

DECLARATION OF RESTRICTIONS

FOX FIRE

2516

THIS DECLARATION, made this *1st* day of *February*, 1986,

by LAUREN M. CANDELOORO, hereinafter called the "Declarant."

WITNESSETH

WHEREAS, Declarant is the owner of all that certain parcel of land situated in Mill Creek Hundred, New Castle County, State of Delaware, known as FOX FIRE, and more particularly described and set forth on the record Major Land Development Plan of FOX FIRE as prepared by Karins and Associates, Inc., Professional Engineers and Land Surveyors, Drawing No. 670-1859, consisting of 3 sheets, dated November 15, 1985, recorded under Microfilm No. in the Recorder of Deeds Office in and for New Castle County, Delaware;

WHEREAS, Declarant desires to create thereon a residential community with private open space for the benefit of said community;

WHEREAS, Declarant desires to provide for the orderly preservation of property values for the individual dwelling lots and individual dwelling units in said community; and desires to provide for the orderly and efficient maintenance of said private open space; and to these ends, desires to subject the real property described above to the covenants, restrictions, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof and for the benefit of New Castle County.

NOW, THEREFORE, THIS DECLARATION WITNESSETH: That the Declarant does hereby covenant and declare that it shall hold and stand seized of those portions of the lands comprising FOX FIRE, more particularly described in Exhibit "A" attached hereto, under and subject to the following covenants, restrictions, easements, reservations, charges and liens, which shall be covenants running with the land and which shall be binding upon the Declarant, its successors and assigns:

ARTICLE I—MAINTENANCE COVENANT

1. For the purpose stated above and to maintain the private open spaces, the hard surface walkways and the storm water management facility as set forth on the Record Major Subdivision Plan of Fox Fire according to the provisions of County Ordinance No. 73-103, Section 7-23 (also referred to as Section 20-70(c)(d) of Subdivision Regulations), there has been organized, FOX FIRE HOMEOWNER'S ASSOCIATION, a non-profit membership corporation, incorporated under the Laws of the State of Delaware (hereafter sometimes referred to as "the Maintenance Corporation"). Members of said maintenance corporation shall be the record owners of lots shown on said plan of Fox Fire.

(a) The purchaser of any lot by the acceptance of a deed to said land, obligates and binds himself, his heirs and assigns, to become a member of the aforesaid maintenance corporation (Fox Fire Homeowner's 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 membership in said Corporation.

(b) The maintenance corporation shall be responsible for maintaining all private open land including but not limited to the following areas as designated on the Record Major Subdivision Plan of Fox Fire:

i. All Private open spaces;

ii. The three foot wide walkways consisting of all weather surface to be constructed within the six foot wide side and rear walkway easements and along the easterly side of Fox Fire Drive and along the southerly side of Hunter's Run;

iii. The storm water management facility.

(c) The purchaser of any land by the acceptance of a deed to said land, obligates and binds himself, his heirs and assigns, to become a member of the maintenance corporation and to be bound by all its rules and regulations and to be subject to all of the duties and obligations imposed by membership in said Corporation. Member, as herein used, shall mean all owners as a unit of any single lot; all the record owners of lots in Fox Fire shall be entitled to two votes for each lot in which they hold the fee interest of record.

(d) Each owner of any lot, by acceptance of a deed therefor, is deemed to covenant and agree to pay to the maintenance corporation when necessary, annual assessments or charges, such assessments to be fixed, established and collected from time to time as hereinafter provided. All assessments must be fixed at a uniform rate for all lots or units. The assessments levied by the Corporation shall be used exclusively by the Corporation for the purpose of its own operating costs and the improvement, maintenance and insurance of private open spaces, together with any improvements erected thereon now or hereafter and any taxes which may be related to the property. Said assessments shall be in sufficient amount to pay the cost of keeping the private open spaces and any improvements thereon in good useable condition and to offset any prior uncollected assessment.

(e) The maintenance corporation may include in its assessments amounts to cover the costs of providing for uniform services for the development of Fox Fire such as garbage collection and snow removal.

(f) Right to Fix Annual Assessments. The Corporation may from time to time set such annual assessments as it deems necessary to carry out the duties and obligations of the Corporation, as set forth hereinabove, and as they may change from time to time, provided however that any change in said assessment must be approved by a majority of the members present at a meeting duly called for this purpose, written notice of which shall have been sent to all members at least thirty (30) days in advance of the time set for said meeting, which said notice shall set forth the purpose of the meeting. The annual assessment shall be at the same rate for each and every lot, and must be in the aggregate sufficient to maintain the property owned by the Corporation, including any grass cutting, tree maintenance, normal landscaping maintenance, and payment of insurance premiums and taxes thereon, except to the extent that Declarant voluntarily pays for or provides same; assessments may include such additional sums as may be deemed necessary by the Corporation to establish reserves for maintenance and to meet the financial needs of the Corporation not relating to maintenance (as provided above) of its properties.

(g) Commencement Date of Annual Assessments. The initial assessment shall be due on June 1, 1986, in the amount to be determined by the Board of Directors of the Corporation for the period beginning June 1, 1986, and ending May 31, 1987. The first day of June each year shall be the due date of annual assessments for each succeeding assessment period. In the case of lots which are conveyed by the Declarant during any assessment period, the assessment on each of said lots shall be an amount which bears the same relationship to the annual assessment as the remaining number of months in that assessment period bear to twelve.

(h) Effect of Non-Payment of Assessment; The Personal Obligation of The Owner; The Lien; Remedies of Corporation. Assessments which are not paid before June 30 of the assessment period shall be deemed to be delinquent, and together with interest thereon at the maximum rate permitted under Delaware Law (Federal Discount Rate plus five (5%) percent) per annum from the due date until paid and costs of collection thereof including reasonable attorney's fees, thereupon shall become a continuing lien on the lot assessed which shall bind such lot in the hands of the then owner, his heirs, devisees, personal representatives, successors and assigns. The Corporation may bring any action at law against the Member personally obligated to pay any delinquent assessment or may bring an action in a court of competent jurisdiction to foreclose the lien thereof against the property, and there shall be added to the amount of such assessment interest and costs as aforesaid.

Said assessments or charges shall be subordinate in lien to the lien of any mortgage or mortgages on the 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 transferee 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 provide 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.

(i) It is expressly agreed that the assessment referred to above shall be a lien or encumbrance on the land in respect to which such assessments are made and it is expressly stated that by accepting title to any of the land included in said tract the owner (not including mortgagee) from the time of acquiring title thereto shall be held to have covenanted and agreed to pay said assessments to the maintenance corporation, including prior unpaid assessments.

(j) By his acceptance of title, each owner shall be held to vest in the maintenance corporation the right and power to take and prosecute all actions or suits, legal, equitable, or otherwise, which may be, in the opinion of the maintenance corporation, necessary or advisable for the collection of such assessments.

(k) The maintenance corporation shall keep an Assessment Lien Docket in which the amount of any delinquent assessment, the due date and the assessment period of any delinquent assessment shall be recorded.

(l) Notwithstanding any provision herein, no lot owned by Declarant or by her successors in title who are engaged in the construction and/or sale of dwelling houses in Fox Fire shall be subject to assessment hereunder.

(m) Declarant, for herself, her successors and assigns, grants to the lot owners the free and uninterrupted use, of all the private open lands (See Paragraph 1(b)) as shown on the said plan of Fox Fire, in common with others entitled thereto forever. Each lot owner, by acceptance of a deed, grants to all other lot owners, their guests, invitees, and licensees, the free and uninterrupted use of all the private open lands, and grants to the maintenance corporation the right to come upon any owner's lot for purposes of maintaining the private open spaces, the hard surface walkways and the storm water management facility.

(n) Declarant hereby grants to New Castle County, its successors and assigns, the right, privilege and authority to enter upon said premises and maintain said private open space, hard surface walkways and storm water management facility at the expense of the

owners of said lots. In the event that New Castle County elects to maintain the private open lands as set forth above, all expenses of maintenance shall be assessed prorata against the owners of each lot, and shall be collectible by New Casle County, as provided in New Castle County Code Section 20-70, or in the manner set forth above in relation to collection by the maintenance corporation. The provisions of Paragraph 1(h) above notwithstanding, any lien for such expenses or maintenance asserted by the County and filed with the Recorder of Deeds in accordance with New Castle County Code Section 20-70 shall be a lien from the time of recording and shall have priority in relation to other liens, either general or special, including mortgages and other liens according to the time of recording of such liens in the proper office, as in the said section provided.

2. The foregoing covenants may not be modified, amended or altered in whole or in part, except by the consent of all lot owners and of the New Castle County Council.

ARTICLE II—GENERAL USE RESTRICTIONS

Section 1. Private Residences. The lots shall be used for private residential purposes only and no buildings of any kind except private dwelling units shall be erected or maintained thereon. No out buildings shall be constructed or maintained upon the lots until compliance with this Declaration has been accomplished.

Section 2. Trailers, Mobile Homes, Etc. No temporary structure, including trailers and mobile homes, shall be permitted or maintained upon any lot.

Section 3. Animals and Pets. No animals of any kind other than usual household pets shall be kept or maintained on the properties and no horses, cows, goats, hogs, poultry, pigeons, or similar animals shall be kept upon the lots.

Section 4. Television and Radio Antennas. No satellite dish, television or radio antenna or other similar antennae shall be constructed, placed, or maintained on any dwelling unit or lot.

Section 5. Trash Receptacles. Trash receptacles shall be kept in enclosed areas, hidden from view, except on regular collection days when they may be placed temporarily at the curb.

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Section 6. Prohibited Vehicles. No trucks, buses, travel trailers, boat trailers, boats, utility trailers or campers whatsoever and no disabled vehicles of any description shall be kept or maintained on any street, lot or parking bay, except that pick up trucks up to and including 3/4 ton and enclosed vans up to 10,000 pounds G.V.W. are permitted, provided that they do not exceed a height of seven feet.

Section 7. Signs. No signs of any nature whatsoever shall be erected, placed or maintained on any lot within the premises described, except that a single real estate "For Sale" sign may be so placed and maintained.

Section 8. Fences. No fence shall be erected on any lot closer to the front street than a line thirteen (13) feet forward of and parallel to the rearmost wall of the principal building on said lot. In any event, no fencing of any kind shall extend into the pedestrian easements along any side or rear lot line as located on the recorded plan cited in Exhibit "A" attached hereto. No fences except as provided in Section 10 below shall be of a height of more than four (4) feet and all such fences shall be constructed only of wood. In any event, no such fences shall be constructed or maintained upon lots until plans for same have been approved by Declarant, its successors or assigns pursuant to Article III, Section 1, herein.

Section 9. Clothes Lines. No permanent outside clothes line or clothes line posts are permitted. Portable outside clothes lines will be permissible in rear yards only provided same are used and clothing is hung only during daylight hours.

Section 10. Swimming Pools and Pool Fences. No above-ground swimming pools shall be constructed or maintained on any lot. In-ground swimming pools may be constructed and maintained thereon. In any event, no such swimming pool shall be constructed or maintained upon the lots until compliance with Article III, Section 1, herein, has been accomplished. Any such swimming pool must be enclosed with either a post and rail fence or a chain link fence provided it is landscaped on the exterior to conceal said fence. Said landscaped exterior must be approved by Declarant or its assigns. The height and width of the entire interior perimeter of the aforementioned post and rail fences must be fully covered with wire mesh and plans specifically approved by Declarant or its assigns.

Section 11. Lawn Mowing. The Owner of each Lot shall be responsible for the maintenance of grass and weeds thereon and shall mow said Lot in accordance with the Grass and Weed Control Ordinance of New Castle County. Declarant reserves to itself, its successors and assigns the right to enter peaceably any Lot whose Owner has not complied with this covenant for the purpose of mowing same at the expense of the Owner.

Section 12. Yards. No statues, sculptures, painted trees, bird bath replicas of animals or other like objects may be affixed to or placed on any Lot or building, where they would be visible from any street, without prior written approval of the Architectural Committee.

ARTICLE III—ARCHITECTURAL CONTROL

Section 1. Review of Plans. No building, shed, fence, wall, posts, covers, swimming pool or other construction shall be commenced, erected or maintained upon any lot, nor shall any exterior addition to or change or alteration thereof, including but not limited to exterior facade color change, addition of storm doors or shutters and/or change in grade or drainage, be made until the plans and specifications, with illustrations, showing the nature, kind, shape, color, height, materials and proposed location of same shall have been 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.

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.

For the purposes of this Declaration, Declarant shall have the sole rights to determine which of lines and/or street lines shall be "front" or "side" lines.

Section 2. Assignment of Architectural Control Function. Declarant shall assign the powers and rights reserved hereunder to the Board of Directors of the Fox Fire Homeowner's Association. The Bylaws of the Corporation shall establish an Architectural Committee and procedures for review and appeal of requests for architectural changes.

ARTICLE IV—SPECIAL COVENANTS FOR TOWNHOUSE AND DUPLEX LOTS

Section 1. Creation of Perpetual Reciprocal Cross Easements for Adjoining Townhouses and Duplex Lots Covering Garage Party Walls, and Other Party Walls, Roof Overhang Encroachments, with Perpetual Easement for Right of Entry to Repair and Maintain Same.

Declarant and all successor owners of title to any townhouse or duplex lot shall and is hereby granted by developer and its successors in title a perpetual reciprocal cross easement upon any adjoining townhouse and/or duplex lot for any encroachment thereon by a party wall, garage party wall, or any other wall, roof or roof overhangs, eaves, down spouts, gutters or splash blocks.

Declarant and all successor owners of title to such lots shall have a perpetual easement for right of entry upon the adjoining townhouse and/or duplex lot owner's premises for the purpose of making repairs to such garage party wall or other party wall, roof or roof overhangs, eaves, down spouts, gutters or splash blocks, provided all such repairs and maintenance is done at anytime between the hours of 8:00 a.m. to 5:00 p.m., Monday through Saturday, and at such other times provided written permission is first obtained from the adjoining lot owner for such other times. Provided further that the lot owner or party exercising the right of entry upon the adjoining lot owner's premises for repair and maintenance of the aforementioned structures, shall be responsible for preserving and/or restoring the adjoining lot owner's premises to its same condition prior to any exercise of the right of entry.

Section 2. No Lawsuit for Damages or Removal of Encroachment. Neither Developer nor any townhouse or duplex lot owner and/or their successors in title may maintain an action in law or equity against an adjoining townhouse or duplex lot owner, or his successors in title, for damages or for the removal of any encroachment caused by any of the structures or objects enumerated in Article IV, Section 1, above.

Section 3. Eaves and Overhangs. In the event any portion of the eaves, gutters or spouts protrudes or encroaches on an adjoining townhouse or duplex lot or lots, such protrusion shall not be deemed an encroachment, and the owner or owners of such lots, or their successors in title, shall neither maintain any action for the removal of any such structure or a portion of any structure as originally constructed by declarant nor maintain any action for damages.

V--SINGLE-FAMILY LOTS

Section 1. Right of Entry. The Developer and its successors in title hereby retain with respect to single-family dwelling lots the right to enter any adjacent lot or lots to correct or repair any condition which causes or may cause any unsafe or unsanitary condition and/or to cure any drainage problems, provided however that said right of entry shall only be exercised to correct the aforementioned conditions and the party so exercising said right of entry to the adjoining lot or lots shall be responsible for restoring same to the condition it was in prior to the exercise of said right of entry.

ARTICLE VI--ENFORCEMENT

Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter or a waiver to enforce the other restrictions contained herein. Action of enforcement may be brought by Declarant, its successors and assigns, or any owner of any land which is the subject of this Declaration; Declarant reserves the right to assign its power to enforce to Fox Fire

Homeowner's Association by appropriate instrument in writing, recorded in the Office of the Recorder of Deeds, in law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter or a waiver to enforce the other restrictions contained herein. Action of enforcement may be brought by Declarant, its successors and assigns, or any owner of any land which is the subject of this Declaration; Declarant reserves the right to assign its power to enforce to Fox Fire Homeowner's Association by appropriate instrument in writing, recorded in the Office of the Recorder of Deeds, in and for New Castle County, Delaware.

ARTICLE VII—DECLARANT'S DEVELOPMENT OF FOX FIRE

1. Declarant's Business. Notwithstanding other restrictions or articles herein, this Declaration shall not be construed so as to prohibit Declarant or her successor in title to vacant lots from building or selling dwelling houses, including but not limited to maintaining and using, advertising and promotions signs, maintaining an office or offices of construction and/or sales, storing construction materials or generally carrying on its business on any portion or portions of Fox Fire so long as Declarant owns any part thereof.

ARTICLE VIII -NOTICES

Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed postage-paid to the last known address of the person who appears as member or owner on the records of the Corporation at the time of such mailing.

ARTICLE IX -SEVERABILITY

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

IN WITNESS WHEREOF, the said LAUREN M. CANDELORO ,

Declarant, has caused this Declaration to be executed the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Elizabeth C. Craig
as to both

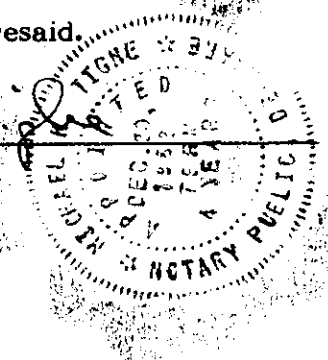
BY: Lauren M. Candeloro (SEAL)

ATTEST: Marie C. Duffert, Esq.

STATE OF DELAWARE)
) SS.
 NEW CASTLE COUNTY)

BE IT REMEMBERED, that on this 7th day of February ,
 A.D. 1986, personally appeared before me, the Subscriber, a Notary Public for the State of
 Delaware, LAUREN M. CANDELORO , party to this Indenture,
 known to me personally to be such, and she acknowledged this Indenture to be her act and deed.
 GIVEN under my hand and seal of Office the day and year aforesaid.

Michael K. F.
 NOTARY PUBLIC



REC'D
 RECORD
 MAR 26 1986
 4.09
 LEO J. DUGAN, Jr. Recorder