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**DECLARATION
OF COVENANTS, RESTRICTIONS, EASEMENTS
AND ESTABLISHMENT OF HOMEOWNERS ASSOCIATION
FOR WICKSFIELD
IN DUCK CREEK HUNDRED, KENT COUNTY, DELAWARE**

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FOR WICKSFIELD
IN DUCK CREEK HUNDRED, KENT COUNTY, DELAWARE**

This Declaration is made this 07 day of April, 2004 by Robert P. Wicks (hereinafter referred to as "Declarant").

PREAMBLE

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" attached to and made a part of this Declaration (herein referred to as the "Subject Property"); and

WHEREAS, the Subject Property has been approved for subdivision by Kent County, Delaware as shown on that certain plan identified as *Wicksfield* prepared by Davis, Bowen, and Friedel, Inc., Salisbury, Maryland dated May, 2003, last revised March 3, 2004 (herein referred to as the "Subdivision Plan") which such Subject Property has been subdivided by the recordation of said Subdivision Plan subject as aforesaid in the Office of the Recorder of Deeds in and for Kent County, Delaware in Plat Book 71, Page 78, *et seq.*; and

WHEREAS, Declarant desires that the Subject Property be developed and improved pursuant to the Subdivision Plan, as amended if amended, with the intent that the Owners of the Residential Dwelling Unit Lots and the owners and occupants of the dwellings constructed on the Subject Property and their invited guests may have the benefit, use and enjoyment of certain portions and improvements to the Subject Property which shall include all those certain portions of the Subject Property referred to in this Declaration and/or designated on the Subdivision Plan as "Open Space" and "Active Open Space" together with all improvements to such Open Space and "Active Open Space" including, but not limited to, recreation facilities, fencing, undedicated roads, walkways and paths, certain portions of the Subject Property designated for the purpose of storm water drainage management detention and retention together with certain improvements to the Subject Property, including but not limited to certain basins, pipes, swales, inlets, systems and other components and facilities appurtenant thereto as are constructed for the purpose of storm water drainage management (herein such portions and improvements are collectively referred to as "Storm Water System"), and any other improvements to the Subject Property, the ownership of which is conveyed to the Association (as hereinafter defined), subject to the obligation of each Owner of any part of the Subject Property to contribute to the cost of

maintenance and improvement of the Open Space and "Active Open Space", improvements thereto, and Storm Water System (herein such Open Space, Active Open Space, improvements thereto and Storm Water System are referred to collectively as the "Community Facilities") and all other obligations of the Association all as more fully set forth in this Declaration; and

WHEREAS, the Declarant desires to provide for the preservation and enhancement of the property values, amenities, and opportunities in the Subject Property contributing to the personal and general health, safety and welfare of residents and for the maintenance of the Community Facilities, and to this end desires to make provision for the maintenance and administration of the Community Facilities, the enforcement of covenants and restrictions set forth in this Declaration or in any document or plan referred to in this Declaration, and the method by which assessments and charges shall be made and enforced against each parcel of land which has been made subject to this Declaration or any Supplement or Amendment hereto and the owner thereof for the aforesaid purposes and to subject the Subject Property to the covenants, restrictions, easements, charges and liens set forth in this Declaration, each and all of which is and are for the benefit of the Subject Property and for each owner of a part thereof; and

WHEREAS, to provide a means for meeting the purposes and intents set forth in this Declaration, the Declarant has incorporated, under the laws of the State of Delaware the "Wicksfield Homeowners Association, Inc.," a non-profit corporation in which each Lot Owner in the Subject Property shall be a member and which such membership shall run with and be inseparable from ownership of a Lot in the Subject Property and to which, subject to the conditions set forth in this Declaration, the Declarant shall convey the Community Facilities within the Subject Property.

NOW, THEREFORE, Declarant hereby declares that the Subject Property, and each part of, or Lot in, the Subject Property (excepting any part thereof, if any, Conveyed or to be Conveyed to Governmental/Public Service Entities) is and shall be held, transferred, sold, conveyed and occupied subject to the easements, covenants, conditions, restrictions, charges and liens set forth in this Declaration.

AND FURTHER, Declarant hereby delegates and assigns to the "Wicksfield Homeowners Association" the power of owning, maintaining and administering the Community Facilities, administering and enforcing the covenants and restrictions set forth in this Declaration, collecting and disbursing the assessments and charges hereinafter set forth in this Declaration, and promoting the recreation, health, safety, and welfare of the residents of the Community of Wicksfield.

ARTICLE I

DEFINITIONS

- 1.1. "Active Open Space." See Community Facilities, Open Space
- 1.2. "Approved Development" shall mean and refer to the development and improvement of the Subject Property pursuant to the Subdivision Plan, as the same may be modified or resubdivided, as approved by Kent County.
- 1.3. "Assignee Declarant." See Declarant.
- 1.4. "Association" shall mean and refer to the Wicksfield Homeowners Association, Inc., a Delaware non-profit corporation, its successors and assigns.
- 1.5. "Community" or "Community of Wicksfield" shall mean and refer to the Subject Property as developed in accordance with the Subdivision Plan, if and as modified, into Residential Dwelling Unit Lots, Open Space, and other areas including without limitation areas Conveyed or to be Conveyed to Governmental/Public Service Entities.
- 1.6. "Community Facilities" shall mean and refer to the Open Space and the Controlled Facilities.
 - 1.6.1. "Open Space" shall mean and refer to all real property interest (including all of the improvements thereto) of all of the Subject Property owned or to be owned by the Association for the common use and enjoyment of the Owners including all those certain portions of the Subject Property designated on the Subdivision Plan as Open Space and Active Open Space, including all improvements thereto such as community/subdivision entrance identification signage, open space landscaping, recreation facilities, fencing, vehicular right-of-way, access, driveway and parking areas, pedestrian access sidewalk, walkway, and path areas, and Storm Water Facilities, but shall not include individual residential building lots and/or any portions of the Subject Property as and when conveyed to or accepted for dedication by any Governmental/Public Service Entity.

- 1.6.2. "Controlled Facilities" shall mean and refer to those portions of the Storm Water System that are not located within the Open Space and all other facilities appurtenant to the Subject Property and intended for the use and enjoyment of the residents of the Community of Wicksfield but shall not include any facilities as and when conveyed to or accepted for dedication by any Governmental/Public Service Entity.
- 1.7. "Common Expenses" shall mean and refer to the costs to the Association, and expenses of the Association, incurred to meet the obligations of the Association pursuant to the terms of this Declaration, the Governing Documents and applicable law.
- 1.8. "Common Expense Liability" shall mean and refer to liability of each Membership for a proportionate share of Common Expenses. The Common Expense Liability of each Membership each year is the result of the General Common Expense Budget as duly adopted pursuant to the provisions of Section 4.4 of this Declaration divided by the number of Memberships.
- 1.9. "Controlled Facilities." See Community Facilities.
- 1.10. "Convey" or "Conveyance" shall mean and refer to the act of conveyance, dedication, lease, grant of easement or license, or any other similar grant of an interest in real property, together with the acceptance thereof by the grantee.
- 1.11. "Declarant" shall mean and refer to Robert P. Wicks, his successors and assigns for the purpose of development of the subdivision known as Wicksfield. Declarant may assign the rights and delegate the duties of Declarant herein in whole or in part to one or more assignees, who shall be (an) Assignee Declarant(s). There is no limit to the number of persons or entities who may become Assignee Declarants.
- 1.12. "Declaration" shall mean and refer to the terms, easements, covenants, conditions, restrictions, charges and liens set forth in this Declaration and all other provisions set forth in this entire document, as they may be duly amended from time to time.

- 1.13. "Development Period" shall mean and refer to the time period commencing on the date hereof and continuing until all subdivision improvements including the construction of streets and utility services are completed and accepted by the Governmental/Public Service Entity having jurisdiction, and upon achievement of the earliest of the following events:
- 1.13.1. The (i) issuance of a Use and Occupancy Certificate by Kent County or other governmental entity having jurisdiction thereof for a dwelling constructed on each Lot in the Approved Development and (ii) Conveyance of all of the Residential Dwelling Unit Lots in the Subject Property to Owners of Residential Dwelling Unit Lots by Declarant or Assignee Declarant, or
- 1.13.2. The date designated, by notice in writing, from the Declarant to the Executive Board of the Association as the date of termination of the Development Period.
- 1.14. "Executive Board" shall mean and refer to the body of persons, duly elected or appointed pursuant to the provisions of Section 3.6 of this Declaration and the Bylaws of this Association, designated and empowered by this Declaration to act on behalf of the Association and which shall manage the business and affairs of the Association.
- 1.15. "Financing Agencies" shall mean and refer to those federal, state, local and private agencies and entities which regulate, participate, or otherwise have an interest in the financing, whether the primary or secondary mortgage market, security, title, or conveyancing or real property interests in the Community including but not limited to the Department of Housing and Urban Development, Federal Housing Administration, Federal Home Administration, Veterans Administration, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association and other similar entities.
- 1.16. "Governing Documents" shall mean and refer to this Declaration, the Articles of Incorporation of the Association, and the Association Bylaws as all may be duly amended from time to time.
- 1.17. "Governmental/Public Service Entity" shall mean and refer to the public, any governmental or quasi-governmental entity, public corporation, agency or authority, public or private utility, or similar entity acting on behalf of, or in service to, the public.
- 1.18. "Initial Subdivision Plan." See Subdivision Plans

- 1.19. "Institutional Lender" shall mean and refer to one or more lenders regularly engaged in financing the purchase, construction, or improvement of real estate including but not limited to commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including but not limited to real estate investment trusts; or any assignee of loans made by such lenders; or any governmental or private institution which insures the loans of such lenders; or any combination of the foregoing entities.
- 1.20. "Lot" and "Residential Dwelling Unit Lot," are synonymous and each shall mean and refer to any one of those certain parcels of land shown on the Subdivision Plan upon which one single-family dwelling is or may be erected. The term "Lot" shall not be construed to include any Open Space or areas Conveyed to Governmental/Public Service Entities.
- 1.21. "Lot Owner." See Owner
- 1.22. "Member" or "Membership" shall mean and refer to members of the Association. The owner, or owners collectively if more than one, of each Lot shall constitute one Member of the Association. Each Member shall hold one Membership in the Association.
- 1.23. "Open Space." See Community Facilities.
- 1.24. "Owner" and "Lot Owner" are synonymous and each shall mean and refer to the record owner, whether one or more persons and/or entities, of a Residential Dwelling Unit Lot, excluding those having such interest, however described, merely as security for the performance of an obligation. Provided, however, a mortgagee in possession shall be deemed an Owner during the time of possession.
- 1.25. "Residential Dwelling Unit Lot." See Lot.

1.26. "Storm Water System" shall mean and refer to the Storm Water Facilities and the Storm Water Easements and shall mean and refer to all those certain rights in, and improvements to the Subject Property designated for the purpose of storm water drainage detention, retention and/or control of the volume and/or rate and/or the direction of storm water.

1.26.1. "Storm Water Facilities" shall mean and refer to all basins, pipes, swales, inlets, outfalls, dissipaters, spreaders, systems and other components and facilities appurtenant thereto as are constructed on the Subject Property for the purpose of storm water drainage management, (but excluding therefrom any such facilities, such as roof drain infiltrator systems, which are located entirely within, and for the sole purpose of storm water management within, the boundaries of a single Lot).

1.26.2. "Storm Water Easements" shall mean and refer to the perpetual easement rights and privilege of access for ingress, egress, and regress on, over, through, under and within all those certain portions of the Subject Property depicted and shown on the Subdivision Plan as "Permanent Drainage Easement" for the purpose of installing, operating, inspecting, replacing, adding to, maintaining and repairing the Storm Water Facilities as necessary or desirable in connection with operation of the Storm Water Facilities.

1.27. "Subdivision Plan" shall mean and refer to such plan of development and/or subdivision of the Subject Property as are approved by all government entities having jurisdiction and shall include the Initial Subdivision Plan and any plan of development and/or subdivision which amends, modifies, supercedes, or replaces, in whole or in part, any prior plan of development and/or subdivision.

In the event that any Subdivision Plan is revised or modified and approved by all government entities having jurisdiction as revised or modified, such revised or modified and approved Subdivision Plan shall replace and supercede any and all previous Subdivision Plans to the extent of any and all differences between Subdivision Plans.

1.27.1. "Initial Subdivision Plan" shall mean and refer to that certain plan identified as *Wicksfield* prepared by Davis, Bowen, and Friedel, Inc., Salisbury, Maryland dated May, 2003, last revised March 3, 2004 being recorded in the Office of the Recorder of Deeds in and for Kent County, Delaware in Plat Book 71, Page 78, et seq.

1.28. "Subject Property" shall mean and refer to that certain parcel of real property described in Exhibit "A" attached hereto and made a part hereof.

ARTICLE II

PROPERTY RIGHTS AND RESPONSIBILITIES

2.1. Open Space. Open Space is defined in Section 1.6.1 of this Declaration.

2.1.1. Title to Open Space. On or before one hundred eighty (180) days after the termination of the Development Period, the Declarant shall cause title to all of the Open Space to be vested, by Special Warranty Deed, in the Association free and clear of all financial liens and encumbrances but subject to all easements and restrictions of record, and the Association shall thereafter own all of the Open Space in the Subject Property subject to the terms of the Governing Documents and the conditions set forth in the deed or deeds of conveyance. Nothing herein shall prevent the Declarant from conveying parts or portions of the Open Space to the Association, whether or not subject to financial liens or encumbrances, from time to time, prior to the required time hereinabove set forth, subject however to the requirement that the Open Space be vested in the Association free and clear of all financial liens and encumbrances within the time period hereinabove set forth.

2.1.2. Disposition of Open Space. The Association may not be dissolved nor dispose of the Open Space, by sale or otherwise, except upon Conveyance of the Open Space to a Governmental/Public Service Entity or other organization which such other organization has been organized for, or has adopted the purpose of, ownership of the Open Space and performance of the duties and obligations of the Association as set forth in the Governing Documents.

The Association shall have the right, subject to the terms and conditions of the Governing Documents, to dedicate, transfer, convey, mortgage, encumber, pledge, or restrict any of the Community Facilities including the Open Space and the Storm Water Facilities.

Until such time as the Declarant has vested title to such area in the Association, the Declarant shall have the right to Convey, without the approval of the Association, all or part of the Community Facilities for such purposes as the Declarant deems appropriate in the development of the Subject Property subject that Declarant cannot convey, without approval by Kent County as an amendment to the approved Subdivision Plan, any part of the Community Facilities to a party other than a) an Assignee Declarant who shall take title subject to all of the provisions of this Declaration; or b) the Association..

- 2.1.3. Use of Open Space. The Open Space shall remain in perpetuity reserved and restricted to use as open space, undeveloped land and/or space for the Storm Water System, accessways, utility and other easements and servitudes and such other uses as are consistent with the Governing Documents and Subdivision Plan. Unless and until any Open Space is used for Storm Water Facilities, or otherwise as set forth in the Governing Documents and Subdivision Plan, such Open Space, whether subject to easement or other servitude or unencumbered, shall be designated as "Undeveloped Open Space." Such Undeveloped Open Space shall be graded and landscaped or shall be left in its natural state where appropriate such as where such Undeveloped Open Space is wetlands or woods, tree stands or other vegetation which serves as a visual barrier, nature preserve or other beneficial function.
- 2.1.4. Owner's Easement of Enjoyment. Every Owner of a Lot shall have a right and easement of enjoyment in and to the Community Facilities which shall be appurtenant to and shall pass with the title to and be unseverable from each Lot.
- 2.1.5. Delegation by Owner. Every Owner shall have the right to delegate, in accordance with the Governing Documents, his, her, or its right of enjoyment in and use of the Community Facilities to the members of his, her, or its family, guests, tenants, or contract purchasers who reside in the Subject Property.
- 2.2. Limitation of Easements, Rights and Privileges. The easements, rights and privileges granted by this Declaration shall be for the benefit of and be restricted solely to the Declarant and to Owners from time to time of all or any portion of the Subject Property, and such Owners may grant the benefit of such easements, rights and privileges to such Owner's tenants for the period of such tenancy, but the same is not intended to create, and shall not be construed as creating any rights in and for the benefit of the general public.
- 2.3. Easements and Licenses
- 2.3.1. Each Owner of a Lot shall afford to the Association and to its agents or employees access through the Lot reasonably necessary for the purposes of maintenance, repair and replacement of the Community Facilities.

2.3.2.

There is hereby reserved to Declarant during the Development Period and to the Association after the Development Period the right to grant to any Governmental/Public Service Entity the right to use, an easement and a right-of-way in perpetuity for free and uninterrupted right of entry, ingress, egress and regress upon, over, under, through and across all of the Community Facilities, for the placing and maintaining of utility service equipment, facilities and components on the Community Facilities, whether for the purpose of serving the Subject Property or any other property or properties, and for access for the installation, removal, maintenance, repair, relocation, or replacement of any utility or service conduits, lines and systems, including, but not limited to, those providing water, sanitary sewer, storm water management (including but not limited to storm water drainage swales, culverts, piping, discharge outlets, basins and similar improvements), electric, telephone, gas, television cable, communication or any other such service, subject to the condition that upon any use of the Easements or Right-of-Way reserved by this Section for the purposes of such Easements or Right-of-Way, upon the completion of any work performed, including, but not limited to, the construction, repair, rebuilding, relocation, or removing of all, or any portion, of any of the aforesaid service components pursuant to the Easements hereby granted, the user shall, at user's sole cost and expense, restore any part of the land disturbed by such work to approximately the same condition as existed prior to the commencement of work.

2.3.3.

For so long as the Declarant or successor to or assign of Declarant is engaged in developing or improving any portion of the Subject Property, there is hereby reserved to Declarant and to any and all Assignee Declarant(s), which Declarant and Assignee Declarant(s) may assign to designees of Declarant or Assignee Declarant(s), an unlimited blanket easement and a right-of-way for free and uninterrupted right of entry, ingress, egress and regress upon, over, under, through and across the entire Subject Property for the purpose of Declarant's or Assignee Declarants' discharge of all of Declarant's or Assignee Declarants' obligations or of Declarant's or Assignee Declarants' exercise of the rights of Declarant or Assignee Declarant(s) as set forth in this Declaration, any and all development activities including without limitation erection and maintenance of directional and promotional signs (only as permitted in accordance with the applicable laws and regulations of Kent County Government, and all conditions of approval of the subdivision of Wicksfield; sign permits may be required prior to the installation of such signage), conduct of sales activities including maintenance of any office or model homes, storage, movement and use of building and construction materials, equipment and personnel, construction and modification of structures including residential dwelling units, Community Facilities, vehicle and pedestrian access and utility services, and grading and regrading, including removal of existing vegetation including trees, all to the extent Declarant or Assignee Declarant(s) shall, in Declarant's or Assignee Declarants' sole judgment, deem appropriate or necessary in the development of the Subject Property.

2.3.4.

There is hereby explicitly reserved to the Declarant, during and only during the Development Period as such Development Period is defined in Section 1.13 of this Declaration, the unrestricted option to subject the Subject Property to easements or licenses in favor of Governmental/Public Service Entities as are required for the provision of public utilities to and through the Subject Property and/or as are reasonably required for the construction of improvements to the Subject Property in accordance with all laws, ordinances and regulations of all governmental entities having jurisdiction thereof.

ARTICLE III

WICKSFIELD HOMEOWNERS ASSOCIATION

- 3.1. The Association. The Association is a non-profit, non-stock corporation organized and existing under the laws of the State of Delaware and charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as such may be amended from time to time, provided no other Governing Documents other than this Declaration shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.
- 3.1.1. Powers and Duties of the Association. The Association shall have all powers necessary to enjoy the rights of the Association and to perform the duties of the Association all as set forth in the Governing Documents including, but not limited to, the power, right, and duty to:
- 3.1.1.1. Adopt and amend bylaws and rules and regulations.
 - 3.1.1.2. Adopt and amend budgets for revenues, expenditures and reserves and impose and collect assessments for common expenses from Lot Owners.
 - 3.1.1.3. Hire and terminate managing agents and other employees, agents and independent contractors.
 - 3.1.1.4. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Lot Owners on matters affecting the Subject Property.
 - 3.1.1.5. Make contracts and incur liabilities.
 - 3.1.1.6. Regulate the use, maintenance, repair, replacement and modification of Community Facilities.
 - 3.1.1.7. Cause additional improvements to be made as a part of the Community Facilities.
 - 3.1.1.8. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, but Community Facilities may be conveyed or subjected to a security interest only pursuant to the provisions of the Governing Documents.
 - 3.1.1.9. Grant easements, leases, licenses and concessions through or over the Community Facilities.
 - 3.1.1.10. Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Governing Documents

- 3.1.1.11. Impose reasonable charges for the preparation and recording of amendments to this Declaration or resale certificates
- 3.1.1.12. Provide for the indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance.
- 3.1.1.13. Exercise any other powers conferred by this Declaration or the bylaws.
- 3.1.1.14. Exercise all other powers that may be exercised in the State of Delaware by legal entities of the same type as the Association.
- 3.1.1.15. Exercise any other powers necessary and proper for the governance and operation of the Association.
- 3.1.1.16. Assign its right to future income, including the right to receive common expense assessments, without limitation.

3.2. Community Facilities Maintenance Responsibilities. The Association shall have the obligation to make adequate provision for the maintenance, repair and replacement of, and to maintain, repair or replace as and when in the sole judgment of the Executive Board required, any and all structures, facilities and land comprising the Community Facilities in a manner which preserves, keeps functional, complies with all applicable County, State and Federal laws and retains the functional condition thereof. This shall include, but is not limited to maintenance of:

- 3.2.1. Open Space lawn, trees, shrubs and landscaping;
- 3.2.2. Recreational facilities;
- 3.2.3. The Storm Water System, as defined in Section 1.26 of this Declaration, to the extent not otherwise Conveyed to Governmental/Public Service Entities.
- 3.2.4. any and all grass area, lawn, trees, shrubs, landscaping, and/or other improvements to Open Space within the rights of way as shown on any Subdivision Plan of the Community including, without limitation, such rights-of-way as are dedicated to the Public Use.

3.3. Insurance to be carried by association. The association shall maintain:

- 3.3.1. comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Executive Board but not less than in the amount of \$500,000.00, covering all occurrences commonly insured against for death, bodily injury and property damage, arising out of or in connection with the use, ownership or maintenance of the Community Facilities; and
- 3.3.2. any other insurance deemed appropriate by the Executive Board to protect the Association or the Members.

3.4. Membership and Voting Rights

The conditions of membership in the Association are such that the members shall be those Owners and only those Owners from time to time of Residential Dwelling Unit Lots in the Subject Property.

Membership in the Association is coextensive with, and indivisible from, ownership of a Residential Dwelling Unit Lot in the Subject Property. Every Owner of a Residential Dwelling Unit Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of a Residential Dwelling Unit Lot.

The owner, or owners collectively if more than one, of each individual Residential Dwelling Unit Lot shall constitute one member of the Association. The Association shall have such number of memberships as there are Residential Dwelling Unit Lots in the Subject Property.

The Association shall have two classes of voting membership:

- 3.4.1. Class A. Class A members shall be all Owners of Residential Dwelling Unit Lots for which a Use and Occupancy Certificate for a dwelling constructed on such Lot shall have been issued by Kent County or other governmental entity having jurisdiction thereof. Class A members shall be entitled to one vote for each such Lot owned.
- 3.4.2. Class B. Class B members shall be the Declarant and Assignee Declarant(s) or any other person owning any vacant Residential Dwelling Unit Lot or any Residential Dwelling Unit Lot containing a dwelling for which a Use and Occupancy Certificate has not been issued by Kent County or other governmental entity having jurisdiction thereof. Class B members shall be entitled to three (3) votes for each Residential Dwelling Unit Lot owned. With respect to any Residential Dwelling Unit Lot, the Class B membership shall cease and be converted to a Class A membership on the issuance of a Use and Occupancy Certificate as aforesaid for the dwelling erected thereon. Provided, however, notwithstanding anything herein contained to the contrary, all remaining Class B memberships, if any, shall become Class A memberships upon termination of the Development Period, whether or not a Use and Occupancy Certificate shall have been issued therefor.

- 3.5. Exercise of vote. If any member is comprised of two or more persons (that is, if any individual Residential Dwelling Unit Lot is owned by two or more persons), all such persons shall be entitled to the benefits of, and responsible jointly and severally for the obligations of, membership in the Association. The vote for such membership shall be cast as such owners shall decide amongst themselves and the vote may be exercised by any one of them, unless any objection or protest by any other of them is made prior to the completion of a vote, in which case the vote for such membership shall be cast in accordance with the majority vote of such owners and if no majority vote of such owners shall be attainable, the vote of such member shall be cast as an abstention. In no event, however, shall more than one vote be cast with respect to any Class A membership.

Any person or entity qualifying as a member of more than one voting class may exercise those votes to which he or it is entitled for each such class of membership.

Cumulative voting shall be permitted only for the purpose of electing members of the Executive Board. Cumulative voting shall not be permitted for any other purpose. Cumulative Voting permits the casting of multiple votes for one candidate for election. In cumulative voting, each Membership is allocated the same number of votes as there are positions to be filled. For example, in an election to elect three directors, each Membership would have three votes. Under cumulative voting, in an election for three directors, each Membership would cast three votes. The three votes may be cast as one vote for each of three separate candidates, or all three votes may be cast for one candidate, or two votes may be cast for one candidate and one vote cast for a second candidate.

- 3.6. Executive Board. The affairs of this Association shall be managed by an Executive Board, the members of which shall be elected by the Members in accordance with the Bylaws of the Association. The Executive Board shall be constituted and organized, and shall operate, in accordance with the Bylaws of the Association.
- 3.6.1. Powers and Duties of the Executive Board. The Executive Board shall have the powers to do all things necessary or appropriate to carry out the duties and obligations imposed upon it by the Governing Documents or otherwise by law and such powers shall include that the Executive Board may act in all instances on behalf of the Association.
- 3.6.2. Obligation, Right and Limitation of Declarant to appoint Members of the Executive Board. During and only during the Development Period as such Development Period is defined in Section 1.13 of this Declaration, Declarant shall appoint and may remove at will, and, in the event of removal, resignation, death, termination, absenteeism or other event resulting in vacancy, shall reappoint replacements for, all members of the Executive Board. Subject to the right of the

Declarant, in Declarant's sole judgment, at will, to remove and replace such Declarant appointed members, with or without cause, the terms of such appointed members of the Executive Board shall be for the period from appointment until the termination of the Development Period.

- 3.6.3. Not later than sixty (60) days prior to the termination of the Development Period, at a Special Meeting duly called for such purpose, the members of the Executive Board who shall take office upon the termination of the Development Period shall be elected by the Members of the Association in accordance with the provisions of Section 3.6.4 of this Declaration and in accordance with the Bylaws of the Association.

- 3.6.4. Notice and Quorum for meeting to elect members of the Executive Board. Written notice of any meeting called for the purposes of electing members of the Executive Board shall be sent to all Members not less than ten (10) nor more than sixty (60) days in advance of the meeting. At such meeting called, the presence of Members or of proxies entitled to cast sixty (60%) percent of all of the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called for a date not later than sixty (60) days following the preceding meeting, subject to the same notice requirement, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

- 3.6.5. Indemnification of Officers, Executive Board and Committee Members. The Association shall indemnify every Executive Board member, officer and committee member, his or her heirs, executors and administrators, against all loss, cost and expenses, including attorneys' fees, reasonably incurred by him or her in connection with any action, suit or proceeding to which he or she may be made a party by reason of his or her being, or having been, an Executive Board member, officer or committee member, except as to matters as to which he or she shall be finally adjudged in such action, suit or proceeding, to be liable for gross negligence or willful misconduct. All liability, loss, damage, cost and expense incurred or suffered by the Association by reason, or arising out of or in connection with, this indemnification provision shall be treated by the Association as General Common Expenses.

ARTICLE IV

ASSESSMENTS

- 4.1. Creation of the Lien and Personal Obligation of Assessments. The obligations appurtenant to ownership of a Residential Dwelling Unit Lot, including the obligation for payment of assessments, shall be clearly and completely described in the text of each deed conveying a Residential Unit Lot from the Declarant to the grantee thereof. Notwithstanding the foregoing, the Grantee of each Lot, by the acceptance of a deed to said Lot, whether or not it shall be so expressed in such deed, including without limitation any purchaser at judicial sale or heir or devisee of a deceased Owner obligates and binds himself, his heirs and assigns, to become a Member of the Association and to be bound by all of its rules and regulations and to be subject to all of the duties and obligations imposed by ownership of, and membership in, said Association and is deemed to covenant and agree to pay to the Association: (1) an Initial Membership Assessment for each Lot which shall be due and payable upon the first Conveyance of each Lot to the first grantee thereof who is not a Declarant nor Assignee Declarant, (2) annual assessments or charges, and (3) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

All assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of each person who was the Owner of such property at the time when the assessment or installment thereof became due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them, but nothing herein contained shall be deemed to discharge the lien of the assessment upon the land, the subject thereof. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non use of the Community Facilities nor by abandonment of the Lot owned.

- 4.2. Estoppel Certificate. Within ten (10) days of the request therefor, the Executive Board shall cause to be provided an Estoppel Certificate substantially in the form of the document attached hereto as Exhibit "B", which shall set forth any assessments and charges, or installments thereof, due upon a Lot as of the date of issuance and shall certify as to whether or not there are violations of the Governing Documents remaining on such Lot known to the Association as of the date of issuance. A reasonable fee may be established from time to time for the cost of preparation of such certificate and shall be paid at the time of request for such certificate. A properly executed certificate of the Association as to the status of assessments or installments thereof on a Lot is binding upon the Association as of the date of its issuance as to any purchaser or mortgagee relying thereon in good faith, but shall not relieve the Owner of personal liability.

- 4.3. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Subject Property and for the improvement and maintenance, repair and replacement of the Community Facilities and for the performance of the obligations of the Association. In addition, the assessments may be used for the creation, maintenance and enhancement of reserves, and the maintenance of appropriate policies of insurance, and for the payment of all obligations required of the Association created by its own acts or imposed upon it by law or by the terms of the Governing Documents.
- 4.4. Annual Assessment. The Fiscal Year of the Association shall, unless changed by resolution of the Executive Board in accordance with the Bylaws of the Association, commence on April 1st of each year and end on March 31st of the following year. On or before sixty (60) days prior to the end of each Fiscal Year of the Association, the Executive Board shall adopt an Annual General Common Expenses Budget in such amount deemed appropriate, in the sole judgment of the Executive Board, for the purposes set forth in the Governing Documents.

The Executive Board shall, at least thirty (30) days in advance of each annual assessment period, fix the annual assessment against each Member for such Member's Common Expense Liability in an amount equal to the amount of the Annual General Common Expenses Budget divided by the number of Memberships.

Written notice of the adopted budgets and Annual Assessments shall be sent to every Member. Unless objection to any Budget or Annual Assessment is made by not less than fifty-one (51%) percent of the Members within thirty (30) days after the date of mailing of such notice, the same shall be deemed adopted and shall be binding on all Members of the Association as provided in the Governing Documents.

In the event that the Executive Board shall fail to fix any annual assessments for any fiscal year, then each assessment established for the prior fiscal year shall be continued until such time as the Executive Board shall act.

- 4.5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized in the Governing Documents, the Executive Board may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of a part of the Community Facilities, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the Members at a meeting ("Members Special Assessment Meeting") duly called for such purpose.
- 4.6. Notice and Quorum for any Action Authorized Under Section 4.5. Written notice of any Members Special Assessment Meeting called for the purposes of taking action by the Members authorized and required under Section 4.5 shall be sent to all Members not less than ten (10) nor more than sixty (60) days in advance of the meeting. At such meeting called, the presence of Members or of proxies entitled to cast sixty (60%) percent of all of the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called for a date not later than sixty (60) days following the preceding meeting, subject to the same notice requirement, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.
- 4.7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Memberships. The Executive Board may authorize, in its discretion, any assessment to be paid in installments thereof on an annual, quarterly or monthly basis.
- 4.8. Effect of Non Payment of Assessments: Remedies of the Association. Any assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve (12%) per cent per annum. The association may bring an action at law against the Member personally obligated to pay the same, or foreclose the lien of such assessment or installment thereof against the Member's Lot.

Each Member on becoming such Member shall be deemed to covenant and agree to the enforcement of all assessments in the manner specified in this Declaration. Each Member agrees to pay reasonable attorney's fees as established from time to time by the Executive Board and costs incurred in the collection of any assessment against such Member and/or such Member's Lot, whether by suit or otherwise, or in enforcing compliance with or specific performance of the terms and conditions of the Governing Documents as against such Member and/or such Members's Lot.

Any assessment or installment thereof not paid within thirty (30) days after the due date shall be delinquent. Thereupon the Association may exercise any one or more of the following remedies, after notice of such delinquency to the Member, which are all declared to be cumulative and not exclusive. The selection of a single remedy or multiple remedies shall not be deemed an election thereby excluding any other remedies, but the Association may exercise any and all remedies singularly, consecutively, or concurrently: (a) declare the entire balance of such annual or special assessment due and payable in full; and (b) charge a late fee in the amount to be set by the Executive Board; and (c) employ any other remedies available at law or in equity which, without limitations of the foregoing, shall include either of the following procedures:

4.8.1. Enforcement by Suit. The Association may commence and maintain a suit by law against any Member for such delinquent assessments as to which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of twelve (12%) per cent per annum from the due date, costs of collection, court costs, and reasonable attorney's fees. Suit to recover any money judgment for any unpaid assessments shall be maintainable without foreclosing or waiving the lien hereinafter provided for.

4.8.2. Enforcement by Lien. There is hereby created a claim of lien with power of sale on each and every Lot to secure payment to the Association of any and all assessments levied against any and all Owners of such Lots pursuant to this Declaration together with interest thereon at the rate of twelve (12%) per cent per annum as provided for by this Section and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. At any time after the occurrence of any delinquency in the payment of any such assessment, the Association, or an authorized representative thereof, may make a written demand for payment to the delinquent Owner. Said demand shall state the date and amount of the delinquency. Each delinquency shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien or liens, and any demand or claim of lien or lien on account of prior delinquencies shall be deemed to include subsequent delinquencies and amounts due on account thereof. If such delinquency is not paid within ten (10) days after mailing of such demand, the Association or its duly authorized representative, may thereafter elect to file and record a claim of lien on behalf of the Association against the Lot of the defaulting Owner in the Office of the Recorder of Deeds or with the Prothonotary of the County or both. Such claim of lien shall be executed and acknowledged by any officer of the Association and shall contain substantially the following information:

- (i) The Name of delinquent Owner;
- (ii) The Legal Description and/or Street Address of the Lot against which the claim is made;
- (iii) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collections costs and attorneys' fees (with any proper offset allowed) as well as the costs of recording and releasing the lien;
- (iv) That the claim of lien is made by the Association pursuant to this Declaration;
- (v) That a lien is claimed against said Lot in an amount equal to the amount stated together with all other amounts becoming due from time to time in accordance with this Declaration; and
- (vi) The date of issuance of the claim.

Upon such recordation of a duly executed original or copy of such a claim of lien, the lien claim therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the lien thereof except for tax liens for real property taxes and assessments on any Lot in favor of any municipal or other governmental assessing unit or mortgagees.

Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for foreclosure of mortgages or sale by a judgment creditor or in any other manner permitted by law. The Executive Board is hereby authorized to appoint any attorney or officer or director of the Association for the purpose of conducting such proceeding.

- 4.9. Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Declaration shall be subordinate in lien to the lien of any mortgage or mortgages on any property which is subject to such assessments regardless of when said mortgage or mortgages were created or when such assessments accrued. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot, pursuant to mortgage foreclosure or any similar judicial proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, further, that assessments or charges accruing after sale shall also be subordinate in lien to the lien of any further mortgage or mortgages which are placed on property subject to such assessments or charges, with the intent that no such assessments or charges shall at any time be prior in lien to any mortgage or mortgages whatsoever on such property.

- 4.10. Exempt Property. All property Conveyed to any Governmental/Public Service Entity shall be exempt from assessments pursuant to this Declaration.

ARTICLE V

SPECIAL DECLARANT RIGHTS

- 5.1. Right to amend Approved Development. The Declarant hereby reserves the right during the Development Period to revise or amend the Approved Development and/or the Subdivision Plan contained therein and to resubdivide the Subject Property, all without the consent of the Association or any Class A members, in response to changes in technological, economic, environmental or social conditions related to the development or for any other reason determined by Declarant; provided, however, that such revision or amendment, and the approval thereof, shall comply with all applicable ordinances, statutes and requirements of all governmental entities having jurisdiction thereof; provided further however that the boundary lines of any Lot owned by a Class A Member shall not be changed without such Class A Member's consent..
- 5.2. Right to subject Property to Easements. Declarant shall have the full power and authority to exercise Declarant's right to subject the Subject Property to Easements pursuant to the provisions of Section 2.3.2 of this Declaration.
- 5.3. Exercise of Rights. Declarant shall have the full power and authority to exercise Declarant's right and obligation to appoint members of the Executive Board pursuant to the provisions of Section 3.6.2 of this Declaration.
- 5.4. Right to Use of Easements. Declarant shall not be denied the use of, and Declarant shall have the full, continuous, and uninterrupted right of use of Easements as set forth in this Declaration, including but not limited to such as set forth in Section 2.3 of this Declaration.
- 5.5. Exception for Development and Sales. Notwithstanding anything in this Declaration to the contrary, nothing herein shall prohibit the use of any portion of the Subject Property, including any Lots or any other portion of the Subject Property, for the development, construction, and sales of the Lots, with or without Residential Dwelling Units thereon, and/or the sale of or contracting for construction of residential dwellings and appurtenant structures.

No prohibition against business use, prohibition against signage, or prohibition against other uses of the Lots or other portions of the Subject Property shall prohibit the seller of Lots and/or residential dwellings thereon from placing, constructing, installing and maintaining such sales offices, signs, temporary structures and facilities, business activities and similar things and activities as such seller shall deem appropriate for the purposes of such sales, construction and related activities as permitted under the codes, ordinances and regulations of Kent County, Delaware.

ARTICLE VI

RESTRICTIVE COVENANTS

- 6.1. Single Family Residences Only. Unless otherwise hereinafter expressly provided, all Lots shall be used solely for private, single family residential purposes.

No buildings or other improvements shall be constructed, placed or maintained on any Lot except detached, single family residential dwelling houses together with customary appurtenant structures, including but not limited to, garage, greenhouse, shed, and play structures, subject to the following restriction.

No more than one (1) appurtenant structure which such appurtenant structure shall require the obtaining of a Building Permit for the construction thereof, may be placed or maintained on any Lot, which such structure is appurtenant to the detached, single family residential dwelling house on said Lot, and which such appurtenant structure shall require the obtaining of a Building Permit for the construction thereof.

No appurtenant structure may be placed or maintained on any Lot, which such structure is appurtenant to the detached, single family residential dwelling house on said Lot, and which such appurtenant structure shall require the obtaining of a Building Permit for the construction thereof, shall exceed one hundred twenty (120) gross square feet in overall size of the structure as calculated from a horizontal plan view of the entire structure, nor shall such structure exceed an overall height of fifteen (15) feet at any point thereof

Every garage, shed or other storage facility constructed, placed or maintained on a Lot shall be used exclusively by the owners or occupants of the Lot on which it is located.

Any addition, enclosure, garage, appurtenant building, fence, wall, planting or other improvement or modification erected, placed or maintained on a Lot shall be harmonious (same siding, roof, and trim color, etc.) in design with the single family residential dwelling on the Lot.

The landscaping and maintenance thereof shall be in accordance with the residential character of the community. No hedges or mass groupings of shrubs and/or trees which could be a visual barrier comparable to a fence shall be placed or maintained closer to the street than the building set-back line established by the Kent County Zoning Ordinance.

- 6.2. Temporary Facilities. No temporary structure, trailer, garage, tent or other similar facility shall be used at any time for residential purposes.

Nothing herein shall prohibit the placement on any Lot of temporary construction trailers, sheds, portable toilets or similar items during construction, repair of, or addition to, any improvements on such Lot.

- 6.3. Business Use. No trade, business or profession, except customary home occupations clearly incidental to the residential use of the dwelling on a Lot and subject to compliance with and approval of all governmental agencies having jurisdiction thereof, shall be regularly conducted or pursued on any Lot or within or without any structure on any Lot

No vehicle, equipment, or structure shall be placed, maintained, constructed or operated, temporarily or permanently, on any Lot for any trade, business or other commercial purpose except the temporary parking of no more than one (1) business or commercial vehicle which such business or commercial vehicle shall be validly and currently licensed for use on public roadways, shall not have more than two axles and shall not have more than four wheels; it being the intent to permit "pick-up truck" and "van" type vehicles but not to permit large (more than two axles or with more than four wheels) trucks, construction equipment or vehicles, "trailer-trucks" or trailers, and similar commercial vehicles.

- 6.4. Animals. Except for animals commonly recognized as domestic house pets, not to exceed three such pets on any Lot, no animals of any kind, whether mammal, bird, reptile or other, shall be at any time kept on any Lot.

No animals may be raised or kept on any Lot for commercial breeding or for any other commercial purpose.

Pets shall be maintained and controlled at all times so as not to offend or disturb other Lot owners or occupants by noise, elimination, odor, intrusion, destruction of property or otherwise.

No kennel, "dog runs" or "dog houses" including, but not limited to those constructed of "chain link" or other fencing materials, shall be constructed, placed, or maintained, temporarily or permanently, on any Lot.

- 6.5. Nuisances. No nuisance, or noxious, offensive, or dangerous activity or thing shall be created, permitted or conducted on or about any Lot including but not limited to open or smoking fires, unfenced swimming pools, and uncovered refuse.

All garbage, trash, and other refuse shall be placed in tight, enclosed containers which shall be kept out of sight except as such may be placed for collection within 24 hours of refuse and trash collection.

- 6.6. Vehicles. No mobile home, bus, house car, motor home, camper, trailer, commercial vehicle (except as set forth in Section 6.3 of this Declaration), airplane, boat, unlicensed motor vehicle, snowmobile or other specialized recreational vehicle, or any inoperative vehicle shall be placed, used, operated, maintained or stored on any Lot or any other part of the Community, nor parked on any street within the Community, except for such time as is necessary to load or unload same, or pickup or discharge passengers therefrom.

Nothing herein shall prohibit the storage of any boat or similar vehicle not exceeding twenty four feet in length provided, however, that any such storage is completely within a garage.

- 6.7. Fences. No "chain link" or other wire or metal construction fence shall be placed, erected or maintained on any Lot at any time.

No fence, wall, or similar structure in excess of five (5) feet in height shall be erected, placed or maintained on any Lot.

No fence in excess of four (4) feet high be erected or maintained along or within ten (10) feet of the property lines of any Lot.

No fence shall be erected or maintained closer to the front street than the rear most wall of the principle building.

- 6.8. Surface Water Flow. After the completion of the construction thereon of a residential dwelling and the establishment of grades for the flow of surface water, the grading of any Lot shall not be changed or modified so as to impede, redirect, accelerate or otherwise change or modify the flow of surface water to, over or from the Lot.

- 6.9. Signs. No signs, billboards, notices, advertising, displays, or other attention attracting devices shall be erected or maintained on any Lot excepting only small signs not exceeding one (1) square foot in size identifying the occupant, address and home occupation, if applicable, and further excepting temporary real estate signs not exceeding six (6) square feet in size advertising the sale or lease of the property.
- 6.10. Compliance with Laws. No building, appurtenant structure or other improvement shall be constructed, placed or maintained on any Lot nearer to any front, side or rear property line than is permissible, with, if required, variance sought and granted, under the Zoning Code of Kent County, Delaware as enacted and in force on the date when this Declaration of Restrictions is recorded. Nothing herein shall prevent an Owner from securing a variance under the Zoning Code of Kent County, Delaware and construction pursuant to a grant thereof shall comply with the provisions of this Declaration.

Notwithstanding the provisions of this Declaration, the use of all of the Subject Property shall at all times be subject to and in conformity with the Kent County Code. No provision of this Declaration, including but not limited to the Restrictive Covenants hereof, shall be interpreted so as to permit the use of any portion of the Subject Property except in full compliance with the Kent County Code.

ARTICLE VII

INSTITUTIONAL LENDERS

- 7.1. Rights of Institutional Lenders. In order to induce Institutional Lenders to make loans secured by liens upon Lots or lands within the Subject Property, the Association shall not, without the prior written consent of at least whatever percent of first mortgagees of individual Lots as is required by Financing Agencies having jurisdiction thereof and two-thirds (2/3) of Owners other than the Declarant:
- 7.1.1. by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any of the Community Facilities owned directly or indirectly excepting, however, Conveyances to Governmental/Public Service Entities consistent with common property use are excepted;
 - 7.1.2. change the method of determining the obligation, assessments, dues or other charges which may be levied against Members;
 - 7.1.3. by act or omission, change, waive or abandon regulations or enforcement pertaining to restrictive covenants, the maintenance of the Community Facilities;
 - 7.1.4. fail to maintain fire and extended coverage on insurable property on a basis as required by Financing Agencies; and
 - 7.1.5. use hazard insurance proceeds for losses to Community Facilities for other than the repayment for, replacement or reconstruction of such Community Facilities.
- 7.2. Obligations of Association to Institutional Lenders. As further inducement to Institutional Lenders, the Association shall:
- 7.2.1. not make liable any mortgagee who obtains title to a Lot, pursuant to the remedies provided in the mortgage, for such Lot's unpaid assessments, installments thereof or charges which accrue prior to the acquisition of title to such Lot by the mortgagee;

- 7.2.2. allow mortgages of Lots to, jointly or singly, pay taxes or other charges against the Community Facilities and pay overdue premiums on hazard insurance policies, or secure new hazard insurance policies on the lapse of a policy for such Community Facilities, and mortgagees making such payment shall be owed immediately reimbursement therefor from the Association;
- 7.2.3. give written notification, upon written request, to any first mortgagee, at the address designated in the request, of any default in the performance by any individual Lot mortgagor or such individual Lot mortgagor's obligations pursuant to the terms of the Governing Documents;
- 7.2.4. limit any agreement for professional management or any contract providing for services from or by the Declarant to that required by any federal agencies having jurisdiction thereof and provide for termination in accord with standards of federal agencies. Any management agreement shall remain consistent with the Governing Documents.
- 7.3. Federal Financing Agency Approval. During the Development Period, the following actions may require the prior approval of the Federal Housing Administration or the Veterans Administration: dedication of Community Facilities, except as provided in the Approved Development; and amendment of this Declaration. Such agency shall withhold consent only to the extent that specific applicable regulations are violated.

ARTICLE VIII

GENERAL PROVISIONS

- 8.1. Enforcement. The Association, the Declarant, any Assignee Declarant, or any Owner shall have the right to enforce, by any proceedings at law or in equity, either to restrain violation or to recover damages, all violations or attempts to violate any restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Governing Documents.

Failure to enforce any restrictions, covenants or agreements contained in the Governing Documents shall in no event be deemed a waiver of the rights to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto.

- 8.2. Severability. Invalidation of any one of the conditions, covenants or restrictions of this Declaration by judgment or court order shall not affect any other provisions, all of which shall remain in full force and effect.

- 8.3. Amendment. The conditions, covenants and restrictions of this Declaration shall run with and bind the Subject Property in perpetuity and may be changed, altered, modified or extinguished in whole or in part, at any time, by an instrument, in writing, signed by not less than the record owners of seventy-five percent (75%) of the Lots within the Subject Property and by Declarant if Declarant owns any Lot, which such Amendment shall be recorded in the office of the Recorder of Deeds in and for Kent County, Delaware.

Declarant shall have the right and power to amend unilaterally any provision herein and any provision of the Subdivision Plans, applications or related documents necessary in the opinion of the Declarant to conform to the requirements of:

- 8.3.1. the Federal Emergency Management Agency, the Federal Environmental Protection Agency, the Soil Conservation Service of the United States Department of Agriculture, the Delaware Department of Natural Resources and Environmental Control, the Kent County Department of Planning Services, and any and every other federal, state, county or local governmental entity having jurisdiction over the lands, the subject of this Declaration, the development and land use contemplated therein; or
- 8.3.2. any mortgagee of improved lots or dwelling houses in the Subject Property; or
- 8.3.3. Required by any title insurance company issuing title insurance to owners and/or mortgagees of same; or

8.3.4. Required by the Federal Housing Administration, Department of Housing and Urban Development, Veterans Administration, Farmers Home Administration, or any like public or private institution acquiring, guaranteeing, or insuring mortgages or providing any type of financial assistance, with respect to dwelling units or Lots within the Subject Property.

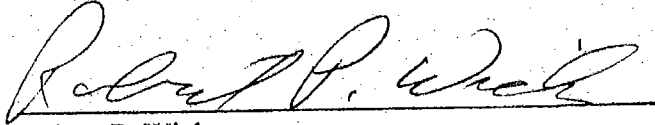
8.4. Conflict. In the event of irreconcilable conflict among the Governing Documents, ordinances, statutes, rules and regulations, the conflict shall be resolved in favor of the requirements of the respective documents in order of their hereinafter stated priority, to wit:

- (1) action of Kent County granting final development approval of the Subject Property;
- (2) Subdivision Plan;
- (5) this Declaration;
- (6) Articles of Incorporation of the Association;
- (7) Bylaws of the Association;
- (8) Book of Resolutions of the Association.

Anything above to the contrary notwithstanding, in all cases the requirements of all regulatory statutes shall control.

8.5. Interpretation. Unless the context otherwise requires the use herein, the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including without limitation." The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

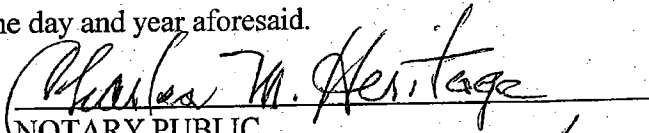
IN WITNESS WHEREOF, the Declarant has hereunto set his hand and seal, the day and year first above written.


Robert P. Wicks

STATE OF DELAWARE)
) SS.
KENT COUNTY)

BE IT REMEMBERED that on this 2 day of April, 2004, before me, the undersigned officer, personally appeared **Robert P. Wicks**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

GIVEN under my hand and seal of office, the day and year aforesaid.


NOTARY PUBLIC
My Commission expires: 4-03-04

NOTARIAL SEAL

EXHIBIT A
LEGAL DESCRIPTION
WICKSFIELD

March 29, 2004

BEING all that piece or parcel of land, hereinafter described, situate, lying and being on the northwesterly side of Sunnyside Road (Route 90) and located in the Duck Creek Hundred of Kent County, Delaware; said piece or parcel of land being more particularly described as follows, to wit:

BEGINNING at an iron rod with cap found at a point formed by the intersection of the northwesterly right-of-way line of Sunnyside Road (Route 90), 60 feet wide, with the northeasterly line of the lands of, now or formerly, Michael L. and Paula L. Jager, as recorded in the Office of the Recorder of Deeds, in and for Kent County and the State of Delaware, in Deed Record D, Volume 288, Page 10; said beginning point being coordinated on the Delaware State Grid System as North 463,761.01, East 599,912.90; thence running, in the datum of said Delaware State Grid System,

1) leaving said Sunnyside Road and running by and with said lands of Jager, for the following two courses, North 47 degrees 25 minutes 11 seconds West 699.94 feet to a point, thence running,

2) South 42 degrees 34 minutes 38 seconds West 447.38 feet to an iron pipe found at a point on the northeasterly line of the lands of, now or formerly, Frank R. and Paulette A. Barbera, as recorded in said Office of the Recorder of Deeds in Deed Record D, Volume 125, Page 236, thence running,

3) leaving said lands of Jager and running by and with said lands of Barbera, North 47 degrees 24 minutes 58 seconds West 624.26 feet to a point on the easterly line of the lands of, now or formerly, George H. Wicks, Jr. and Amelia Mary Wicks, as recorded in said Office of the Recorder of Deeds in Deed Record U, Volume 20, Page 377, said point being located in the centerline of Farsons Branch; passing over an iron pipe found 34.53 feet, reversely, from the end of said course, thence running,

4) leaving said lands of Barbera and running by and with said lands of George and Amelia Wicks and by and with said centerline of Farsons Branch, for the following eight courses, North 28 degrees 58 minutes 20 seconds East 59.58 feet to a point, thence running,

5) North 10 degrees 54 minutes 51 seconds West 67.41 feet to a point, thence running,

6) North 13 degrees 28 minutes 39 seconds East 264.78 feet to a point, thence running,

Legal Description

Wicksfield

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- 7) North 32 degrees 43 minutes 34 seconds East 236.66 feet to a point, thence running,
- 8) North 16 degrees 40 minutes 22 seconds East 88.68 feet to a point, thence running,
- 9) North 10 degrees 37 minutes 47 seconds West 184.29 feet to a point, thence running,
- 10) North 09 degrees 29 minutes 58 seconds East 336.31 feet to a point, thence running,
- 11) North 15 degrees 22 minutes 01 seconds East 72.09 feet to a point, thence running,
- 12) North 50 degrees 36 minutes 06 seconds West 287.20 feet to a point on the southerly line of the lands of, now or formerly, Elizabeth M. Brown, as recorded in the aforesaid Office of the Recorder of Deeds in Deed Record L, Volume 32, Page 323, thence running,
- 13) leaving said lands of George and Amelia Wicks and running by and with said lands of Brown, for the following six courses, North 54 degrees 24 minutes 05 seconds East 826.90 feet to a point in the centerline of Farsons Branch, thence running,
- 14) continuing by and with said lands of Brown, and also running by and with said centerline of Farsons Branch, for the following five courses, North 20 degrees 54 minutes 21 seconds East 40.12 feet to a point, thence running,
- 15) North 47 degrees 15 minutes 56 seconds East 26.72 feet to a point, thence running,
- 16) South 82 degrees 27 minutes 22 seconds East 88.23 feet to a point, thence running,
- 17) South 82 degrees 12 minutes 10 seconds East 26.20 feet to a point, thence running,
- 18) North 27 degrees 14 minutes 13 seconds East 472.21 feet to a point on the southerly line of the lands of, now or formerly, Joseph F. and Patricia W. Wick, as recorded in said Office of the Recorder of Deeds in Deed Record S, Volume 42, Page 115, thence running,
- 19) leaving said lands of Brown and also leaving said centerline of Farsons Branch and running by and with said lands of Joseph and Patricia Wick, also running by and with the lands of, now or formerly, Matthew J. and Glenda A. Lewnewski, as recorded in said Office of the Recorder of Deeds in Deed Record D, Volume 288, Page 308 and by and with Cedarbrook Acres, as recorded in said Office of the Recorder of Deeds in Plot Book 3, Page 159, South 59 degrees 43 minutes 49 seconds East 1960.16 feet to a point on the aforesaid northwesterly right-of-way line of Sunnyside Road, thence running,

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20) leaving said lands of Joseph and Patricia Wick and running by and with said right-of-way line of Sunnyside Road, for the following two courses, South 31 degrees 16 minutes 11 seconds West 865.50 feet to a point of curvature, thence running,

21) by and with the arc of a circle, deflecting to the right, having an arc length of 549.12 feet, a radius of 2324.46 feet and a chord bearing and distance of South 38 degrees 02 minutes 15 seconds West 547.84 feet to an iron pipe found at a point on the northerly line of the lands of, now or formerly, Robert P. Wicks, as recorded in the aforesaid Office of the Recorder of Deeds in Deed Record G, Volume 39, Page 198, thence running,

22) leaving said Sunnyside Road and running by and with said lands of Robert Wicks, for the following three courses, North 45 degrees 46 minutes 28 seconds West 282.00 feet to a point, thence running,

23) South 44 degrees 43 minutes 48 seconds West 217.19 feet to a point, thence running,

24) South 47 degrees 12 minutes 40 seconds East 289.50 feet to an iron pipe found at a point on the aforesaid northwesterly right-of-way line of Sunnyside Road, thence running,

25) leaving said lands of Robert Wicks and running by and with said right-of-way line of Sunnyside Road, South 42 degrees 42 minutes 56 seconds West 842.67 feet to the point and place of beginning;
CONTAINING 108.2224 acres of land, more or less.

EXHIBIT "B"

Estoppel Certificate

Pursuant to Section 4.2 of the *Declaration of Covenants, Restrictions, Easements and Establishment of Homeowners Association for Wicksfield in Duck Creek Hundred, Kent County, Delaware* ("Wicksfield Declaration"), the Wicksfield Homeowners Association, Inc. (the "Association") hereby states as follows:

Capitalized words and terms in this Certificate not defined herein are defined pursuant to the provisions of the Wicksfield Declaration.

This certificate is made, and the statements and certifications made herein are effective as of:

1. Regarding the property identified as Lot ____ as shown on the plan identified as *Wicksfield* prepared by Davis, Bowen, and Friedel, Inc., Salisbury, Maryland dated May, 2003, last revised _____ being recorded in the Office of the Recorder of Deeds in and for Kent County, Delaware in Plat Book ____, Page ____, *et seq.* (the "Property"), the Wicksfield Homeowners Association hereby certifies as follows:
 - a. The current Common Expense Liability assessment for the Property for the annual period commencing on _____ and ending on _____ is _____
 - b. The Common Expense Liability assessment against the Property is paid in full until _____
 - c. As of the date of this statement, unpaid Common Expense Liability assessments levied against the Property are _____
2. Other than the assessments referred to in Section 1 of this Certification, there are no other fees payable to the Association by the Owner of the Property.
3. The Association has the following knowledge of violations of the Governing Documents remaining on such Lot as of the date hereof (if the Association has no knowledge, "None" is stated): _____

The Wicksfield Homeowners Association states that each and every of the foregoing statements is true and correct to the best of the Association's knowledge, information and belief.

WICKSFIELD HOMEOWNERS ASSOCIATION, INC.

Name: _____

Title: _____