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BK: 3629 PG: 56

Tax Parcels: 2-34-18.00-22.00,
22.03, & 615 to 778

Prepared by and return to:
Herring Pointe Development, Inc
P.O. Box 212
Lewes, DE 19958

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND
RESTRICTIONS FOR**

BAY POINTE

This Declaration of Covenants, Conditions, Easements and Restrictions is made this 24th day of October, 2008, by Herring Pointe Development, Inc., a Delaware corporation (hereinafter referred to as "Developer").

RECITALS

WHEREAS, the Developer is the fee simple owner of certain real property located in Sussex County, State of Delaware, said property being more particularly described in *Exhibit "A"* attached hereto as a part hereof, also being lots 1 to 165 shown on that certain plat of the "Bay Pointe Subdivision" dated April 18, 2008, recorded in the Office of the Recorder of Deeds of Sussex County in Georgetown, Delaware, in Plot Book 120 at Pages 203 to 206; and said real property being hereinafter referred to as the "Property"; and

WHEREAS, the Developer proposes to create on the Property a planned community by subdividing the area into lots for single family detached houses together with certain interests set forth below in easements, leases and licenses; and

WHEREAS, the Developer imposes these covenants and restrictions in order efficiently to preserve the values and amenities in said community; and establishes the authority of a corporation to which will be delegated and assigned the powers of maintaining and administering any community facilities, common lands and recreation amenities and administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Developer will incorporate under the laws of the State of Delaware, as a non-profit corporation, Bay Pointe Homeowners Association, Inc., or a similarly named corporation, for the purpose of exercising the functions aforesaid; and

WHEREAS, the Developer plans to set aside certain interests in the Property and, except as may otherwise herein be provided, impose upon certain portions of the Property the conditions that they be held as common areas, (i.e. entrance areas, common areas,

roadways, etc.) in which owners of home lots will have rights and easements of use and enjoyment therein in common with others, the ultimate title of which shall be placed in the Bay Pointe Homeowners Association, Inc. or its assigns, and

WHEREAS, the Developer desires to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Property, which is now submitted to this Declaration.

NOW THEREFORE, the Developer hereby declares that all of the Property, subjected to this Declaration hereafter, shall be held, mortgaged, transferred, sold, conveyed, leased, occupied and used subordinate and subject to all easements, rights of way and restrictions previously placed upon the Property as recorded in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, by the Developer or its predecessors in title and to the following easements, restrictions, covenants, conditions, liens and charges set forth herein, which are for the purpose of protecting the value and desirability of and which shall run with the real property submitted to this Declaration and which shall be binding upon all parties having any right, title, lien or other interest in the described property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Words and terms shall have the meaning set forth below for all purposes of this Declaration unless the context shall require otherwise, and such definitions shall apply to the singular and plural forms of any such word or term.

ASSESSMENT - Shall mean an Owner's share of the Common Expenses and funding reserves.

ASSOCIATION - Shall mean Bay Pointe Homeowners Association, Inc., a Delaware membership, non-profit, non-stock corporation, its successors and assigns.

BOARD OF DIRECTORS - Shall mean the governing body of the Association, also referred to as "Board."

BY-LAWS - Shall mean the By-Laws of the Association as amended from time to time.

COMMON AREA - Shall mean all real and personal property in the Development now or hereafter owned or leased by the Association or otherwise held for the common use and enjoyment of the Owners. The Developer shall have the right from time to time to designate as Common Area any portion of the Development and to withdraw property

from such designation. Common Area is not intended for, or dedicated to, use by the general public, and the general public shall have no right to use or enjoyment thereof, provided, however, that nothing herein contained, nor any recorded plat, shall be deemed to prohibit the Developer, in its sole and absolute discretion, from conveying same to a federal, state or municipal government or to any body or agency thereof. Specifically included in the Common Area are Utility Systems not dedicated to a governmental agency or to another entity, maintenance areas, roads not dedicated to a governmental agency, swales, parking lots and spaces, green areas, fencing, sidewalks, signage, site lighting, street lighting, ponds, easement areas designated as Common Area, access easements across other real property, parks and Recreational Facility (as hereinafter defined), such other lands and/or improvements as the Developer may, in its absolute and sole discretion, make subject to this Declaration and designate as Common Area by subsequent amendment or supplement. Nothing herein contained, nor any recorded plat shall be deemed to create a Common Area, nor shall the Association or any Owner be entitled to any right, title or interest in any of the Developer's property unless and until Developer shall formally include such property in the Common Area by a supplemental or amended Declaration.

COMMON EXPENSES - Shall mean and include the actual and estimated expenses incurred by or on behalf of the Association in accordance with the provisions and intent of this Declaration and shall include amounts necessary to establish and maintain any reserve fund(s) determined to be necessary and appropriate by the Board of Directors.

DECLARATION - Shall mean this Declaration and all supplements and amendments to this Declaration recorded in the Office of the Recorder of Deeds, in and for Sussex County, Delaware.

DEVELOPER - Shall mean Herring Pointe Development, Inc., a Delaware corporation, and the successors and assigns as to all or any portion of the interests of Herring Pointe Development, Inc, in the Property and the Development. By specific amendment of this Declaration, the Developer may designate the Association as its successor from such time and for such purposes as shall be stated in such amendment.

DEVELOPER'S UTILITY RIGHTS - Shall mean those legal rights to provide for utility infrastructure for the Development including the right to identify, locate, place, operate and maintain the utility infrastructure for the Development and specifically including the right to dedicate, bargain and sell and/or grant easements to effect the same.

DEVELOPMENT - Shall mean with an initial capital letter, the Property, together with all appurtenant easements, leases and licenses as they are described in this Declaration and as are enlarged, diminished or otherwise modified at any time and from time to time by amendment of this Declaration duly recorded.

DEVELOPMENT PLAT - Shall mean any plat for any portion of the Property and any such plat or amended plat which the Developer from time to time causes to be

recorded in the Office of the Recorder of Deeds for Sussex County; specifically, the first plat of the Property as recorded in the Office of the Recorder of Deeds of Sussex County, at Georgetown, Delaware, in Plot Book 120 at pages 203 to 206.

FORECLOSURE - Shall mean a conveyance of property pursuant to judicial foreclosure of a Mortgage or by a deed given in lieu of a judicial foreclosure.

LEASE - Shall mean any agreement for the use of property in the Development, whether oral or written, whether in exchange for payment of rent or for other or no consideration, and whether for a term of hours, days, months or years.

LOT - Shall mean and refer to any plot of land (with the exception of the Common Area), regardless of size, whether vacant or improved with a single-family detached dwelling, shown upon any recorded subdivision plat or map of the property.

MEMBER - Shall mean and refer to all of those Owners who are members of the Association as provided in Article III, Section 3.1 of this Declaration.

MORTGAGE - Shall mean a Mortgage to a person, bank, trust company, insurance company, pension fund, other commercial lender (whether organized as a corporation, partnership, or otherwise), or to an organization such as, but not limited to, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, which participates in any way in a secondary market for mortgages.

MORTGAGEE - Shall mean, when spelled with an initial capital letter, a holder of a Mortgage.

OCCUPANT - Shall mean, any person, including, without limitation, any Owner, member of an Owner's immediate family, guest, tenant or other lawful user of a Lot in the Development.

OWNER - Shall mean, when spelled with an initial capital letter, the Developer and any one or more persons or entities holding fee-simple title of record in a Lot in the Development.

PARTICIPATING BUILDER - Shall mean an entity other than the Developer that, in the ordinary course of such entity's business, constructs residential structures on any portion of the Development, including the Lots.

PROFESSIONAL MANAGEMENT AGENT - Shall mean a professionally licensed individual or organization whose primary business is management of residential properties and who shall be capable of being bonded.

PROPERTY - Shall mean the "Property" as defined in the first Recital paragraph of this Declaration.

RECREATIONAL FACILITY - Shall mean that part of the Common Areas as will be described on a plot and which will include a clubhouse, outdoor swimming pool, waterfront gazebo and pier, any or all of which may be subject to separate fees and assessments.

SUBDIVISION - Shall mean and refer to the Development.

UTILITY SYSTEM(S) - Shall mean and refer to the utilities, including but not limited to sewer lines, mains and appurtenances; the water mains, water laterals, valves, meter pits and meters, and appurtenances; stormwater drainage culverts, swales, pipes, and appurtenances, including specifically, any siltation and/or retention ponds as required by any federal, state or local agency; irrigation well, distribution lines, sprinkler heads and appurtenances; television cable and its various attendant services, telephone service to include teletype, computer, telex, news service, or computer or any like instrument used in the transmission, reception or retrieval of messages, facts, or information, gas, or other utility lines and wires.

ARTICLE II

PLAN OF DEVELOPMENT

Section 2.1. Plan of Development.

2.1.1. The Development shall consist of all the Property described in *Exhibit "A"* attached hereto. All property within the Development shall be subject to the covenants, easements and restrictions set forth in this Declaration. For so long as Developer owns any lot or any interest in the Property, Developer shall have the right, but not the obligation, to make improvements and changes to the Common Area and to any or all Lots or any other property owned by Developer, including but not limited to the following: (1) installation and maintenance of any improvements in and to any Common Area or Recreational Facility, (2) changes in the location of the boundaries of the Common Area, any Utility System, any Recreational Facility and any Lot owned by Developer, (3) installation and maintenance of the whole or parts of any utility system or facility; and (4) installation of security and/or refuse facilities. The Developer or Association shall have the right to collect reasonable fees and charges for activities or the use of its facilities.

2.1.2. Except as otherwise expressly stated in this Declaration, Developer reserves the right to plan, design, develop, construct, maintain and manage, as Developer deems appropriate for its purposes, the Common Area and Developer-owned Lots. This reservation of right includes, without limitation, the right to change the number, shape, size and location of Lots, the shape, size and location of Common Area, Utility Systems, Recreational Facility or any part thereof.

2.1.3. Developer shall have the right, in its sole discretion, at any time and from time to time, to convey to the Association any Common Area and any other property owned by the

Developer contained within the Property or any portion or portions thereof, and such property shall be subject to the lien of taxes not yet due and payable, all easements and restrictions of record, utility easements serving or otherwise encumbering the Property and any exceptions which would be disclosed by an accurate survey or physical inspection of such parcel(s).

2.1.4. The Declarant shall retain control of such Common Areas until such time as the Declarant transfers control of the Association to the Class A Members.

Section 2.2. Plan of Development of Annexed Property. Not Applicable.

Section 2.3. Interest Subject to Plan of Development. Every grantee of a Lot or any other portion of the Development shall purchase such Lot or other property, and every holder of a mortgage or other lien, or a security interest in, a Lot or other portion of the Development shall take such title, lien or security interest with notice of the Developer's plan of development as set forth herein and other provisions of this Declaration, and no conveyance of, lien on, or security interest in a Lot or other portion of the Development shall have any effect on the right of the Developer to convey any interest therein by deed, lease, declaration, mortgage or other means or instrument to a purchaser, lender, or other party. Any provision of this Declaration to the contrary notwithstanding, the provisions of this Article II may not be abrogated, modified, rescinded, supplemented or amended or otherwise affected, in whole or in part except by Developer or with the written consent of Developer.

Section 2.4. Utilities and Related Facilities. Developer, any affiliate of Developer or contractor of Developer, may own any Utility Systems or any part of them, serving the Development. Notwithstanding the foregoing, Developer, or any affiliate, owning such system and facilities, or any part of them, shall have the right but not the obligation, to make any part or all of any such system and facilities a part of the Common Area or, at any time and from time to time, convey any part or all of any such system and facilities to the Association, a club, a municipality, public authority, governmental agency, public service district or a public or private utility operator.

ARTICLE III

THE ASSOCIATION; MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Membership. Every person or entity who is an Owner of a Lot shall be a member of the Association and shall enjoy all of the benefits of such membership. Membership shall be appurtenant to, and may not be separated from, ownership of a Lot. Conveyance of a Lot shall, without need to specifically provide therein, terminate membership of the grantor in the Association with respect to the Lot conveyed; and, by

accepting the conveyance, the grantee shall be deemed to accept membership in the Association.

Section 3.2. Transfer of Membership. Every conveyance of a Lot, without need for any provision therein, shall transfer the Association membership of the grantor with respect to that Lot; and, by accepting such conveyance, the grantee shall accept Association membership with respect to that Lot. It shall be the express responsibility of the grantee to provide all required documentation, including but not limited to name, address and settlement sheet, to the Association upon acceptance of the conveyance of any Lot.

Section 3.3. Voting Rights.

3.3.1. Class A members shall be all of the owners except the Developer. Class A members shall have one vote for each Lot owned; the owners of a Lot with more than one owner shall share a single vote.

3.3.2. The sole Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership under Section 3.1. above. Class B membership shall be converted to Class A membership upon the earlier of (1) the Developer owning no Lots, or (2) December 31, 2014.

3.3.3. A vote assigned to a Lot shall be cast by one natural person, as a block, and without splitting. A corporation or other entity shall vote by a person named in a certificate signed by the President, Vice-President or person with authority, attested by the Secretary or an Assistant Secretary, and with the corporate or appropriate seal affixed. A partnership shall vote by a person named in a certificate signed by all of the general partners. In the case of a Lot with more than one party holding record title, the vote shall be cast by a person designated in a certificate signed by all of the holders of record title. No vote shall be cast by a person named in a certificate given pursuant to this paragraph until the certificate is filed with the Secretary of the Association. Such a certificate shall remain in effect until a new certificate is filed.

3.3.4. Members may vote by a written proxy which shall be good only for the single meeting being held, and any recess or adjournments thereof, at the place and time, and on the date, stated in the proxy, and the proxy shall be filed with the Secretary before the meeting is called to order. Every proxy shall be revocable and shall automatically cease upon conveyance of the Member's Lot.

Section 3.4. Incorporation. The Developer shall establish the Association by the filing of a Certificate of Incorporation of the Association when the Developer, at its sole discretion, deems the creation of such Association is appropriate, except that the Certificate of Incorporation shall be filed by the Developer.

Section 3.5. Responsibilities of the Association. The Developer has established the Association for the purpose of maintaining and administering the Common Area; providing common services; administering and enforcing covenants, conditions and restrictions contained herein; adopting and enforcing rules and regulations; and levying, collecting and disbursing the Assessments and other charges provided for herein. The Association shall also have the power to provide, and shall provide the following:

3.5.1. Operation, care and maintenance of all Common Area, Utility Systems and Recreational Facility;

3.5.2. Insect and pest control to the extent that the Board of Directors deems it necessary or desirable, and whether or not it supplements any service provided by any government or other agency;

3.5.3. Enforcement of all covenants and restrictions affecting the Development;

3.5.4. Establish and operate the Bay Pointe Architectural Board;

3.5.5. Management, legal, accounting, information about membership and other services as may be required to achieve the highest integrity of the Association and a high level of informed participation by members;

3.5.6. Prudent insurance coverage, either independently or in common with the Developer, of the Association, of the Common Areas, of the actions taken on behalf of the Association by its directors and officers, and of such other persons, properties, and activities as the Board of Directors shall deem appropriate.

3.5.7. Maintain and preserve wooded areas, if any, in the Common Area.

3.5.8. And perform any of the functions or services delegated to the Association in any instrument applicable to the Development;

3.5.9. Any and all other services the Board of Directors deems necessary or desirable to further the interests of the Development, of the Owners, or of both.

Section 3.6. Board of Directors. Prior to full completion of the Development, the Board of Directors shall consist of three (3) directors as shall have been designated by the Developer. When one hundred percent (100%) of the proposed Lots in the Development are constructed and settled, or until December 31, 2014, whichever is sooner, the Board of Directors shall consist of five (5) directors, all of whom shall be Owners, and all of whom shall be elected at large, as established in the Bylaws of the Association. The Board of Directors shall have the power to perform all rights and duties of the Association unless otherwise specifically reserved to the Association membership in this Declaration or in the Articles of Incorporation or Bylaws of the Association.

Section 3.7. Rules and Regulations. The Board of Directors of the Association may from time to time adopt rules and regulations governing the use of Common Area, of Lots and of the Recreational Facility.

Section 3.8. Managing Agent. The Association may employ a Professional Managing Agent at a compensation to be established by the Board of Directors to perform such duties as the Board of Directors shall authorize, except that making assessments and rules and providing that any action by managing agent with respect to hiring and dismissal of personnel, opening bank accounts and designating signatories there to and enforcing rules by legal action shall require the prior written consent thereto of the Board of Directors.

Section 3.9. Limitations.

3.9.1. The Board of Directors shall have the exclusive right to initiate any form of Legal Proceedings as it deems necessary and appropriate related to the use, operation or maintenance of the Common Area, or on behalf of the Association and the welfare of the Owners, subject to the following requirements.

3.9.2. "Legal Proceedings", as used in this Article, shall mean the institution of any form of action or suit, except the filing and enforcement of liens, the initiation of legal action for routine common expense assessment collection matters, legal actions required to enforce provisions of the Declaration, rules and regulations with respect to the Common Area or enforcement of service contracts between the Association and non-Developer contractors.

3.9.3. All claims, counterclaims, disputes and other matters in question between the Association or the Owners with the Developer arising out of or relating to the obligations of the Developer under the Declaration or any other statute, regulation, ordinance or the defense of any claims or actions relating the Common area or the breach thereof shall be decided by arbitration in accordance with the Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations and restrictions stated in paragraphs 3.9.5 below. This Agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this paragraph will be specifically enforceable under the laws of the State of Delaware.

3.9.4. Notice of demand for arbitration must be filed in writing with the other parties to the Declaration and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

3.9.5. All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement identifying the total sum or value in controversy as alleged by the party making such demand or answering statement and the arbitrators will not have jurisdiction, power or authority to render a monetary award in response

thereto against any party which totals more than such stated amount (exclusive of interest and costs).

3.9.6. The limitations and restrictions contained in paragraph 3.9.5. may be waived in whole or in part upon written consent of the Association and Developer as to any claim, counterclaim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute or consent to arbitrate any other claim, counterclaim, dispute or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute or other matter in question which is not specifically described in such consent or which is with any party not specifically described therein.

3.9.7. The award rendered by the arbitrators shall be final; judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modification or appeal except to the extent permitted by Section 10 and 11 of the Federal Arbitration Act (9 U.S. C. Sections 10 and 11).

3.9.8. Due to the potential adverse financial impact of pursuing Legal Proceedings, the decision to initiate any Legal Proceedings must be made by a resolution duly adopted at a properly noticed regular or special meeting of the Association held for such purpose. Such resolution shall require the affirmative vote of the Lot owners representing not less than sixty-seven (67%) of the Class A Members and their mortgagees. If the Association shall incur or potentially be obligated as a result of such resolution to incur attorney's fees, expert fees or other costs associated with such legal proceedings totaling in excess of \$25,000 or if the amount recoverable by an attorney for the Association pursuant to a contingency fee agreement shall exceed \$50,000, then such resolution shall require the affirmative vote of the Lot owners representing not less than seventy-five (75%) of the Class A Members and their mortgagees. Neither the Board, the Association nor the Owners shall borrow on behalf of the Association nor use any funds from reserves of the Association to pay such legal costs, but the same shall be paid from and limited to the amounts provided in the annual budget for such expenditures for the fiscal year or shall be raised by special assessment levied against the Owners for such purpose. If such Legal Proceedings are not concluded within 1 year of the date of such resolution, the continued prosecution of such Legal Proceedings beyond such period must be reaffirmed annually at a special meeting held for such purpose by the percentage vote of the Association as was required to adopt the original resolution. If the continued prosecution of such Legal Proceedings is not reaffirmed, the action shall be discontinued and the Board shall have no further authority to act as the attorney-in-fact for the Association in the further prosecution or defense of such Legal Proceedings but may, with the affirmative vote of a majority of the vote in the Association, act as its attorney-in-fact with respect to any settlement or compromise of such Legal Proceedings; provided the same is completed with six (6) months thereafter. If the Association, by resolution approved in accordance with this section, authorizes the Board to initiate Legal Proceedings, then the decisions relating to the conduct of the Legal Proceedings shall be made by the Board for such purposes. Any action regarding the conduct of the Legal Proceedings shall be approved by a percentage

vote of seventy-five (75%) or more of the Board. Decisions regarding the conduct of any Legal Proceedings are non-delegable. Notwithstanding anything contained herein on in the Declaration to the contrary, the provisions of this Section shall not be modified or amended without Developer's written consent so long as Developer owns any property within the Development; thereafter this Section shall not be modified or amended except by a written instrument, executed by the Owners representing not less than eighty-five (85%) of the Class A Members and their mortgagees, and be recorded among the land records of Sussex County.

Section 3.10. Assignment of Obligations. At the request of the Developer, the Association shall accept assignment and delegation of any or all rights and obligations of the Developer under this Declaration.

Section 3.11. Fines. In addition to the means for enforcement provided elsewhere in this Declaration, the Association shall have the right to levy fines against an Owner or such Owner's guests, relatives, lessees or invitees, in the manner set forth herein, and such fines shall be collectible in the same manner as any other assessment such that the Association shall have a lien against the Lot, as provided in this Declaration, and the Bylaws and the Certificate of Incorporation of the Association and such fine(s) shall also become the binding personal obligation of such Owner.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON AREA

Section 4.1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

4.1.1. The right of the Developer or the Association to charge reasonable admission and other fees for the use of any facility which may be situated upon the Bay Pointe Common Area from time to time;

4.1.2. The right of the Developer or the Association to suspend a Lot or Owner's voting rights and right to use any of the Bay Pointe Common Area for a period in which the Owner is in default in the payment of any assessment, fee, penalty, interest or any other charge outstanding. Additionally, such rights may be suspended by notice from the Board of Directors for such a period not to exceed ninety (90) days for any single and nonrecurring infraction of the Association's published rules and regulations or breach of or default under any of the covenants or provisions of the Declaration. If any such infraction, breach or default is continuous or recurring, then such rights may be suspended for a period commencing on the date the owner is given notice of the cause for such suspension and ending not more than ninety (90) days after the date such infraction, breach or default ceases or is remedied;

4.1.3. The Developer's Utility Rights;

4.1.4. The right of the Association, subject to the Developer's Utility Rights, to dedicate or transfer all or any part of the Bay Pointe 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 of the Association. No such transfer or dedication except for the dedications or transfer of utility easements by the Association or any dedication or transfer made in the exercise of the Developer's Utility Rights, shall be effective unless approved by more than sixty-seven percent (67%) of the votes entitled to be cast by all of the members of the Association;

4.1.5. The right of the Association to limit the number of guests, visitors, licensees, invitees, or lessees of Owner utilizing such Common Areas;

4.1.6. The right of the Developer and the Association to establish uniform rules and regulations pertaining to the use of such Common Areas;

4.1.7. The right of the Association, in accordance with its Certificate of Incorporation and Bylaws, and with the consent of the Declarant (for so long as the Declarant shall own any portion of the Property or Development) and two-thirds (2/3) of the total votes of the Members, to borrow money for the purpose of improving such Common Areas in a manner designed to promote the enjoyment and welfare of the Members and in aid thereof after conveyance of title therein to the Association, to mortgage any portion of such Common Areas;

4.1.8. The right of the Association to take such steps as are reasonable necessary to protect the property of the Association against mortgage default and foreclosures; provided, however, that the same are in conformity with the other provisions of this Declaration;

4.1.9. The right of the Association, acting by and through the Board, to grant easements, licenses or other rights of use of such Common Areas to persons or entities that are not Members of the Association for such consideration and on such terms and conditions as the Board may from time to time consider appropriate or in the best interest of the Association, Property or Development;

4.1.10. The rights of parties holding rights under easements reserved; and

4.1.11. Other rights of the Developer set forth in this Declaration.

Section 4.2. Title to Common Area. The Developer hereby may convey to the Association, in such portions as may be convenient to the Developer, by limited warranty deed or deeds, any title in fee simple to the Common Area then retained by the Developer, subject, however to liens of unpaid taxes not then due and payable, to liens and

encumbrances of record, to conditions shown by a survey, to conditions shown by an inspection thereof, and to the terms and provisions of this Declaration.

Section 4.3. Restrictions Upon Owners' Rights. All titles, leaseholds, and other interests in, and all liens upon, property in the Development shall be held subject to the following:

4.3.1. The right of the Developer, and of the Association, to dedicate, transfer or convey all or any of the Common Area, with or without consideration, to any successor association, governmental body, district, agency or authority, or to any public or private utility, provided that it shall promote the interests of the Owners;

4.3.2. Easements and rights-of-way through, under, over and across the Common Area, for the installation, maintenance and inspection of lines and appurtenances for the Utility Systems including but not limited to utilities, signage, wastewater collection, treatment and disposal system, public or private water, storm sewer, drainage, electric, fuel oil, gas and other utilities and services, specifically including any telephone, television, irrigation or lawn-sprinkler systems or facility, and the right of the Developer to grant and reserve easements and right-of-way through, over and upon and across the Lots and/or Common Area for the completion of the Development, for the operation and maintenance of the Common Area, and for the benefit of the Owners;

4.3.3. The right of invitees of the Developer or an Owner to use the parking lots and other necessary portions of the Common Area for ingress and egress;

4.3.4. The right of the Association to provide penalties and suspend the rights of any Owner for any period during which any Assessment remains unpaid and for any infraction of this Declaration or the Associations' published rules and regulations;

4.3.5. The right of the Developer and the Association, respectively and from time to time, to fix and collect assessments, and to fix fees, charges and penalties.

Section 4.4. Additional Structures. Neither the Association nor any Owner or any group of Owners shall, without the prior written approval of Developer and the Bay Pointe Architectural Board, allow or cause any structure or other improvement to be placed in or on the Common Area.

Section 4.5. Easements for Developer. During the period that Developer owns any Common Area, or owns any Lot primarily for the purpose of sale or that any Participating Builder has any building or improvements under construction, or has any constructed home on a Lot not sold to an independent third party home purchaser, Developer and/or Participating Builder, as applicable, shall have an alienable and transferable right and easement on, over, through, under and across the Common Area for the purpose of constructing or improving Lots, any improvements to the Common Area, and for installing, maintaining, repairing and replacing such other improvements to the

Development (including the Recreational Facility and other portions of the Common Area) as are contemplated by this Declaration or as Developer or Participating Builder, in its absolute and sole discretion, deems in the best interest of the Development, including without limitation any improvements or changes permitted and described in this Declaration, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided that in no event shall Developer have the obligation to do any of the foregoing.

Section 4.6. Changes in Boundaries; Additions to Common Area. Developer shall have the right to change and realign the boundaries of the Common Area, any Lot or other portion of the Development owned by Developer, including the realignment of boundaries between adjacent Lots and Common Area.

Section 4.7. Easement for Utilities/Utility Systems. There is hereby reserved for the benefit of Developer and the Association the power to grant and accept easements to and from any private or public authority, agency, public service district, public or private utility or other person upon, over, under and across (1) all the Common Area or (2) an area on any Lot intended for improvement as a single-family dwelling ten feet (10') in width along the interior side of the perimeter boundary lines of the subdivision, and five feet (5') in width along the boundary lines of each Lot for a total easement width of at least ten feet (10') along a lot line common to two (2) Lots, for the purpose of installing, replacing, repairing, maintaining and using Utility Systems. For so long as Developer or any Participating Builder owns any portion of the Common Area or owns any Lot or has a home under construction primarily for the purpose of sale, the Association may not grant or accept any such easement without the prior written consent of Developer and Participating Builder. To the extent feasible, all systems, utilities and facilities in the Development shall be located underground. All of such easements shall be deemed to include permission (1) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities, (2) to cut and remove any trees, bushes or shrubbery, (3) to grade, excavate or fill, or (4) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use. No building, structure or other permanent obstruction of any kind whatsoever shall be placed on or in the easement described above.

Section 4.8. Sales Offices, Rental Offices, Property Management Offices and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Developer and Participating Builder, until the Developer owns no Lots or until December 31, 2015, whichever is sooner, the perpetual, alienable and transferable right and easement in and to the Development for the maintenance of signs, sales offices, rental offices, property management offices, construction offices, business offices and model or sample homes, together with such other facilities as in the sole and absolute discretion of Developer or Participating Builder may be convenient or necessary to the completion, management, rental, improvement and/or sale of homes, Lots or Common Area.

Section 4.9. Easements for Annexed Property. Not Applicable.

Section 4.10. Dedication of Roads and Alleys. The Developer may cause some or all of the roads and alleys in the Development to be dedicated to the State of Delaware as public roads and alleys at such time, and on such terms and conditions, as the Developer, in its sole and absolute discretion, deems in the best interests to the Development. Until such time as all streets, roads and alleys are dedicated as public roads, and such dedication is accepted by the State, if ever, all deeds to lots in the Development shall comply with Section 9623 of Title 9 of the Delaware Code by containing a statement that such private streets and roads are not maintained by the State.

Section 4.11. Delegation of Owner's Rights. An Owner may delegate to the Owner's family members, tenants, and invitees, in accordance with the By-Laws and the Rules and Regulations established by the Developer or Association and not otherwise, the Owner's respective right to enjoyment of the Common Area.

Section 4.12. Access. All Owners, by accepting title to Lots conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress and egress to and from such Lots and acknowledge and agree that such access, ingress and egress to and from such streets, sidewalks, and walkways, and trails located within the Development from time to time, provided that pedestrian and vehicular access to and from all Lots shall be permitted at all times, subject to the rules and regulations provided for herein.

Section 4.13. Easements for Association. The Association shall have a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including but not limited to any Professional Managing Agent employed by the Association and any employees of such manager, to enter upon and into any Lot or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or occupant, as the case may be.

Section 4.14. Maintenance Easement. Subject to the other terms of this Declaration, the Developer or the Association shall have the right and easement to enter upon any unimproved portions of any Lot for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety and appearance within the Development; provided that such easements shall not impose any duty or obligation upon the Developer or the Association to perform any such actions. Furthermore, there is hereby reserved for the benefit of the Developer and the Association an easement, but not an obligation, to enter upon any unimproved portions of Lots located within twenty feet (20') from the water's edge of any pond or other body of water within the Development for the purpose of mowing such area and keeping same clear and free from unsightly growth and trash, as well as for the purpose of maintaining such body of water, such

maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards.

Section 4.15. Environmental Easement. The Developer or the Association shall have an alienable, transferable and perpetual right and easement on, over and across all unimproved portions of the Common Area and Lots for the purposes of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include without limitation the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

Section 4.16. Wells and Effluent. The Developer or the Association shall have an alienable, transferable and perpetual right and easement to (1) pump water from ponds and other bodies of water located within the Development for the purpose of irrigating any portions of the Development, for fire control and for other purposes, (2) drill, install, locate, maintain and use wells, pumping stations, water towers, siltation basins and tanks and related water and sewer treatment facilities and systems within the Common Area.

Section 4.17. No Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the Development has been removed from the provisions of this Declaration.

Section 4.18. Jurisdiction. Notice is hereby given of the restriction that as to any portion of any Lot within the Development which may contain submerged land or other critical areas, all activities on or over and all uses of such land or other critical areas are subject to the jurisdiction of the U.S. Army Corps of Engineers and/or the State of Delaware. An Owner is liable for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning any portion of the Owner's respective property which is submerged land, wetlands or other critical area.

ARTICLE V

MAINTENANCE

Section 5.1. Association's Responsibility.

5.1.1 Subject to the Developer's rights otherwise provided in this document, the Association shall have the right to make or cause to be made alterations, modifications, improvements, repairs, maintenance and replacements to the Common Area, and to portions of buildings and lots designated herein. The cost thereof shall be assessed as Common Expenses and collected from the Owners according to their respective interests in the Common Area.

5.1.2 Except as may be herein otherwise specifically provided, the Association shall provide grass cutting services for the Lots and shall maintain, keep in good repair and replace as needed all portions of the Common Area including but not limited to, (1) all Common Area, ponds, landscaped areas, natural areas, buffer areas, stormwater management areas, surface drainage facilities, erosion and sedimentation control facilities, the Recreational Facility and all other improvements situated within the Development, (2) such Utility Systems and facilities which are a part of the Common Area and which are not maintained by the Developer, a public authority, public service district, or another public or private party. The Association shall not be liable for injury or damage to any person or property (1) caused by any cause or act of God, or an Owner or any other person, (2) resulting from any rain or other surface water which may leak or flow from any portion of the Common Area, or (3) resulting from any failure or neglect of repair by the Association. The Association shall not be liable to any Owner or invitee of an Owner for loss or damage, by theft or otherwise, of any property stored or left in or upon any portion of the Common Area or any other portion of the Development. No diminution or abatement of Assessments or any dues or charges payable to the Association shall be claimed or allowed by reason of any alleged failure of the Association to take some required action or to perform some required function, or for inconvenience or discomfort arising from the Association making improvements or repairs or from the Association taking any action to comply with any law, ordinance, order or other directive of any court or other governmental authority, the obligation to pay such Assessments being a separate and independent covenant on the part of each Owner.

5.1.3 In the event that any maintenance, repair or replacement performed by the Developer or the Association arises out of any failure of an Owner to perform the obligations imposed by Section 5.2 or arises out of any willful or negligent act of an Owner, of a member of an Owner's family, of an Owner's invitee, or tenant, and is not covered or paid for by insurance in whole or in part, then, in either event, the Developer or the Association, may charge such Owner and all other persons responsible with the expenses, including reasonable attorney's fees and costs, incurred together with a reasonable amount to cover the cost of the time spent by the personnel of the Developer, the Association, or a property manager in arranging such maintenance, repair or replacement. No such maintenance, repair or replacement shall be undertaken by the Developer or Association, except in an emergency, without giving the Owner notice of the action required and an opportunity to undertake such action. The Developer need not undertake any such action, but may do so. In the event that the Developer undertakes such action, the Association shall promptly reimburse the Developer for the Developer's costs and expenses. The Association shall have a lien on the Lot of the responsible Owner for all such charges, costs and expense.

Section 5.2. Owner's Responsibility.

5.2.1. All maintenance and repair of structures, landscaping (excluding grass cutting and fertilization) and other improvements which are not Common Area shall be the responsibility of the Owner thereof.

5.2.2. Cutting and fertilization of the grass on the Lots shall be the responsibility of the Association. Maintenance, repair and replacement of the irrigation system, landscape beds, flowers, shrubs and trees on the Lots shall be the responsibility of the Owner thereof.

5.2.3. The maintenance and repair of all Common Areas (including the Recreational Facility and Utility Systems) shall be the responsibility of the Association.

5.2.4. Developer shall be responsible for the maintenance and repair of structures, lawns, landscaping and other improvements on Developer-owned portions of the Property which are not Common Area.

5.2.5. The Association shall provide maintenance and repair which an Owner fails to provide and shall charge the respective Owner for the cost thereof, including an amount determined by the Association, in its sole and absolute judgment, to reimburse the Association for the time spent in arranging such maintenance or repair by personnel of the Association or of any property manager retained by the Association as well as reasonable attorney's fees and costs incurred. The Association shall have a lien on the Lot of the responsible Owner for all such charges, costs and expense. No Owner shall (1) decorate, relocate or otherwise alter the exterior or any portion of the exterior of any structure without the prior written approval of the Bay Pointe Architectural Board, or (2) do any work which, in the reasonable opinion of the Bay Pointe Architectural Board, will jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement or hereditament thereto, without the prior written approval of the Bay Pointe Architectural Board.

5.2.6. All maintenance of the surface area, lawns, landscaping and wooded areas, if any, in the easement areas shall be the responsibility of the Owner thereof.

5.2.7. No Owner shall modify the irrigation system on any Lot without the prior written approval of the Bay Pointe Architectural Board. The cost of any and all modifications shall be the responsibility solely of the Owner of the said Lot.

ARTICLE VI

ASSESSMENTS

Section 6.1. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Property, the provision of services and facilities authorized by the Board of Directors, taxes and other expenses of the Association, and for the improvement, maintenance, repair and replacement of the Common Areas located in the Property, and for services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas; the payment of taxes and insurance premiums for the Common Areas,

utility services used in or for the Common Areas; for the cost of labor, equipment, materials, management and supervision thereof; and for operating reserve funds and reserve funds for repair and replacement of the Common Areas and facilities thereon and other contingencies. Assessments also may be levied to accomplish the purpose and duties of the Association and all other costs and expenses incurred by the Association in the proper conduct of its activities; including but not limited to the maintenance, repair or replacement of any property or facilities serving or appurtenant to the Development that the Association is obligated or elects to maintain, whether or not such property or facilities are owned by the Association or are located within the Development.

Section 6.2. Creation of Lien and Personal Obligation of Assessments. The Developer, for itself and its successors and assigns, and for each Lot within the Development, hereby covenants, and each Owner of any Lot, by acceptance of a deed or other transfer document therefor, whether or not it shall be expressly established in such Deed or other transfer document, hereby covenants and agrees to pay the Association: (1) annual assessments or charges; (2) special assessments (including but not limited to "initial assessments" provided for below) for capital improvements, operations, repair, replacement and reserve funds, such assessments to be fixed, established and collected as hereinafter provided; and (3) fees established by the Board of Directors. The annual and special assessments and fees, together with penalties, interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment or fee, together with penalties, interest, costs, and reasonable attorney's fees, for the collection thereof, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. A personal obligation for any delinquent assessment shall not pass to the Owner's successor in title (other than as a lien on the land), unless expressly assumed by them. No assessments shall be due from any Lots owned by the Developer or any Participating Builder.

Section 6.3. Computation of Assessment.

6.3.1. Until the beginning of the next fiscal year of the Association following the first conveyance of a Lot to a Class A Member, the applicable annual assessment (if any) shall be the amount established by the Developer in its sole discretion. Thereafter, it shall be the duty of the Board of Directors, at least sixty (60) days before the beginning of the fiscal year and thirty (30) days prior to the annual meeting, to prepare a budget and determine the annual assessment covering the estimated costs of operating the Association during the coming year. The Board shall cause a copy of the budget and the amount of the annual assessment to be levied against each Lot for the following year to be delivered to each Owner at least fifteen (15) days prior to the meeting. The budget shall be approved by majority vote of the Board of Directors; provided, however, that any budget under consideration by the Board of Directors pursuant to this Section 6.3.1. that would result in an increase in the annual assessments payable by the Members in excess of the amounts permitted under Section 6.3.6. below, shall be approved by the affirmative vote of Members entitled to cast not less than sixty-seven percent (67%) of the votes of the

Members present, in person or by proxy, and voting at the annual meeting or any meeting of the Association duly called for this purpose.

6.3.2. Notwithstanding the foregoing, however, in the event the Board of Directors disapproves the proposed budget or the Board of Directors fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year or years.

6.3.3. All assessments shall be allocated equally among all Lots excepting exempt lands as hereinafter provided.

6.3.4. The initial assessments shall be as provided in Section 6.8.

6.3.5. In addition to the Annual Assessment authorized by Section 6.2. hereof, the Board of Directors of the Association may levy in any assessment year one or more special assessments applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon or in the Common Areas, including the necessary fixtures and personal property related thereon, and for operating the Common Areas, for which a reserve fund does not exist or is not adequate, and including operating cost overruns due to extraordinary conditions; provided that any such assessment shall have the assent of a majority of a quorum of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose and such assessments shall be subject to the limitations set forth in Section 6.3.10 of this Declaration.

6.3.6. In the year Developer withdraws from control of the Association, the Board of Directors may increase the annual assessment without limit. In subsequent years, the Board of Directors may, without the consent of the members, increase the annual assessment in an amount not to exceed twenty percent (20%) of the annual assessment for the preceding fiscal year plus the amount by which any ad valorem real estate taxes and insurance premiums payable by the Association have increased over the amount payable for the same or similar items for the previous year.

6.3.7. The maximum annual assessment may be increased above twenty percent (20%) upon approval of sixty-seven percent (67%) of the votes of the then Class A members and sixty-seven (67%) of the votes of the then Class B members, in person or by proxy at a meeting duly called for this purpose.

6.3.8. The Board of Directors may from time to time fix the annual assessment at an amount not in excess of the maximum.

6.3.9. The Board of Directors shall establish and maintain a reserve fund for replacements of the Common Area by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be

conclusively deemed to be a common expense of the Association and may be deposited in any banking account institution, the accounts of which are insured by any state or an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by the United States of America. The reserve for replacements of the Common Areas may be expended only for the purpose of effecting the replacement of the Common Areas, Utility Systems, and/or major repairs to any equipment or replacement thereof, and for start-up expenses and operating contingencies of a nonrecurring nature relating to the Common Areas. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider necessary or appropriate. The proportional interest of a member in any such reserve shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it ascertainment and shall be deemed to be transferred with such Lot.

6.3.10. In no event shall an annual assessment or special assessment include any amount for "Community Amenities" (as such term is used in the context of 25 Del. C. Section 317) that have not been opened or made available for Class A Members and that are intended for the use of the Class A Members.

6.3.11. The Association may also levy a special assessment against any Owner to reimburse the Association for costs incurred in bringing the Owner or such Owner's Lot into compliance with the provisions of this Declaration, or the Certificate of Incorporation, Bylaws and rules and regulations of the Association, or any applicable Laws; provided such special assessment may only be levied upon the affirmative vote of a majority of the Board of Directors, after notice and an opportunity for a hearing has been provided to the Owner.

6.3.12. Notwithstanding anything contained in this Declaration to the contrary, in addition to any other rights and remedies available to the Association as provided herein, or at law or in equity, the Association shall have the right (but not the obligation or duty) to discontinue all or a portion of the services provided to any such Owner by the Association until such time as full payment is received as provided herein above.

Section 6.4. Effect of Nonpayment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of the Association. If any Assessment is not paid on the date when due as hereinabove provided, then such Assessment shall be deemed delinquent and together with such interest and cost of collection thereof, including reasonable attorney's fees, as hereinafter provided, continue as a lien on the Lot and any structure built thereon which shall bind such Lot in the hands of the then Owner. In addition to such lien rights, the personal obligation of the then Owner to pay such Assessment, however, shall remain his personal obligation and shall not pass to his successors in title (other than as a lien on the land) unless expressly assumed by them. If the Assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the legal interest rate authorized by 6 Del. C., Section 2301, as amended, and the Association may bring a legal action against the Owner personally

obligated to pay the same or may enforce or foreclose the lien against the Lot, and in the event a judgment is obtained, such judgment shall include interest on the assessment above provided and reasonable attorney's fees, together with the costs of the action. No Owner of a Lot may waive or otherwise escape liability or the Assessment provided for herein by non-use of the Common Areas or abandonment of said Lot.

Section 6.5. Assessment Lien. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage on the Lot. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, provided that no Participating Builder shall be subject to any assessment.

Section 6.6. Exceptions for Assessments. The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

6.6.1. All properties dedicated to and accepted by a governmental body, agency or authority and devoted to public use;

6.6.2. All Common Areas;

6.6.3. All vacant Lots owned by the Developer, any successor Developer, Joseph P. Reed or Seabreak Land Investment, LLC and not sold or leased to third persons.

6.6.4. **Section 6.7. Uniform Rate of Assessment.** Both annual and special Assessments must be fixed for each Lot at the same amount as for every other Lot, and shall be collected in one installment or more, as the Board of Directors may from time to time decide.

Section 6.8. Initial Assessment. At the time the Developer conveys a Lot to the first buyer of the Lot after its construction; such first buyer shall pay to the Association an Initial Assessment set by the Developer. Initial Assessments shall be used by the Association as working capital to insure availability of cash for expected and unexpected expenditures, or to acquire equipment or service deemed necessary by the Association. Initial Assessments shall be paid in addition to regular Assessments. With respect to assessments related to "Community Amenities" (as such term is used in the context of 25 Del. C. Section 317) initial assessments may be imposed as a special assessment hereunder upon such Common Amenities becoming open or available for use by Class A Members, and may at such time include amounts for operating and replacement reserves. This section shall not apply to any Participating Builder.

ARTICLE VII

ARCHITECTURAL CONTROL

Section 7.1. Authority. The Developer or Board of Directors shall have the authority and standing, on behalf of the Association to enforce in courts of competent jurisdiction decisions of the Board established in Section 7.2 of this Article. This Article may not be amended without the Developer's written consent so long as the Developer owns any property within the Development. No alteration, modification or construction, which term shall include within its definition, changing the exterior appearance of any building, wall, fence or other structural improvement, staking, clearing, excavation, grading and other site work or removal of plants, trees or shrubs, shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the Bay Pointe Architectural Board ("BPAB") has been obtained.

Section 7.2. Bay Pointe Architectural Board.

(a) The Bay Pointe Architectural Board shall have exclusive jurisdiction over all original construction, modifications, additions or alterations made on or to all existing improvements and the open space, if any, appurtenant thereto, on all property within the Development, including landscaping and grading. In order to protect the visual integrity, architectural spirit and long-term property values of the Development, the Bay Pointe Architectural Board shall prepare and, on behalf of the Developer or Board of Directors, shall promulgate design and development guidelines and application and review procedures, all as part of the Bay Pointe Design Standards and Guidelines ("Bay Pointe Standards") and may establish reasonable fees for review, provided that such fees shall not be applicable to construction or alterations by a Participating Builder. Bay Pointe Standards shall incorporate all restrictions and guidelines relating to development and construction contained in this Declaration as well as restrictions and guidelines with respect to location of structures upon property, foundations, size, length, design of structures, driveway and parking requirements and landscaping requirements. Copies shall be available from the Bay Pointe Architectural Board for review. Unless otherwise provided in this Declaration, the guidelines and procedures shall be those of the Developer or Association and the Bay Pointe Architectural Board shall have sole and full authority to prepare and to amend the Bay Pointe Standards. The Bay Pointe Architectural Board shall make Bay Pointe Standards available to owners.

(b) The Bay Pointe Architectural Board shall initially consist of three (3) members, all appointed by the Developer, and who shall serve until such time as their successors are designated by the Developer or Board of Directors as provided below. Declarant may remove with or without cause any Bay Pointe Architectural Board member appointed by Declarant at any time by written notice to such member. At such time as Developer deems appropriate, the Board of Directors of the Association shall have the right to appoint a maximum of two (2) additional members. At no time shall the Bay Pointe Architectural Board have less than three (3) members nor more than five (5) members. At such time as one hundred percent (100%) of all property within the Development has been developed, improved or conveyed to purchasers in the normal course of development and sale, the Board of Directors shall appoint all members of the Bay Pointe Architectural Board.

Thereafter, the regular term of office for each Bay Pointe Architectural Board member appointed by the Board of Directors shall be one (1) year, measured from the date of such member's appointment. Upon death or resignation of any such member, a successor or successors appointed by the Board of Directors to fill such a vacancy shall serve the remainder of the term of the former member. The Bay Pointe Architectural Board shall select its own Chairman and he, or in his absence the Vice Chairman, shall be presiding officer of its meetings. The Developer may, at its option, delegate to the Board of Directors, its right to appoint one (1) or more members of the Bay Pointe Architectural Board. Anything elsewhere contained herein to the contrary notwithstanding, the Developer shall retain an absolute veto over any decision by the Bay Pointe Architectural Board so long as Developer owns any Lot or Common Area within the Development.

Section 7.3. Meeting and Decisions of the Board. The Bay Pointe Architectural Board shall establish times, dates and frequency of meetings. A quorum of a simple majority of the members shall be required to review and take action on applications for approval. The Board shall appoint a secretary who shall prepare minutes of each Board meeting including all decisions of the Board. If the Bay Pointe Architectural Board fails to approve or deny an application within thirty (30) days of receipt of the complete application by and payment of fees to the Board, the party making the submission for approval shall deliver written notice to the Bay Pointe Architectural Board of its failure to act, and, if approval is not granted or denied within fifteen (15) days thereafter, the plans and specifications shall be deemed to be denied. It is further specifically provided that if any proposed application for action will affect drainage of stormwater, such application shall include a certification of non-effect of said plans from a professional engineer licensed in the State of Delaware.

Section 7.4. No Waiver of Future Approvals. The approval of the Bay Pointe Architectural Board of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Board, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specification, drawings, or matter subsequently or additionally submitted for approval or consent.

Section 7.5. Variance. The Bay Pointe Architectural Board may authorize variances from compliance with any of the provisions of the Bay Pointe Standards when circumstances such as topography, natural obstructions, hardship or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of the Declaration, or (c) prevent the Bay Pointe Architectural Board from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 7.6. Review and Control by the Bay Pointe Architectural Board.

7.6.1. No building, outside attached shower, fence, wall, deck, patio, bulkhead, retaining wall, swimming pool, tennis court, septic system, parking area, garage, and/or paving for driveways or garages, or other any other structure of any kind shall be erected, placed or altered nor shall a building permit from Sussex County for such improvement or construction for such improvement be applied for on any improved or unimproved property in the Development until all fees to the Association have been paid and complete sets of building plans and elevations, specifications, and site plan (showing the proposed location of such building, drives and parking areas, etc.) shall have been reviewed and approved in writing by the Bay Pointe Architectural Board. The number of plans required shall be established by the Bay Pointe Architectural Board with the intention that there shall be at least one (1) complete set of plans and specification for each member of the Bay Pointe Architectural Board and one (1) additional set for the Association's files. In reviewing such materials, the Bay Pointe Architectural Board shall consider such things as aesthetic appearance, harmony with surrounding improvements, compliance with this Declaration and any additional criteria adopted by the Bay Pointe Architectural Board as part of the Bay Pointe Standards. Approval or disapproval of plans, locations or specifications may be based by the Bay Pointe Architectural Board upon any ground incorporated within the Bay Pointe Standards including purely aesthetic considerations, which in the sole discretion of the Bay Pointe Architectural Board, shall be sufficient. No painting, staining, changes in color, finish materials or alteration to the exterior facade of any structure shall be undertaken until approval has been obtained in writing from the Bay Pointe Architectural Board. This provision shall not apply to repainting the same color. There shall be no submission review fees required of Developer or any Participating Builder.

7.6.2. No completed structure shall be deemed to be in compliance with this Declaration unless and until a Certificate of Compliance has been issued by the Bay Pointe Architectural Board. A Certificate of Compliance will not be unreasonably withheld if the structure is completed pursuant to the approved plans.

7.6.3. Neither Developer nor any member of the Bay Pointe Architectural Board shall be responsible or liable in any way for any defects in any plans or specifications approved by the Developer or the Bay Pointe Architectural Board, nor for any structural defects in any work done according to such plans and specifications approved by the Developer or the Bay Pointe Architectural Board. Further, neither Developer nor any member of the Bay Pointe Architectural Board shall be liable for damages to anyone submitting plans or specifications for approval under this Section, or to any owner of property affected by this Declaration by reason of mistake in judgment, negligence, or non-feasance arising out of or in connection with the approval or disapproval of or failure to approve or disapprove of any such plans or specifications. Every person who submits plans or specifications, and every Owner of any Lot agrees, that such Owner will not bring any action or suit against Developer, or any member of the Bay Pointe Architectural Board, to recover for any such damage. No approval of plans, location or specification shall be construed as representing or implying that such plans, specification or standards will, if followed, result in a properly designed residence. Such approvals and standards shall in no event be construed as

representing or guaranteeing that any residence or improvement hereto will be built in a good workmanlike manner. The property owner shall have sole responsibility for compliance with approved plans and does hereby hold the Bay Pointe Architectural Board and the Developer harmless for any failure thereof caused by the property owner's architect or builder.

7.6.4. Architectural and design review shall be directed towards attaining the following objectives for the Development, and the Developer or Association may adopt reasonable standards, rules, and regulations deemed necessary or convenient in attaining such objectives:

7.6.4.1. Preventing excessive or unsightly grading, indiscriminate earth moving or clearing of property, or removal of trees and vegetation which could cause disruption of natural water courses or alter natural or designed land forms.

7.6.4.2. Ensuring that the location and configuration of structures are visually harmonious with the terrain, with the vegetation of the residential Lot and with surrounding residential lots and structures, and do not unnecessarily block scenic views from existing structures, walks or roads or tend to dominate any general development or natural landscape.

7.6.4.3. Ensuring that the architectural design of structures and their materials and colors are visually harmonious with the Development's overall appearance, history and cultural heritage, with surrounding development, with natural land forms and native vegetation, and with development plans approved by the Developer, or by a governmental or public authority, if any, for the areas in which the structures are proposed to be located.

7.6.4.4. Ensuring that the Development structure, building or landscaping complies with the provisions of this Declaration.

7.6.4.5. Promoting building design and construction techniques that respond to energy consumption and environmental quality considerations such as heat loss, air emissions and run-off water quality.

7.6.5. The approval of the Bay Pointe Architectural Board shall not be required for matters of interior decoration only.

Section 7.7. Application Fees. The Board of Directors of the Association shall have the right to set and charge a reasonable fee for applications for home improvement alterations, additions, construction of accessory structures, garages or fences to defray architectural review costs. Participating Builder shall not be subject to such fees.

Section 7.8. Entry on a Property. The Bay Pointe Architectural Board or any of its representatives shall have the right to enter any improved lot or unimproved lot within Bay Pointe for the purpose of determining compliance with these covenants and the Bay Pointe Standards, and with decisions of the Bay Pointe Architectural Board, pending or

completed, which affect that property. Entering a property for this purpose shall not be deemed trespass.

ARTICLE VIII

USE RESTRICTIONS

In order to protect the appearance and beauty of the vegetation, topography or other natural features within Bay Pointe, the following controls are hereby established.

Section 8.1. Residential Use Only.

The Owners of Lots in the Development acknowledge and recognize that Bay Pointe is a community planned to achieve the goals and objectives of providing an environment for families to live and enjoy the peace and quiet of an attractive and distinctive residential community. In order to achieve a neighborhood of serenity and peaceful use, the Owners agree and covenant that the homes in the Development shall only be used for single-family residential purposes exclusively. No groups, except families shall reside, occupy, rent or use a dwelling in the Development. No business activity of any kind, including by example but not limited to, rooming house, boarding house, gift shop, antique shop, professional office or beauty/barber shop or the like or any trade of any kind whatsoever including yard sales, garage sales or the like shall be carried on upon any Lot or in any structure on a Lot; provided, however, that nothing contained herein shall be construed so as to prohibit home offices so long as no stock in trade is kept or commodities sold, there are no employees, patrons, customers or clients and no signs. Nothing herein shall be construed to prevent the Developer or a Participating Builder from constructing dwellings to be sold or leased, from showing Lots, dwellings or models for the purpose of selling or leasing a Lot or dwelling shown for another or from placing and maintaining signs, structures, storage places, facilities and offices it deems necessary.

Section 8.2. Fences, Boundary Wall, Boundary Line Hedge and Shrubbery. Fences, boundary walls, boundary line hedges and shrubberies shall only be permitted if the following requirements are met:

8.2.1. Fences, boundary walls, boundary line hedges and shrubberies shall be prohibited within the front yard area of the lots and in general, shall not be closer to the front of the lot than one-half (½) of the length of the side of the dwelling unit. The height of any such fence, boundary wall, boundary line hedge or shrubbery along the side of a unit shall not exceed four feet (4'-0"). Material, color, type and style of fence and boundary wall shall be limited to those which are viewed by the Bay Pointe Architectural Board to be aesthetically pleasing when installed in a residential setting. The Bay Pointe Architectural Board shall endeavor to maintain consistency in fence design and appearance within the Development.

8.2.2. Prior written approval shall be obtained from the Bay Pointe Architectural Board.

8.2.3. Any fence, boundary wall, boundary line hedge or shrubbery along the side or rear of any Lot shall not extend over any Utility System or easement on said Lot, and shall not exceed four feet (4'). The heights or elevations of any fence or wall shall be measured from the existing elevations of the Lot.

Section 8.3. Pools, Hot tubs. No above-ground swimming pools whatsoever shall be erected or allowed to remain in the Development. "Hot tubs", "jacuzzis" and the like shall be prohibited except when placed in the area at the rear of a dwelling and within lines measured and running in a parallel line from each rear corner of such dwelling to the rear Lot lines and only after obtaining prior written approval of the Bay Pointe Architectural Board.

Section 8.4. Temporary Structures, Vehicles, Boats and Trailers. Except as may otherwise be provided in this Declaration, no structure of a temporary character shall be placed upon any Lot at any time; provided, however, that this prohibition shall not apply to shelters or other structures constructed or used by a Participating Builder, or approved by the Developer and used by a contractor during construction of a dwelling, it being clearly understood that the latter temporary shelters may not, at any time, be used for residence or remain on the Lot after completion of construction. Except for construction related trailers used by Participating Builder, no trailer, mobile home, double-wide, park model trailer, motor home, tent, barn, camper, bus, or other similar vehicle, out-building, structure, horse/livestock trailer, boat or trailer shall be placed, kept or parked on any Lot or on any portion of the Common Area, except as may be stored within the enclosed garage, at any time either temporarily or permanently unless the Developer or the Association designates one or more areas in the development for regulated storage and long-term parking.

Section 8.5. Mining and Drilling Prohibition. No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, and no derrick or other structure designed for use in boring for oil or natural gas shall be stored, erected, maintained or permitted in the Development.

Section 8.6. Use and Height Restrictions. No structure shall be erected, placed or permitted to remain on any Lot in excess of three (3) stories in height, and in no instance shall any structure exceed forty-two feet (42') in height above the first floor finished elevation.

Section 8.7. Setbacks and Building Lines. Each dwelling which shall be erected on any Lot shall be situated on such Lot in accordance with the building and setback lines established by Developer and authorized by Sussex County zoning regulations. No structure shall be placed on or over any easement on any Lot. Developer shall determine, at its sole discretion, placement of all dwellings, garages and accessory uses. The Developer shall have the power and authority to promulgate and publish setback requirements for each Lot. In certain cases, the Developer may require an Owner to seek a

variance from Sussex County Zoning Ordinance if necessary to protect important trees, vistas or to preserve aesthetic value.

Section 8.8. Restriction on Materials.

8.8.1. All structures constructed or placed on any Lot shall be built of good quality and new material, and no used structures or old buildings or parts thereof shall be relocated or placed on any such Lot.

8.8.2. No structures constructed or placed on any Lot shall have an exterior finish of cinder block, grooved plywood, T-111, or plywood above grade.

8.8.3. All roofing shall be made of cedar shingles, tile, architectural grade asphalt shingles or a material similar thereto which has been approved by the Bay Pointe Architectural Board.

8.8.4. All driveways and parking areas shall have a hard, dustless surface, such as asphalt, concrete, brick, paver or such similar material as may be approved by the Bay Pointe Architectural Board.

Section 8.9. Mobile Home Restriction. Except for construction related trailers used by Participating Builder, no mobile home, trailer, doublewide, manufactured, or similar type structure shall be permitted, placed or constructed on any Lot in the Development.

Section 8.10. Re-Building Requirement. Any dwelling or out-building on any Lot which may be destroyed in whole or in part by fire, windstorm or any other cause or act of God must be rebuilt and the structure restored to a natural condition, within nine (9) months or such shorter period of time as may be reasonable; all debris must be removed within fourteen (14) days.

Section 8.11. Elevation and Drainage Changes. No changes in the elevation, topography or drainage characteristics of the Development by any Owner other than a Participating Builder shall be made so as to materially affect the surface elevation or natural drainage of surrounding Lots and without the prior written approval of the Developer or Bay Pointe Architectural Board. Nor shall any fill be used to extend any property into any state or federal wetlands, to increase the size of a Lot by filling in water it abuts, or to fill in any waterway, wetland or storm drainage area of the Development for any purpose whatsoever.

Section 8.12. Tree Removal. The removal of trees, shrubs and other plant material shall be limited to removal of those materials essential for house construction and driveway installation only. The Bay Pointe Architectural Board shall further have the authority to require any Owner removing a tree in violation of this clause to replace the same with a tree of the same species or a different species with a caliper of two inches (2") or greater at such Owner's cost and expense.

Section 8.13. Clotheslines. No clothesline or drying yards shall be located upon any Lot in the Development, nor shall towels, blankets or the like be hung or placed on the front or rear porch, decks, railing or fences or any dwelling or Lot, except with the written permission of the Developer or Bay Pointe Architectural Board. Permission may be granted by the Developer or Bay Pointe Architectural Board when the clothesline, drying yard, or other exposure of clothes to the air for drying can be effected behind shrubbery, trellis or another type of screen so as not to be seen from another Lot or Common Area, including, but not limited to, streets or roadways in the Development.

Section 8.14. Sewer and Water System. No surface toilets or septic tanks shall be permitted in the Development (other than those utilized by the Developer or any Participating Builder). A purchaser of a Lot assumes responsibility for attaching water connections, plumbing fixtures, dishwashers, toilets and sewage disposal system to the central sewer and water systems of the Development.

Section 8.15. Garbage/Trash Disposal. Each Owner shall provide garbage and trash receptacles or similar facilities in accordance with reasonable standards established by the Developer or the Association, which receptacles shall be placed only at the front of the dwelling in an enclosure approved by the Developer or Association and placed adjacent to the driveway for the dwelling in a location approved by the Developer or Association. If an Owner does not have a receptacle or similar facility approved by the Developer or Association, all garbage and trash must be kept in the Owner's garage and may only be placed outside on the designated trash pick-up day for Owner's Lot. The Developer or Association may from time to time adopt rules and regulations for the sorting of garbage and trash into separate receptacles or other handling according to the nature of the materials or otherwise to aid in recycling or other processes with beneficial impact on the environment. No garbage or trash incinerator shall be permitted. No burning, burying or other disposal of garbage or trash on any Lot or within the Development shall be permitted. The Developer or Association may from time to time adopt rules and regulations, including designation of the persons and methods, for garbage/trash collections and disposal, and all Owners shall be bound thereby. Owners and the Association shall use professional commercial garbage and trash removal services. Notwithstanding the foregoing, the provisions of this Section 8.15 shall not apply to any Participating Builder.

Section 8.16. Sign Controls. No signs of any character shall be erected on any Lot, placed in the window of any dwelling or structure located on a Lot, or displayed to the public in any manner on any Lot. This restriction shall not apply to signs used by the Developer or Participating Builder to identify and advertise the subdivision as a whole, nor to Developer's or Participating Builder's signs for selling Lots and/or houses.

Section 8.17. Natural Buffer Zone. No Lot Owner and no Lot Owner's family, guests, tenants, agents or employees shall disturb any natural buffer zone in any manner and/or for any reason. Owners of Lots adjoining and/or including a natural buffer zone shall be

responsible for advising their contractor or subcontractors of the natural buffer zone and will ensure no encroachment or clearing of said area. If a natural buffer zone is disturbed, the Lot Owner responsible shall be required to pay all costs incurred by the Developer and the Association, including reasonable attorney's fees and costs, as a result of its attempt to restore the area to its natural state.

Section 8.18. Exclusion of Above Ground Utilities. All electrical service, wires, pipes, lines, telephone, cable television (CATV) lines and utility services of any type shall be placed in appropriate conduit underground as possible and no outside electrical lines shall be placed overhead. No exposed or exterior radio or television transmission or receiving antenna shall be erected, placed or maintained on any part of the Development except those master facilities approved by the Developer, provided, however, that the normal service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the Development. Overhead utilities shall be permitted during the construction period and until utility companies can place them underground.

Section 8.19. Junk or Disabled Vehicles. No stripped, partially wrecked, unlicensed or invalidly licensed, disabled or junk motor vehicle or part thereof, shall be permitted to be parked or kept in the Development. The following activities are prohibited: vehicle repair, bodywork, oil change, engine maintenance and the like except cleaning and washing Owners' own vehicles; no vehicles shall be maintained on jacks or blocks except temporary usage for emergency tire change.

Section 8.20. Perimeter Access. There shall be no access to any Lot on the perimeter of the Development except from designated roads within the development; provided, however, that Developer and Participating Builder reserves the right to construct and operate temporary construction roads during the construction and development period.

Section 8.21. Rentals. The Developer or Association may from time to time adopt rules and regulations pertaining to the rental of dwellings. Owners of rented dwellings shall be personally liable for the failure of a tenant or any invitee of a tenant to abide by rules and regulations pertaining to the use or occupancy of the Development.

Section 8.22. Accessory Structures.

8.22.1 Exceptions. No accessory structure shall be constructed upon any Lot, except an exterior attached shower, a shed, mailbox, doghouse, birdhouse, garage, swing set or similar play structure, or basketball backboard/hoop attached to the front of a garage or to a free standing pole or individual flagpole of aluminum, steel or other material approved by the Developer or Association which has been approved in writing by the BPAB prior to installation or construction.

8.22.2 All mailboxes shall be as designed and installed by the Developer. Mailbox structures may be found acceptable, by special exception, only if they are uniform and

after concise plans for same have been submitted to and reviewed by the Bay Pointe Architectural Board.

8.22.3. Garages, exterior attached shower, and sheds shall conform in appearance to the style of the dwelling and shall have the same exterior and roof materials and colors as the dwelling.

8.22.4. No such structure except a mailbox and/or flagpole shall be placed closer to the front Lot boundary than the closer of the rear line of the dwelling or of the front line of the garage.

8.22.5 A flagpole shall not exceed twenty four feet (24') in height.

Section 8.23. Landscaping. Owners are encouraged to provide landscaping for their Lots; provided, however, that Developer reserves the right to reasonably restrict the placement of landscaping, fences or other impediments to the enjoyment of views. No vegetable garden shall be located in the area between the front lot line and the front of the dwelling. Grasses, lawn growth or weeds shall be limited to a maximum of four inches (4") in height. Developer reserves the right to enter onto any Lot after notice and an opportunity to maintain landscaping and grass height, and cut any grass or weeds which continue to exceed four inches (4") in height after said notice, and to assess the cost to the Owner thereof, pursuant to Section 5.1.3.

Section 8.24. Special Hazards. Each Owner accepts and assumes all the risks and hazards of ownership or occupancy attendant to the ownership of such Owner's Lot, including but not limited to its proximity to any Recreational Facility or Common Area or any bodies of water in or near the Development, and agrees hereby to hold the Developer and the Association harmless and shall indemnify the Developer or the Association for all losses, costs and expenses, including attorney's fees for all such risks and hazards. Specifically, the Developer does hereby disclaim any and all liability for any property damage or personal injury resulting from acts, activity or erosion along the bank of all ditches, streams, other bodies of water or watercourses located in the Development.

Section 8.25. Traffic Regulations. The Developer and the Association may from time to time adopt additional rules and regulations pertaining to vehicular and pedestrian traffic in the Development as it or they deem appropriate and necessary.

Section 8.26. Alteration of Common Area. No person shall alter in any way any Common Area except with the written permission of the Developer or Association.

Section 8.27. Easements and Encroachments. No building or part of a building, including porches or projections of any kind, shall be erected so as to extend over or across any of the building lines as hereinafter established. Provided, however, if any portion of any Common Area unintentionally encroaches upon a Lot or any part thereof, whether by settlement or otherwise, a valid easement for the encroachment and for the

maintenance of same, so long as it stands, shall and does exist. If any portion of improvements to a Lot or Lots unintentionally encroaches upon a Lot or any portion thereof, whether by settlement or otherwise, a valid easement for encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event any improvement or part thereof is partially or totally destroyed and then rebuilt, any encroachment of any Common Area upon a Lot or Lots or encroachment of a Lot or Lots upon any Common Area or upon an adjoining Lot or Lots resulting because of such rebuilding, shall be permitted, and a valid easement shall exist for the maintenance of such encroachments so long as the same stand. Such encroachments and easements shall not be considered or determined to be encumbrances either on any Common Area or any Lot or Lots, and no Owner shall be entitled to damages or injunctive relief because of the construction, re-construction or maintenance thereof.

Section 8.28. Alteration of Building Lines in the Best Interest of Development.

Where because of size, natural terrain, or other reason it is in the best interest of the Development that any building lines be altered, the Developer may make such alteration in its sole and absolute discretion. The Developer specifically reserves the right to assign to the Bay Pointe Architectural Board this right to alter building lines.

Section 8.29. Developer, Participating Builder and Association Exempt.

None of the foregoing restrictions shall be applicable to the activities of: (a) the Developer or Participating Builder, its officers, employees, agents or assigns, in the development, marketing and sale of Lots or other parcels within the Project; or (b) the Association, its officers, employees and agents in connection with the proper maintenance, repair, replacement and improvement of the Utility Systems and/or Common Areas.

Section 8.30. Pets. No animals, livestock, birds, or fowl shall be kept or maintained on any part of the Development except animals commonly recognized as domestic pets, such as dogs, cats, pet fish and birds, which may be housed on a Lot in reasonable numbers (not to exceed three) as pets for the pleasure and use of the Owner but not for any commercial use or purpose. All animals must be fenced or shall be kept on a lead or leash when they are off the Owner's Lot and must be under the Owner's control at all times. No animal shall become a nuisance to other resident by barking or other acts and the Owner is responsible for removing his or her animal from the property of another. The Owner of any animal is responsible for and liable for any happenstance or accident which may occur in connection with or arising from a loose, uncontrolled or vicious animal. Non-owners (e.g. renters or lessees) may not keep any pets without the prior written approval of the Owner and any such approval must be filed with the Association.

Section 8.31. Storage of Toxic or Hazardous Materials. No toxic or hazardous substances as defined by environmental law shall be used, disposed, stored or released on any Lot or in the Development except for use with an outdoor grill in a tank holding thirty (30) pounds or less of natural gas or propane.

Section 8.32. Antennae and Satellite Dishes/Receivers. – Installation of antennas, including satellite dishes and receivers, shall be governed by this Section and such other additional reasonable rules and regulations regarding the location and screening of any such items that the Board shall impose from time to time. The Federal Communications Commission (the "FCC") adopted a rule effective October 14, 1996 (the "FCC Rule"), preempting certain restrictions concerning the installation, maintenance, and use of direct broadcast satellite, television broadcast, and multipoint distribution service antennas (collectively, "Antennas"). The requirements set forth in this Section are generally consistent with the FCC Rule; however, because the FCC Rule is subject to change or modification, the Board reserves the right to amend or modify any requirements governing installation, maintenance, and use of Antennas, which may be more restrictive than as set forth herein and which may, in the discretion of the Board, be applied retroactively. Antennas not covered by the FCC Rule, including satellite dishes in excess of one (1) meter in diameter, shall not be installed on the exterior portions of any Lot or Common Facility without prior written approval as required by Article XIII. Antennas covered by the FCC Rule, including satellite dishes of one (1) meter or less in diameter, are permitted within a Lot, provided such Antennas shall not be visible from the front elevation of the Lot; provided, however, that nothing herein requires installation of such an Antenna in a location from which an acceptable quality signal cannot be received, as certified in writing by a licensed installer.

Section 8.33. Completion of Construction. Except for construction by a Participating Builder, once the construction of any building or structure on a Lot has commenced, such construction shall be proceed without delay and shall be completed in accordance with the time line established by the Owner and the Bay Pointe Architectural Board, except where such completion is impossible or would result in great hardship to the owner of builder due to strikes, fires or national emergencies or natural calamities. Cessation of work, whether such work be construction or demolition work, once started and before completion thereof for a continuous period of sixty (60) days shall be *prima facie* evidence of an intent to abandon the work in its partially completed or demolished state and shall be deemed to be a public and private nuisance. The Developer and Bay Pointe Architectural Board shall have the power to seek and demand an injunction from the Court of Chancery of the State of Delaware to compel the completion or demolition of the work within sixty (60) days.

Section 8.34. Agricultural Notice. This property is located in the vicinity of land used primarily for agricultural purposes on which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities.

Section 8.35. Wetlands Notice. This site contains regulated wetlands. Activities within these wetlands may require a permit from the U.S. Army Corps of Engineers and/or the State of Delaware.

ARTICLE IX

INSURANCE

Section 9.1. Required Coverage.

9.1.1. The Developer or the Board of Directors of the Association, or its duly-authorized agent, shall be required to obtain, maintain and pay the premiums, as a common expense, upon a special form policy of property insurance covering all the Common Areas and Utility Systems, 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.

9.1.2. The insurance policy shall afford, as a minimum, protection against loss or damage by fire and 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 the Common Areas (less a deductible deemed reasonable by the Board of Directors) and shall name the Association as the named insured.

Section 9.2. Individual Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Developer and the Association that each Individual Owner shall carry blanket all-risk casualty insurance on the Lot and structures constructed on the Lot in accordance with the standards set forth in this Article. Each individual 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 Lot and structures constructed on the Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structures in a manner consistent with the original construction. In the event that a detached single-family dwelling 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. The Board of Directors may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lot and the standard for returning the Lot to its natural state in the event the Owner decides not to rebuild or reconstruct.

ARTICLE X

CONDEMNATION

Section 10.1 Award. Whenever all or any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain (or conveyed in lieu of or under threat of condemnation), each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed as follows:

Section 10.2. Approval. If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Developer and at least seventy-five percent (75%) of the Class "A" Members of the Association shall otherwise agree, the Association shall restore or replace such improvement so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article IX hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

ARTICLE XI

MORTGAGEES RIGHTS

Section 11.1. Changes Required by Lenders. Notwithstanding any provision to the contrary contained in the Articles of Incorporation or By-Laws of the Association or this Declaration, the Developer shall have and hereby reserves the right to make modifications, additions or deletions to the Declaration, the Certificate of Incorporation and the By-Laws of the Association if such modifications, additions or deletions are required by the Veterans Administration, Federal Housing Administration, Federal Home Loan Mortgage Corporation or Federal National Mortgage Association. The Developer further reserves the right to waive in writing any exemption, right or privilege granted or reserved to the Developer by this Declaration or the Certificate of Incorporation or the By-Laws of the Association.

Section 11.2. Developer Reserved Rights. No amendment to this Declaration may remove, revoke or modify any right, reservation or privilege of the Developer without the prior written consent of the Developer.

Section 11.3. Failure to Respond. Any Mortgagee who receives a written request to approve any additions or amendments who fails to submit a response within thirty (30) days shall be deemed to have approved such request.

Section 11.4. Additional Rights of Mortgagees - Notice.

11.4.1. The Association shall promptly notify all Mortgagees who hold first mortgages on any Lot for which any assessment levied pursuant to the Declaration, or any installment thereof, becomes delinquent for a period in excess of sixty (60) days and the Association shall promptly notify said Mortgagee 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 first mortgage on any unit 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.

11.4. 2. 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.

11.4. 3. Any first mortgagee of any Lot may pay any taxes, utility charges or other 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 premiums on any hazard insurance policy or secure new hazard insurance coverage on the lapse of any 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.

ARTICLE XII

GENERAL PROVISIONS

Section 12.1. Enforcement. The Developer, the Association, and any Owner shall have the right to enforce, by any proceedings at law or in equity, all of the restrictions, conditions, covenants, easements, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Developer, the Association, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed as a waiver of the right to do so thereafter. The Developer and the Association shall have the right to adopt reasonable rules and regulations for enforcing the provisions hereof or any other rule or regulation, including the right to set and collect fines which shall be liens against Lots.

Section 12.2. Severability. Invalidation of any covenants or restrictions or any term, phrase or clause of this Declaration by the adjudication of any court or tribunal shall in no way affect the other provision hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 12.3. Assignment and Delegation. The Developer shall have the right to assign to any one (1) or more persons, firms, corporations, partnerships or associations any and all rights, powers, titles, easements and estates reserved or given to the Developer in this Declaration. Further, the Developer reserves the right to convey, assign or delegate to the Association, and the Association shall accept, any or all of the Developer's rights and obligations set forth in this Declaration.

Section 12.4. Irrevocable Power of Attorney. The Developer is hereby granted an irrevocable power of attorney coupled with an interest to amend this Declaration as provided in this Section and to take all other action convenient or necessary to give effect to any or all of the rights reserved to Developer in this Declaration. Every party accepting an interest in any part of the Property, whether it be title, a lien, or any other interest, and whether it be transferred by a deed, a mortgage, a judgment, a last will and testament, or otherwise, shall thereby specifically accept the reservation of Developer's rights as provided in this Declaration, and shall also thereby grant to Developer this irrevocable power of attorney coupled with an interest. The Developer may require that a party accepting any such interest in the Property shall execute a separate and written power of attorney coupled with an interest and record it in the Office of the Recorder of Deeds of Sussex County, Delaware. However, the power of attorney coupled with an interest provided by this paragraph shall be deemed fully granted to Developer when any such interest is acquired, whether or not such separate and written power of attorney coupled with an interest is executed and recorded.

Section 12.5. Rights and Liabilities of Participating Builder.

(a) Participating Builder does not and shall not assume or be responsible for any liabilities, warranties or obligations which have or may accrue to Developer, including, but not limited to, any liabilities, warranties or obligations concerning any Lots, the Common Areas or Recreational Facilities, any buildings or other improvements constructed, or to be constructed, by or on behalf of, Developer.

(b) No Participating Builder makes any representation or warranty whatsoever, whether express or implied, with respect to any Lots, Common Areas, Recreational Facilities, buildings or other improvements constructed or sold by parties other than the Participating Builder, nor has any Participating Builder authorized any other party to make any such representation or warranty, and such other parties are without legal authority to enforce or make any such representation or warranty. No Participating Builder shall assume or be responsible for, and each Owner of any Lot expressly waives any all claims against each Participating Builder for any liabilities, warranties or obligations which may accrue to Developer or any assignee under the Declaration or pursuant to law in connection with Developer's or any assignee's status as Developer under this Declaration.

Section 12.6. Duration and Amendments.

12.6.1. Except as may otherwise be provided in this Declaration, the Restrictions of this Declaration run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors or assigns, as the case may be, in perpetuity; subject, however, to the provision that the Developer, until all Lots in the Development have been conveyed by the Developer and the Developer has withdrawn from control of the Association, shall have the power to waive, abandon, terminate, modify, alter, change, amend, eliminate or add to these restrictions and this Declaration. Upon the Developer's conveyance of its last Lot and/or upon its withdrawal from the control of the Association, the Association or its successors, by with the vote or written consent of sixty-six percent (66%) of the then Owners of Lots, shall have the power to waive, abandon, terminate, modify, alter, change, amend, eliminate or add to these restrictions and this Declaration at any time hereafter. Any such waiver, abandonment, termination, modification, alteration, change, amendment, elimination, or additions shall take effect when a copy thereof, executed and acknowledged by the Association or its successors in accord with the usual form of execution and acknowledgment of deeds, together with the written consents of the requisite number of owners or by a certificate by the Association verified under oath by the President thereof, or in the case of his/her absence or inability, by any Vice President thereof, setting forth the time, manner and result of the taking of the vote of the members, have been filed for record in the Office of the Recorder of Deeds, in and for Sussex County, and the same shall thereafter remain in effect in perpetuity unless otherwise provided.

12.6.2. Any amendment made pursuant to this Section shall be certified by Developer as having been duly approved by Developer and, if any, by the Owners and shall be effective only upon recordation or at such alternate date as shall be specified in the amendment. Every Owner or occupant, by accepting a conveyance or occupancy of a Lot shall be deemed to have agreed to be bound by such amendments as are permitted hereby, and to agree further that, if requested to do so by Developer, such will consent to the amendment of this Declaration or any other instruments relating to the Development.

12.6.3. Developer is hereby granted an irrevocable power of attorney coupled with an interest to amend this Declaration as provided in this Section and to take all other action convenient or necessary to give effect to any or all of the rights reserved to Developer in this Declaration. Every party accepting an interest in any part of the Property, whether it be title, a lien, or any other interest, and whether it be transferred by a deed, a mortgage, a judgment, a last will and testament, or otherwise, shall thereby specifically accept the reservation of Developer's rights as provided in this Declaration, and shall also thereby grant to Developer this irrevocable power of attorney coupled with an interest. The Developer may require that a party accepting any such interest in the Property shall execute a separate and written power of attorney coupled with an interest in a form acceptable to Developer and record it in the Office of the Recorder of Deeds of Sussex County, Delaware. However, the power of attorney coupled with an interest provided by this paragraph shall be deemed fully granted to Developer when any such interest is

acquired, whether or not such separate and written power of attorney coupled with an interest is executed and recorded.

Section 12.7. Dedication of Common Area. Except as may otherwise be provided in this Declaration, every road, body of water, Common Area, Utility System, and other amenity within the Development is private, and neither the Developer's recording of any instrument or plan, or any other act of the Developer with respect to the Property is, or is intended to be, or shall be construed to be, a dedication to the public of any part of the Development except as may otherwise be provided herein. The use and enjoyment of every part of the Development is reserved to the Developer, to those who, from time to time, are Owner members of the Association and to the invitees thereof. Such use shall be subject to such rules and regulations as may be prescribed by the Developer or the Association, as the case may be.

Section 12.8. Time is of the Essence. It is agreed that time is of the essence with regard to the provisions of this Declaration.

Section 12.9. Remedies for Violation of Restrictions. Except as may otherwise be provided in this Declaration, in the event of a violation or breach of any of these restrictions by an Owner or agent of an Owner, by an occupant or agent of an occupant, or by another party, then the Owners of Lots in the Development, the Developer and the Association, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel compliance therewith, or to prevent the violation or breach thereof. In addition to the foregoing, the Developer and the Association shall have the right, whenever any improvement or structure is built or placed in violation of this Declaration, to enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the Owner, if after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner. The Association is hereby granted a perpetual easement across each Lot for the purpose of enforcing its right under this Section, and no such entry and abatement or removal shall be deemed a trespass. The Association may also maintain such watchmen and erect, maintain and control, at its discretion, such gate houses, or adopt at its discretion other measures to enforce the rights mentioned in this Declaration, and such watchmen or gate houses shall not constitute the creation or maintenance of a nuisance or obstruction nor constitute any limitation or annulment of the grant of free and uninterrupted use of the Common Areas, including streets and roadways, of Owners. The failure to enforce any rights, reservation, restriction or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement. Should any person employ counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the Owner of such Lot or Lots in breach thereof. The Developer shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself.

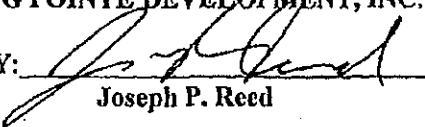
Section 12.10. Rule Against Perpetuities. In the event that any of the provisions hereof are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event such term shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of Delaware, and such provision shall be fully effective for said reduced period of time.

Section 12.11. Binding Effect. This Declaration shall bind, and inure to the benefit of, the respective heirs, devisees, representatives, successors, successors in title and/or assigns of anyone or anything who/which purchases or takes any interest in any property which is subject to this Declaration.

IN WITNESS WHEREOF, the Developer has hereunto set its hand and seal the day and year aforesaid.

HERRING POINTE DEVELOPMENT, INC.

BY:


Joseph P. Reed

(Seal)

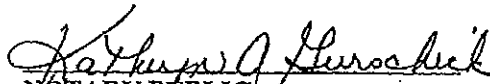
STATE OF DELAWARE :

: ss.

COUNTY OF SUSSEX :

BE IT REMEMBERED, That on this 24th day of October, A.D. 2008, personally came before me, The Subscriber, a Notary Public for the State and County aforesaid, Joseph P. Reed, President of Herring Pointe Development, Inc., a corporation of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and Deed, and the act and the Deed of the said limited liability company; that the signature of the Manager is in his own proper handwriting; and that the act of signing, sealing, acknowledging and delivering the said Indenture was first duly authorized by resolution of the members of the said limited liability company.

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


NOTARY PUBLIC

COMMISSION EXPIRES:

KATHRYN A. GURSHICK
NOTARY PUBLIC DELAWARE
TYPE OR PRINT NAME AND EXPIRES 10-3-2012

EXHIBIT A

ALL those two certain tracts of land situate lying and being in Indian River Hundred, Sussex County, Delaware, containing 78.15 acres, more or less, being more particularly described on a Boundary Survey of the Lands of Carlton O. Dorman and Kenneth Ray Dorman, prepared by Wiles Mensch Corporation, Atlantic Group, dated the 20th day of October, 2003:

TRACT #1

BEGINNING at a point being the corner of these lands and a corner of Tract #2 herein conveyed set along the northerly boundary of "the Cove", said Point of Beginning being an iron pipe with cap situated the following courses and distances from an iron pipe with cap set along the easterly right-of-way of County Road 278 at the corner of Tract #2 herein conveyed and lands now or formerly William Penn Properties: (a) South 04 degrees 02 minutes 47 seconds West 90.34 feet to a concrete monument and (b) thence following the northern boundary of "the Cove" South 82 degrees 36 minutes 28 seconds East at distance of 990.09 feet; thence continuing from said Point of Beginning by and with Tract #2 and Grantors' remaining lands North 02 degrees 21 minutes 28 seconds West 472.72 feet to a point; thence by and with other lands of Grantors North 87 degrees 38 minutes 32 seconds East 138.60 feet to a point; thence with said other lands of Grantors South 02 degrees 21 minutes 28 seconds East 165.00 feet to a point; thence with said other lands of Grantor and lands now or formerly of Kuhn Family Sussex Partnership North 88 degrees 08 minutes 32 seconds East 1,284.97 feet to an iron pipe with cap to be set, said point being the common corner for these lands and said Kuhn Lands and set along the western boundary of Angola Crest II, LLC; thence continuing with Angola Crest II, LLC South 01 degrees 32 minutes 24 seconds East 505.31 feet to an iron pipe with cap to be set; thence with other lands now or formerly of Kuhn Family Sussex Partnership South 03 degrees 21 minutes 08 seconds West 456.79 feet to an iron pipe with cap to be set; thence with other Kuhn Lands South 85 degrees 19 minutes 37 seconds West 7.50 feet to an iron pipe with cap to be set; thence continuing with said Kuhn Lands South 02 degrees 07 minutes 17 seconds West 227.54 feet to an iron pipe with cap to be set; thence continuing with said Kuhn Lands South 36 degrees 27 minutes 08 seconds West 1,280.91 feet to an iron pipe with cap to be set; thence continuing with said Kuhn Lands South 15 degrees 38 minutes 40 seconds West 1,359.53 feet to a point, said point being 24.85 feet distant from a found Cedar Post set in this line; thence along the meanderings of the mean low waterline of Herring Creek to a point, said point being situated at the end of a Tie Line beginning at the point in the prior course being South 15 degrees 38 minutes 40 seconds West 24.85 feet from found Cedar Post and running North 23 degrees 50 minutes 43 seconds West a distance of 135.92 feet from said point; thence from the end of said Tie Line along the eastern boundary of "The Cove" North 08 degrees 08 minutes 32 seconds East 2,314.76 feet to a concrete monument; thence with the northern boundary of "The Cove" North 82 degrees 36 minutes 28 seconds West 204.60 feet to the Point of Beginning, said to contain

75.61 acres, more or less, as shown on "Boundary Survey Lands of Carlton O. Dorman and Kenneth Ray Dorman" prepared by Wiles Mensch Corporation, Atlantic Group.

TRACT #2

BEGINNING at an iron pipe with cap to be set situated along the easterly right-of-way of County Road 278, said point being the corner of these lands and the remaining lands of Grantors herein; thence by and with Grantors' remaining lands South 63 degrees 59 minutes 11 seconds East 280.00 feet to an iron pipe with cap to be set; thence continuing with said Grantors' remaining lands South 82 degrees 36 minutes 28 seconds East 697.71 feet to an iron pipe with cap to be set; thence with the common boundary of Tract #1 South 02 degrees 21 minutes 28 seconds East 101.47 feet to an iron pipe with cap to be set, said iron pipe being the Point of Beginning for Tract #1 herein and situated along the northern boundary of "The Cove"; thence by and with northern boundary of "the Cove" North 82 degrees 36 minutes 28 seconds West 990.09 feet to a concrete monument; thence with lands now or formerly of William Penn Properties North 04 degrees 02 minutes 47 seconds East 90.34 feet to an iron pipe with cap to be set, said iron pipe being situated in the easterly right-of-way of County Road 278; thence continuing with said right-of-way at distance of 100.49 feet to the Point of Beginning, containing 2.54 acres, more or less, as shown on "Boundary Survey Lands of Carlton O. Dorman and Kenneth Ray Dorman" prepared by Wiles Mensch Corporation, Atlantic Group.

Recorder of Deeds
John F. Brady
Oct 28, 2008 12:07P
Sussex County
Doc. Surcharge Paid

RECEIVED

OCT 28 2008

**ASSESSMENT DIVISION
OF SUSSEX COUNTY**