Owner shall take any action which would in any way interfere with utility services being provided to other Owners within the Property or Project. If a Lot, Unit or the Condominium contains any utility pipes, ducts, conduits, wires or the like which are for the benefit, in whole or in part, of other Owners within the Property or Project, then the Owner of such Lot, Unit or the Condominium shall promptly, at his expense, repair any damage to such utilities caused by the Owner, or such Owner's tenants, lessees, agents, guests, invitees, licensees or family members.

(i) The Association, its agents and employees, shall have an irrevocable right and an easement to enter the Lots or the Condominium for purposes of exercising the rights and fulfilling the obligations established by this Declaration and any supplementary declarations recorded hereafter.

~~(j) The Declarant reserves the right to modify or alter the size, number, type and location of the Common Areas, including, but not limited to, the Common Facilities, and the Lots, Units and Condominium and any other improvements thereon, as it deems necessary or desirable in conjunction with the development of the Property or Project. Without limiting the generality of the foregoing, the Declarant reserves the right to resubdivide all or a portion of the Property or Project, to convey Common Areas, to modify the site plans, to construct the Community Facilities on the Common Areas, and to take whatever other action with respect to the Common Areas, Community Facilities, Lots, Units and Condominium as the Declarant may deem necessary or desirable.~~

~~(j)~~ (j) The Association is hereby granted a non-exclusive easement and right of passage on, through, over, under and across the Lots, Condominium and Common Areas to maintain, repair and replace any Community Facilities situated within the Lots, Condominium or Common Areas.

~~(l) There is hereby reserved unto the Declarant (and its successors and assigns to whom such easement has been specifically assigned in writing), for the benefit of the real property shown on the Development Plans, and for the benefit of the Declarant and its agents, a non-exclusive perpetual blanket easement upon, across and under the Property and Project (provided such easement does not encroach upon any building within the Property or Project or unreasonably interfere with the use and enjoyment of the Property or Project), for the following purposes: (i) ingress and egress to and from any and all portions of the Property and Project by trucks, construction equipment, construction personnel and the like; (ii) to construct, install, reconstruct, alter, modify, remove and replace the Community Facilities or any other improvements within~~

~~the Property and Project; (iii) to excavate, fill and coordinate the height, grade, slope and contour of the Property and Project, and to add and remove soil from the Property; and (iv) for the conduct of all other development, construction, marketing, sales, leasing and related activities as may be deemed necessary or desirable by the Declarant to implement the Development Plans, to comply with requirements imposed by Sussex County, Delaware, or any governmental or quasi-governmental agency or authority having regulatory jurisdiction over the Property or Project, and/or to comply with applicable Laws.~~

~~(m)~~(k) In addition to the foregoing reservations and grants of easement rights, Lots 3A, 5C, 13A, 15B, 28A, 29B, 35A, and 37C, shall be subject to a five (5) foot stormwater management easement along the rear property line of such Lots as set forth in the Plan.

*Section 8.2. Association Easements.* The Board shall have the right to grant easements, rights-of-way, licenses and similar interests over any part of the Common Areas for any lawful purpose which the Board determines, in its sole discretion, to be in the best interests of the Association.

*Section 8.3. Party Wall Easements and Rights* To the extent ~~not inconsistent~~ with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful act or omissions shall apply to each party wall, party fence, deck, or other structure and/or improvement which is built as part of the original construction of the dwellings upon the applicable Lots and Units and any replacement thereof.

(a) *Encroachments.* The event that any portion of any dwelling, structure or improvement, as originally constructed by the Declarant on a Lot or Unit or the Common Areas, including, but not limited to any party wall, fence, or deck shall protrude over an adjoining Lot, Unit or the Common Areas, then such dwelling, structure or improvement (including any party wall, fence or other projection) (collectively the "Projections") shall not be deemed to be an encroachment upon the adjoining Lots, Units or Common Areas, and no Owner shall maintain any action for removal of any such Projections nor any action for damages. In the event there is a Projection as described aforesaid, it shall be deemed that the Owners and, where applicable, the Association have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the Projections. The foregoing shall also apply to replacements of any such Projections if same are constructed in conformance with the original Projection constructed by the Declarant. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and, restrictions.

(b) *Sharing of Repair and Maintenance.* The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall in proportion to such use.

(c) *Destruction by Fire or Other Casualty.* If a party wall or party fence is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) *Weatherproofing.* Notwithstanding any other provision of this Article, an Owner, who by his negligent or willful act causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors and assigns in title.

(f) Arbitration. In the event of any dispute arises concerning a party wall or party fence, or under the provisions of this Article, such dispute shall be adjudicated by the ARC pursuant to Article 6.

## **ARTICLE 9** **MAINTENANCE**

*Section 9.1. Owners' Maintenance.* Except as otherwise specifically provided in this Declaration, the Owner of each Lot or Unit shall keep the Lot or Unit, and all ~~improvements~~ Improvements therein or thereon, in good order and repair and free of debris in a manner and with such frequency as is consistent with good property management and the Community-Wide Standard. The Owner of any Lot or Unit shall be responsible for the maintenance of any Irrigation Facilities located on or under his or her Lot or Unit and, ~~except where included as part of Common Expenses~~, shall be responsible for the payment of any utility bills associated with the use of the Irrigation Facilities on his or her Lot or Unit. In the event an Owner of any Lot or Unit shall fail to maintain such Lot or Unit and such ~~improvements~~ Improvements, the Association or its agent shall have the right to enter upon said Lot or Unit to repair, maintain and restore the Lot or Unit and such ~~improvements~~ Improvements. The Association shall also have the right to enter the Lots or the Condominium to correct drainage. Whenever entry is not required in an Emergency situation, the Association shall afford the Owner reasonable notice and opportunity to cure the problem prior to entry. All costs related to such correction, repair or restoration, including reasonable attorneys' fees, shall be collectible from the Owner of such Lot or Unit, in the same manner as assessments as provided in Article 5 herein.

*Section 9.2. Association Maintenance.* The Association shall maintain, repair and replace the Common Areas, including, without limitation, the Common Facilities, and shall keep the Common Areas and all such Community Facilities in good order at all times. This obligation shall include, without limitation (i) the maintenance, repair and, as necessary, replacement of any private streets and parking areas within the Common Areas, (ii) the maintenance, repair and, as necessary, replacement of any landscaping, pathways, sidewalks, trails and walkways that are constructed or installed ~~by, or on behalf of, the Declarant~~ within the Common Areas, provided that the Association shall not be obligated to maintain, repair or replace any landscaping, pathway, sidewalk, trail or walkway leader, or portion thereof, within any Lot or the Condominium (the maintenance, repair and replacement of any such landscaping, pathway, sidewalk, trail or walkway leader shall be the obligation of the Lot Owner or the Condominium, as applicable), and (iii) the removal of accumulated snow and ice from within all private streets and parking areas within the Common Areas and from all Common Areas pathways, sidewalks, trails, walkways, or portions thereof. Further, the Association shall maintain, repair and replace any rights-of-way, swales, culvert pipes, entry strips, signage, and entrance features or ~~improvements~~ Improvements that are situated within or that are appurtenant to and serve the Property and Project, including, without limitation, any landscaping and other flora and ~~improvements~~ Improvements situated thereon, and (ii) any other real and personal property, facilities and equipment as the Association is obligated or elects to maintain pursuant to this Declaration, or any lease, easement or agreement, or the direction of any governmental authority or agency. The expenses of all such maintenance, repair and replacement of the Common Areas, including, but not limited to, the Community Facilities, shall be a Common Expense of the Association, including, but not limited to, reserves for the maintenance, repair and replacement of any such property or

improvements. The Association shall also maintain any portion of any Lot or the Condominium that it is obligated or elects to maintain pursuant to this Declaration, any easement or other agreement.

The Association shall also have the right to enter any Lot, Unit or the Condominium, without the consent of the Owner and/or occupant or other governing body thereof, to conduct any Emergency repairs as are necessary and for the maintenance and protection of the Common Areas, any Lot, the Condominium that the Association is responsible for under this Declaration. The costs of such repairs shall be collectible from the Owner of such Lot or Unit in the same manner as assessments as provided in Article 5 herein.

The Association shall be responsible for the maintenance, repair and replacement of any of the Common Areas, including, but not limited to, the Community Facilities, which consist of storm water management area or facilities situated within the Common Areas to the extent that Sussex County, Delaware does not assume the responsibility for the maintenance, repair and replacement of any storm water management area or facilities, including, without limitation, drainage pipes, culvert pipes, infiltration trenches, ponds, basins, swales, berms, out-flow control devices, drainage areas, filters, inlets, oil/grit separators and underground facilities, if any, which serve and/or benefit the Property or Project whether or not located within the Common Areas if the Association is responsible therefor pursuant to any easement, agreement or the direction of any governmental authority or agency. Such responsibility may be in the form of contributing the Association's share of the maintenance costs of any such storm water management area, facility or equipment pursuant to an easement or agreement which shall be a Common Expense of the Association. The Board may enter into any such easements and/or other agreements as the Board may deem necessary or desirable for purposes of allocating and/or sharing the costs associated with the maintenance of any storm water management areas, facilities and/or equipment which serve and/or benefit the Property or Project. ~~The Association shall not refuse to accept the conveyance of any such storm water management area, facilities or equipment from the Declarant.~~

*Section 9.3. Additional Maintenance Responsibilities.* The Association may, in the discretion of the Board, provide additional services and/or assume additional maintenance responsibilities with respect to all or any portion of the Property or Project. In such event, all costs of such services and/or maintenance shall be assessed only against those Owners residing within the portion of the Property or Project receiving the additional services. This assumption of responsibility may take place either by contract or because, in the opinion of the Board, the level and quality of service or maintenance then being provided is not consistent with the Community-Wide Standard.

## **ARTICLE 10** **INSURANCE**

*Section 10.1. Required Coverage.* The Board, or its duly authorized agent, shall be required to obtain, maintain and pay the premiums, as a Common Expense, upon a policy of hazard insurance covering the Common Areas, including, but not limited to, the Community Facilities, and any property required to be insured by the Association pursuant to any easement or lease agreement (except land, foundation, excavation and other items normally excluded from coverage) including fixtures and building service equipment, to the extent that they are a part of the Common Areas or such other property which the Association may insure, as well as common personal property and supplies.

(a) The hazard insurance policy shall afford, as a minimum, protection against loss or damage by fire and all other perils normally covered by the standard extended coverage endorsement, as well as all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such



is available, and shall name the Association as a named insured. The insurance should cover one hundred percent (100%) of the current replacement cost (less a reasonable deductible) of the insured property. Coverage need not include land, foundations, excavations or other items that are usually excluded from insurance coverage. Unless a higher maximum amount is required pursuant to the law of the State of Delaware, the maximum deductible amount for coverage of the Common Areas (including the Community Facilities) is the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount. The funds to cover this deductible amount should be included in the Association's operating reserve account.

(b) Each hazard insurance policy must be written by a hazard insurance carrier which has a current rating by the Best's Key Rating Guide of B/III or better (or its equivalent). Each insurer must be specifically licensed or authorized by law to transact business within the State of Delaware. The policy contract shall provide that no assessment may be made against the mortgagee, and that any assessment made against others may not become a lien on the mortgaged Lot or Unit superior to the First Mortgage.

(c) The hazard insurance policy must provide that the insurance carrier shall notify the Association and each mortgagee named in the mortgagee clause in writing at least ten (10) days before it cancels or substantially changes the Association's coverage. In addition, each Eligible Mortgage Holder shall receive timely written notice of any lapse, material modification or cancellation of any insurance policy covering the Common.

(d) All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutions as mortgage investors in the area in which the mortgaged premises are located. The following endorsements are also required: (i) an Inflation Guard Endorsement (if reasonably available); (ii) a Construction Code Endorsement if the Common Areas are subject to a construction code provision which would become operative and require changes to undamaged portions of any structures, even when only part of a structure is destroyed by an insured hazard or peril; and (iii) a Steam Boiler and Machinery Coverage Endorsement if any structure within the Common Areas has central heating or cooling, which should provide for the insurer's minimum liability per accident per location to be at least equal to the lesser of Two Million Dollars (\$2,000,000.00) or the insurable value of the structure(s) housing the boiler or machinery.

(e) If the Common Areas is located in a Special Flood Hazard Area designated as A, AE, AH, AO, A 1-30, A-99, V, VE, or V 1-30 on a Flood Insurance Rate Map, the Association must maintain a "master" or "blanket" policy of flood insurance on the Common Areas. The amount of flood insurance shall be at least equal to the lesser of one hundred percent (100%) of the insurable value of all structures and improvements situated in such Special Flood Hazard Area or the maximum coverage available under the applicable National Flood Insurance Administration program. Unless a higher deductible amount is required under the laws of the State of Delaware, the maximum deductible amount for flood insurance policies shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy's face amount. The funds to cover this deductible amount should be included in the Association's operating reserve account.

(f) The Association shall obtain and maintain a comprehensive general liability policy of insurance covering all of the Common Areas, public ways and any other areas that are under the Association's supervision. The policy shall also cover any commercial space owned by the Association, even if such space is leased to others. The policy should provide coverage for bodily injury (including

death) and property damage that results from the operation, maintenance or use of the Common Areas, including, but not limited to, the Community Facilities, and any legal liability that results from law suits related to employment contracts in which the Association is a party. Supplemental coverage to protect against additional risks should also be obtained, if required by a mortgagee. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Liability coverage shall be at least One Million Dollars (\$1,000,000.00) per occurrence, for bodily injury and property damage, unless higher amounts of coverage are required by a mortgagee. The liability policy must provide that the insurance carrier shall notify the Association in writing at least ten (10) days before it cancels or substantially modifies the Association's coverage.

*Section 10.2. Fidelity Coverage.* To the extent reasonably available, blanket fidelity insurance may be maintained by the Board for all officers, directors, managers, trustees, employees and volunteers of the Association and all other persons handling or responsible for funds held or administered by the Association, whether or not they receive compensation for their services. Where the Board has delegated some or all of the responsibility for the handling of funds to a management agent, such management agent shall be covered by its own fidelity insurance policy which must provide the same coverage as fidelity insurance maintained by the Board. Except for fidelity insurance that a management agent obtains for its personnel, all other fidelity insurance policies should name the Association as the insured and should have their premiums paid as a Common Expense by the Association. Fidelity insurance obtained by a management agent shall name the Association as an additional insured. The total amount of fidelity coverage required should be sufficient to cover the maximum funds (including reserve funds) that will be in the custody of the Association or management agent at any time while the fidelity insurance policy is in force, and should at least equal the sum of three (3) months aggregate assessments on all Lots and Units within the Association, plus any reserves. Fidelity insurance policies should contain waivers by the insurers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions. The fidelity insurance policies should provide that they cannot be canceled or materially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association.

*Section 10.3. Repair and Reconstruction of Common Areas After Fire or Other Casualty.* In the event of damage to or destruction of any portion of the Common Areas covered by insurance payable to the Association as a result of fire or other casualty, the Board shall arrange for the prompt repair and restoration thereof, and shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration, as appropriate. Promptly after a casualty causing damage or destruction of any portion of the Common Areas for which the Association has the responsibility of maintenance, repair, and/or replacement, the Board shall obtain reliable and detailed estimates of the cost to place the damaged portions of the Common Areas in as good a condition as existed prior to the casualty. Such costs may include, without limitation, professional fees and premiums for such bonds as the Board may desire.

## **ARTICLE 11 MANAGEMENT**

*Section 11.1. Management Agent.* The Board may employ for the Association a management agent or manager (the "**Management Agent**") at a rate of compensation established by the Board to perform such duties and services as the Board shall from time to time authorize in writing, including, but not limited to, the following:

(a) to establish (with the approval of the Board) and provide for the collection of the annual maintenance assessments and any other assessments provided for in this Declaration and to

provide for the enforcement of liens therefor in a manner consistent with the law and the provisions of this Declaration; and

(b) to provide for the care, upkeep, maintenance and surveillance of the Common Areas; and

(c) to designate, hire and dismiss such personnel as may be required for the good working order, maintenance and efficient operation of the Common Areas; and

(d) to promulgate (with the approval of the Board) and enforce such rules and regulations and such restrictions or requirements, "house rules" or the like as may be deemed proper respecting the use of the Common Areas and the Lots and Condominium; and

(e) to provide such other services (including legal and accounting services) for the Association as may be consistent with law and the provisions of this Declaration.

*Section 11.2. Duration of Management Agreement.* Any management agreement entered into by the Association shall provide, among other things, that such agreement may be terminated for cause by either party upon thirty (30) days written notice thereof to the other party. The term of any such management agreement shall not exceed three (3) years; provided, however, that the term of any such management agreement may be renewable by mutual agreement of the parties for successive one (1) year periods.

~~Any management agreement entered into while the Declarant is in control of the Association must be terminable, without cause, any time after transfer of control from the Declarant, on not less than thirty (30) nor more than ninety (90) days notice, and no charge or penalty may be associated with such termination.~~

## **ARTICLE 12**

### **GENERAL PROVISIONS**

*Section 12.1. Common Areas Responsibility.* The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and any property, real or personal, which the Association is delegated the responsibility for pursuant to any easement or lease agreement, and all improvements thereon (including, without limitation, furnishings and equipment related thereto, private drainage facilities and common landscaped areas), and shall keep the Common Areas and such other property in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof. The Association shall accept title to any real estate or personal property offered to the Association by the Declarant.

*Section 12.2. Personal Property and Real Property for Common Use.* The Association may acquire, lease, hold, and dispose of tangible and intangible personal property and real property, subject to the requirements of this Declaration. The Board, acting on behalf of the Association, will accept any real or personal property, leasehold, or other property interests within the Property or Project conveyed to it by the Declarant.

*Section 12.3. Implied Rights.* The Association may exercise any other right or privilege given to it expressly by this Declaration or the Certificate of Incorporation, Bylaws of the Association or any lease, easement or other agreement or document affecting the Association, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

*Section 12.4. Limitation of Liability.* The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the Common Expense funds, or for injury or damage to persons or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas or other property within the control or supervision of the Association, or from any wire, pipe, drain, conduit or the like. The Association shall not be liable to any Member for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Areas or other property within the control or supervision of the Association. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or other property within the control or supervision of the Association, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any Laws or with the order or directive of any municipal or other governmental authority.

*Section 12.5. Enforcement.* The ~~Declarant, the~~ Association, or any Owner, or any Mortgagee of any Lot or Unit shall have the right to enforce, by any proceeding at law and/or in equity, all restrictions, conditions, covenants, reservations, easements, liens, charges or other obligations or terms now or hereafter imposed by the provisions of this Declaration, or the Certificate of Incorporation or Bylaws of the Association or any rule or regulation promulgated by the Association pursuant to its authority as provided in this Declaration, or the Certificate of Incorporation or Bylaws of the Association. Failure by ~~the Declarant, the~~ Association or by any Owner or Mortgagee of any Lot or Unit to enforce any covenants or restrictions herein contained or any provision of the Bylaws, Certificate of Incorporation or rules and regulations of the Association shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of any of the within covenants or restrictions or any provision of the Bylaws or Certificate of Incorporation of the Association cannot be adequately remedied by action at law or exclusively by recovery of damages. If the ~~Declarant, the~~ Association, or any Owner or Mortgagee of any Lot or Unit, successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Declaration or the Certificate of Incorporation or Bylaws of the Association, the costs of such action, including legal fees, shall become a binding, personal obligation of the Owner committing or responsible for such violation, and such costs shall also be a lien upon the Lot or Unit of such Owner.

Without limiting the generality of the foregoing, and in addition to any other remedies available, the Association after reasonable written notice, in writing, provided to the Owner, may enter any Lot or the Condominium to remedy any violation of the provisions of this Declaration, or the Bylaws, Certificate of Incorporation or rules and regulations of the Association provided, however, that the Association may not enter the interior of any dwelling unit on a Lot or a Unit except in an Emergency. The costs of such action, including reasonable attorneys' fees, shall become a binding, personal obligation of the Owner otherwise responsible for such violation and shall also be a lien upon the Lot or Unit of such Owner.

*Section 12.6. Fines.* In addition to the means for enforcement provided elsewhere in this Declaration, the Association shall have the right to levy fines against an Owner or such Owner's guests, relatives, lessees or invitees, in the manner set forth herein, and such fines shall be collectible in the same manner as any other assessment such that the Association shall have a lien against the Lot or Unit of such Owner as provided in this Declaration, and the Bylaws and the Certificate of Incorporation of the Association and such fine(s) shall also become the binding personal obligation of such Owner.

- (a) Except with respect to matters pertaining to the Design Guidelines which shall be within the exclusive jurisdiction of the ARC, the Board shall be charged with determining whether there is probable cause that any of the provisions of this Declaration, the Bylaws, Certificate of Incorporation or the rules and regulations of the Association, regarding the use of the Lots, Common Areas, Condominium or other Association property, are being or have been violated. In the event that the Board or the ARC, with respect to the Design Guidelines, determines an instance of such probable cause, the ARC shall provide written notice to the person alleged to be in violation, and the Owner of the Lot or Unit which that person occupies or is visiting if such person is not the Owner, of the specific nature of the alleged violation and of the opportunity for a hearing before the ARC or Board, as applicable, upon a request made within five (5) days of the sending of the notice. The notice shall also specify, and it is hereby provided, that each recurrence of the alleged violation or each day during which it continues shall be deemed a separate offense, subject to a separate fine not to exceed a reasonable amount established by the Board or the ARC, as applicable, for each offense. The amount of the fine shall be based upon the costs and inconvenience caused to the Board or the ARC and shall not be a penalty. The notice shall also specify, and it is hereby provided, that in lieu of requesting a hearing, the alleged violator or Owner may respond to the notice within five (5) days of its sending, acknowledging in writing that the violation occurred as alleged and promising that the violation will thereafter cease and will not recur, and that such acknowledgment and promise, and performance in accordance therewith, shall terminate the enforcement activity of the Board or ARC, as applicable, with regard to such violation.
- (b) If a hearing is timely requested, the Board or the ARC, as applicable, shall hold the same, and shall hear any and all defenses to the charges, including any witnesses that the alleged violator, Owner, the Board or the ARC may produce. Any party at the hearing may be represented by counsel.
- (c) Subsequent to any hearing, or if no hearing is timely requested and if no acknowledgment and promise is timely made, the Board or the ARC, as applicable, shall determine whether there is sufficient evidence of a violation or violations as provided herein. If the Board or the ARC, as applicable, determines that there is sufficient evidence, it may levy a fine for each violation in the amount provided herein.
- (d) A fine pursuant to this Section shall be assessed against the Lot or Unit which the violator occupied or was visiting at the time of the violation, whether or not the violator is an Owner of that Lot or Unit, and shall be collectible in the same manner as any other assessment, including by the Association's lien rights as provided in this Declaration and the Bylaws. Nothing herein shall be construed to interfere with any right that an Owner may have to obtain from a violator occupying or visiting such Owner's Lot or Unit payment of the amount of any fine(s) assessed against that Lot or Unit.
- (e) Nothing herein shall be construed as a prohibition of or limitation on the right of the Association to pursue any other means of enforcement of the provisions of this Declaration, or the Bylaws, Certificate of Incorporation or rules and regulations of the Association, including, but not limited to, legal action for damages or any equitable action, including injunctive relief.

Section 12.7. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 12.8. Duration and Amendment. All covenants, conditions and restrictions set forth in this Declaration shall run with and bind the land and shall be perpetual unless expressly stated otherwise in this Declaration. ~~In addition to the provisions of Section 12.9, t~~This Declaration may be amended by an instrument signed by, or the affirmative vote of, Members entitled to cast not less than sixty-seven (67%) of the total votes of all Members ~~and shall require the prior written consent of the Declarant (for so long as the Declarant shall own any portion of the Property or Project).~~ Any amendment must be recorded in the Recorder's Office.

Section 12.9. Changes and Modifications-by-Declarant. ~~The Declarant shall have the right, for a period of ten (10) years following the date of recordation of this Declaration, without the consent or joinder of the Members, any Mortgagee or any other party, to (i) modify, amend or change any of the provisions of this Declaration, as the Declarant may deem necessary or desirable, and (ii) or if such amendments are:~~

~~required by federal, state, county or local laws; or~~

~~required by any Mortgagee of improved Lots or Units and dwelling houses in the Property or Project; or~~

~~required by any title insurance company issuing title insurance to Owners and/or Mortgagees of same; or~~

~~required by the Federal Housing Administration, Department of Housing and Urban Development, Veterans Administration, Farmers Home Administration, Delaware State Housing Authority, Federal National Mortgage Association, Federal Home Loan Mortgage Service Corporation, GNMA or by any like public or private institution acquiring, guaranteeing or insuring mortgages or providing any type of financial assistance with respect to dwelling units in the Property or Project; or~~

~~required to correct errors or technical deficiencies or imperfections or to clarify ambiguities.~~

~~Notwithstanding the foregoing, neither the Declarant nor the~~The Owners shall not modify or change the requirement that all Lots and Units be used for single family residential purposes, unless such decision is made by all of the Owners. ~~Declarant also~~The Association reserves the right to waive or modify any requirement as to any individual Lot or Unit or the Condominium in general where necessary to avoid hardship resulting from unintentional noncompliance with this Declaration.

Section 12.10. Casualty Losses. In the event of substantial damage or destruction to any of the Common Areas, the Board shall give prompt written notice of such damage or destruction to the Eligible Mortgage Holders who hold First Mortgages of record on the Lots and Units. No provision of this Declaration or the Certificate of Incorporation or Bylaws of the Association shall entitle any Member to any priority over the holder of any First Mortgage of record on his or her Lot or Units with respect to the distribution to such Member of any insurance proceeds paid or payable on account of any damage or destruction of any of the Common Areas.

Section 12.11. Condemnation or Eminent Domain. In the event any part of the Common Areas are made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, then the Board shall give prompt written notice of any such

proceeding or proposed acquisition to the Eligible Mortgage Holders who hold First Mortgages of record on the Lots and Units. No provision of this Declaration or the Certificate of Incorporation or Bylaws of the Association shall entitle any Member to any priority over the holder of any First Mortgage of record on his or her Lot or Unit with respect to the distribution to such Member of the proceeds of any condemnation or settlement relating to a taking of any portion of the Common Areas.

*Section 12.12. Notice to Eligible Mortgage Holders: Deemed Consent.*

(a) The Association shall give prompt written notice to each Eligible Mortgage Holder of (and each Owner hereby consents to, and authorizes such notice):

(i) Any condemnation loss or any casualty loss which affects a material portion of the Common Areas or any Lot or Unit subject to a First Mortgage or security interest held, insured, or guaranteed by such Eligible Mortgage Holder.

(ii) Any delinquency in the payment of Common Expense assessments or charges owed by an Owner whose Lot or Unit is subject to a First Mortgage or security interest held, insured, or guaranteed, by such Eligible Mortgage Holder which remains uncured for a period of sixty (60) days. Any lapse, cancellation, or material modification of any insurance policy or fidelity coverage maintained by the Association.

(iii) Any other matter with respect to which Eligible Mortgage Holders are entitled to notice or to give their consent as provided in this Declaration.

(b) To be entitled to receive notice of the matters set forth in this Section, the Eligible Mortgage Holder must send a written request to the Association, stating both its name and address and the Lot or Unit or address of the Lot or Unit on which it has (or insures or guarantees) the mortgage. Any Eligible Mortgage Holder or mortgagee who is notified of any matter for which it is entitled to notice as provided herein (such notice to be delivered by certified or registered mail, return receipt requested), and which fails to respond within thirty days of receipt of such notice shall be deemed to have consented, if applicable, to the matter of which the Eligible Mortgage Holder or mortgagee was provided notice.

~~*Section 12.13. Declarant's Power of Attorney.* Notwithstanding any provision to the contrary contained in this Declaration or Certificate of Incorporation or Bylaws of the Associates, the Declarant hereby reserves for itself, its successors, transferees and assigns, for a period of twenty (20) years from the date the first Lot or Unit is conveyed to a Class A Member, or until it conveys title to all of the Lots and Units whichever occurs first, the right to execute on behalf of all contract purchasers, Owners, Members, Eligible Mortgage Holders, mortgagees, and other lien holders or parties claiming a legal or equitable interest in any portion of the Property or Project, including without limitations, any Lot or Unit or the Common Areas or Condominium, any such agreements, documents, amendments or supplements to this Declaration and the Certificate of Incorporation and Bylaws of the Association which may be required by FNMA, FHA, VA, FHLMC, GNMA, Sussex County, Delaware, any governmental or quasi-governmental agency or authority having regulatory jurisdiction over the Association, the Property, the Project, any public or private utility company designated by the Declarant, any institutional lender or title insurance company designated by the Declarant, or as may be required to comply with the federal Fair Housing Act, or to comply with other applicable Laws or to correct any typographical or clerical errors or correct any ambiguity in the text of this Declaration.~~

- ~~a. By acceptance of a deed to any Lot or Unit or by the acceptance of any other legal or equitable interest in any portion of the Property or Project, including without limitations, the Lots, Units, Common Areas or Condominium, each and every such contract purchaser, Owner, Member, Eligible Mortgage Holder, mortgagee or other lien holder or party having a legal or equitable interest in any portion of the Property or Project, including without limitations, any Lot or Unit or the Common Areas or Condominium does automatically and irrevocably name, constitute, appoint and confirm the Declarant, its successors, transferees and assigns, as attorney in fact for the purpose of executing such agreement, document, amendment, supplement and other instrument(s) necessary to effect the foregoing subject to the limitations set forth herein.~~
- ~~b. No such agreement, document, amendment, supplement or other instrument which adversely affects the value of a Lot or Unit, or substantially increases the financial obligations of an Owner, or reserves any additional or special privileges for the Declarant not previously reserved, shall be made without the prior written consent of the affected Owner(s) and all mortgagees of any Mortgage encumbering the Lots or Units owned by the affected Owner(s). Any such agreement, document, amendment, supplement or instrument which adversely affects the priority or validity of any mortgage which encumbers any Lot or Unit or the Common Areas or Condominium shall not be made without the prior written consent of all such mortgagees.~~
- ~~e.~~
- ~~d. The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to the Property and Project, including, without limitations, each Lot and Unit and the Common Areas and the Condominium and shall be binding upon the heirs, personal representatives, successors, transferees and assigns of any of the foregoing parties. Further, said power of attorney shall not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to said power of attorney. Said power of attorney shall be vested in the Declarant, its successors, transferees and assigns for a period of ten (10) years from the date the first Lot or Unit is conveyed to a Class A Member, or until Declarant conveys title to the last Lot and Unit, whichever occurs first. Each Owner covenants and agrees to execute and deliver to Declarant an irrevocable power of attorney coupled with an interest in form and content consistent with this Section to be recorded in the Recorder's Office at the Owner's sole cost which shall run with and bind the Lot or the Unit for a period of ten (10) years as specified above.~~

~~*Section 12.14. Successors of Declarant.*~~

~~(a) Any and all rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant hereunder, or any part of them, may be assigned and transferred (exclusively or non-exclusively) by the Declarant by an instrument, in writing, without notice to the Association, to one or more successors or assigns (hereinafter referred to as an "Assignee").~~

~~(b) Each Owner of any Lot or Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed is deemed to covenant and agree to the following:~~



~~(i) — Neither Participating Builder nor Declarant shall assume or be responsible for any liabilities, warranties or obligations which have or may accrue to the other, including, but not limited to, any liabilities, warranties or obligations concerning any Lots or Units or the Condominium, Common Areas, any buildings or other improvements constructed, or to be constructed, by or on behalf of the other, nor shall such Lots, Units or Common Areas or any buildings or other improvements be deemed to be part of any contract, or to constitute the basis of the bargain, between Declarant and any Lot or Unit purchaser;~~

~~(ii) — No Participating Builder makes any representation or warranty whatsoever, whether express or implied, with respect to any Lots, Units, the Condominium, Common Areas, Community Facilities, buildings or other improvements constructed or sold by parties other than the Participating Builder, nor has any Participating Builder authorized any other party to make any such representation or warranty, and such other parties are without legal authority to enforce or make any such representation or warranty. No Participating Builder shall assume or be responsible for, and each Lot and Unit Owner expressly waives any and all claims against each Participating Builder for, any liabilities, warranties or obligations which have or may accrue to Declarant or any Assignee under the Declaration or pursuant to law in connection with Declarant's or any Assignee's status as Declarant under this Declaration, or in connection with Declarant's or any Assignee's development of all or any real property subjected, or to be subjected, to this Declaration, including, but not limited to, any liabilities, warranties or obligations concerning any Lots or Units or the Common Area, Condominiums, or dwelling units or other improvements constructed, or to be constructed, by or on behalf of Declarant or any Assignee;~~

~~(iii) — Declarant makes no representation or warranty whatsoever, whether express or implied, with respect to any Lots or Units or the Condominium or Common Area or Condominium, buildings or other improvements constructed or sold by parties other than Declarant, nor has Declarant authorized any other party to make any such representation or warranty, and such other parties are without legal authority to enforce or make any such representation or warranty. Declarant shall not assume or be responsible for, and each Lot and Unit Owner expressly waives any and all claims against Declarant for, any liabilities, warranties or obligations which have or may accrue to any Participating Builder or any Assignee under this Declaration or pursuant to law in connection with such Participating Builder's or any Assignee's status as Declarant under this Declaration, or in connection with such Participating Builder's or any Assignee's development of all or any real property subjected, or to be subjected, to this Declaration, including, but not limited to, any liabilities, warranties or obligations concerning any Lots or Units, or the Common Area, Condominium, or dwelling units or other improvements constructed, or to be constructed, by or on behalf of such Participating Builder or any Assignee.~~

Section 12. ~~1513~~. Arbitration.

(a) Notwithstanding any provision of this Declaration or the Bylaws or Certificate of Incorporation of the Association to the contrary, if, after good faith efforts to negotiate a satisfactory solution have failed, any dispute that cannot be resolved between ~~(i) the Declarant (including any of the Declarant's employees, agents, or contractors)~~ and ~~(ii)~~ the Association and/or any Owner or Owners, will be submitted to arbitration in accordance with this Section, unless an alternative dispute resolution procedure is agreed to by the parties to the dispute. As used in this Section 12. ~~1513~~(a), the term "dispute" includes any controversy or claim, including, without limitation, any claim based on contract, tort, or statute, arising out of or relating to ( 1) the rights or obligations of such parties under this Declaration, the Bylaws, or Certificate of Incorporation of the Association, or any rules promulgated by the Board or the ARC or (2) the design, construction, or warranty of the Common Area including, without limitation, the

Common Facilities. Upon the request of a party to a dispute, the issue shall be adjudicated in accordance with the provisions of the Arbitration Act and the rules of the American Arbitration Association applicable to such disputes, to the extent such rules are not inconsistent with such Arbitration Act.

(b) Notwithstanding any provision of this Declaration or the Bylaws or Certificate of Incorporation of the Association to the contrary, if, after good faith efforts to negotiate a satisfactory solution have failed, any dispute that cannot be resolved between (i) the Association and (ii) the Condominium, will be submitted to arbitration in accordance with this Section, unless an alternative dispute resolution procedure is agreed to by the parties to the dispute. As used in this Section 12.1513(b), the term "dispute" includes any controversy or claim arising out of or relating to any decisions and/or assessments regarding any aspect of the Common Expenses that the Condominium believes in good faith to be arbitrary and capricious. Upon the request of a party to a dispute, the issue shall be adjudicated in accordance with the provisions of the Arbitration Act and the rules of the American Arbitration Association applicable to such disputes, to the extent such rules are not inconsistent with such Arbitration Act.

(c) Any party may commence the arbitration process called for in this Section by filing a written demand for arbitration in accordance with the Arbitration Act, with a copy to the other party. The arbitration shall be conducted at a location determined by the arbitrator in Delaware and will be administered in accordance with the provisions of the Arbitration Act in effect at the time of filing of the demand for arbitration, or such other rules and procedures that are agreed to by all parties. The parties covenant that they will participate in the arbitration in good faith and that they will share equally in the fees and expenses of the arbitrator.

(d) The arbitrator shall determine which is the prevailing party and shall include in the award payment by the non-prevailing party of the prevailing party's reasonable attorneys' fees and expenses. The provisions of this Section and any judgment rendered by the arbitrator may be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered.

(e) EVERY OWNER, MEMBER, MORTGAGEE, AND ALL OTHER PARTIES WITH AN INTEREST IN ANY PORTION OF THE PROPERTY OR PROJECT COVENANT AND AGREE TO HAVE ALL DISPUTES DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THIS SECTION AND RELINQUISH ANY RIGHTS THAT MAY BE AVAILABLE TO HAVE SUCH MATTERS LITIGATED IN A COURT OR BY JURY TRIAL, INCLUDING JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. THE REFUSAL BY A PARTY TO SUBMIT TO ARBITRATION IN ACCORDANCE WITH THIS SECTION MAY RESULT IN THE PARTY BEING COMPELLED TO ARBITRATE UNDER FEDERAL OR STATE LAW.

Section 12.1614. *No Dedication to Public Use.* Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any portion of the Common Area by any public or municipal agency, authority, or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any portion of the Common Area.

~~*Section 12.17. Declarant Reserved Rights.* No amendment to this Declaration or the Bylaws or Certificate of Incorporation of the Association may remove, revoke, or modify any right, reservation or privilege of the Declarant without the prior written consent of the Declarant or any successors or assignees (pursuant to Section 12.15) of the Declarant and no amendment to this Declaration or the Bylaws or Certificate of Incorporation of the Association may remove, revoke, or modify any right, reservation or privilege of a Participating Builder without the prior written consent of the Participating Builder.~~

*Section 12.15. Perpetuities.* If any of the covenants, conditions, easements, restrictions, or other provisions of this Declaration shall be unlawfully void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George W. Bush, II, ~~current~~ Past-President of the United States of America.

*Section 12.19. Captions and Gender.* The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration or to aid in the construction or interpretation of this Declaration. Whenever in this Declaration the context so requires, the singular number shall include the plural and the converse, and the use of any gender shall be deemed to include all genders.

*Section 12.20. Condominium.* The provisions and restrictions contained in this Declaration shall govern and control those provisions and restrictions contained in the Condominium Documents. To the extent of any ambiguity or inconsistency between the provisions and restrictions in this Declaration and the provisions and restrictions in the Condominium Documents, the provisions and restrictions in this Declaration shall govern and control.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused its seal to be affixed and these presents to be signed by its member hereunto duly authorized the \_\_\_\_\_ day of \_\_\_\_\_, 20072017.

SEALED AND DELIVERED IN THE PRESENCE OF:

\_\_\_\_\_  
Name: \_\_\_\_\_

MASTER HOMEOWNERS ASSOCIATION OF BREAKWATERBREAKWATER, L.L.C., a Delaware limited liability company, a nonstock corporation of Delaware

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF DELAWARE )  
 ) SS.  
COUNTY OF SUSSEX )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 20072017, personally came before me, the Subscriber, a Notary Public for the State of Delaware, \_\_\_\_\_, an Authorized Representative of Breakwater, L.L.C., a Delaware limited liability company, party to this Indenture, known to me personally to be such and acknowledged this Indenture to be his act and deed and the act and deed of such company.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

\_\_\_\_\_  
Notary Public  
Print Name  
My Commission Expires:\_\_\_\_\_

EXHIBIT "A"

ALL that certain tract, piece and parcel of land, lying and being situate in Lewes and Rehoboth Hundred, Sussex County, and State of Delaware, as depicted on a survey prepared by Charles D. Murphy Associates, Inc., dated 11 June 2003, and comprising all of Lot 1 on a Minor Subdivision of lands of J.G. Townsend, Jr. & Co., lying on the northwesterly side of County Road 267, also known as Gills Neck Road at twenty-five (25) feet from the centerline thereof, adjoining the Residual lands of J.G. Townsend, Jr. & Co., lands now or formerly of Lowder W. Mitchell, Jr., et ux, Bay Breeze Estates Subdivision as filed with the Office of the Recorder of Deeds, at Georgetown, Delaware in Plat Book 35, Page 80 and lands now or formerly of Hazel M. Smith, being more particularly described as follows, to wit:

BEGINNING at a point on the northwesterly right-of-way line of County Road 267 at a comer for the Residual lands of J.G. Townsend, Jr. & Co., said point being distant 3,045 feet more or less from the intersection of the northerly right-of-way line of County Road 267 and the easterly right-of-way of County Road 268; thence running with said Residual lands the following three (3) courses and distances:

1. North 51 degrees 37 minutes 48 seconds West 851.65 feet;
2. South 38 degrees 22 minutes 12 seconds West 159.74 feet; and
3. North 51 degrees 37 minutes 48 seconds West 400.00 feet to a point at a comer for the Residual lands of J.G. Townsend, Jr. & Co.; thence running with said Residual lands, lands now or formerly of Lowder W. Mitchell, Jr., et ux and Bay Estate Subdivision North 38 degrees 22 minutes 12 seconds East, passing over a set capped rebar at 300.00 feet for a total distance of 978.92 feet to a found concrete monument at a comer for Bay Breeze Estates Subdivision; thence running with said Subdivision the following two (2) Courses and distances:  
..
  1. North 53 degrees 01 minutes 52 seconds West 609.99 feet to a found concrete monument; and
  2. North 63 degrees 57 minutes 52 seconds East 689.06 feet to a found concrete monument on line of lands now or formerly of Hazel M. Smith; thence running with said Smith land the following three (3) courses and distances:
    1. South 49 degrees 24 minutes 16 seconds East 546.82 feet;
    2. North 38 degrees 35 minutes 16 seconds East 263.33 feet; and
    3. South 51 degrees 35 minutes 53 seconds East 1,340.25 feet to a set capped rebar on the northwesterly right-of-way line of County Road 267; thence finally, running with the aforementioned right-of-way line South 38 degrees 40 minutes 38 seconds West 1,734.49 feet to the place of beginning, containing 61.49 acres of land, more or less.

EXHIBIT "B"

Breakwater Recreation Area Comm Ctr & Pool	3-35 8.00 43.00
Breakwater Townhome Area Bldgs 18 thru 26	3-35 8.00 43.02
Breakwater Open Area Swm & Buffers	3-35 8.00 43.03
Breakwater Streets	3-35 8.00 43.04
Lot 1	3-35 8.00 742.00
Lot 2	3-35 8.00 743.00
Lot 3	3-35 8.00 744.00
Lot 4	3-35 8.00 745.00
Lot 5	3-35 8.00 746.00
Lot 6	3-35 8.00 747.00
Lot 7	3-35 8.00 748.00
Lot 8	3-35 8.00 749.00
Lot 9	3-35 8.00 750.00
Lot 10	3-35 8.00 751.00
Lot 11	3-35 8.00 752.00
Lot 12	3-35 8.00 753.00
Lot 13	3-35 8.00 754.00
Lot 14	3-35 8.00 755.00
Lot 15	3-35 8.00 756.00
Lot 16	3-35 8.00 757.00
Lot 17	3-35 8.00 758.00
Lot 18	3-35 8.00 759.00
Lot 19	3-35 8.00 760.00
Lot 20	3-35 8.00 761.00
Lot 21	3-35 8.00 762.00
Lot 22	3-35 8.00 763.00
Lot 23	3-35 8.00 764.00
Lot 24	3-35 8.00 765.00
Lot 25	3-35 8.00 766.00
Lot 26	3-35 8.00 767.00
Lot 27	3-35 8.00 768.00
Lot 28	3-35 8.00 769.00
Lot 29	3-35 8.00 770.00
Lot 30	3-35 8.00 771.00
Lot 31	3-35 8.00 772.00
Lot 32	3-35 8.00 773.00
Lot 33	3-35 8.00 774.00
Lot 34	3-35 8.00 775.00
Lot 35	3-35 8.00 776.00
Lot 36	3-35 8.00 777.00
Lot 37	3-35 8.00 778.00
Lot 38	3-35 8.00 779.00
Lot 39	3-35 8.00 780.00

Lot 40	3-35 8.00 781.00
Lot 41	3-35 8.00 782.00
Lot 42	3-35 8.00 783.00
Lot 43	3-35 8.00 784.00
Lot 44	3-35 8.00 785.00
Lot 45	3-35 8.00 786.00
Lot 46	3-35 8.00 787.00
Lot 47	3-35 8.00 788.00
Lot 48	3-35 8.00 789.00
Lot 49	3-35 8.00 790.00
Lot 50	3-35 8.00 791.00
Lot 51	3-35 8.00 792.00
Lot 52	3-35 8.00 793.00
Lot 53	3-35 8.00 794.00
Lot 54	3-35 8.00 795.00
Lot 55	3-35 8.00 796.00
Lot 56	3-35 8.00 797.00
Lot 57	3-35 8.00 798.00
Lot 58	3-35 8.00 799.00
Lot 59	3-35 8.00 800.00
Lot 60	3-35 8.00 801.00
Lot 61	3-35 8.00 802.00
Lot 62	3-35 8.00 803.00
Lot 63	3-35 8.00 804.00
Lot 64	3-35 8.00 805.00
Lot 65	3-35 8.00 806.00
Lot 66	3-35 8.00 807.00
Lot 67	3-35 8.00 808.00
Lot 68	3-35 8.00 809.00
Lot 69	3-35 8.00 810.00
Lot 70	3-35 8.00 811.00
Lot 71	3-35 8.00 812.00
Lot 72	3-35 8.00 813.00
Lot 73	3-35 8.00 814.00
Lot 74	3-35 8.00 815.00
Lot 75	3-35 8.00 816.00
Lot 76	3-35 8.00 817.00
Lot 77	3-35 8.00 818.00
Lot 78	3-35 8.00 819.00
Lot 79	3-35 8.00 820.00
Lot 80	3-35 8.00 821.00
Breakwater Unit/Lot TH- 1A	3-35 8.00 822.00
Breakwater Unit/Lot TH- 1B	3-35 8.00 823.00

## SCHEDULE "A"

### **Design Guidelines and Procedures**

#### **BREAKWATER**

#### **ARCHITECTURAL REVIEW AND DESIGN COMMITTEE (ARC) ARCHITECTURAL GUIDELINES**

These architectural guidelines shall set parameters for ~~the construction of new~~ single-family, twinhome and townhome dwellings homes at the residential community ~~to be~~ known as "Breakwater" for the purpose of creating a distinctive neighborhood with diverse but compatible homes. The homes shall be of various regionally appropriate, architectural styles and shall have fenestration, colors, materials, roof pitches/styles and details appropriate to the region and particular style. The homes shall be designed to respond to both the individual lot characteristics and the surrounding landscape and common areas to develop a diverse yet harmonious community.

#### **Regionally Appropriate Traditional Architectural Styles**

Colonial, Georgian, English, Colonial Revival, Neoclassical, French, French Eclectic, Italian Renaissance, Modern, Monterey, Prairie, Craftsman, Ranch, Victorian (such as generally recognized by licensed architects as appropriate adaptations of authentic styles). All references to "regionally appropriate," whether in these Guidelines or the Declaration to which they are appended, shall have this meaning.

#### **Regionally Inappropriate/Non-Traditional Architectural Styles**

Tudor, Chateaque, Beaux Arts, Mission, Spanish Eclectic, Pueblo Revival, Modernistic, Mediterranean, Contemporary, Log Structures, Greek Revival, Gothic Revival, Exotic Revivals, Octogon or other non-traditional (in the context of Rehoboth and Lewes Hundred) styles and interpretations.

#### **Appropriate materials/Details**

Wood, stucco, brick, stone, or architectural-grade man made materials such as concrete fiber siding, provided same have substantially the same appearance as the natural materials for which they are being substituted. Vinyl Beaded siding with a minimum 6" width between planks and minimum .44 Mill thickness and vinyl cedar impressions siding may be acceptable, subject to review and approval by the ARC.

Wood shingle, natural or simulated slate, dimensional fiberglass shingles, copper or metal (painted in traditional colors) accent roofs, provided that non-natural materials shall be architectural grade having substantially the same appearance as the natural materials for which they are being substituted.



Painted wood, composite materials, iron or stone columns (all columns on the front of the house must be a minimum of 8" in diameter and must have a decorative cap and base), railings, brackets, etc. on front facades, provided that non-natural materials shall be architectural grade having substantially the same appearance as the natural materials for which they are being substituted.

Regionally appropriate cornice/trim details, window and door details, shutters and portico details.

Windows composed of an all wood frame and sash. Wood windows may be clad in aluminum or other non-natural materials provided same has substantially the same appearance as the natural materials they represent.

### **Inappropriate Materials/Details**

Simulated brick or stone veneers (except for foundations)

Mediterranean styled tile roofs

Metal roofs in non-traditional styles or colors

Pressure treated columns or railings, unpainted posts etc. on front facade

Skylights on front elevations of roof

HVAC compressors visible on front elevation

Hollow-core windows of vinyl, aluminum or other non-natural material.

### **Appropriate Colors**

Subtle earth tones with compatible, traditional accents with regional precedence

### **Inappropriate Colors**

Bright, extraordinarily vibrant colors which are not traditional and appropriate to the region

### **Appropriate Roof Pitches/Styles**

Main front-to-back roofs should have a minimum 9/12 pitch

Cross gables should have a minimum 10/12 pitch

Hip roofs, simple gable roofs with dormers, and other regionally inspired and/or traditional residential forms

Varied eave heights, cornice details, dormer designs with historical precedence and/or consistent with approved architectural styles

**Inappropriate Roof Pitches/Styles**

Flat roofs unless part of balconies or porches with balustrades

Shallow pitched roofs, less than 7/12, unless on accent roof, porch roof or as cricket roofs

Unusually steeply pitched roofs without historical precedence

### **Other Considerations for Design**

Homes are restricted to 2 story homes of a maximum 42 feet (as prescribed under Sussex County Code). The square footage of heated living space shall be no less than 1750 square feet.

All fascia and rakes must be a minimum 8" wide and be composed of aluminum wrapped lumber of exterior trimboard.

All windows without shutters must be trimmed on all sides with 3" or wider vinyl lineal trimboard, fypon or painted wood trim. Use of J-channel only around windows is not permitted. Windows with shutters must have a 3" minimum width fypon or other trim material above and below the window.

Front porches must be open and cannot be enclosed by screens or any other material. Rear porches can be enclosed with screening and/or glass.

Foundations must be composed of poured concrete or concrete block. The exterior of all foundations must be covered by one of the following: stone veneer; brick or brick veneer, painted brick form walls or painted concrete parge coat. Exposed block foundation is not permitted. A parge coat must be applied to the block and painted.

All Double-Hung window must have grilles in the top pane (bottom pane is optional). Grilles in casement or fixed window are not required.

Each ~~proposed~~ home to be situated within Breakwater shall be evaluated by the ARC individually, according to the proposed style of residence, consistency with these Architectural Guidelines, and the physical characteristics of the proposed lot. ~~Said evaluation shall not apply to homes contracted through Schell Brothers, LLC.~~