

**Tax Parcel Nos.: See Schedule
Attached)**

Prepared by and return to:
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**SOUTHERNESS AT ODESSA NATIONAL GOLF CLUB
AND RESIDENTIAL COMMUNITY
ACTIVE ADULT/LOT MAINTENANCE
DECLARATION OF RESTRICTIONS**

THIS DECLARATION (the "Declaration"), made as of this ____ day of February, 2006, by ODESSA NATIONAL DEVELOPMENT COMPANY, LLC, a Delaware limited liability company (hereinafter referred to as "Declarant").

WHEREAS Declarant is the owner of those parcels of land, constituting approximately 70.8 ± acres (the "Property"), as shown and being more particularly described on the Record Major Subdivision Plan of Odessa National Development Golf Club and Residential Community prepared by Nave, Newell and Stampel, LTD., dated April 12, 2000 and recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware on January 25, 2001 in Instrument No. 20010125-0005362 as may be amended by the Record Re-Subdivision Plan for Odessa National Golf Club and Residential Community as prepared by Nave, Newell and Stampel, LTD., dated April 10, 2001 and recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware on June 14, 2001 in Instrument No. 20010614-0046994 (the "Plan") and being identified as Southernness (the "Community") on the Plan and which land is designated for the construction of the Community to consist of two hundred and sixty two (262) single family homes (individually a "Unit" and collectively the "Units") each on an individual lot (individually a "Lot" and collectively the "Lots") with appurtenant common and public areas;

AND WHEREAS, Declarant intends to restrict occupancy within the Community to older persons in accordance with the Fair Housing Act, 42 U.S.C. Section 3601 *et seq.* and HUD Regulation 24 CFR Part 100, Subpart E Governing 55 and Older Housing, and with the Delaware Fair Housing Act, 6 Del. C. §4600 *et seq.* (collectively, the "Act");

AND WHEREAS, Declarant further intends to impose certain restrictive covenants and deed restrictions with respect to the use of the Property as well as certain affirmative obligations and duties with respect to the maintenance and upkeep of certain landscaping and improvements on each of the Lots which shall be under the jurisdiction of and management by a service corporation (the "Service Corporation") which Declarant has incorporated or intends to incorporate under the laws of the State of Delaware to be known as the "Southernness Service Corporation" for the purpose of exercising the functions set forth herein below and shall be separate from and independent of the Southernness Maintenance Corporation (the "Maintenance Corporation") formed and established pursuant to that certain Maintenance Declaration (the "Maintenance Declaration") dated September 6, 2000 and recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware in Deed Book 2890, Page 80;

AND WHEREAS, the Service Corporation shall exist and operate separately and independently from the Maintenance Corporation unless and until such time as both (1) sixty-six percent (66%) of the members of the Maintenance Corporation elect to expand the duties of the Maintenance Corporation to include those services of the Service Corporation as provided under this Declaration, and its Articles of Incorporation and Bylaws; and (2) Declarant approves of and consents, in writing, to any such arrangement. Any such consolidation of services by and between the Maintenance Corporation and the Service Corporation shall be upon such terms and conditions as are mutually agreeable to the Maintenance Corporation, the Service Corporation and Declarant;

AND WHEREAS, Declarant desires to impose upon the Property, and to bind itself, its successors, and assigns, as owner of the Property, to certain covenants and deed restrictions respecting the use of the Lots and certain maintenance aspects of the Lots as more fully set forth herein below;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT:

Declarant does covenant and declare that it shall hold and stand seized of all of the Property, as the same appears on the Plan, under and subject to the following covenants and agreements which shall be covenants running with the Property and which shall be binding upon Declarant, as well as Declarant's successors and assigns for the benefit of each owner of a Lot or parcel of land as set forth on the Plan.

ARTICLE 1 DEFINITIONS

The following definitions shall be applicable to the words defined as used herein:

(1) The "Corporation" shall mean and refer to the Southernness Service Corporation, a non-profit maintenance corporation incorporated under the laws of the State of Delaware, and its successors and assigns; the "Board" shall mean and refer to the Corporation's Board of Directors.

(2) The "Property" shall mean and refer to all the land in the Community, including the Lots and common facilities which are included on the Plan as referenced above;

(3) "Common Facilities" shall mean and refer to those areas of land as identified in the Maintenance Agreement and as shown on the Plan of the Property as areas intended and devoted to the private common use and enjoyment of the Lot Owners and which are managed by the Maintenance Corporation in accordance with the Maintenance Agreement and the Articles of Incorporation and Bylaws of the Maintenance Corporation .

(4) "Lot" shall mean and refer to any plot of land intended for private individual residential use by subdivision as shown on any Plan of the Property, but does not include or refer to any Common Facilities.

(5) "Lot Maintenance" shall mean general landscaping maintenance and yard maintenance activities such as branch and leaf removal, weeding, mulching and yard pruning , and grass cutting of each Lot and snow removal from and sanding or salting of any driveway and sidewalk on or adjacent to each Lot, as well as any public street or right of way servicing the Community as shown on the Plan (which are not otherwise serviced and maintained by the Maintenance Corporation), trash collection (excluding any Common Facilities) and such other services and maintenance to be performed on each Lot by the Service Corporation as determined by the affirmative vote of sixty-six percent (66%) of the Service Corporation.

(6) "Owner" shall mean and refer to the record title owner, whether one or more persons or entities, of fee simple title to any Lot, but shall not include a mortgagee who has not obtained fee simple title.

(7) "Member" shall mean and refer to members of the Service Corporation.

(8) The "Declarant" shall mean and refer to Odessa National Development Company, LLC, a Delaware limited liability company, its successors and assigns as provided in this Declaration.

(9) The "Plan" shall mean and refer to the aforesaid Plan as above referenced, as hereafter amended, enlarged, supplemented and re-subdivided from time to time.

(10) "Community" shall mean the residential development known as Southernness as generally depicted on the Plan.

(11) "Minimum Age" shall mean fifty-five (55) years of age or older or any such lower minimum age as may hereafter qualify under regulations of the Department of Housing and Urban Development, or any successor agency, in

administration of the Federal Fair Housing Act, and under the Delaware Fair Housing Act, establishing an exemption from regulations prohibiting housing discrimination based on familial status in connection with housing for older persons.

ARTICLE 2 AGE RESTRICTIONS

(1) Age Restrictions. Pursuant to the provisions of the federal Fair Housing Act, and the Delaware Fair Housing Act, DEL. CODE tit. 6 § 4600 *et seq.*, as either is amended from time to time, and in order to provide for congenial occupancy of the Property and for the protection of the value of the Units, each Unit, excepting Units owned by Declarant, is intended to be operated for occupancy by, and shall not be sold, leased, licensed or permitted to be occupied except by at least one person of at least the Minimum Age, and shall be subject to the following additional occupancy restrictions:

(a) No person under the age of nineteen (19) years of age shall occupy a Unit for more than ninety (90) days per year.

(b) Notwithstanding the restriction contained in paragraph (1)(a) above, persons under 18 years of age may occupy a Unit with a person or persons who are of Minimum Age, provided that: (a) such person under 18 years of age must move into the housing by reason of death, serious injury or serious illness of the parent, guardian or person acting in the place of a parent with whom such person under 18 years of age resided immediately before the time of such death, serious injury or serious illness; and (b) occupancy by the person under 18 years of age is of a temporary nature terminating when reasonably practicable.

(c) Without limiting the other restrictions set forth in this Article 2, the following persons shall also be entitled to occupy a Unit: a husband or wife of nineteen (19) years or older residing with his or her spouse at the Unit provided the spouse is of the Minimum Age; a surviving husband or wife of nineteen (19) years or older who is resided at the Unit prior to the death of his or her spouse, provided the deceased spouse was of the Minimum Age at the time of death; and a child or other family member of nineteen (19) years or older residing at the Unit, provided that the Unit is also occupied by a parent or family member who is of the Minimum Age or who otherwise falls into the class of persons permitted in subsections (i) or (ii) above. Nothing in this Article 2 shall prohibit the entertainment of persons of any age, or temporary occupancy not aggregating more than ninety (90) days in any calendar year by persons of any age.

(2) Verification Regarding Age Restrictions. The Board shall have the right to verify compliance with age restrictions imposed under this Article 2. The Board shall be empowered to adopt such rules, regulations, and administrative procedures, including, for example and without limitation, procedures for conducting a periodic census of the Members, Owners and Unit occupants, as may be necessary or desirable to ensure that the Property is operated as housing for older persons in accordance with the

federal Fair Housing Act and the Delaware Fair Housing Act, and regulations promulgated thereunder, as any of the same may be amended from time to time.

(3) Amendments for Maintenance of Age Restrictions.

Notwithstanding anything to the contrary contained in this Article 2, the foregoing age restrictions shall at all times be interpreted and deemed amended to permit the broadest permissible use and occupancy of a Unit consistent with the exemption from the prohibition against discrimination in housing based on familial status under the federal Fair Housing Act, the Delaware Fair Housing Act, or any similar state law, as any such laws may be amended from time to time, and any regulations promulgated thereunder, for housing for older persons. Further, notwithstanding anything to the contrary contained in this Declaration, the provisions of this Article 2 may at any time, and from time to time, be amended by Declarant during Declarant's Period of Control and thereafter by the Board, in order to conform the same to any provisions of the federal Fair Housing Act, the Delaware Fair Housing Act, any similar state law and/or any regulations promulgated under any of them, which are applicable at the time of such amendment and which may permit occupancy by a broader class of persons than may be presently permitted under the provisions thereof which establish the exemption from the regulations thereunder concerning familial status, without the consent of any Unit Owner, Permitted Mortgagee, or tenant or other occupant of a Unit. Any such amendment may be made and executed by Declarant during Declarant's Period of Control and thereafter by any officer of the Corporation duly authorized by the Board.

ARTICLE 3
RENTAL OF RESIDENCES

(1) No residence situated on any Lot shall be rented, in whole or in part at any time or from time to time, without the prior written consent of the Service Corporation which consent may be withheld in its sole and absolute discretion.

(2) If the Service Corporation does consent to the rental of a residence, whether in whole or in part, the terms of such rental shall be documented by means of a lease and such lease: (i) shall be in writing; (ii) shall be signed by the Owner of the affected residence and the proposed tenant thereof; and (iii) shall be expressly subject to all of the terms and conditions of all provisions of record (including, without limitation, those of this Declaration and that certain Maintenance Declaration filed of record contemporaneously herewith, as the same are in effect from time to time. The preceding sentence to the contrary notwithstanding, any Owner (including, without limitation, the Declarant) may rent a residence, for a period of less than six (6) months and without the consent of the Service Corporation, to any bona fide contract purchaser awaiting the purchase of such residence under an written contract of sale for the same as long as such proposed purchaser, as a tenant, executes a written lease and the same is in accordance with clauses (ii) and (iii) herein above set forth in this paragraph 2. All lessees of a residence shall be jointly and severally liable, along with the residence Owner, for all liabilities and for the performance of all obligations of the particular Owner under each and every document relating to the Community, in general, and such residence, in

particular. The Service Corporation may, by promulgating rules and regulations, determine from time to time the procedures, including notice periods, by which the Service Corporation can enforce the Service Corporation's rights in the event any lessee of a residence fails to comply with the terms of such lessee's lease or with any other document or documents pertaining to the residence or the Community, as herein above referenced or any pertinent provision of applicable law. The Service Corporation also may determine the acceptable form of lease agreement and, in any event, shall be entitled to review each proposed lease prior to the same being effective and shall receive a copy of each executed lease within one (1) business day after such lease is executed.

(3) If a tenant of a residence fails to comply with the provisions of this Declaration or any other document pertinent to the Community or the residence occupied by such tenant, the Service Corporation shall, in addition to all other remedies which the Service Corporation may have, at law or in equity, notify the residence Owner of such violation(s) and demand that the same be remedied through the residence Owner's efforts within thirty (30) days after such notice. If such violation(s) is not remedied within such thirty (30) day period, the residence Owner shall immediately thereafter, and at such Owner's own cost and expense, institute and diligently prosecute an eviction against such Owner's tenant on account of such violation(s). Such action shall not be compromised or settled without the prior written consent of the Service Corporation. If the Owner fails to fulfill the foregoing obligation, the Service Corporation shall have the right, but not the duty, to institute and prosecute such action as attorney-in-fact for such Owner and at such Owner's sole cost and expense, including all legal fees incurred. Such cost and expenses shall be deemed to constitute a lien on the particular residence involved, and collection thereof may be enforced by the Service Corporation in the same manner as the Service Corporation is entitled to enforce collection of assessments pursuant to Article 4 hereof. By acceptance of a deed to a lot within the Community, each and every Owner thereby automatically and irrevocably names, constitutes, appoints and confirms the Service Corporation as such Owner's attorney-in-fact coupled with an interest for the purposes described in this subsection.

ARTICLE 4

THE SERVICE CORPORATION

(1) In order that certain specific and designated elements of each individual Lot are uniformly serviced and maintained as provided under this Declaration for the benefit of all the owners of the Lots, there shall be organized a nonprofit maintenance Corporation which is the Southernness Service Corporation. The Members of the Service Corporation shall be all the Owners of Lots as shown on the Plan.

(2) The purchaser of any Lot by acceptance of a deed to the Lot from Declarant, agrees, obligates, and binds himself/herself, his/her heirs, successors and assigns, to become a Member of the Service Corporation and to be bound by all of its rules and regulations, and to be subject to all of the duties and obligations imposed by membership in the Service Corporation.

(3) Each Owner of a Lot, by acceptance of a deed therefor from Declarant, is deemed to covenant and agree to pay to the Service Corporation when due (a) annual assessments or charges, and (b) special assessments established and collected from time to time as hereinafter provided, such assessments to be fixed at a uniform rate for all Lots, and used solely and exclusively for the purposes set forth herein.

(4) Each Owner of a Lot further covenants and agrees, at the time of settlement on the purchase of any Lot, to sign a confession of judgment, obligating such Owner to pay to the Service Corporation his or her share of the costs associated with the Lot Maintenance. In addition, at the time of settlement on any Lot, the Service Corporation shall collect an initial one time start up assessment from the Owner towards the Lot Maintenance (the "Start Up Assessment"). The Start Up Assessment shall be determined from time to time by the Service Corporation and the amount shall be disclosed to each Owner and shall be incorporated into and made a part of any written agreement of sale for the purchase and sale of any Lot. ← ??

(5) An annual assessment shall be set by a majority of the votes cast at the annual meeting of Members, and any special assessments, if necessary, shall be set by a majority of the votes cast at the annual meeting of Members or at a special meeting duly called for such purpose.

(6) The Service Corporation shall have two (2) classes of Members; Class A and Class B Members.

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

Class B Members. The Class B Member shall be the Declarant, its successors and assigns. The Class B membership shall be entitled to 262 votes for each Lot in which it holds the interest required for membership. "Declarant's Period of Control" shall be the period of time beginning on the date of this Declaration and ending at such time as there are no Class B Members. Upon the happening of any of the following events, whichever first occurs, the Class B membership shall cease and be converted to Class A membership:

(a) When the total votes outstanding in the Class A membership equal 262, or

(b) When, in its sole and absolute discretion, the Declarant so determines.

Within one hundred twenty (120) days thereafter, the Declarant will call an organizational meeting of the Service Corporation, if the same has not previously occurred.

When a purchaser of an individual Lot takes title thereto from the Declarant, he becomes a Class A Member and the Class B membership of the Declarant with respect to such Lot shall cease. Each Owner of any Lot by acceptance of the deed thereto shall be deemed to covenant and agree that the annual and special assessments, together with such interest thereon and cost of collection thereof including reasonable attorney's fees which shall become a part of the assessment, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereon and the costs and expenses of collection there (including, but not limited to reasonable attorneys fees) of shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due and shall remain his/her personal obligation and shall not pass to successors in title unless expressly assumed. It is expressly agreed that the assessments referred to above shall be a lien or encumbrance on the land with respect to which said assessments are made and it is expressly stated that by acceptance of title to any of the land included in the Property the Owner from the time of acquiring title thereto shall be held to have covenanted and agreed to pay said assessments to the Service Corporation. By his/her acceptance of title, each Owner shall be held to vest in the Service Corporation the right and power in its own name, to take and prosecute all actions or suites, legal, equitable, or otherwise, which may be, in the opinion of the Service Corporation, necessary or advisable for the collection of such assessments, and shall be held to agree that no Owner may waive or otherwise avoid liability for the assessments herein provided for the non-use of his/her Lot or abandonment of his/her Lot. If any assessment is not paid when due, after the due date, it shall be deemed delinquent, and if not paid within thirty (30) days after the due date, shall bear interest at the rate of ten percent (10%) per annum or the legal rate of interest, whichever is higher. Without limiting the rights and remedies of the Service Corporation for the collection of assessments, each Owner, by acceptance of a deed, assigns to the Service Corporation all rents due and payable for leases and rental agreements for that Owner's Lot as collateral for all assessment obligations; provided, however, that each Owner shall have a license to collect such rents unless and until there has occurred a default by the Owner hereunder.

(7) The assessments levied by the Service Corporation shall be used exclusively for the purpose of the Lot Maintenance and such incidental costs and expenses associated therewith, including, but not limited to, the payment of wage taxes and liability insurance thereon, and for the cost of labor, services, equipment, materials, management and supervision thereof.

(8) The lien of all assessments shall be subordinate in lien to the lien of any mortgage or mortgages on any property which is subject to such charges regardless of when said mortgage or mortgages were created or when such charges accrued; provided that such subordination shall apply only to charges that shall have

become payable prior to the passing of title under foreclosure of such mortgage or mortgages, and the transferees shall not be liable for payment of any assessment accruing prior to said foreclosure, but nothing herein shall be held to affect the rights herein given to enforce the collection of such charges accruing after sale under foreclosure of such mortgage or mortgages; and provided, further, that such 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 charges, with the intent that no such charges shall at any time be prior in lien of any mortgage or mortgages whatsoever on such property.

(9) The following properties subject to this Declaration shall be excepted from the assessments, charges and liens created herein: (1) all properties dedicated to and accepted by a governmental body, agency or authority, and devoted to public use; (2) all Common Facilities; (3) Lots titled in the name of the Declarant which are not occupied or used for residential purposes. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be excepted from said assessments, charges or liens.

(10) The annual assessments provided for herein shall commence on the conveyance of the first Lot to an Owner by the Declarant and shall be due and payable in advance on the first day of each calendar month thereafter.

(11) The Service Corporation shall keep an Assessment Lien Docket (the "Docket") at the registered office of the Southerness Service Corporation, a Delaware corporation, which, at the date of recording hereof, is at 105 Foulk Road, Wilmington, DE 19803. Immediately upon an assessment becoming delinquent as herein above provided, the Treasurer of the Service Corporation 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 as shown in the Service Corporation's records, the number of the Lot, the amount of the delinquent assessment, 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 Service Corporation that he represents either an Owner of a Lot or a prospective purchaser thereof, the Treasurer, upon receipt of a reasonable service charge (as established by the Service Corporation from time to time), shall certify to the inquiring Owner or attorney-at-law as to the assessment status of the Lot which is the subject of the inquiry, stating:

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

(b) If there are any delinquent assessments, all of the information entered in the Docket with respect to the Lot 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 Service Corporation of payment thereof in full. Upon receipt by the Service Corporation of payment of any delinquent assessment, with interest and costs, if applicable, as herein above provided, the Treasurer shall enter in the Docket the date and amount of the payment received, together with the notation "Paid in Full."

(12) Each Owner of a Lot further covenants and agrees, at the time of settlement on the purchase of any Lot, to sign a confession of judgment, obligating such Owner to pay to the Service Corporation his or her share of the costs associated with the Lot Maintenance.

(13) In the event any Owner fails or neglects to promptly pay in full, when due, any and all annual or special assessments, then, in addition to any other rights and remedies available to the Service Corporation as provided herein, or at law or in equity, the Service Corporation shall have the right, (but not the obligation or duty) to discontinue all or a portion of the services provided to any such Owner by the Service Corporation (without being liable to the Owner or any third party for any such discontinuance of services) until such time as full payment (including any other costs, fees and other charges that may be assessed under this Declaration in connection with delinquent payments) is received as provided herein above.

ARTICLE 5

RESERVATION AND ESTABLISHMENT OF ACCESS RIGHTS

Declarant for itself and for benefit of the Service Corporation, together with their respective successors and assigns, expressly grants and reserves nonexclusive and perpetual easements and rights-of-way on, through, under, over and across the Lots, for the limited purposes of providing ingress, egress and regress to the Lots as may be reasonably required or necessary to perform and conduct the Lot Maintenance. In consideration of the grant of the foregoing rights, the Service Corporation, by the exercise of the easement and other rights granted and reserved hereunder, shall be deemed to covenant and agrees that: (1) the Lot Maintenance shall be conducted in such a manner so as not to unreasonably interfere with or restrict the use of any Lot by the Owner of any Lot, including the Lot Owner's respective agents, tenants, invitees, licensees, guests; (2) the Lot Maintenance shall be performed and conducted in such a manner as to minimize the extent, degree and scope of any disturbance of or damage to the Lots; (3) the Service Corporation shall promptly correct and remedy any damages, nuisances or wastes arising from or associated with the Lot Maintenance and to promptly restore any areas of the Lots disturbed or damaged by the Lot Maintenance to the condition (to the extent reasonably practicable) which existed prior thereto; (4) its contractors, subcontractors, agents, employees, representatives or other third parties under the control or authorization of the Service Corporation shall not store any vehicles, equipment, materials, supplies, debris or other items on any of the Lots in connection with the Lot Maintenance, except as may be reasonably required and subject to the individual Lot owner's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. The Service Corporation is expressly authorized and permitted to make such reasonable rules, procedures and regulations regarding the performance of the Lot Maintenance as in its discretion will be for the mutual benefit of all of the Owners and which shall promote the safe, efficient and economical performance and completion of the Lot Maintenance.

ARTICLE 6
PARTY WALLS

(1) General Rules of Law to Apply. To the extent not inconsistent with the provision of this Article, 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 or party fence which is built as part of the original construction of the homes upon the Property and any replacement thereof.

In the event that any portion of any structure, as originally constructed by the Declarant, including any party wall, shall protrude over an adjoining Lot such structure, or party wall shall not be deemed to be an encroachment upon the adjoining Lot or Lots, and Owners shall neither maintain any action for removal of a party wall or fence or projection nor any action for damages. In the event there is a protrusion as described aforesaid, it shall be deemed that the Owners and, where applicable, the Service Corporation have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the projection or party wall. The foregoing shall also apply to replacements of any structures, or party walls if same are constructed in conformance with the original structure, or party wall constructed by the Declarant. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and, restrictions.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) Arbitration. In the event of any dispute arising concerning a party wall or party fence, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision

shall be by a majority of all the arbitrators and be binding upon the parties. The costs of such arbitration shall be shared equally by the parties.

ARTICLE 7

ARCHITECTURAL CONTROL

(1) No Unit, building, fence, wall or other structure as built shall be altered, extended, added to or modified, nor shall any additional structures of any nature be erected, nor shall any exterior change or alteration be made (including, but not limited to, exterior facade color changes or change in grade or drainage) unless the Declarant shall determine that any such action is necessary for the mutual benefit of the Owners. In the event that repair, replacement or other work on existing structures is necessary, or the erection of any additional structures is necessary, any such work must, to the extent practicable, be performed such that the condition and appearance is equal to and identical to the condition and appearance of the structure as originally constructed, or with respect to additional structures, the construction and appearance is in architectural harmony with the property as originally built and developed. No work as above described shall be performed until plans and specifications as to the nature, kind, appearance, materials and location of the work to be performed has been submitted to the Declarant and approved by the Declarant, or its designated committee, in writing as to compliance with the above requirements, as follows:

(a) Plans and specifications with illustrations showing the nature, kind, shape, color, height, materials and proposed location of the addition, alteration or change shall be submitted to and approved in writing by the Declarant. In the event the Declarant, or its successors or assigns, fails to approve or disapprove such architectural change request within thirty (30) days after said plans and specifications have been submitted to it, approval thereof will be deemed to have been given by the Declarant.

(b) The Declarant, its successors or assigns, in connection with the review of said plans, specifications and illustrations, shall consider them in terms of: the harmony of the proposed change, addition, construction or alteration with the structures on surrounding properties and the outlook therefrom onto the subject property; the effect it will have on the reasonable passage of light and air to the surrounding properties; the consistency and harmony of the architectural design, color, height, size, shape, proposed location and materials with the subject property and with the surrounding structures; and with respect to the physical impact thereof, including, but not limited to drainage on surrounding properties.

(c) For the purpose of this Declaration, the Declarant shall have the sole right to determine which Lot lines and/or street lines shall be "front" or "side" lines.

(d) Requests for architectural change which have been rejected hereunder may be appealed by the applicant in writing and upon the receipt of same, the Declarant, or its successor or assignee, shall schedule a special meeting with the applicant

to review applicant's appeal, which meeting shall be held within two (2) weeks after receipt of notice. The decision upon review shall be communicated in writing to the applicant within thirty (30) days after the review meeting and the failure of the Declarant, or its successor or assignee, to give written notice of such decision within said thirty (30) days shall be construed as a rescission of the initial rejection.

(e) The Declarant may appoint an Ad Hoc Architectural Control Committee to assist the Declarant in architectural control matters. The Ad Hoc Architectural Control Committee will automatically be dissolved upon assignment of the architectural control responsibilities to the Service Corporation.

ARTICLE 8

EXTERIOR APPEARANCE

By acceptance of a deed to any Lot, each Owner agrees and covenants to maintain the exterior appearance of the Unit and structures on his/her respective Lot, including the dwelling, in a condition as similar to that appearance existing at the time of purchase as is practicable, and further covenants and agrees (a) that the Service Corporation shall have the right to contract for the maintenance, repair, and/or replacement of the structures, to be performed at reasonable regular intervals, (b) that the contractor selected to perform said work may come upon the premises of the Lot at reasonable times (subject to reasonable prior notice to the Owner) and utilize reasonable means to perform said work, and (c) the Service Corporation may incorporate the costs of said work as an assessment against each Lot to be assessed and collected in the same manner as described in Article 4. Each Owner may request the Service Corporation to perform special maintenance on the exterior of that Owner's structures and the Service Corporation may choose, (but shall not be obligated) to contract for the performance of such maintenance and specially assess that Owner with respect to said work, (either prior to the commencement of such work or upon the completion of such work) said assessment to be collectible in the manner as described in Article 4, in such event or if Owner fails to perform said maintenance.

ARTICLE 9

USE OF THE PROPERTY

(1) No Lot shall be used except for residential purposes subject to the age and similar restrictions imposed under the Act and as expressly provided in Article 2. No dwelling or any part thereof shall be used for any purpose except as a private dwelling for one family. No dwelling, garage, porch or other structure shall be erected, altered, added to, or the appearance altered in any manner by Owner unless otherwise permitted by these covenants and restrictions and approved by the Service Corporation in the manner described in Article 4.

(2) No trade or business, nor any building designed or intended for such purpose or for industrial or manufacturing purpose, nor for any dangerous or offensive trade or business whatsoever, shall be erected, permitted, maintained or operated on any

of the Property, nor any noxious or offensive activity shall be carried on upon the Property nor shall anything be done thereon which may be or result in an annoyance or nuisance to the neighborhood.

(3) No animals, livestock or poultry of any kind shall be raised, bred or kept in any dwelling or on any part of the Property except that dogs, cats or other common domesticated household pets may be kept inside the dwelling provided that they are not kept, bred or maintained for any commercial purpose and provided that no more than two such pets in the aggregate may be kept with respect to each dwelling. No pets shall be permitted unleashed upon the Common Facilities or on any Lot except pets owned by Owners. Dogs, cats and other ambulatory pets shall, when not on a leash, be kept within its owner's Lot. No dog, cat or other animal shall be permitted to relieve itself on any shrub, patio, building, fence, car or other items of personal property. Any solid waste left on any Common Facilities or Lot shall be promptly placed in a bag and put in the pet owner's refuse container. Every pet owner shall take all reasonable steps to prevent the noise, waste or odors of his pet from annoying other Owners. No animal, insect, fish or reptile of any kind shall be bred, born or buried in or on Lots or the Common Facilities over the objection of any other Owner or the Declarant. Owners shall be strictly liable for the actions of their pets. The Declarant shall have the right to require that any habitually diseased, infested, unclean or noisy animal, bird, reptile, fish or insect be removed from the Community.

(4) No sign or other object shall be displayed on any wall or rooftop without the Declarant's written approval. No sign of any kind shall be displayed to public view on any dwelling, or Lot except: (a) a post office street number sign being uniform in appearance and placement, such appearance and placement to be determined by the Service Corporation; (b) such signs as the Service Corporation may deem necessary, in its sole discretion, to fulfill its purposes and which comply with all applicable Federal, State, County or local laws, ordinances and regulations.

(5) Garbage, rubbish or any other material of any nature to be abandoned or disposed of shall not be placed or allowed to remain on any Lot nor shall it be placed, left or allowed to fall upon any portion of the Property, but if placed outside the dwelling shall be placed in closed garbage receptacles of permanent (mobile) construction intended for such purpose and may be placed at street side on the day of collection if required by the collecting agency and as provided by the Service Corporation. All garbage and other refuse shall be deposited in covered containers and placed at the designated location on each Lot no earlier than the 5:00 p.m. the night before the designated trash pickup date(s) and the empty containers shall be placed within the garage or other designated area within the same day the garbage or refuse is collected, and as otherwise instructed from time to time by the Service Corporation. Each Owner shall take all reasonable steps to prevent his garbage and refuse from omitting odors which would reasonably annoy any other Owner.

(6) No trailer, travel trailer, mobile home, tent, shack, garage or other outbuilding, temporary or semi-permanent or permanent structure or shelter of any kind

other than the dwelling house shall be erected, or shall be placed or utilized as a residence either temporarily or permanently, on any Lot or the Property, except for those structures erected by the Declarant. No structures in addition to those erected by Declarant shall be erected, placed or maintained anywhere on the Property except such temporary structures as the Service Corporation may determine to be necessary for the mutual benefit of the Owners.

(7) No unusual vehicles, including trucks (except "pick-up" trucks), boats, aircraft, trailers of any kind including boat, hauling or travel trailers, mobile homes, commercial vans, mowers, rototillers, tractors, buses or vehicles immobilized for any reason, shall be permitted by any person to remain on the Property, including Lot lawns, Common Facilities, the public streets or rights of way. All motor vehicles owned and operated by residents of the Community and their guests, licensees and/or invitees must be parked over-night in their parking spaces. No such vehicle may be parked elsewhere on any Lot, or on the streets, except for temporary parking. For purposes of this paragraph, "temporary parking" shall mean the parking of such motor vehicles on an intermittent and non-recurring basis during the period between dawn and the following midnight.

(8) No Owner shall cause or permit any sign to be displayed, or any rug, laundry, aerial, fan, air-conditioner, wire or other object to hang or protrude from any window or door. No sign or other object shall be displayed on any wall or rooftop without the Declarant's written approval.

(a) The foregoing shall not prohibit the display of customary holiday decorations, subject to such specific limitations on type, manner of display and duration as the Declarant may from time to time fix and determine.

(9) All screens or screening not installed by the Declarant shall be subject to the Declarant's written approval as to appearance, design, materials and manner of installation. All window treatment introduced by an Owner or other occupant shall be subject to Declarant's written approval, to the extent the same are visible from outside the dwelling on the Lot; and, in the specific context of draperies and other window treatment, all draperies shall be lined with a white or off-white lining and all blinds, shades and other window treatments shall present themselves, when viewed from outside the dwelling, as white or off-white in color. No shades, awnings, shutters or window guards shall be used except with the Declarant's written approval. The Declarant may require the removal of any interior window coverings or door coverings which, in the sole opinion of the Declarant, are offensive or inappropriate when viewed from outside the dwelling.

(10) No rugs shall be beaten on patios, balconies or outdoor living areas, nor shall dust, rubbish or litter be shaken, swept or thrown from any window, door, patio, balcony or outdoor living area. No laundry shall be aired from any balcony or on any Lot or Common Facilities. Laundry lines and poles outside houses are prohibited.

(11) No bicycles, toys, tires, tools, ladders or any other items shall be stored or left outside of any dwelling.

(12) No Owner shall place his name, or any sign, advertisement or notice, in or on any Lot or Common Facilities except as permitted by the Declarant. No Owner shall paint, decorate or adorn any Lot or Common Facilities except as permitted by the Declarant.

(13) Firewood shall be stored only in an Owner's garage, on his patio or deck or in such other areas as may be designated by the Declarant from time to time and shall be neatly maintained and stacked at a height not to exceed three (3) feet height and a width not to exceed four (4) feet.

(14) All Lot Maintenance shall be performed by the Service Corporation as provided under Article and each Owner of a Lot by the acceptance of a Deed to his or her Lot expressly grants and conveys to the Service Corporation a non-exclusive and perpetual easement and license to come upon the Lot to perform the Lot Maintenance by and through its agents and employees without such activities constituting a trespass or any other form of intrusion into the property rights of the Owner.

(15) No radio, television or communications tower, aerial, dish or other reception or signal sending device shall be erected or placed on any Lot or Common Facilities or be attached to the exterior or any structure, except to the extent expressly authorized and permitted by any applicable Federal statute, ordinance or regulation., nor may any device, apparatus or decoration be permanently or temporarily attached to the exterior of the structure without prior written approval by the Service Corporation in accordance with Article 7. Christmas lights are specifically permitted but must be removed no later than January 15th of any year. Basketball hoops, street hockey nets and other street designed athletic equipment are specifically prohibited. No solar panels shall be erected or maintained on any structure.

(16) Lot Maintenance shall be performed by the Service Corporation and no alteration, modification, addition or new landscaping shall be performed unless the plans are submitted to and approved in writing by the Service Corporation in the same manner provided for structures in Article 7. Owners are permitted to grow small flower gardens which are neatly maintained. Statues, bird feeders, fountains and all other lawn decorative devices are prohibited. Swimming pools, both in-ground and above-ground, are prohibited, except for swimming pools installed by the Declarant. Fences are prohibited, except for fences installed by the Declarant on or across the Lots or the Common Facilities.

(17) All mail delivery will be taken at mail boxes located in an area dedicated to that purpose or as required by the United States Postal Service or other governmental agency or authority.

(18) If any portion of a dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner with due diligence to rebuild, repair or reconstruct in a manner substantially restoring the structure to its original appearance and condition immediately prior to the casualty. Reconstruction shall be commenced within four (4) months and pursued with due diligence to completion unless prohibited by causes beyond the reasonable control of the Owner.

(19) The Declarant or its successors and assigns shall undertake the work of developing all Lots included within the Property. The completion of that work, and the sale, rental, or other disposal of residential units is essential to the establishment and welfare of the subdivision as an ongoing residential community. In order that such work may be completed and the subdivision established as a fully occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to:

(a) prevent the Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of the Declarant or Declarant's transferees, from doing on any part or parts of the Property owned or controlled by the Declarant or Declarant's transferees, or their representatives, whatever they determine may be reasonably necessary or advisable in connection with the completion of such work;

(b) prevent the Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of the Declarant or Declarant's transferees, from constructing and maintaining on any part or parts of the Property owned or controlled by the Declarant, Declarant's transferees, or their representatives, such structures as may be reasonably necessary for the completion of such work, the establishment of Southernness as an age restricted residential community and the disposition of Lots by sale, lease or otherwise;

(c) prevent the Declarant, Declarant's transferees, or the employees, contractors, or subcontractors or the Declarant or Declarant's transferees, from conducting on any part or parts of Property owned or controlled by the Declarant or Declarant's transferees or their representatives, the business of completing such work, of establishing Southernness as an age restricted residential community and of disposing of Lots by sale, lease or otherwise, or

(d) prevent the Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of the Declarant or Declarant's transferees, from maintaining such sign or signs on any part or parts of the Property owned or controlled by them as may be necessary in connection with the subdivision, sale, lease or other disposition of Lots.

As used in this section the words "its transferees" specifically exclude purchasers of Lots improved with completed residences. The "part or parts of Property owned or controlled" shall include the Common Facilities.

(20) No signs, lamp posts, fences, birdbaths, or other improvements or adornments shall be erected or placed upon any Lot or Common Facility except pursuant to the Declarant's written permission. No existing fences or enclosures, walks, or curbs shall be painted, written or drawn upon, used to mount a sign, removed, marked or otherwise defaced. Lawn chairs, tables, barbecues, game equipment, toys and other such items shall be placed upon the grounds only at such times and places as the Declarant may from time to time prescribe; and shall be removed from the grounds when not in use unless otherwise permitted in writing by the Declarant.

(21) No fires shall be caused or permitted on the grounds of any Lot or the Common Facilities, except for the lighting of gas or charcoal in an elevated, safe, enclosed grill used on a patio or other area designated by the Declarant, if any. No activity shall be carried on upon the grounds of the Lots or the Common Facilities which will cause unreasonable wear and tear to the grounds thereof or damage to the landscaping.

(22) No Owner shall play or allow to be played any musical instrument, radio, television, phonograph, sound movie projector, tape recorder or like device, or shall practice singing or vocal exercises, or shall use any tool or engage in any noisy activity, earlier in the morning than eight o'clock a.m. Monday through Saturday, and eleven o'clock a.m. Sunday, or later in the evening than eleven o'clock p.m. Sunday through Thursday, and twelve o'clock midnight Friday and Saturday, or for longer (except for television, radio or phonograph) than three (3) hours in any given day, if the same shall disturb and annoy any other Owners. No Owner shall engage in any altercation at any time or otherwise shout, yell, or disturb the peace if the same shall annoy and disturb, any other Owners. Television, radio and other electrical devices subject to volume control shall not be played above moderate levels if any Owner objects, regardless of time of day.

(23) Perpetual easements for the installation and maintenance of sewer, water, gas and drainage facilities for the benefit of the adjoining land owners or private utility company ultimately operating such facilities are reserved as shown on the Record Plan. Perpetual easements in and over each Lot for the installation of electric, gas, telephone and cable facilities are reserved as well. No building or structure shall be erected within the easement areas occupied by such facilities.

(24) The Declarant or any Owner shall have the right to enforce the provisions contained in this Article against any Owner violating them, and the Declarant shall have the right, with or without court action, to reimbursement for its reasonable attorneys fees and other costs and expenses from any Owner who fails to abide by these restrictions and obligations.

ARTICLE 10 **MISCELLANEOUS**

(1) The covenants and restrictions of this Declaration shall run with and

bind the land, and shall inure to the benefit of and be enforceable by the Service Corporation or the owner of any land subject to this Declaration (including the Declarant) their respective legal representatives, heirs, successors and assigns.

(2) These covenants and restrictions may be changed, altered, modified or extinguished in whole or in part, at any time, by an instrument in writing signed by the then Owners of two-thirds (2/3) of the Lots, which instrument shall be recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware; excepting, however, that the Declarant, so long as it is the owner of any Lots, shall have the absolute right to amend this Declaration without the joinder of any Owners by executing and recording amendments in the Office aforesaid if such amendments are:

(a) required by Federal, State, County or local law, ordinance, rule or regulations; or

(b) required by any mortgagee of improved Lots and dwelling houses in the Property; or

(c) required by any title insurance company issuing title insurance to Owners and/or mortgagees of same; or

(d) 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

(e) required to correct errors, technical deficiencies or imperfections or to clarify inconsistencies or ambiguities (including inconsistencies with the Maintenance Declaration and other recorded documents affecting the Property).

(3) Any notice required to be sent to any Member or Owner under the provisions of the Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a Member or Owner on the records of the Service Corporation at the time of such mailing.

(4) The Service Corporation, or any Owner, shall have the right to enforce these covenants and restrictions by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction, to restrain violation, to require specific performance and/or to recover damages; and against the land to enforce any lien created by these covenants; and failure by the Service Corporation or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The expense of enforcement by the Service Corporation, including reasonable attorney's fees, shall be chargeable to the

Owner of the Lot violating these covenants and restrictions and shall constitute a lien on the Lot, collectible in the same manner as assessments hereunder.

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

(6) All reference herein to the masculine shall be deemed to include the feminine or neuter genders, and vice versa, as appropriate. All reference herein to the singular shall be deemed to include the plural, and vice versa, as appropriate.

(7) This Declaration shall be binding upon all Owners and their respective lessees, mortgagees, invitees and licensees.

(8) Except as expressly provided herein, neither the Service Corporation nor any Owner shall inure to the rights of the Declarant herein until or unless the Declarant assigns such rights by express assignment in a written instrument as provided herein below. The Declarant reserves the right to assign any and all of its rights hereunder, subject to the terms and conditions herein. The Declarant shall have the same rights as the Service Corporation to enforce this Declaration. Until such time as the Service Corporation has been created, the right and obligations of the Service Corporation set forth herein shall be vested in the Declarant; provided, however, that the foregoing shall not be construed to assign to the Service Corporation rights vested in the Declarant.

(9) Any and all of the rights, powers, title and estates reserved or given to Declarant herein may be assigned to any one or more individuals, corporations, or associations that will agree to assume, carry out and perform the same. Any such assignment or transfer shall be made by appropriate instrument in writing to which the assignee or transferee shall join for the purpose of evidencing its consent to the obligations and duties as are herein given and assumed by Declarant and shall be recorded in the Office of the Recorder of Deeds, New Castle County, Delaware at which time Declarant shall be released from any and all obligations or duties hereunder unless the Instrument expressly provides otherwise.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have caused their respective seals to be affixed and these presents to be signed by their respective officers hereunto duly authorized the day and year first above written.

**SEALED AND DELIVERED
IN THE PRESENCE OF**

**ODESSA NATIONAL DEVELOPMENT
COMPANY, LLC**, a Delaware limited liability
company

By _____
Joseph M. Capano, Manager

STATE OF DELAWARE

)

) SS.

COUNTY OF NEW CASTLE

)

BE IT REMEMBERED, that on this ____ day February, 2006, personally came before me, the Subscriber, a Notary Public for the State of Delaware, Joseph M. Capano, Manager of Odessa National Development Company, LLC 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 as a member of such limited liability company, and that his act of sealing, executing and delivering this Indenture was duly authorized by such corporation and in accordance with the terms of the governing documents of such limited liability company.

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

Notary Public

Print Name

My Commission Expires: _____