

TAX MAP NOS. 3-30-11.00-419
thru 3-30-11.00-605.00
All lots in the *Orchard Hill* Subdivision

**DECLARATION OF
COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR THE ORCHARD HILL SUBDIVISION
PURSUANT TO PLOT BOOK 71, PAGE 229**

**DECLARATION RESTRICTIONS
FOR
ORCHARD HILL**

TABLE OF CONTENTS

Article I		Page
	Definitions	
Section 1-10	Definitions	4
Article II	Property <u>Rights</u>	
Section	1. Owner's Easements of Enjoyment	5
	2. Declaration of Use	6
	3. Rental of Lots	6
	4. Encroachments	6
Article III	Membership and Voting Rights	
Section	1. Membership	7
	2. Classes of Voting Membership	7
Article IV	Covenants for Maintenance Assessments	
Section	1. Creation of the Lien and Personal Obligations of Assessments	7
	2. Purpose of Assessments	8
	3. Maximum Annual Assessment	8
	4. Declarant's Duty to Fund Deficits	8
	5. Special Assessments	9
	6. Notice and Quorum for an Actions Authorized Under Section 3 and 5	9
	7. Uniform Rate of Assessment	9
	8. Date of Commencement of Annual Assessments: Due Dates	9
	9. Effect of Non-Payment of Assessments: Remedies of the Association	10
	10. Notice of Lien	10
	11. Foreclosure	10
	12. Curing of Default	10
	13. Cumulative Remedies	10
	14. Subordination of the Lien Mortgages	10
	15. Notice to Mortgagees	11

Article V	Architectural Standards	
Section	1. Creation	11
	2. Approval	11
Article VI	Maintenance	
Section	1. Common Areas	12
	2. Individual Lots	12
Article VII	Powers and Duties of The Association	
Section	1. General Powers and Duties	13
	2. Maintenance of Records	14
Article VIII	Prohibited Uses and Nuisances	
Section	1. Declaration of Restrictions	14
	2. Itemization	14
	3. Right of Association to Remove or Correct a Violation of this Article	16
	4. Class B Member's Exemption	16
Article IX	Easements	
Section	I. Property Subject to Easements	16
	2. Easements	16
Article X	Annexation of Additional Property	
Section	1. Property Subject to Declaration	17
Article XI	General Provisions	
Section	1. Enforcement	17
	2. Severability	18
	3. Amendment	18

Tax Parcel Nos.
Return to Hudson, Jones
225 S. State St. -Dover, DE 19901

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

THIS DECLARATION, made this 6th Day of October, 2004 by and between LHID ORCHARD HILL, LLC, a Delaware Limited Liability Company, and CROLLWOOD DEVELOPMENT, LLC, a Delaware Limited Liability Company, hereinafter referred to as "Declarant", and the undersigned individual lot owners, who are Joining in this Declaration in order to evidence their assent to the imposition of the covenants, conditions and restrictions upon their respective lots.

WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property located in Cedar Creek Hundred, Sussex County, Delaware, more particularly described in the plats entitled "Orchard Hill Subdivision" recorded in the Office of the Recorder of Deeds, in and for Sussex County, in Plat Book 71. Page 229 on August 1, 2001, which Plats shall collectively be referred to herein as the "Plats"; and

WHEREAS, the Declarant desires to provide for the preservation of values and amenities in the community being developed on the aforesaid tract and for maintenance of common areas; and to this end desires to subject the Property, as hereinafter, defined and as described in the aforesaid Plats, to the covenants, conditions, easements, charges, liens and restrictions, hereinafter set forth, each and all of which is and are for the benefit of said property and the subsequent Owners, as hereinafter defined; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the said community to create an association to which are delegated and assigned the powers and duties of maintaining and administering the common areas, administering and enforcing the within covenants and restrictions and collecting and disbursing the charges and assessments hereinafter created; and

WHEREAS, the Declarant has formed (or intends to form) Orchard Hill Homeowners Association, Inc., for the purpose of carrying out the powers and duties aforesaid

NOW, THEREFORE, the Declarant hereby declares that the property described in the Plats aforesaid is and shall be held, conveyed, hypothecated or encumbered, sold, leased, used, occupied, and improved subject to the covenants, restrictions, easements, charges and, liens (hereinafter sometimes referred to as "covenants" or "restrictions") hereinafter set forth:

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Orchard Hill Homeowners Association, Inc., a Delaware non-profit non-stock corporation, its successors and assigns.

Section 2. "Board" shall mean and refer to the Board of Directors of the Association.

- Section 3. "Common Areas" shall mean all real property (including the improvements thereon) owned by the Association for the common use and enjoyment of the Owners. The Common Areas which hereafter be owned by the Association are described in "Exhibit B" attached hereto and made part hereof.
- Section 4. "Declarant" or "Developer" shall mean and refer to LHID Orchard Hill LLC and Croll-Wood Development, LLC limited liability companies, its successors and assigns and any other legal entity which, in conjunction with or in lieu of LHID Orchard Hill, LLC and Croll-Wood Development, LLC develops dwellings on the property, if such successor, assign or legal entity should acquire one or more undeveloped lots from the Declarant for the purpose of development and/or construction of a dwelling thereon.
- Section 5. "Dwelling" shall mean and refer to any residential single family residential structure constructed on any portion of the property.
- Section 6. "Lot" shall mean and refer to any plot or land shown upon any recorded subdivision plat of the properties, with the exception of the Common Areas and publicly dedicated right-of-way.
- Section 7. "Member" shall mean and refer to every person, group of persons or entity who holds membership in the Association including the Declarant
- Section 8. "Mortgagee" shall mean and refer to the holder of any mortgage or trustee or beneficiary of any deed of trust on any Lot provided such holder is an institutional lender and/or licensed mortgage banker.
- Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest as security for the performance of an obligation.
- Section 10. "Property" or "Properties" shall mean and refer to that certain real property hereinabove described, as Orchard Hill Subdivision, PB 71, Page 229 and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II.

PROPERTY RIGHTS

- Section 1. Owner's Easements of Enjoyment Every Owner shall have a right and easement in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:
- (a) the right of the Association to assess annual fees for the maintenance and improvement of the Common Areas;

- (b) the right of the Association to suspend the rights and right of use of the Common Areas by an Owner for any period during which assessment against his Lot remains unpaid, and for any period during which an Owner has violated and continues to violate the published rules and regulations of the Association;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members and fifty-one percent (51%) of all Mortgagees holding first mortgages or first deeds of trust on Lots within the Property which have been annexed into the Association
- (d) the right of Declarant, prior to the conveyance of the Common Areas, and of the Association to grant and reserve easements and rights-of-way through, under, over and across the Common Areas, for installation maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, fuel oil, communication systems (including cable television) and other utilities;
- (e) the right of the Association, by and through its Board, to limit the number and charge reasonable fees for guests of members utilizing Common Areas;
- (f) the right of the Association, by and through its Board, to establish uniform rules pertaining to the use of the Common Areas and any improvements that may be located thereon; and
- (g) the right of the Association, by and through its Board, to regulate the use maintenance, repair and replacement of Common Areas and amenities located thereon.

Section 2. Declaration of Use. Any Owner may delegate in accordance with the By-Laws, his right of enjoyment to the Common Areas to any person or persons residing on his lot, including the members of his family, his lessees or contract purchasers, subject to such rules which the Board may from time to time adopt; provided, however, that such delegation shall be not abrogate the duty of the Owner to pay assessments as provided in Article IV hereof.

Section 3. Rental of Lots. The Owner of any Lot may lease his respective property subject to the following terms and conditions:

- (a) no lot shall be leased until such time as a Dwelling has been constructed upon it;
- (b) any lease between an Owner and a lessee must be in writing and shall not be for a term of less than six (6) months;
- (c) the lease shall state that it is subject in all respect to, and that the lessee shall comply with all of the provisions of the Declaration, Articles of Incorporation and the By-Laws, and that failure of the lessee to comply with any of the terms of the aforementioned documents shall be a default under the lease,
- (d) the lease shall in no way relieve the Owner of any duty or obligation imposed by this Declaration.

- Section 4. Encroachments. In the event that any portion of any Dwelling encroaches upon the Common Areas and facilities as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the aforesaid Dwelling a valid easement of such encroachment and for the maintenance of same shall exist so long as such encroachment exists.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

- Section 1. Membership. Every Owner of a lot which is subject to assessments shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.
- Section 2. Classes of Voting Membership. The Association shall have two (2) classes of voting membership:

CLASS A, Class A members shall be all Owners, with the exception of the Declarant and/or all Class B member(s) and shall be entitled to one vote (1) for each Lot owned. When more than one person hold an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

CLASS B. The Class B member shall include the Declarant and its grantees, successors and assigns who acquire more than one lot prior to completion of a Dwelling thereon. The Class B member shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership, or
- (b) seven (7) years from the date of recordation of this Declaration; PROVIDED, HOWEVER, that if the Class B member is delayed in the improvement and development of the Property on account of a sewer, water or building permit moratorium or any other cause or event beyond the Class B member's control, then the aforesaid seven (7) year period shall be extended by a period of time equal to the length of the delays or three (3) years, whichever is less.

ARTICLE IV.

COVENANTS FOR MAINTENANCE ASSESSMENTS

- Section 1. Creation of the Lien and Personal Obligations of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants and agrees, and each Owner of a Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for any purpose; such assessments to be established and collected as hereinafter provided. The annual and special assessments together with interest, late charges, costs of collection, and reasonable attorneys' fees, shall be a charge on the land and shall be a lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, late charges, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.
- Section 2. Purpose of Assessments. The assessments levied by the Association shall be used for the following purpose:
- (a) to pay taxes and other governmental charges and assessments on the Common Areas, if any;
 - (b) to promote the health, recreation, and welfare of the residents in the Lots;
 - (c) to pay all administrative, managerial, legal, insurance and any other costs or expenses incurred by the Association in the operation of the Association;
 - (d) for the use, improvement, maintenance, repair, and replacement of the Common Areas,
 - (e) to provide an adequate reserve for maintenance, repair and replacement of the Common Areas and any improvements situate thereon;
 - (e) to pay for the cost of use, improvement, maintenance, repair and replacement of storm water management facilities and recreational amenities, if any, constructed upon the Common Areas or upon public easement areas appurtenant to the Property.
- Section 3. Maximum Annual Assessment. Until January of the year immediately following the conveyance of the first Lot to an Owner the maximum permitted annual assessment shall be One Hundred Fifty Dollars (\$150.00) per Lot per year, which shall be payable monthly, quarterly, semi-annually, or annually, as determined by the Board.
- (a) From and after January I of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment may be increased each year not more than ten percent (10%) above the maximum permitted annual assessment amount for the previous year, as may be calculated in a cumulative manner, such increase to be determined by the Board, without a vote of the membership.

- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum permitted annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.
- (c) That Board of Directors may fix the annual assessment at an amount not in excess of the maximum permitted annual assessment amount.

Section 4. Declarant's Duty to Fund Deficits. Any and all Lots owned by the Declarant shall be exempt from assessment pursuant to this Article IV. During any fiscal year in which the Declarant owns one or more Lots, it shall be obligated to or for the account of the Association, at such time or times as is reasonably required by the Association an aggregate amount equaling the lesser of (a) the total amount which Declarant would have owed to the Association if such Lots had been eligible for assessment during that fiscal year, or (b) the amount if any, by which the expenses of the Association exceed the assessment levied against all Lots eligible for assessment for that fiscal year. Declarant shall be entitled to meet such funding obligations by making, or causing one or more cash payments or in-kind distribution of goods or services, or any combinations thereof and the Association shall have the right to enter into written or oral contracts with the Declarant for contribution of such goods or services. Nothing in this Section or elsewhere in this Declaration shall be deemed to impose upon the Association or Declarant any duty whatsoever to refrain from increasing the respective amounts of any assessments from fiscal year to fiscal year or from levying any special assessments, all to the extent otherwise permitted by this Declaration

Section 5. Special Assessments. In addition to the annual assessments authorized above, (1) the Board may, without consent of the membership, levy special assessments not exceeding the aggregate total amount of Ten Thousand Dollars (\$10,000.00) in any given calendar year for the purpose of defraying in whole or in part any unbudgeted contingency expense of a non-recurring nature or other extraordinary expense; and/or (2) the Association may levy special assessments for the purpose of defraying, in whole or in part the cost of any construction, recons true tier., repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property, or for any other purpose, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting called for this purpose.

Section 6. Notice and Quorum for any Action Authorized Under Sections 3 and 5. Written notice of any meeting cahed for the purpose of taking any action under Article IV, Sections 3 or 5 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast twenty-five percent (25%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called subject to the, same notice requirements set forth above, and the required quorum at any subsequent meeting shall be reduced to one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

- Section 7. Uniform Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for Lots except as noted in Section 4 of this Article, and may be collected on a monthly basis, quarterly, semi-annually, or annually, as determined by the Board.
- Section 8. Date of Commencement of Annual Assessments:
Due Dates. The annual assessment provided for herein shall commence thirty (30) days following the sale and Settlement of the first 138th Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Board shall establish the due dates. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.
- Section 9. Effect of a Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum and late charges not exceeding Fifteen Dollars (\$15.00) or one-tenth (1/10th) of the total amount of delinquent assessment or installment, whichever is greater, provided the late charge may not be imposed more than once for the same delinquent payment and may only be imposed if the delinquency has continued for at least fifteen (15) calendar days. The Owner shall also be responsible for payment of all costs of collection and reasonable attorneys' fees incurred by the Association as a result of nonpayment of the assessment amount. Subject to the provisions of Section 14 of this Article, the Association may bring an action at law against the Owner personally obligated to pay the same, or, establish and foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.
- Section 10. Notice of Lien. No action shall be brought to establish or foreclose an assessment lien or to proceed under the power of sale herein except in strict accordance with Delaware law.
- Section 11 Foreclosure. The Declarant for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant, agree and authorize the Association to foreclose on any recorded lien in accordance with the procedures prescribed in the rules pertaining to foreclosures of mortgages in the Delaware Rules of Procedure, as if the Association were the mortgagee and the Owner were the mortgator.

- Section 12. Curing of Default Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed One Hundred Dollars (\$100.00), to cover the costs of preparing and filing or recording such release,
- Section 13. Cumulative Remedies. The assessment lien and the rights to foreclosure sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its successors and assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.
- Section 14. Subordination of the Lien to Mortgages. The Lien of the assessments provided for herein shall be subordinate to the Lien of any institutional Mortgagee providing purchase money financing in either the form of a single purchase money first mortgage or a combination purchase money first and purchase money second mortgage, such purchase money first and purchase money second mortgage combination designed to facilitate financing due to statutory lending limits which may prohibit financing of first mortgages in excess of certain dollar amounts. Sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot Owner from liability for any assessments thereafter becoming due from the lien thereof.
- Section 15. Notice to Mortgagees. Upon request, the Association shall notify the Mortgagee of any first mortgage or any first deeds of trust on any Lot for which the assessment levied pursuant to this Declaration becomes delinquent for a period in excess of sixty (60) days and in any other case where the Owner of such Lot is in default with respect to the performance of any other obligation hereunder for a period in excess of sixty (60) days. Such notification shall be in writing.

ARTICLE V.

ARCHITECTURAL STANDARDS

- Section 1.** Creation
- (a) There shall be an architectural committee (referred to as the "Architectural Committee" or "Committee") for the Lots. The Committee shall have a minimum of three (3) members, each of whom shall (notwithstanding the expiration of the period referred to in the provisions of subsection (b) of this Section (1) serve as such until the earlier to occur of
- (i) his resignation from the Committee, or
 - (ii) his, replacement pursuant to the following, provisions of this Section by the Declarant or the Board

- (b) The Declarant shall have the exclusive right from time to time to designate and replace the members of the Committee until the later to occur of:
 - (i) the seventh anniversary of the date hereof, or
 - (ii) the conveyance of record by the Declarant to one or more persons of the title to at least ninety percent (90%) of the Lots.
- (c) Thereafter, the Board shall have the exclusive right to designate and replace the members of the Architectural Committee who will serve at the pleasure of the Board.

Section 2.

Approval,

- (a) Subject to the operation and effect of the provisions of Article VIII, and except for any improvements by the Class B member(s) no change, alteration or addition affecting the appearance of the exterior of any Lot shall be commenced, no building, driveway, planting, parking pad, fence, wall, sign, fuel tank, deck, patio, shed, privacy screen, sidewalk, flue, chase, antenna, porch, pool, hot-tub or clothes dryer, or other structure of any kind whatsoever (each of which is hereinafter referred to as an "Improvement") shall be constructed, reconstructed, placed, (even temporarily or periodically), maintained or modified (other than, (1) exterior repainting in the same color as the existing color, " (2) interior painting or other modifications not visible from. or affecting the exterior of the dwelling), unless such action and such Improvement has been approved expressly and in writing by the Architectural Committee, which shall have the absolute right to refuse to grant such approval for any aesthetic or other reasonable cause, and to withhold such approval until plans and specifications, showing in reasonable detail the nature, kind, shape, height, materials, location and approximate cost of such Improvement, have been submitted to and approved by the Committee expressly and in writing. In considering whether to grant any such approval, the Committee may consider the suitability of such proposed Improvement with relation to such Lot and the other Lots, and may base such consideration upon such, if any, information concerning the nature, kind shape, heights, materials, location and approximate cost of such Improvement as is furnished to the Committee, as aforesaid, all to the end that such Improvement shall be in harmony with, and have no perceived adverse affect upon, its immediate surroundings and the other Lots.
- (b) If any Owner submits to the Committee a written application for approval of any Improvement as aforesaid, and if the Committee has not disapproved, in writing said application p within thirty (30) days of receipt hereof, such approval shall thereupon be deemed to have been given.
- (c) The affirmative vote of a majority of the members of the Committee shall be required for it to take any action; provided, that such majority may designate one member to act for it.
- (d) The above provisions to the contrary notwithstanding, the provisions set forth in Article V shall not apply to any Structures commenced, erected or maintained by a Class B member on any Lot, or within the Property until after completion thereof by the Class B member and conveyance to a Class A member.

ARTICLE VI.

MAINTENANCE

Section 1. Common Areas. The Association shall be responsible for the care and maintenance of the Common Areas.

Section 2. Individual Lots.

- (a) The Owner of each Lot shall otherwise be responsible for the care, maintenance, repair and replacement of his Lot, Dwelling and all improvements situate thereon, therein and thereunder including, but not limited to , all grass, ground cover, street trees and/or other landscaping features located on or adjacent to the Lot, extending to the curb line of any street adjoining such Lot. The Association, after approval by a majority of the board, may elect to maintain and/or replace street trees and/or other landscaping features located upon the Lots. In the event of such an election by the Association, the Association, and not the Owner of the Lost(s) shall pay the cost of such maintenance and/or replacement.
- (b) In the event that any Owner shall fail to maintain any Lot or the remises and the improvements situate thereon in a manner satisfactory to the Board, the Association, after approval by a majority vote of the Board, shall have the right, through its agents, contractors and employees to enter upon said Lot and to repair, maintain and/or restore the Lot, the premises and any improvements erected thereon. Such right of entry, repair, maintenance and restoration shall be exercisable only upon fifteen (15) days' written notice given to the Owner thereof, unless, in the discretion of the Board, a genuine emergency necessitates a shorter period of time. The costs of any such repairs, maintenance and/or restoration shall be added to and become part of the lien for assessment to which such Lot and Owner is subject. Enforcement of the right to recover these assessments may be had pursuant to Article IV, Section 9, hereof.

ARTICLE VII.

POWERS AND DUTIES OF THE ASSOCIATION

Section 1. General Powers and Duties. In addition to the powers and duties enumerated in its Articles of Incorporation, and By-Laws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

- (a) Own, maintain, improve, construct, reconstruct (in the event of deterioration or destruction) and manage all of the Common Areas and all facilities, improvements and landscaping thereon, and all property acquired by the Association, and to pay all the costs thereof;
- (b) Pay personal property taxes and other charges assessed against the Common Areas;

- (c) Have the authority to obtain, for the benefit of the Common Areas, all water, gas and electric service and refuse collection;
- (d) Grant easements where necessary for utilities and sewer facilities over the Common Areas to serve the Common Areas;
- (e) Maintain such policy or policies of insurance on the Common Areas as the Board deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its members;
- (f) Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed shall not exceed one (1) year in term unless approved to a majority of the members of the Association, with exception of an insurance contract that may be for a period not to exceed three (3) years.
- (g) Enforce applicable provisions of this Declaration and the By-Laws of the Association and establish and enforce uniform rules pertaining to the use of the Common Areas;
- (h) Have the authority to contract for fire, casualty, liability and other insurance on behalf of the Association.

Section 2. Maintenance of Records. The Association shall maintain adequate books and records and any member, Owner and Mortgagee shall have the right to examine the books and records of the Association during regular business hours and upon reasonable notice.

ARTICLE VIII

PROHIBITED USES AND NUISANCES

Section 1. Declaration of Restrictions. Each owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to be bound by the terms of the aforesaid Declaration of Restrictions.

Section 2. Itemization. Except for the activities of the Declarant during original development, construction and marketing period.

- (a) No noxious or offensive trade or activity shall be carried on upon any Lot situate upon the Properties, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or the other Owners.

- (b) The maintenance, keeping boarding and/or raising of animals, livestock or poultry of any kind, regardless of number shall be and is hereby prohibited on any Lot situate upon the Properties, except that this shall not prohibit the keeping of not more than two (2) dogs or cats, provided they are not kept; or bred or maintained for commercial purposes. Owners are required to keep all pets on a leash when outside and to remove any and all litter created by his or her pet.
- (c) No burning of any trash and no accumulation or storage of litter, new or used building materials or trash of any kind shall be permitted on the Properties
- (d) Except as herein elsewhere provided, no junk vehicle, commercial vehicle, trailer, truck, (except for pick-up trucks for personal use with a maximum payload not exceeding one thousand (1,000) pounds) camper, camp truck, tractor trailer, construction type equipment, mobile home, house trailer, recreational vehicle, boat, vehicle that does not display current registration, or the like shall be kept upon the Properties except as determined by the Board (except for bona fide emergencies), nor shall the repair or **extraordinary maintenance of automobiles** or other vehicles be carried out thereon. The washing, detailing, maintenance and/or repair of vehicles not owned by owners or residents of the Association is prohibited. The Association may, in the discretion of the Board, provide and maintain a suitable areas designated for the parking of such vehicles and such other activities with respect to such vehicles as the Board may determine.
- (e) Trash and garbage container shall be kept in a clean and sanitary condition ash shall not be permitted to remain in public view except on days of trash collection. Such containers shall be kept in the rear of any Lot, or in an area designated by the Board.
- (f) No structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be used on any Lot at any time. Temporary playhouses may be so maintained provided their primary purpose is the maintenance and/or promotion of juvenile recreation. Storage sheds not to exceed 8 feet by 10 feet may be kept on each lot providing that the roof is of gable construction and the roofing and siding colors match that of the home situated on said property. Subject to application to and approval by the Board or by the Architectural Committee as the case may be.
- (g) No signs of any character shall be erected/posted, or displayed upon, in or about any Lot or nit; PROVIDED, HOWEVER, that one temporary real estate sign not exceeding ten (10) square feet in area, may be erected upon and Lot placed upon the market for sale or rent. No pools shall be maintained in any lot with the exception that one in ground pool may be constructed on each lot providing that it meets all city codes. All pools will be subject to review by the Architectural Review Committee.

- (i) No structure, planting or material other than sidewalks shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels.
- (j) No trade, business, commerce, industry, profession or occupation shall be operated on any Lot or from or within any Dwelling, except that a no-impact home-based business may be conducted with a Dwelling upon the prior written consent of the Board. For the purposes of the Subsection, a "no-impact home-based" shall mean a business that is
 - (i) consistent with the residential character of the Dwelling and Association;
 - (ii) subordinate to the use of the Dwelling for residential purposes and requires no external modifications that detract from the residential appearance of the Dwelling or Lot;
 - (iii) uses no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable by neighbors or that causes an increase of common expenses that can be solely attributable to the business; and does not involve use, storage, or disposal of any grouping or classification of materials that the United States Secretary of Transportation, the State of Delaware or any local governing body designates as a hazardous material.
- (k) No radio aerial antenna or satellite or other signal receiving dish, or other aerial or antenna for reception or transmission, shall be placed or kept on any Lot, except on the following terms;
 - 1 A small satellite may be erected on the exterior of a home for the reception of T.V. signal. The size may not exceed 30" in diameter
- (l) No exotic or invasive planting may be installed or maintained on any lot. All plantings exceeding normal annual plantings must be approved by the Architectural Review Committee. This includes water gardening features.
- (m) Fencing: Fencing shall not exceed 5' in height and shall not extend past the rear corners toward the front of the house. All fencing must be approved by the architectural review committee.

Section 3. Right of the Association to Remove or Correct a Violation of this Article. The Association may, in the interest of the general welfare of all the Owners and the Properties, and after reasonable notice to the Owner, enter upon any Lot at reasonable hours on any day for the purpose of removing or correcting any violation or breach of any attempted violation of any of the covenants and restriction contained in the Article, or for the purpose of abating anything herein defined as a prohibited use or nuisance, PROVIDED, HOWEVER, that no such action shall be taken without a resolution of the Board or by the Architectural Committee.

Section 4 Class B Member's Exemption

- (a) During the period of development, construction and marketing, the provisions of this Article shall not be applicable to any Class B member, nor shall the provisions of this Article apply to any Structures commenced, erected or maintained by a Class B member on any Lot or within the Property until after completion thereof by the Class B member and conveyance to a Class A member.
- (b) The Development Period shall mean the time until all lots are sold with homes situated on each lot and occupied by owner. During the Development Period, any Class member may construct, maintain and operate real estate sales and construction office, model homes, displays, signs, and special lighting on any part of the Common Areas or on any Lot which has not yet been conveyed to a Class A member, and on or in any building or Structure now or hereafter erected thereon until the community is closed out.
- (c) Any Lot may be used by a Class B member for model home purposes or for the maintenance of a real estate office during the Development Period. A Class B member shall be entitled to conduct on any Lot all activities normally associated with and convenient to the development of the Property and the construction and sale of the Dwellings thereon during the Development Period.

ARTICLE IX.

EASEMENTS

Section 1 Property Subject to Easements. The easements created pursuant to this Article shall inure to benefit of all Owners within the Association, pursuant to Article II hereof.

Section 2 Easements. In addition to the easements reserved on the Plats herein described which are for the benefit of the Declarant, its successors and assigns, and any applicable Mortgagees;

- (a) Declarant for itself, its successors and assigns, hereby declares that every Owner shall have a perpetual easement in, upon, through and over the land shown on the Plats herein described, for ingress and egress to all Lots and Common Areas, and for use of all sidewalks, walkways, and roadways upon the Property.
- (b) Declarant reserves unto itself, its successors and assigns, as easement in, upon, through and over the land comprising the Common Areas for the purpose of installation, maintenance, repair and replacement of all sewer, water, power telephone and other communication systems, pipes, lines, mains conduits, poles, transformer and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility system serving the Property.

- (c) Declarant reserves unto itself, its successors and assigns, and easement in, upon, through and over the land comprising the Common Areas and Lots for the purpose of planting, maintenance, and/or replacement of any and all landscaping features including, but not limited to trees, shrubs, and other plantings. This reserved right shall expire (2) years after completion of construction of all improvements by Declarant and/or any Class B member.
- (d) Class B members shall have the right to store building supplies, construction equipment, and other similar property on the Common Areas during the Development Period. This reserved right shall expire one (1) year after completion of construction of (a) all improvements by a Class B member or (b) all Lots within the section in which the Common Areas subject to such reserved easement are located, whichever shall last occur.

ARTICLE X.

ANNEXATION OF ADDITIONAL PROPERTY

- Section 1. Property Subject to Declaration. The reas property which is, and shall be held, conveyed, hypothecated or encumbered, sold leased, rented, used, occupied and improved subject to this Declaration is located in Sussex County, State of Delaware described in "Exhibit A", and is shown on the Plats. No other real property shall be subject to this Declaration.

ARTICLE XI.

GENERAL PROVISIONS

- Section 1. Enforcement. The association, by and through its Board, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restriction, condition's, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration. In the event the Association institutes legal action to compel enforcement, it shall be entitled to recover all court costs and reasonable attorneys' fees incurred from the violating Owner. Failure by the Association or by 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.
- Section 2. Severability Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than sixty six percent (66%) of the Lot Owners. Any amendment(s) must be properly recorded in the Office of Recorder of Deeds. Notwithstanding the foregoing/ this Declaration shall not be amended with the written consent of sixty six percent (66%) of the first Mortgagees and sixty six percent (66%) of the Owners to permit the Association or the Owners to:

- (a) By act or omission, seek to abandon or terminate the Association or the provisions of this Declaration relating to architectural standards, exterior maintenance and Common Area maintenance;
- (b) Change the method of determining the obligations or assessments, which may be levied against an Owner;
- (c) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion the Common Areas, provided, however, that the grant of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this clause;
- (d) Use hazard insurance proceeds for losses to the Common Areas for other than the repair, replacement or reconstruction of such improvements and Common Areas except as provided by statute;

or

- (f) Fail to maintain fire and extended coverage insurance on the Common Areas on a current replacement cost basis in an amount less than one hundred percent (100%) of insurable value based on present replacement cost.