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**Parcel I.D. Number:  
2-35 14.00 131**

**Return To: Preserve on the Broadkill, LLC  
210 Chandler Street  
Milton, DE 19968**

PRESERVE ON THE BROADKILL HOMEOWNERS ASSOCIATION

DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration"), made on this 14<sup>th</sup> day of May, 2003, by PRESERVE ON THE BROADKILL, LLC, a Delaware limited liability company (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of a certain parcel of land in the Town of Milton, Delaware consisting of approximately 23 acres and called PRESERVE ON THE BROADKILL, which includes two adjacent parts, one designated as Property Phase I and the other as Property Phase II; and

WHEREAS, Declarant desires to develop Preserve on the Broadkill as a neighborhood within the historic Town of Milton, Delaware, providing standards both to preserve and enhance the authentic and diverse attributes of the community and adapt them to new understandings, as well as to protect the natural beauties of the Property, including its heritage trees, waterfront wetland and topography, and,

WHEREAS, Declarant has determined and agrees to subject the Property to covenants in this Declaration to accomplish their goal of having a coordinated, cohesive development.

NOW, THEREFORE, Declarant declares that the Property shall be held, sold, and

conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Property, and be binding on all parties having any right, title or interest in the Property, and any additions to it made in conformance with the provisions of this Declaration, or any part of it, their heirs, successors, and assigns, and shall inure to the benefit of each Owner of the Property or any part of it.

## ARTICLE I DEFINITIONS

Section 1.01. “Association” or “Homeowners Association” shall mean and refer to the PRESERVE ON THE BROADKILL HOMEOWNERS ASSOCIATION, its successors and assigns. “Board” or “Board of Directors” shall mean and refer to the Board of Directors of the Association.

Section 1.02. “Common Area” or “Common Areas” shall mean all real property owned or leased by the Association or otherwise available for the common use and enjoyment of the Owners (including any improvements thereto). The Common Area may include public facilities for the benefit of Members, such as, but not limited to, parking, roadways, lighting, recreational facilities, wetlands and storm water management facilities.

Section 1.03. “Common Expenses” shall mean and refer to the actual and estimated expenses of operating the Association, including a reasonable reserve, all as may be found to be necessary or appropriate by the Board pursuant to this Declaration, the Bylaws and the Articles of Incorporation of the Association.

Section 1.04. “Community-Wide Standard” shall mean the standard of conduct, maintenance or other activity generally prevailing in the Project (hereinafter defined). Such standard may be more specifically determined and set forth by the Covenant Committee.

Section 1.05. “Covenant Committee” shall be composed of three (3) or more members appointed by the Declarant and serve at the pleasure of the Declarant. They shall serve from the date of the recordation of the Declaration to the time all Lots in the Property have been sold, or, in the discretion of the Declarant, before that time. After such time, members of the Covenant Committee shall resign and members shall be appointed by the Board in such numbers as the Board may determine and shall serve at the pleasure of the Board. If any member of the Covenant Committee shall resign or die, prior to sale of all lots, the Declarant shall select a replacement. Thereafter, the Board shall select a replacement.

Section 1.06. “Declarant” shall include its successors and assigns, but only to the extent that any of the rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant are specifically assigned or transferred to such successors or assigns by an instrument in writing recorded among the Land Records in Delaware where the

Property is located. Declarant shall remain the Declarant even after Class B Memberships have been terminated in accordance with Section 5.02 of this Declaration.

Section 1.07. “Lot” shall mean and refer to any parcel or subdivided area of land shown upon any recorded subdivision plat of the Property (hereinafter defined) upon which it is intended that a dwelling be constructed.

Section 1.08. “Member” shall mean and refer to every person, group of persons, corporation, trust or other legal entity, or any combination thereof, who holds any class of membership in the Association.

Section 1.09 “Mortgagee” shall mean the holder of any recorded mortgage, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots. “Mortgage”, as used herein, shall include deed of trust. “First Mortgage”, as used herein, shall mean a mortgage with priority over other mortgages. As used in this Declaration, the term “mortgagee” shall mean any mortgagee and shall not be limited to institutional mortgages. As used in this Declaration, the term “institutional mortgagee” or institutional holder” shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trust, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association (“FNMA”), Federal Home Loan Mortgage Corporation (“FHLMC”), all corporations and any agency or department of the United States Government or of any state or municipal government, or any other organization or entity which has a security interest in any Lot. “Eligible Mortgage Holder” shall mean a holder of a first mortgage on a Lot who has requested notice from the Association of amendments to the Association documents or other significant matters which would affect the interests of the mortgagee.

In the event any mortgage is insured by the Federal Housing Administration (“FHA”) or guaranteed by the Veterans Administration (“VA”), then as to such mortgage the expressions “mortgagee” and “institutional mortgagee” include the FHA or the VA as the circumstances may require, acting, respectively, through the Federal Housing Commission and the Commissioner of Veterans’ Benefits or through other duly authorized agents.

Section 1.10. “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 a part of the Property, but excluding those having a legal interest merely as security for the performance of an obligation.

Section 1.11. “Project or the “Community” as used in this Declaration means that certain community being developed by the Declarant (or affiliates, successors and assigns of the Declarant) in Milton, Delaware and referred to as Preserve on the Broadkill.

Section 1.12. “Property” shall mean and refer to “Property Phase I” and “Property Phase II” as set forth in Article II of the Declaration.

ARTICLE II  
PROPERTY SUBJECT TO DECLARATION

Section 2.01. Initial Property Subject to Declaration. “Property Phase I” as shown on the site plan recorded March 19, 2003, in the Office of the Recorder of Deeds in Plot Book 79, page 9, Sussex County, Delaware, is the initial real property which is, and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration.

Section 2.02. Additions. Declarant may, without the consent of any Owner, person, agency or entity add all or part of the remaining parcel of 23 acres of Preserve on the Broadkill, including Property Phase II, and make it subject to this Declaration. Such addition shall be made by recording a Supplemental Declaration of Covenants, Conditions and Restrictions and any additional Supplemental Declarations among the Land Records of Delaware and may contain additions and modifications to the terms of the Declaration as may deemed necessary and appropriate by the Declarant. Every Owner of a Lot added by any Supplemental Declaration shall have the same rights and obligations as the Owners initially subject to the Declaration.

ARTICLE III  
COMMUNITY, ARCHITECTURAL AND CONSTRUCTION STANDARDS

Section 3.00. Community Objective. Preserve On The Broadkill will be a neighborhood within walking distance of the center of the historic Town of Milton, Delaware. Its houses are to be designed to have their own special character based on siting of the particular lot, floor plans to suit the owner, elevations that are balanced and details reflecting lasting quality – not simply as imitations of historic styles – but maintaining principles of good design. Its site plan emphasizes neighborhood interaction by minimizing the prominence of automobiles, with appropriately proportioned and pedestrian friendly streets, placing garages away from street front, open yards and approximately five and one-half acre natural tract with a hiking path, gazebo and a canoe rack along the Broadkill River. The following are basic guidelines for community, architectural and construction standards designed to achieve such objectives. They shall apply to all Lots, improvements and dwellings in Preserve on the Broadkill Property. Variations are not precluded, but are subject to review and approval by the Covenant Committee.

Section 3.01. Architectural Review and Approval. Prior to the construction of any structure on a Lot of the Property, or alteration of an existing structure, plans and specifications shall be submitted for written approval by the Covenant Committee. The Covenant Committee may submit such plans and specifications for review by an architect designated by the Association. If the Committee fails to approve or disapprove such plans and specifications within ninety (90) days, this Article shall be deemed to have been fully complied with. The Owner is responsible for obtaining approvals and permits from appropriate public agencies. Upon completion of construction, the Owner may request the

issuance of a Certificate of Compliance by the Covenant Committee. An Owner who is aggrieved by any action of the Covenant Committee may appeal to the Board which, after a hearing, may reverse the Covenant Committee by a vote of two thirds (2/3) of the members.

Section 3.02. Architectural and Construction Standards. The following standards shall apply to all construction on Lots of the Property. The Covenant Committee shall have discretion, for good cause, to approve variations.

(a) Site Design. Houses should be designed to fit the topography of their Lots. Designs that provide for large amounts of grading to fit a house, whether flat or sloping, should be avoided and may be disapproved by the Covenant Committee.

(b) Building Size and Area. Houses shall be built with at least one and one-half or more stories and in accordance with the height limitations set by the Town of Milton, Delaware. Excluding garages, porches, patios, decks, carports and basements, no house shall be built having more than 4,000 square feet of living area.

(c) Floor Area. Houses shall have a floor area ratio (FAR) of not more than thirty (30) percent of the lot size exclusive of unheated areas (except Lots 20-A to 23-B). A one and one-half story house shall have a minimum of 1,600 square feet of living area on the first floor and a house with two or more stories shall have a minimum of 1,200 square feet of living area on the first floor. For Lots 20-A to 23-B of Property Phase I, the minimum total living area shall be 1,800 square feet.

(d) Building Materials. Exterior walls of houses should be built of natural materials such as wood, brick or natural stone, and such other materials as cement board and the like. Roofs should be built of cedar shingles, composite asphalt shingles of a minimum 25-year rating or metal. However, other appropriate materials may be used with the approval of the Covenant Committee with architectural advice.

(e) Building Completion. All Lot improvements shall be completed by the Owner not later than two (2) years after the date of settlement. Upon written application by the Owner not later than one (1) year and nine (9) months after the date of settlement, the Declarant shall respond with thirty (30) days after such application, and, in its sole discretion, may approve an extension for four (4) months upon determining that the Owner has made a good faith effort to comply with this provision but has been unable to do so for valid reasons. In similar fashion, Declarant may approve extensions in four (4) month increments, provided that such extensions shall not go beyond three (3) years after the date of settlement and completion evidenced by the issuance of a Certificate of Occupancy. Furthermore, after the date of settlement, the Owner is solely responsible for maintaining the Lot in a neat and orderly condition as required by the Town of Milton in Chapter 11, Article 4 of the Town Ordinances and in this Declaration.

(f) Fence, Wall & Hedge. The Covenant Committee shall approve in writing the composition, location and height of any fence, wall or hedge to be constructed on any

Lot. The Covenant Committee shall require the composition of any fence, wall or hedge to be consistent with the material used in adjacent Lots and other fences, if any. Chain link fencing shall not be used. Fencing design must accompany the working drawings submitted to the Covenant Committee for any proposed Lot.

(g) Parking Space. Each Lot Owner shall provide space for parking of two (2) automobiles off the streets and roads of the Preserve on the Broadkill. Storage and/or parking on or off the streets and roads in the Preserve on the Broadkill of recreational vehicles or commercial vehicles (except when making deliveries) shall be prohibited. At no time shall boats and/or boat trailers be stored or parked on the streets and roads in the Preserve on the Broadkill.

(h) Driveways and Parking Areas. All driveways and parking areas shall have hard dustless surfaces, such as asphalt, concrete, brick or stone. All driveways shall be approved in advance by the Covenant Committee.

(i) Signs, Lot Numbers and Mailboxes. The size and design of all signs, numbering for the Lot, mailboxes and such materials shall be approved by the Covenant Committee. No signs, billboards, advertisements or notices of any kind, including without limitation, "For Sale" or "For Rent" signs, shall be displayed for Public view on any improved or unimproved Lot or on the Association Property, without the prior written approval of the Covenant Committee; it being understood that the Covenant Committee will not grant permission for said signs unless their erection is reasonably necessary to avert serious hardships to the Owner. If such permission is granted, the Covenant Committee reserves the right to restrict size, color, content and location of such sign(s). No sign shall be nailed or attached to any tree. The Covenant Committee shall have the right to adopt reasonable rules regarding signs to be used during construction of improvements and dwellings, including Owner identification and name of contractor and/or architect.

(j) Landscaping. Each Owner must submit to the Covenant Committee, for its prior approval, a plan for landscaping on any Lot

(k) Swimming Pool and Tennis Court. Any swimming pool or tennis court to be constructed on any Lot shall require the prior written approval of the Covenant Committee, which shall specifically determine whether the facility is appropriate for the available space, whether the fencing is adequate and whether the lighting is not intrusive on the neighbors, and shall include, but not be limited to, the following:

(i) Composition to be of material thoroughly tested and accepted by the industry for such construction.

(ii) All pools and ponds must be constructed in-ground. Hot-tubs must be constructed in the rear yard within an enclosure of a deck, patio enclosure or porch structure.

(iii) Swimming pools, decks, tennis court fencing, screen enclosures, and patio and terrace slabs shall conform to the requirements of the local, County and State codes and laws and particularly, ground pool enclosures should contain safety fencing to prevent accidental drowning of infants.

(iv) Pool, landscape, recreation and security lighting shall be designed so as to not trespass or be an annoyance to the surrounding residences and common areas.

Section 3.03. Amendment. Notwithstanding any provision in this declaration and any other governing documents of the Association to the contrary, the Covenant Committee shall have the right to amend or add any provision in this Article III without approval of Lot Owners or mortgages.

#### ARTICLE IV PROPERTY RIGHTS

Section 4.01. Lot Owner's Easements of Enjoyment. Every Lot Owner shall have a right and easement of enjoyment in and to the Common Areas, including an easement for the use and enjoyment of any private streets and parking areas and walkways, if any, within the Common Areas, subject to the following provisions:

(a) The right of the Association to charge reasonable and uniform admission and other fees for the use of any recreational facility situated upon the Common Areas.

(b) The right of the Association to suspend the voting rights and rights to use of any common areas by Lot Owner for any period during which any assessment against the Lot remains unpaid; and, after notice and an opportunity for a hearing before the Board of Directors or a committee appointed by them, for an infraction of this Declaration, the Bylaws or 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 Areas to any federal, state, county, or municipal public agency, authority, or utility for any purposes agreed to by the Members, and subject to any conditions required by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each Class of Members and any of the Eligible Mortgage Holders agreeing to such dedication or transfer has been recorded.

(d) The right of the Association to limit the number of guests of Owners of Lots with respect to the use of Common Areas.

(e) The right of the Association to establish uniform Rules and Regulations pertaining to the use of the Common Areas and the facilities thereon.

(f) The right of the Association to provide for the exclusive use by Owners of

certain designated parking spaces within the Common Areas.

(g) The right of the Association, the Declarant, utility companies and other Owners with respect to the easements established in Section 7.07 hereof.

(h) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, and with the consent of two-thirds (2/3) of each class of then Members of the Association, voting separately, to borrow money for the purpose of maintaining or improving the Common Areas in a manner designed to promote the enjoyment and welfare of the Members and in aid of such maintenance, repairs or improvements to mortgage any of the Common Areas.

(i) The right of the Association through its Board to take any steps that are reasonably necessary to protect the property of the Association against mortgage default, foreclosures, and tax sales; provided, however, that the actions taken are in conformity with the other provisions of this Declaration.

(j) The right of the Association through its Board to grant easements, licenses or other rights of use to persons or entities who are not members of the Association in connection with the Common Areas for such consideration and on such terms conditions as the Board may from time to time consider appropriate.

#### Section 4.02. Limitations.

(a) Any other provision of this Declaration to the contrary notwithstanding, the Association shall have no right to suspend the right of any Member of the Association to use any private streets and roadways located upon the Common Areas (including, without limitation, any private streets and roadways located within the Property) for both vehicular and pedestrian ingress and egress to and from his or her Lot and for parking. However, this shall not limit the Association's ability to adopt reasonable Rules and Regulations concerning parking.

(b) Any other provision of this Declaration to the contrary notwithstanding, the Association shall have no right to suspend the right of any Member of the Association to use the Common Areas for necessary, ordinary and reasonable pedestrian ingress and egress to and from his Lot or to suspend any easement over the Common Areas for storm water drainage, electrical energy, water, sanitary sewer, natural gas, cable television, telephone service, or any similar utilities and services to the Lots.

Section 4.03. Delegation of Use. Any Lot Owner may delegate, subject to the Bylaws and Rules and Regulations of the Association, his right of access to the Common Areas and facilities to the members of his family, his or her tenants and social invitees.



ARTICLE V  
MEMBERSHIP AND VOTING RIGHTS

Section 5.01. Membership. Every Owner of a Lot that is subject to assessment shall be a Member of the Association. Persons or entities who hold an interest merely as security for the performance of an obligation are not Members. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment.

Section 5.02. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. With the exception initially of the Declarant, every person, corporation, partnership, trust or other legal entity, or any combination thereof, who is an Owner of any Lot which is part of the Property, or which otherwise becomes subject to the covenants set forth in this Declaration to assessments by the Association, shall be a Class A Member of the Association; provided, however, that any such person, group of persons, corporation, partnership, trust or other legal entity who holds such interest solely as security for the performance of an obligation shall not be a Class A Member solely on account of such interest. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine in writing to the Association, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event that multiple Owners of any Lot have not designated in writing to the Association which one of them shall be entitled to cast the vote for such Lot, the person who is first named on the deed into them of such Lot shall be deemed to have the right to cast such vote, unless the Association is advised otherwise in writing by all other Owners. Members entitled to vote may, by written proxy filed with the Association, designate any other to cast their vote.

Class B. The Class B Members shall be the Declarant, as well as any successor, assign or nominee of the Declarant to whom the Declarant assigns any Class B Memberships pursuant to an instrument in writing. Class B Members shall be entitled to three (3) votes for each Lot it owns. Upon the conveyance of any Lot to any Class A Member, the three (3) Class B votes for that Lot shall lapse and become null and void. The votes of the Class B Member shall be cast by such person as the Declarant, or other Class B Members to the extent of their Class B interests, designate in writing. Each Class B Membership shall lapse and become a nullity on the first to happen of the following events:

- (i) Thirty (30) days after certificates of occupancy have been issued for all dwellings on Lots both in Property Phase I and Property Phase II; or,
- (ii) Upon the surrender of the Class B Memberships on the books and records of the Association by the Declarant.

Upon the lapse or surrender of the Class B Memberships as provided for in this Article (the "Declarant Control Period"), the Declarant shall thereafter become a Class A

Member of the Association as to each and every Lot in which the Declarant than holds interest otherwise required for such Class A membership.

## ARTICLE VI BUDGETS AND ASSESSMENTS

Section 6.01. The Board of Directors shall prepare each year the following documents: (1) an Annual Budget covering estimated Common Expenses of the Association; (2) a Reserve Fund Budget covering the estimated costs of replaceable assets of the Association; and, (3) the assessments and any specific fees, charges, fines, costs and expenses to be levied against and applied to each Lot. Copies of these budgets and assessments shall be mailed or delivered to each Owner at least thirty (30) days before the Annual Meeting of the Association. The budgets and assessments shall become effective upon approval by a majority of the votes of the Members (Class A and Class B) at such Annual Meeting. If one or more of these documents are not prepared or acted upon in any year, the existing ones shall continue in effect. In addition to the annual budgets and assessments, the Association may levy a Special Assessment if approved at a Special Meeting called for such purpose and as provided in the Bylaws of the Association.

Section 6.02. Creation of Lien and Personal Obligation of Assessments. Each Owner of a Lot by acceptance of a deed for the Lot, whether or not it is so expressed in the deed, is deemed to covenant and agree to pay to the Association the annual assessments and special assessments. Such assessments, together with any late charges, costs and reasonable attorney's fees, shall be a charge on the Lot, including all improvements on it, and shall be a continuing lien on such property. Such assessments and charges shall also be the obligation of the then Owner of the Lot, and, if delinquent, shall pass to any successor in title, unless otherwise provided herein.

Section 6.03. Due Dates of Assessments. Assessments provided for in this Declaration shall commence as to all Lots on the first day of the month following the first conveyance of a Lot to a Class A Member and prorated in accordance with the fiscal year of the Association. The Board of Directors shall establish due dates and may provide that assessments be paid on a periodic basis.

Section 6.04. Non-Payment of Assessment; Remedies of Association. If an assessment is not paid within (30) days after the due date, it shall bear interest at the prime interest rate of a local bank. The Board of Directors may, in its discretion, establish other penalties and may determine that the Assessment be recorded in the Office of the Recorded of Deeds and the Owner shall be obligated to pay any attorney's fees, filing fees or costs of such action.

Section 6.05. Subordination of Assessment Lien to Mortgages. The assessment lien provided for herein shall be subordinate to any first mortgage or deed of trust. No sale or

transfer of a Lot, except by foreclosure of mortgage or deed of trust, shall extinguish an assessment lien.

## ARTICLE VII USE RESTRICTIONS

Section 7.01. Permitted Uses. Improvements on the Lots shall be used for residential purposes only. No building shall be erected, altered, placed or permitted to remain on such Lot other than to be used as a single-family dwelling, except that a professional office may be maintained in a dwelling and an accessory unit may be attached to such dwelling provided as follows: (i) such uses are in strict conformity with any applicable zoning law, ordinance or regulation; (ii) the use is approved in writing by the Covenant Committee; (iii) such uses are limited to the person(s) actually residing in the premises; and, (iv) no employees or staff are included other than the person(s) actually residing therein. Furthermore, "professional office" shall mean rooms used for office purposes by a member of a recognized profession, such as a doctor, lawyer, dentist, architect or the like, but does not include medical or dental clinics (defined as two or more doctors or dentists or operated as a public health facility). Nothing provided for in this Article or in the Declaration shall be construed to prohibit the Declarant from the use of any Lot dwelling or improvement for promotional or display purposes or as a "model home", a sales or construction office or for any other lawful purpose.

Section 7.02. Prohibited Uses and Nuisances. Except for the activities of the Declarant during the construction or development of the Project, or except as may be necessary on a temporary basis in connection with reasonable and necessary repairs or maintenance to any dwelling or upon the Common Areas:

(a) No noxious or offensive trade or activity shall be conducted on any Lot or within any dwelling or any other part of the Property, nor shall anything be done in or on it which may be or become an annoyance or nuisance to the neighborhood or other Owners. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren bell amplifier or other sound device, except such devices with timing and loudness controls as may be used exclusively for security purposes, shall be located, installed or maintained on any dwelling or on any other improvements constructed upon any Lot.

(b) The maintenance, keeping, boarding or raising of animals, livestock or poultry of any kind, regardless of number, is hereby prohibited on any Lot or within any dwelling, or other part of the Property, except that this shall not prohibit the keeping of dogs, cats or caged birds as domestic pets provided: (i) they are not kept, bred or maintained for commercial purposes; (ii) such domestic pets are not a source of annoyance or nuisance to the neighborhood or other Members; (iii) all pets, dogs and cats shall be kept indoors and on leashes when outdoors; and (iv) such pets are maintained in strict conformance with all laws and ordinances. The Board of Directors or Covenant Committee, upon resolution of the Board, shall have the authority, after hearing, to determine whether a particular pet is a nuisance or a source annoyance to other Members, and such determination shall be

conclusive. Pets shall be attended at all times and shall be registered, licensed and inoculated as may, from time to time, be required by law. Pets shall not be permitted upon the Common Areas unless accompanied by responsible person and unless they are carried or leashed or otherwise under the control of the pet's owner. The Board of Directors shall have the right to adopt such additional Rules and Regulations regarding pets as it may from time to time consider necessary or appropriate.

(c) No burning of any trash and no accumulation or storage of litter, lumber, scrap metals, refuse, bulk materials waste, new or used building materials, or trash of any other kind shall be permitted on any Lot or other part of the Property.

(d) Except for parking within garages, and except as herein elsewhere provided, no junk vehicle, commercial vehicle (including vans used for commercial use), commercial truck (defined for purposes of this Declaration as any truck with an advertisement or logo affixed, as well as any tow truck or any truck with more than two axles, or any two axle truck with a gross vehicle weight of greater than 7,000 pounds and/or a cargo capacity of greater than  $\frac{3}{4}$  ton), unlicensed or inoperable motor vehicle (which shall include, without limitation, any vehicle which would not pass applicable state inspection criteria), trailer, camp truck, house trailer, boat or other similar machinery or equipment of any kind or character (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any dwelling and except for such equipment and machinery as the Association may require in connection with the maintenance and operations of the Common Areas shall be kept upon the Property nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. The Association may, in the discretion of the Board of Directors, provide and maintain a suitable area designated for the parking of such vehicles or the like.

(e) Trash and garbage containers shall not be permitted to remain in public view, except on days of trash collection, nor after 8:00 p.m. on the day prior to collection. No incinerator shall be kept or maintained upon any Lot.

(f) No Lot shall be divided or subdivided and no portion of any Lot (other than the entire Lot) shall be transferred or conveyed for any purpose. The provisions of this subsection shall not be construed to prohibit the granting of any easement or right-of-way to any municipality, political subdivision, public utility or other public body or authority, or to the Association, the Declarant or any other person for any purpose.

(g) No tree, hedge or other landscape feature shall be planted or maintained in a location which obstructs sight lines for vehicular traffic on public streets or on private streets and roadways. By way of example and not of limitation, no wire or other lawn edging, fencing or other treatment shall be placed or maintained on any Lot which would impede the Association's ability to perform its obligations as set forth in this Declaration, or which would be not conform to the aesthetics of the rest of the Project. For the purposes of the immediately preceding sentence, wire lawn edging shall be deemed not conforming.

(h) No decorative lawn ornament or any structure shall be maintained on any Lot without the prior written approval of the Covenant Committee or the Board of Directors.

(i) No signs shall be erected, posted or displayed upon, in or about any Lot or dwelling without the prior written approval of the Covenant Committee, provided, however, that one sign not exceeding two (2) square feet in area and not illuminated may be attached to a dwelling where a professional office (as herein elsewhere in this Declaration defined) is maintained, and provided, further, that a temporary real estate sign for rental or sale may be displayed no larger than two (2) square feet and shall be removed promptly following the sale or rental of such dwelling. The provisions and limitations of this subsection shall not apply to any institutional first mortgagee of any Lot who comes into possession of the Lot by reason of any remedies provided by law or in such mortgage or as a result of foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, assignment or deed in lieu of foreclosure.

(j) No water pipe, sewer pipe, gas pipe, drainage pipe, television cable or other similar transmission line shall be installed or maintained upon any Lot above the surface of the ground and no wire, cable or other similar transmission line may be attached to the exterior of any structure on any Lot. Except during periods of actual use, no hose shall be stored or placed in the front or side yard of any dwelling unless screened from public view.

(k) No play equipment, including, without limitation, basketball backboard, basketball hoops and other equipment shall be attached in any manner to the exterior of any dwelling and no such equipment shall be erected without the prior written approval of the Covenant Committee or the Board of the Directors.

(l) No structure, planting or other material 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 unreasonably change, obstruct or retard direction or flow of any drainage channels.

(m) No outside television aerial or radio antenna, or other aerial or antenna for either reception or transmission, shall be maintained upon the Property unless such aerials or antennae are erected and maintained in accordance with FCC regulations. An Owner shall submit plans for such installation to the Covenant Committee, which shall have authority impose reasonable restrictions on visibility and placement.

(n) Satellite dishes may be permitted on any Lot if and to the extent that satellite dishes are permitted to be located on the Property by the provisions of the local Zoning Ordinance and any other applicable Federal, State, County or municipal law, ordinance or regulation prior to installation. An Owner shall submit such plans to the Covenant Committee, which shall have authority to impose reasonable restrictions on visibility and placement.

(o) Vegetable gardens shall be maintained only within the rear yard of any Lot and shall be maintained in a neat and attractive manner.

(p) Lawn furniture shall be used and maintained in rear yards only.

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

(r) No garbage or trash containers shall be kept on the front or side yard of any Lot except on trash collection days as provided in Paragraph (e) above, and garbage and trash containers kept or maintained in the rear yard of any Lot, under or upon decks, shall be screened from public view at all times.

(s) No Member shall make any private or exclusive or proprietary use of any of the Common Areas except with specific approval of the Covenant Committee and then only on a temporary basis.

(t) No fence shall be constructed upon the front or side yards of any Lot. See also section 3.02 (f).

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

(v) Children's play and similar equipment shall not be allowed to remain overnight within any front yard of any Lot or within the Common Area.

(w) Children's outdoor permanent playhouses and swinging or climbing apparatus or equipment shall not be permitted within the front or side yard of any Lot. Such apparatus or equipment may be installed within the rear yard of a Lot. All such apparatus must be well maintained at all times.

(x) No exterior lighting emanating from a Lot, shall be directed outside the boundaries of the Lot.

(y) No garage or outbuilding properly erected on a Lot shall at any time be used for human or animal habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human or animal habitation.

(z) No drying or airing of any kind, e.g., clothing or bedding, shall be permitted outdoors and within any Lot other than within rear yards and between the hours of 8 a.m. and 5 p.m. on Monday through Friday and 8 a.m. and 1 p.m. on Saturdays, and clothes hanging devices such as lines, reels, poles, frames, etc., shall be stored out of sight other than during the times aforementioned; drying or airing of any kind is prohibited on Sundays and

holidays.

(aa) Notwithstanding anything to the contrary contained in this Declaration, no garage may be altered, modified or changed in any manner which would inhibit or in any way limit its function as a parking area for vehicles without the prior written approval of the Covenant Committee or the Board of Directors.

Section 7.03. Leasing and Transfers.

(a) No portion of a dwelling, other than the entire dwelling, may be leased or rented. All leases shall: (i) contain provisions advising the tenant of his or her obligation to comply with all provisions of this Declaration, the Bylaws and the Rules and Regulations of the Association; and, (ii) provide that the Association shall have the right to terminate the lease upon default or violation by the tenant in observing any of the provisions of this Declaration, the Bylaws or Rules and Regulations of the Association, or of any other document, agreement or instrument governing the dwelling. The Owner(s) of a leased or rented dwelling shall be jointly and severally liable with his or her tenant(s) to the Association to pay any claim for injury against the Association or damage to persons or property caused by any action or omission, including, without limitation, the negligence of the tenant(s). Every lease shall be subordinate to any lien filed by the Association, whether before or after such lease was entered into. The minimum term any dwelling unit may be rented or leased shall be ninety (90) days, and in no event may a transient tenant be accommodated in any dwelling.

(b) Prior to the sale, conveyance or transfer of any Lot to any person, the Owner shall notify the Board of Directors in writing, by certified mail, return receipt requested of the name and address of the person to whom the proposed sale, conveyance or transfer is to be made and provide to it such other information as the Board of Directors may reasonably require.

Section 7.04. Parking. Parking within the Property Phase I shall be subject to the following restrictions:

(a) The Declarant and thereafter the Board of Directors of the Association shall have the right to designate areas on the Common Areas for temporary guest parking, subject to the requirements of the local Zoning Ordinance. Except as set forth below, or as otherwise established by the Declarant or the Association, said designated guest parking areas shall be for temporary (up to three (3) hours) guest parking only.

(b) All Owners and occupants of any dwelling located within the Property which has a garage attached or appurtenant thereto shall park within such Lot, either in the garage or on the driveway appurtenant thereto, if any.

(c) The Board of Directors shall have the right to establish supplemental Rules and Regulations concerning parking on any portion of the Common Area and Lots, including,

without limitation, providing for the involuntary removal of any vehicle violating the provisions of this Declaration and/or such Rules and Regulations.

7.06. Exemptions. None of the foregoing restrictions of Article VII shall be applicable to the activities of:

(a) Declarant or the Builders or their officers, employees, agents or assigns in their development, marketing, leasing and sale of Lots or other parcels within the Property; or,

(b) To the Association, its officers, employees and agents in connection with the proper maintenance, repair, replacement and improvement of the Common Areas.

Section 7.07. Declaration of Easements and Rights. The following easements and rights are hereby declared or reserved:

(a) Declarant reserves the right to grant easements, both temporary and permanent, to all public authorities and utility companies over any part of the Property.

(b) Each Lot within the Property is hereby declared to have and be subject to an easement, not exceeding one (1) foot in width, over all the adjoining Lots and Common Areas for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhangs, gutters, architectural or other appendages, draining of rainwater from roofs, or any other similar cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if the encroachment occurred due to the intentional or willful misconduct of said Owner or Owners.

(c) There is hereby reserved unto the Declarant and the Declarant's assigns for the benefit of the Property Phase I a blanket easement and license upon, across and under the Property Phase I (provided with the use and enjoyment of such Property), for vehicular and pedestrian ingress and egress, curb cuts, slope, or grading easements, as well as for the installation, replacement, repair and maintenance of all utilities, including, but not limited to, water, sewer, drainage, storm water detention and/or siltation, gas, cable television, telephones and electricity, and further including the right to connect to and use any such utilities which may exist or be located upon the Property from time to time. By virtue of this easement and license, it shall be expressly permissible to erect and maintain the necessary poles, pipes, lines and other equipment on the Property, to affix and maintain electrical or telephone wires and conduits, sewer and water drainage lines, on, above, or including any improvements constructed thereon, and to have construction vehicles, equipment and the like exercise the aforesaid right of ingress and egress over such Property. There is further reserved unto the Declarant and the Declarant's assigns the right to grant specific easements and licenses, both temporary and permanent, to any person or entity, including all public



authorities and utility companies, over any part of the Property Phase I, in furtherance of the blanket easement and license created by this Subsection (c). Further, without limiting the generality of the foregoing, the Declarant reserves the right to unilaterally execute and record such additional easements, licenses and agreements as may be necessary in order to give effect to the foregoing, easements, licenses and other rights, which additional easements, licenses and other agreements need not be consented to or joined in by any party having an interest in the Property Phase I; provided, however, that if requested by the Declarant, any party have an interest in the Property Phase I shall promptly join in and execute such confirmatory easements, licenses and other agreements.

(d) There is hereby reserved unto the Declarant the right to erect entry features, promotional and other similar items within the Property Phase I provided they do not unreasonably interfere with the use, operation and enjoyment of such Property.

(e) Each Lot shall be subject to a public pedestrian access easement over and upon any sidewalk (or the replacement thereof) that may be constructed on any Lot by the Declarant, which sidewalk is reasonably deemed to be for the use of the Project of which the Lot is a part.

(f) An easement is hereby reserved to Declarant and its agent to enter the Common Areas during the period of construction and sale within the Property Phase I, and to maintain such facilities and perform such operations as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale or rental of residences, including, without limitation, a business office, sales/leasing office, storage area, construction yards, signs, displays and model units.

(g) Declarant reserves the right to enter the Common Areas for the purpose of carrying out any obligations it may have, or assume, with respect to the curing of any defects in workmanship or materials in the Property Phase I or the improvements thereon.

(h) For a period of ten (10) years from the date of conveyance of the first Lot, the Declarant reserves a blanket easement and right, but not the obligation, on, over and under the Property Phase I to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes, or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which the Declarant shall restore the affected property to as close to its original condition as is reasonably practicable. The Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes such notice. There is further reserved unto the Declarant the right to grant specific easements and licenses, both temporary and permanent, to any person or entity, including all public authorities and utility companies, over any part of the Property Phase I in furtherance of the blanket easement and license created by this Subsection.

(i) The rights and duties with respect to sanitary sewer and water, storm

drains, downspouts, yard drains, cable television, electricity, gas and telephone lines and facilities shall be governed by the following:

(i) Whenever water, sanitary sewer and water, storm drains, downspouts, yard drains, electricity, gas, cable television or telephone connections, lines, cables or any portion thereof, are or have been installed within the Property Phase I, the Owner of any Lot, or the Association, shall have the right, and are hereby granted an easement and license to the extent necessary therefore, to enter upon or have a representative of the company responsible for such installations enter upon any portion of such Property in which said installations lie, to repair, replace and generally maintain said installations.

(ii) The right granted in the Subparagraph (i) above shall be only to the extent necessary to preserve the full and reasonable use and enjoyment of the property and provided further that anyone exercising said right shall be responsible for restoring the surface of the easement and license area so used to its condition prior to such use.

(iii) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors, who shall decide the dispute, and the decision of the Board of Directors shall be final and conclusive as to the parties.

(j) The Association shall have an easement to enter any portion of the Property Phase I for the performance of its duties hereunder; provided that except as otherwise provided in this Declaration, such easement shall not entitle the entry within the interior portion of any dwelling located on such Property, but (by the way of illustration only and not in limitation of the rights granted herein) shall permit the entry into fenced, or other similar areas of such Property, including Lots.

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

(l) The Association, its agents and employees, shall have an irrevocable right, easement and license to enter the Lots for the purpose of exercising the rights and fulfilling the obligations established by this Declaration and any Supplementary Declarations recorded hereafter.

ARTICLE VIII  
MAINTENANCE

Section 8.01. Owners' Rights and Responsibilities. Except as otherwise specifically provided in this Declaration, each Owner shall keep each Lot owned by him or her, and all improvements therein or on it, in good order and repair and free of debris in a manner and with such frequency as is consistent with good property management and the Community-Wide Standard. In the event an Owner fails to maintain the Lot and improvements to it, the Board of Directors or its agent shall have the right in an emergency to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. Whenever entry is not required in an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry. All costs related to such correction, repair or restoration shall be collectible from the Owner of such Lot in the same manner as assessments as provided in Article VI herein.

Section 8.03. Additional Association Maintenance. The Association may, in the discretion of the Board of Directors, assume additional maintenance responsibilities upon all or any portion of the Property Phase I. In such event, all costs of such maintenance may, in the discretion of the Board of Directors, be assessed only against those Owners residing within the portion of such Property receiving the additional services and collected as an assessment as provided in Article VI herein. This assumption of responsibility may take place either by contract or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard of the Project. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association shall also have the right to enter any Lot without the consent of the Owner and/or occupant thereof, to conduct any emergency repairs as are necessary for the maintenance and protection of the Common Areas or any Lot(s). The costs of such repairs shall be collectible from the Owner of such Lot in the same manner as assessments as provided in Article VI herein.

ARTICLE IX  
INSURANCE

Section 9.01. Individual Coverage. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association that each individual Owner shall carry blanket all risk casualty insurance on the dwelling and all structures located upon the Lot. At a minimum, such coverage shall provide against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost (less a reasonable deductible) of any repair or reconstruction work in the event of damage or destruction from any insured hazard. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction to the

dwelling and other structures constructed on the Lot, the Owner shall proceed promptly to repair or to reconstruct the dwelling and other damaged structures in a manner consistent with the original construction. In the event that a dwelling located upon a Lot is totally destroyed and the Owner determines not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction of the dwelling on such Lot.

Section 9.02. Required Coverage. The Board of Directors of the Association, or its duly authorized agent, shall be required to obtain (to the extent reasonably available), maintain and pay the premiums, as a Common Expense, upon a policy of property insurance covering any and all Common Areas (except land, foundation, excavation and other items normally excluded from coverage) including fixtures and building service equipment, to the extent that they are a part of the Common Areas of the Association, as well as common personal property and supplies.

The insurance policy shall afford, at a minimum, protection against loss or damage by fire and other perils normally covered by the standard extended coverage endorsement, as well as all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "All Risk" endorsement, where such is available. The policy shall be in an amount equal to one hundred percent (100%) of the current replacement cost of any improvements in the Common Areas (less a deductible deemed reasonable by the Board of Directors) and shall name the Association as the named insured.

Each hazard insurance policy must be written by a hazard insurance carrier. Each insurer must be specifically licensed or authorized by law to transact business within the State of Delaware. The policy contract shall provide no assessment may be made against the mortgages, and that any assessment made against others may not become a lien on the mortgaged premises superior to the first mortgage.

All policies of hazard insurance must contain (to the extent reasonably available) or have the standard mortgagee clause commonly accepted by private institutions as mortgage investors in the area in which the mortgaged premises are located. The mortgagee clause must provide that all property insurance policies must provide an Agreed Amount and Inflation Guard Endorsement, if available, and a Construction Code Endorsement if the Common Areas in the Association are subject to a construction code provision which would become operative and require changes to undamaged portions of any building(s), thereby imposing significant costs in the event of partial destruction of the Project by an insured peril.

If any portion of the Common Areas are in a special flood hazard area, as defined by the Federal Emergency Management Agency, the Board of Directors of the Association, or its duly authorized agent, shall be required to obtain (to the extent reasonably available), maintain and pay, as a Common Expense, the premiums upon a "master" or "blanket" policy of flood insurance on any Common Area buildings and any other Common Area

improvements. The policy shall be in an amount deemed appropriate, but not less than the maximum coverage available under the National Flood Insurance Administration Program for all building and other insurable property within any portion of the Common Areas located within a designated flood hazard area or one hundred percent (100%) of current replacement cost of all such buildings and other insurable property.

The Association shall maintain (to the extent reasonably available) comprehensive general liability insurance coverage covering all of the Common Areas and other areas that are under its ownership. Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use. However, such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation and maintenance or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. Such insurance policy shall contain a "severability of interest" clause or endorsement that shall preclude the insurer from denying the claim of an Owner or the Association because of negligent acts of the Association or other Owners. Such policies must provide that they may not be canceled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association.

Blanket fidelity bonds shall be required to be maintained by the Association (to the extent reasonably available) for all Officers, Directors, managers, trustees, employees and volunteers of the Association and all other persons handling or responsible for funds held or administered by the Association, whether or not they receive compensation for their services.

Where the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such management agent shall also be covered by its own fidelity bond. All fidelity bonds, including those entered into by, and/or on behalf of or for the benefit of a management agent and its personnel, should name the Association as an obligee (for bonds entered into by or on behalf of, or for the benefit of a management agent and its personnel, the Association should be named as an additional obligee). Fidelity bonds entered into by the Association shall have their premiums paid as a Common Expense of the Association. The total amount of fidelity coverage required shall be sufficient to cover the maximum funds that will be in the custody of the Association or management agent at any time, but must at least be equal to the sum of three (3) months' assessments on all Lots within the Property, plus the Association's reserve funds. The bonds shall provide that they cannot be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association and to all Eligible Mortgage Holders.

Section 9.03. Repair and Reconstruction of Common Areas After Fire or Other Casualty. Except as hereinafter provided, in the event of damage to or destruction of any portion of the Common Areas covered by insurance payable to the Association as a result of fire or other casualty, the Board of Directors or the Insurance Trustee (as hereinafter defined),

as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration, as provided below.

The Insurance Trustee may rely upon a certificate of the Board of Directors that certifies whether or not the damaged property is to be reconstructed or repaired. The Board of Directors, upon request of the Insurance Trustee, shall deliver such certificate as soon as practicable.

Immediately after a casualty causing damage to the Common Areas for which the Association has the responsibility of maintenance, repair, and/or replacement, the Board of Directors shall obtain reliable and detailed estimates of the cost to restore the damaged portions of the Common Areas to as good a condition as existed before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desire.

In the event of reconstruction or repair authorized by the Board of Directors (as estimated by the Board of Directors) which shall exceed Fifty Thousand Dollars (\$50,000), all proceeds of insurance shall be paid over to a trust company or bank having trust powers and authorized to engage in the trust business in the State of Delaware (hereinafter the "Insurance Trustee"), selected by the Board of Directors and shall be paid out from time to time as the reconstruction and repair progresses in accordance with the provisions of an Insurance Trust Agreement and which contains, inter alia, the following provisions:

(a) The authorized reconstruction or repair shall be in the charge of an architect or engineer, who may be an employee of the Association, and hereinafter called the "Architect";

(b) Any authorized restoration or repair shall be performed substantially in accordance with this Declaration and the original plans and specifications, unless other action is approved by at least fifty-one percent (51%) of the Eligible Mortgage Holders (based upon one vote for each first mortgage owned), and two thirds (2/3) of the Owners (other than the Declarant);

(c) Each request for an advance of the proceeds of insurance shall be made to the Insurance Trustee and shall be accompanied by a certificate from the Architect and Board of Directors to the effect that: (i) all work then completed has been performed in accordance with the plans and specifications; (ii) the amount requested to be advanced is required to reimburse the Board of Directors for payments previously made by the Board of Directors or is due to the contractor responsible for the authorized restoration or repair, or to subcontractors, materialmen, laborers, engineers, architects or to other persons responsible for services or materials in connection with such restoration or repair, or for fees or the like necessarily incurred in connection with the same; and, (iii) when added to amounts previously advanced by the insurance Trustee, the amount requested to be advanced does not unreasonably exceed the value of the work done and materials delivered to the date of such request.

(d) Each request for an advance of the proceeds of insurance shall be accompanied by satisfactory waivers of liens covering that portion of the repair or reconstruction for which payment or reimbursement is being requested, together with appropriate evidence from a title insurance company or the like to the effect that there has not been filed with respect to the Common Areas, or any part thereof, any mechanics' or other lien, or notice of intention to file the same, which has not been dismissed, bonded, or satisfied of record;

(e) The fees and expenses of the Insurance Trustee as agreed upon by the Board of Directors and the Insurance Trustee, shall be paid by the Association as a Common Expense, and such fees and expenses may be deducted from any insurance proceeds in the hands of the Insurance Trustee, pro rata, as the reconstruction or repair progresses;

(f) Such other provisions not inconsistent with the provisions hereof as the Board of Directors or the Insurance Trustee may reasonably require.

Upon completion of the reconstruction or repair and payment in full of all amounts due on account thereof, any proceeds of insurance then in the hands of the Insurance Trustee shall be paid to the Board of Directors if such funds relate to Common Areas, or to the Owner of any Lot to which any such proceeds may relate.

## ARTICLE X PARTY FENCES AND DRIVEWAYS

The rights and duties of the Owners of Lots with respect to any party fences and driveways shall be governed by the following:

Section 10.01. General Rules of Law to Apply. Each fence or driveway which is constructed as part of the original construction on the Property and any part of which is placed on the dividing line between separate Lots, shall constitute a party fence or party driveway, as applicable, and with respect to such fence or driveway each of the adjoining Owners shall assume the burdens, and be subject to an easement for that portion of the fence or driveway on his or her Lot, and be entitled to the benefits of these restrictive covenants and, to the extent not inconsistent herewith, the general rules of law regarding party fences and driveways and of liability for property damage due to negligence or willful acts or omissions shall apply. All fences facing adjoining property, whether boundary or not, shall be subject to the restrictions of this Article and such fences shall be finished on both sides.

Section 10.02. Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty. If any such party fence or driveway is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners, his agents or guests or members of his family, including ordinary wear and tear and deterioration from



lapse of time, then both such adjoining Owners shall proceed forthwith to rebuild or repair the same.

Section 10.03. Repairs of Damage Caused by One Owner. If any such party fence or driveway is damaged or destroyed through the act of one adjoining Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such fence or driveway, then the Owner responsible for such damage shall forthwith proceed to rebuild and repair the same to as good condition as formerly, without cost to the adjoining Owner.

Section 10.05. Encroachments. If a portion of a party fence or driveway shall encroach upon any adjoining Lot, or upon the Common Areas by reason of reconstruction, settlement or shifting or otherwise, a valid easement shall vest for the encroachment and for the maintenance of the same as long as the encroachment exist.

Section 10.06. Other Changes. In addition to meeting the other requirements of these restrictive covenants, and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions or to rebuild in any manner which requires the extension or other alteration of any party fence or driveway, shall first obtain the written consent of the adjoining Owner.

Section 10.07. 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 in title.

Section 10.08. Dispute. In the event of a dispute between Owners with respect to repair or rebuilding of a party fence or driveway or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute, and the decision of such Board of Directors shall be final and conclusive upon the parties.

## ARTICLE XI MANAGEMENT

Section 11.01. Management Agent. The Board of Directors may employ for the Association a professional management agent or manager (the "Management Agent") at a rate of compensation established by the Board of Directors to perform such duties and services may include, but not be limited to, the right:

(a) To establish (with the approval of the Board of Directors of the Association) and provide for the collection of the annual maintenance assessments and any other assessments provided for in this Declaration and to provide for the enforcement of liens therefore in a manner consistent with the law and the provisions of this Declaration; and,



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

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

(d) To promulgate (with the approval of the Board of Directors of the Association) and enforce such Rules and Regulations and such restrictions or requirements, "house rules" or the like as may be deemed proper respecting the use of the Common Areas; and

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

When professional management has been previously required by any Eligible Mortgage Holder, any decision to establish self-management by the Association shall require the consent of sixty-seven percent (67%) of the Owners and the approval of fifty one percent (51%) of the votes of Lots subject to eligible mortgage holders.

Section 11.02. Duration of Management Agreement. Any management agreement entered into by the Association shall provide, *inter alia*, that such agreement may be terminated with or without cause by either party upon thirty (30) days' written notice thereof to the other party. The term of any such management agreement shall not exceed one (1) year; provided, however, that the term of any such management agreement may be renewable by mutual agreement of the parties for successive one (1) year periods.

Any Management Agreement entered into by the Declarant, his nominee or nominees, assigns, successor(s) or agent thereof, prior to transfer of control of the Association must be terminable, without cause, any time after transfer or control, on not less than thirty (30) nor more than ninety (90) days' notice, and no charge or penalty may be associated with such termination.

Section 11.03. No Member shall engage or direct any employee of the Association on any private business of the Member during the hours of employment, nor shall any Member attempt to assert any control over an Association Employee.

## ARTICLE XII GENERAL PROVISIONS

Section 12.01. Common Area Responsibility. The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of any Common Areas and all improvements thereon (as defined in

Section 1.02), and shall keep the Common Areas in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof.

Section 12.02. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the requirements of this Declaration. The Board of Directors, acting on behalf of the Association, will accept any real or personal property, leasehold, or other property interests within the Property conveyed to it by the Declarant.

Section 12.03. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 12.04. Limitation of Liability. The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the Common Expense funds, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas, or from any wire, pipe, drain, conduit or the like. The Association shall not be liable to any Member for loss or damage, by theft or otherwise, of articles that may be stored upon the Common Areas. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas, or from any action taken by ordinance or by the order or directive of any municipal or other governmental authority.

Section 12.05. Enforcement. The Association, or any Owner, or any Mortgagee of any Lot shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens, charges or other obligations or terms now or hereafter imposed by the provisions of this Declaration, or the articles of Incorporation or Bylaws of the Association or any Rule or Regulation promulgated by the Association pursuant to its authority as provided in this Declaration, the Articles of Incorporation or Bylaws. Failure by the Association or by any Owner or by any Mortgagee of any Lot to enforce any covenant or restrictions herein contained or any provision of the Bylaws, Articles of Incorporation or Rules and Regulations of the Association shall in no event be deemed a waiver of the right to do so thereafter. If the Association, or any Owner or Mortgagee of any Lot, successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Declaration or the Articles of Incorporation or Bylaws of the Association, the costs of such action, including legal fees, shall become a binding, personal obligation of the Owner committing or responsible for such violation, and such costs shall be collectible by the Association in the same manner as other assessments as set forth in Article V herein.

Without limiting the generality of the foregoing, and in addition to any other remedies available, the Association after reasonable notice, in writing, provided to the Owner, may enter any Lot to remedy any violation of the provisions of this Declaration, the Bylaws,

Articles of Incorporation or Rules and Regulations of the Association provided, however, that the Association may not enter the interior of any dwelling except in an emergency. All costs incurred by the Association in connection with such remedial actions shall be reimbursed by the Owner responsible for such violation. If such Owner fails to reimburse the Association, the Association may collect such costs in the same manner as set forth in Article VI herein. Such entry shall not be considered a trespass.

(a) The Board of Directors, or a duly appointed committee, shall be charged with determining where there is probable cause that any of the provisions of this Declaration, the use of the dwellings, Lots, Common Areas or other Association property, are being or have been violated. In the event that the Board of Directors or the committee determines an instance of such probable cause it shall cause the Board of Directors to provide written notice to the person alleged to be in violation, and the Owner of the Lot which the person occupies or is visiting if such person is not the Owner, of the specific nature of the alleged violation and of the opportunity for a hearing before the Board of Directors upon a request made within five (5) days of the sending of the notice.

(b) If a hearing is timely requested by an Owner or alleged violator, or if the Board requests that there be a hearing, the Board of Directors shall hold the same, and shall hear any and all defenses to the charges, including any witnesses that the alleged violator, Owner or the Board of Directors or committee may produce.

(c) Subsequent to any hearing, the Board of Directors shall determine whether there is sufficient evidence of a violation or violations as provided herein. If the Board of Directors determines that there is sufficient evidence, it may levy a fine for each violation in an amount fixed by the Board of Directors.

(d) Nothing herein shall be construed as a prohibition of or limitation on the right of the Association to pursue any other means of enforcement of the provisions of this Declaration, the Bylaws, Articles of Incorporation or rules and regulations, including, but not limited to, legal action for damages or injunctive relief.

(e) Notwithstanding any provision to the contrary in this Section, the Board, in its sole discretion, may impose a fine for any violation, provided, however, the collection of the fine shall be held in abeyance if the Owner requests a hearing after notice of the violation.

Section 12.07. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order or any inconsistency of any of these provisions with any provision of Federal, State, or local law or ordinance now in effect or as hereafter amended or enacted shall result in invalidation of that provision only, and shall in no wise affect any other provisions which shall remain in full force and effect.

Section 12.08 FHA-VA Approvals. Provided that any Lot subject to this Declaration is then encumbered by a deed of trust or mortgage which is insured by FHA or guaranteed by

VA, and further provided that there are then Class B Memberships of the Association outstanding, neither the Members, the Board of Directors, nor the Association shall by act or omissions, take any of the following actions without the prior written consent or approval of the Federal Housing Administration and the Veterans Administration, as the circumstances may require:

- (a) Change the basic organization of the Association including the merger, consolidation, or dissolution of the Association; or,
- (b) Dedicate, convey, or mortgage the Common Areas; or,
- (c) Annex additional properties (other than any annexation by the Declarant as provided in Section 2.02); or,
- (d) Otherwise materially modify or amend any provision of this Declaration, the Bylaws or the Articles of Incorporation of the Association.

Section 12.09. Consents. Any other provision of this Declaration or the Bylaws or Articles of Incorporation of the Association to the contrary notwithstanding, neither the Members, the Board of Directors nor the Association shall, by act or omission, take any of the following actions:

(a) Abandon, partition, alienate, release, hypothecate, dedicate, subdivide, encumber, sell or transfer any of the Common Areas directly or indirectly owned by the Association unless at least fifty-one percent (51%) of the Eligible Mortgage Holders (based upon one vote for each first mortgage owned) and Lot Owners representing sixty-seven percent (67%) of the votes in the Association have given their prior written approval; provided, however, that the granting of rights-of-way, easements and the like for public utilities or for other purposes consistent with the use of the Common Areas by Members of the Association shall not be considered a transfer within the meaning of this Section; or

(b) Conversion of Lots into Common Areas or vice versa unless sixty-seven percent (67%) of the Eligible Mortgage Holders (based upon one vote for each first mortgage owned) and Lot Owners representing seventy-five percent (75%) of the votes of the Association have given their prior written approval

Section 12.10. Additional Rights of Mortgagees – Notice. The Association shall promptly notify all Eligible Mortgage Holders who hold first mortgages on any Lot for which an assessment is levied pursuant to this Declaration, when an assessment, or any installment thereof, becomes delinquent for a period in excess of sixty (60) days, and the Association shall promptly notify any Eligible Mortgage Holder who holds a first mortgage on any Lot with respect to which any default in any other provision of this Declaration remains uncured for a period in excess of sixty (60) days following the date of such default. Any failure to give any such notice shall not affect the validity or priority of any Eligible Mortgage Holder

on any Lot and the protection extended in this Declaration to the holder of any such mortgage shall not be altered, modified or diminished by reason of such failure.

No suit or other proceeding may be brought to foreclose the lien for any assessment levied pursuant to this Declaration except after ten (10) days' written notice to the holder of the first mortgage on the Lot which is the subject matter of such suit or proceeding.

Any first mortgagee of any Lot may pay any taxes, utility charges or other charge levied against the Common Areas which are in default and which may or have become a charge or lien against any of the Common Areas, and any such first mortgagee may pay any overdue amount on the lapse of any insurance policy, with respect to the Common Areas. Any first mortgagee who advances any such payment shall be due immediate reimbursement of the amount so advanced from the Association.

Section 12.11. Casualty Losses. In the event of substantial damage or destruction to any of the Common Areas, the Board of Directors of the Association shall give prompt written notice of such damage or destruction to the Eligible Mortgage Holders who hold first mortgages of record on the Lots. No provision of this Declaration or the Articles of Incorporation or the Bylaws of the Association shall entitle any Member to any priority over the holder of any first mortgage of record on his or her Lot with respect to the distribution to such Member of any insurance proceeds paid on account of any damage or destruction of any Common areas.

Section 12.12. Condemnation or Eminent Domain. In the event any part of the Common Areas is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Board of Directors of the Association shall give prompt written notice of any such proceeding or proposed acquisition to the Eligible Mortgage Holders who hold first mortgages of record on the Lots. No provision of this Declaration or the Articles of Incorporation or the Bylaws of the Association shall entitle any Member to any priority over the holder of any first mortgage of record on his or her Lot with respect to the distribution to such Member of the proceeds of any condemnation or settlement relating to a taking of the Common Areas.

Section 12.13. Taxes and Assessment. Any taxes levied on the Common Areas shall be a Common Expense.

Section 12.14. Successors of Declarant. Any and all rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant hereunder, or any part of them, may be assigned and transferred (exclusively or non-exclusively) by the Declarant by an Instrument, in writing, without notice to the Association and Owners.

Section 12.15. No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any Common Areas by any public or municipal agency, authority or utility. No public or municipal

agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of the Common Areas.

Section 12.16. Incorporation by Reference on Resale. In the event any Owner sells or otherwise transfers any Lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration. However, the failure of such deed to contain such a provision shall not in any way affect the validity of this Declaration on any amendment thereto.

Section 12.17. Declarant Reserved Rights. No amendment to this Declaration may remove, revoke, or modify any right, reservation or privilege of the Declarant without the prior written consent of the Declarant. Notwithstanding any provision in this Declaration, the Declarant, in its sole discretion, while holding a Class B Membership, may amend this Declaration and the Bylaws without the consent of Owners or mortgagees.

Section 12.18. Perpetuities. If any of the covenants, restrictions, or other provisions of this Declaration shall be void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 12.19. Captions and Gender. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders, and the singular shall include the singular and the plural.

### ARTICLE XIII

#### DURATION, TERMINATION AND AMENDMENT OF DECLARATION

Section 13.01. Duration. 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, except where permanent right or interests are herein created, and subject to Section 13.02 below.

Section 13.02. Termination. This Declaration may be terminated during the first twenty (20) years or thereafter, after the Declarant has conveyed all the Lots it owns, in Property Phase I and Property Phase II, by the consent of not less than seventy-five percent (75%) of all Lot Owners, voting at duly noticed and convened meeting of the Association, as well as by sixty-seven percent (67%) of Eligible Mortgage Holders and thereafter, by the consent of not less than sixty-six and two thirds percent (66 2/3%) of all Lot Owners and the same number of Eligible Mortgage Holders.

Section 13.03. Amendments. This Declaration, or any part thereof, may be amended by the Declarant at any time until all the Lots it owns in Property Phase I and Property Phase II have been conveyed and thereafter by the consent of not less than sixty-six and two-thirds percent (66 2/3%) of all Lot Owners, voting at a duly noticed and convened meeting of the Association. The notice of any meeting called at which an amendment of the Declaration may be voted shall state the purpose of the meeting and shall set forth the proposed amendment. Any amendment adopted by the Association shall be recorded in the Land Records where the Property is located. Technical or clarification changes to the Declaration shall not be deemed amendments.

Section 13.04. Changes required by Lenders: Developmental Changes.

Notwithstanding any provision to the contrary contained in Articles of Incorporation or Bylaws of the Association or this Declaration, the Declarant shall have and hereby reserves the right to make modification, additions or deletions to the Declaration, the Articles of Incorporation and the Bylaws of the Association if such modifications, additions or deletions are: (i) required by VA, FHA, FHLMC, or FNMA; or, (ii) otherwise deemed necessary or desirable by the Declarant in connection with the development of the project. The Declarant may make such modification, addition or deletion without the consent of any Lot Owner, or upon request by Declarant, a Lot Owner shall be required to ratify such change, or, failing to do so within a reasonable time, the change shall become effective without such ratification. The Declarant may waive any exemption, right or privilege provided in this Declaration by a statement in writing.

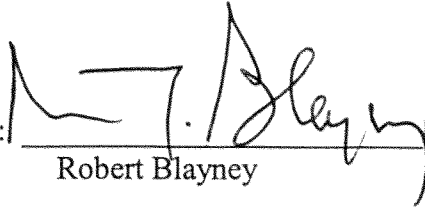
IN WITNESS WHEREOF, the undersigned, being the DECLARANT, have executed this instrument this 14<sup>th</sup> day of May 2003.

Preserve on the Broadkill, LLC hereby executes this Declaration for the purpose of subjecting certain property to the covenants, conditions, and restrictions stated in this Declaration.

ATTEST:

PRESERVE ON THE BROADKILL, LLC



By:  [SEAL]  
Robert Blayney

to wit:

On this 14<sup>th</sup> day of May, 2003, before me, the undersigned member, personally appeared Robert Blayney, known to me or satisfactorily proven to be the person whose name is subscribed to this written instrument, who acknowledged himself to be a member of Preserve on the Broadkill, LLC, being authorized to do so, he executed the foregoing instrument for the purposes therein contained, by signing the name of the LLC by himself as member.

GIVEN under my hand and seal this 14<sup>th</sup> day of May, 2003.



DAWN M. B. JOHNSON  
NOTARY PUBLIC  
STATE OF DELAWARE  
My commission expires Mar. 2, 2004

My Commission expires: \_\_\_\_\_

[NOTARY SEAL]



ATTEST:

PRESERVE ON THE BROADKILL, LLC

Peter Thompson

By: Milton Carrow [SEAL]  
Milton Carrow

to wit:

On this 9<sup>th</sup> day of May, 2003, before me, the undersigned member, personally appeared Milton Carrow, known to me or satisfactorily proven to be the person whose name is subscribed to this written instrument, who acknowledged himself to be a member of Preserve on the Broadkill, LLC, being authorized to do so, he executed the foregoing instrument for the purposes therein contained, by signing the name of the LLC by himself as member.

GIVEN under my hand and seal this 9<sup>th</sup> day of May, 2003.

Peter Thompson  
Notary Public

My Commission expires: 9-30-05

[NOTARY SEAL]

**PETRA THOMPSON**  
Notary Public District of Columbia  
My Commission Expires September 30, 2005