

Tax Parcel Nos.: See Exhibit A attached hereto

Prepared by and return to:

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Connolly Gallagher LLP  
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Michael E. Kozikowski T20200028954  
New Castle Recorder MISC

THE FORT DUPONT COMPLEX  
DELAWARE CITY, COUNTY OF NEW CASTLE, STATE OF DELAWARE  
AMENDED AND REINSTATED DECLARATION OF COVENANTS, CONDITIONS,  
AGREEMENTS, RESTRICTIONS AND LICENSES

**AMENDED AND REINSTATED DECLARATION OF COVENANTS, CONDITIONS,  
AGREEMENTS, RESTRICTIONS AND LICENSES**

THIS AMENDED AND REINSTATED DECLARATION OF COVENANTS, CONDITIONS, AGREEMENTS, RESTRICTIONS AND LICENSES (this "Declaration") is made this 17<sup>th</sup> day of June, 2020 (the "Effective Date") by FORT DUPONT REDEVELOPMENT AND PRESERVATION CORPORATION, a Delaware corporation (hereinafter referred to as "Declarant" or "Corporation").

**RECITALS**

Declarant is a corporation established by the Delaware Department of Natural Resources and Environmental Control and is a public instrumentality of the State of Delaware ("State"), created for the purposes stated in Title 7, Chapter 47, Subsection II of the Delaware Code (the "FDRPC Act").

Declarant is the owner of certain property located in Delaware City, Delaware as more particularly described in Exhibit A attached hereto and incorporated herein (the "Complex"). The Complex is more commonly known and recognized as "Fort DuPont" or the "Fort DuPont Complex."

Fort DuPont was a planned military landscape of the late nineteenth and early twentieth centuries, consisting of the fort's defensive installations and the post that was built to support it. It was owned by the United States of America and operated as a military base until 1947. After decommissioning Fort DuPont, the United States sold the Complex to the State on January 28, 1947. The State utilized the Complex for many purposes including the operation of the Governor Bacon Health Center, Fort DuPont State Park and the 153<sup>rd</sup> Military Police Company, a unit of the Delaware Army National Guard.

The State ultimately determined that the Complex had enormous potential as a sustainable, mixed-use community that could produce revenue, jobs, housing choices, and recreational and other amenities while preserving its historic character and the surrounding environment and that any efforts to redevelop and reuse the Complex should be integrated with the plans of Delaware City and to provide recreational and tourist opportunities at nearby Fort Delaware State Park on Pea Patch Island, along the Delaware River and the C&D canal, and the Delaware Bayshore Region. Accordingly, the Declarant, along with other state agencies and community stakeholders established the goal of planning, designing and redeveloping the Complex in a high quality manner, and that new construction and rehabilitation projects, as well as future modifications to existing buildings and grounds, should contribute and adhere to the larger vision for Fort DuPont.

To achieve these goals, an initial master plan (the "Master Plan") was developed and approved by Declarant. The Master Plan serves as the master planning guide for the reuse and redevelopment of the Complex (the "Project"). The Master Plan, as it may be amended from time to time as deemed necessary by the Declarant, guides the reuse and redevelopment of Fort DuPont. The goals of planning, designing and redeveloping the Complex in a high quality manner consistent with the both the history of the Complex and the Master Plan include protecting, to the extent possible, the economic, historic, cultural, archaeological, and natural

resources of the Fort DuPont Complex in any conveyance or alienation of real property interests by the Declarant through covenants, historic conservation easements, or other appropriate legal restrictions approved as to form by the Declarant that protect such resources.

As reflected in the current Master Plan, it is envisioned that the Complex will be a mixed use community comprised of at least nine (9) districts, each of which are indicative of their geographical location within the Complex as well as the types of planned uses for the property including residential districts, commercial districts and mixed use districts containing opportunities for both commercial and residential uses.

To insure that the Complex is reused and redeveloped in a manner consistent with the intended goals of the Master Plan, Declarant desires to control the development and usage of the Complex and to provide for the maintenance, repair and upkeep of all common areas in the property including, but not limited to, streets, sidewalks, lawn, landscaping, certain trails and pathways and infrastructure for the benefit of all present and future Lot Owners and Permittees (as such terms are defined herein), as well as the many visitors and members of the public which Declarant anticipates will patronize the businesses, parks and other public amenities to be located within the Complex, and to this end, desires to subject the Complex to the covenants, conditions, agreements, restrictions and licenses hereinafter set forth, each and all of which are for the benefit of the Complex, each Lot Owner and each Permittee, as well as in furtherance of the FDRPC Act and the Master Plan.

Section 46-28(d) of the Delaware City Code, as amended, governs the zoning of the HPR District in which the Complex is located and provides, among other things, that all common areas not associated with condominiums in the HPR District, such as roads, active open space, passive open space, recreational amenities, and parks as depicted and outlined on any subdivision or other land development plan (collectively "Subdivision Amenities") may be owned, maintained and operated by the State of Delaware or any of its agencies, the City of Delaware City, or any entity that is public instrumentality of the State exercising essential governmental functions. Subdivision Amenities shall be governed by such requirements as established by ordinance and such other requirements as the owner of the Subdivision Amenities shall establish by rule, regulation, guidelines, or through recorded restrictions. If the owner of the Subdivision Amenities is the State of Delaware or any of its agencies, the City, or any entity that is public instrumentality of the State exercising essential governmental functions, such owner may charge proportional assessments, common area maintenance fees, or other fees to subdivision property owners for the maintenance and upkeep of Subdivision Amenities and other similar amenities.

In compliance with Section 46-28(d) of the Delaware City Code and in order to insure that the goals and mandates of the State, the FDRPC Act and the Master Plan are met and adhered to, all common elements presently existing or to be developed within the Complex that will benefit all Lot Owners and Permittees (as such terms are defined below) including, but not limited to, streets, sidewalks, lawn, landscaping, certain trails and pathways and infrastructure or that otherwise constitute Subdivision Amenities, will remain under the ownership and control of the Declarant. The Declarant shall have the continuing duty, obligation and power to maintain and operate all Subdivision Amenities and Common Areas (as that term is defined below) and to develop, administer and enforce the covenants and restrictions contained in the Declaration of

Covenants, Conditions, Agreements, Restrictions and Licenses dated December 18, 2018 and recorded in the New Castle Recorder of Deeds in and for New Castle County at Instrument No. 20190103-0000618 (as previously may have been amended, the “Original Declaration”), as amended and restated by this Declaration or hereinafter adopted by the Declarant. Declarant shall, as an instrumentality of the State exercising essential governmental functions, have the ability to charge proportional assessments, common area maintenance fees, or other fees to subdivision property owners for the maintenance and upkeep of Subdivision Amenities and Common Areas.

Because Declarant’s ownership, operation and maintenance of the Complex is an exercise by it of an essential government function: (i) Declarant may, pursuant to applicable zoning law, retain ownership of all Subdivision Amenities; (ii) during the period of control by Declarant of the Complex, the annual average common area expense liability of each Residential Unit (as such term is defined below), exclusive of optional user fees and any insurance premiums paid by an association, will not exceed \$500, as adjusted; and (iii) all remaining portions of the Complex that are not subject to the limitation set forth in subsection (ii) hereof are nonresidential in nature, Declarant does not believe that the provisions of DUCIOA (as such term is defined herein) is applicable to the Complex. Nevertheless, Declarant reserves all of its rights to subject the Complex to the terms and provisions of DUCIOA in the future as the Declarant may deem necessary or advisable.

NOW THEREFORE, Declarant makes this Declaration, which is intended to amend and restate in its entirety the Original Declaration, and does hereby declare that the Complex as described herein and on Exhibit A attached hereto is, and shall be held, transferred, sold, conveyed and occupied, subject to the covenants, conditions, agreements, restrictions and licenses (sometimes hereinafter referred to as “covenants and restrictions,”), all of which shall be binding upon all persons owning or acquiring any right, title or interest therein and their heirs, personal representatives, successors and assigns.

## **ARTICLE 1** **DEFINITIONS**

1.1 The following capitalized terms shall have the following meanings for purposes of this Declaration.

“Barracks District” shall mean that certain area of the Complex identified on Exhibit B hereto and the Master Plan, as may be amended from time to time, which will feature restored and renovated residential housing and auxiliary buildings for residential use as well as anticipated commercial and retail uses.

“Battery Row District” shall mean that certain area of the Fort Complex identified on Exhibit B hereto and the Master Plan, as may be amended from time to time, which will feature restored and renovated residential housing and auxiliary buildings for residential use as well as anticipated commercial and retail uses.

“Building” means any permanent structure built as a dwelling, shelter or place for human activities or for storage.

“By-Laws” means the By-Laws governing the Declarant, as amended from time to time.

“Canal District” means that certain portion of the Complex reflected in the Major Subdivision Plan known as Proposed Lot Nos. 16 Thru 92 and Open Space Lots, Canal District (Fort DuPont Phase 1B-1D) as prepared by Duffield Associates on March 22, 2018 and revised on September 10, 2019 and said revision was recorded in the New Castle Recorder of Deeds Office at Instrument Number 20191206-0099412 (“Canal Subdivision Plan”), which will be developed by Declarant (and/or by a third party developer under contract with Declarant) in three (3) phases providing for an approximate aggregate total of sixty-three (63) lots strictly for residential use and supporting areas including single family and town homes.

“Common Areas” and “Common Area Improvements” shall mean and refer to those areas of the Complex, together with any improvements to be Constructed and Maintained thereon as designated by Declarant from time to time, including but not limited to the recreation areas, parklands, walkways, berms, stormwater facilities, lawns (including the parade ground), landscaping, and buildings and areas open to the public at the Complex, and shall be divided into two classifications as further defined herein (i) District Common Areas and (ii) Shared Common Areas. The Common Areas and Common Area Improvements shall be Constructed and Maintained by Declarant and are intended for the general non-exclusive use, convenience and benefit of Declarant, Lot Owners, and Permittees subject to the terms, covenants and conditions of this Declaration, together with the Complex Rules and Regulations. The Common Areas expressly exclude any and all Lots which are owned by anyone other than Declarant (and/or a Developer for the purpose of developing and selling such Lots to third parties) and any walkways or sidewalks located within a particular Lot.

“Common Area Expenses” or any variation thereof shall mean all reasonable and appropriate sums, costs and expenses incurred by the Declarant for the best interests of the Complex and Lot Owners in connection with the Construction and Maintenance of the Common Areas (or any additions thereto) as well as certain insurance coverage obligations with respect to such areas, with respect to and including the costs and expenses of: (i) Construction and Maintenance of the storm water management infrastructure inclusive of bio-basins and levee, sanitary sewer, water, electrical, gas, steam, telephone, lighting (including, poles, bulbs, and fixtures), other utility systems and facilities and services supplied for use within or in connection with the Common Areas, together with usage, reservation, connection and other fees, rents and charges therefore, including transition fees or other fees paid in connection with the termination, addition or change of Utility Providers by Declarant; Maintenance of pylon, monument, directional and other traffic signals, markers, controls, signs (including all identification signs) both on and off site serving the Fort DuPont Complex (excluding individual Lot Owner sign faces and any other sign fixtures or components Maintained by individual Lot Owners); ducts, conduits and similar items; (ii) snow, ice, pest control, and cleaning, painting, sweeping, striping and repaving all parking surfaces, roads, services areas and other portions of the Common Areas as reasonably required; (iii) Maintenance of heating, ventilating and air cooling, sprinkler, security, emergency, life safety systems, all escalator and elevator systems (if any) (excluding

such systems exclusively serving individual Lot Owners) and any other items, facilities, equipment and systems furnished by Declarant as part of the Common Areas; (iv) premiums and other charges for insurance to the extent provided by Declarant, including liability insurance for personal and bodily injury, death and property damage; insurance covering the Common Areas against fire and extended coverage perils; theft or casualties; workers' compensation; plate glass insurance for glass exclusively serving the Common Areas, if applicable; boiler insurance (if carried); (v) Maintenance of fencing and similar items located within the Common Areas and interior and exterior planting, replanting and replacing of all flowers, shrubbery, plants, trees and other landscaping within the Common Areas; (vi) Maintenance of structures forming part of the Common Areas; (vii) Maintenance and depreciation of all machinery and equipment used solely in the operation or Maintenance of the Common Areas (including all escalators, elevators and other vertical transportation (if any)), Maintenance of security vehicles and equipment used solely for the Common Areas, and all personal property taxes and other charges incurred in connection with such machinery and equipment; (viii) all license and permit fees for the Common Areas, and any and all parking surcharges that may result from any Laws or Permits applicable to the Common Areas; (ix) the cost of Maintenance of cable television systems, or similar audio or video transmission systems for the Common Areas (if applicable); (xi) the cost of security personnel and equipment for the Common Areas, including uniforms as well as transportation and surveillance equipment and Maintenance thereof; (xii) reasonable reserves for replacement of fixtures and improvements in and equipment servicing the Common Areas; (xiii) administrative and management fees; and (xv) holiday and seasonal decorations and assorted Maintenance thereof as reasonably determined by Declarant.

“Complex Rules and Regulations” shall mean the reasonable written rules and regulations governing the Complex, including with respect to the use and enjoyment of the Common Areas, as may be established and amended from time to time by Declarant.

“Condominium Unit” shall mean one of a group of housing or commercial units where each owner owns their individual unit space, and a share of ownership of areas of common use by each unit owner.

“Condominium Association” shall mean each council of the association of Condominium Unit Owners under DUCIOA, as applicable, established for any Condominium of which such Condominium Unit is a part with respect to the Project.

“Condominium Documents” shall collectively mean the recorded instruments, however denominated, that create a condominium form of ownership in all or any portion of the Project under applicable Laws, together with any amendments to such instruments including, any one or more declarations, code of regulations, bylaws and condominium declaration plans.

“Conduits” shall mean and refer to any and all pipes, lines, wires, cables ducts and other transmission conduit, including any accessory or appurtenant facilities, structures or improvements, including, by way of illustration and not limitation, meters, utility vaults, substations and pumping or treatment stations, now or in the future associated with any Utilities or all or any portion of the Complex.

“Construct” or “Construction” or any variation thereof shall mean to design, layout, configure, develop, effect, implement, make, assemble, build, fabricate, fashion, forge, form, frame, put together, erect, put up, establish, operate, use, install, construct, relocate, remove, reconstruct, alter, extend and inspect, or any other words of similar meaning.

“Damage” or “Damages” and any variation thereof shall mean and include any and all damages incurred by Declarant as a result of the acts or omissions of a Responsible Party, together with and including without limitation any and all costs, expenses and fees incurred by Declarant in connection therewith, or resulting therefrom, including reasonable attorneys’ fees, court costs, and Construction and Maintenance costs and expenses, but expressly excluding normal, customary and reasonable wear and tear; consequential, punitive or special damages; administrative or operational costs; and lost profits.

“Declarant” shall mean and refer to the Fort DuPont Redevelopment and Preservation Corporation, a Delaware corporation, its successors and assigns, but only to the extent that any one or more of the rights, reservations, licenses, interests, exemptions, privileges, powers, duties and/or obligations of Declarant under this Declaration are specifically assigned or transferred to any such successors or assigns by one or more written instruments executed and acknowledged by Declarant and recorded in the Recorder’s Office.

“Declarant Board” means the Board of Directors of the Declarant.

“Declaration” means this Declaration of Covenants, Conditions, Restrictions and Easements.

“DHP Guidelines” shall mean any rules, guidelines, standards, applicable federal, state and local laws, and/or other requirements instituted by the Declarant Board or other Governmental Authority, as may be amended from time to time, relating to the use, design, appearance, historical character or similar attribute of any Lot or improvement thereon within the Complex.

“District” shall mean each of the present and future districts, as depicted on the Master Plan and/or Exhibit B attached hereto, in the Complex including, but not limited to, the Canal District, Officers Row District, Barracks District, Battery Row District, Marina District, Reeves Farm District, Theater District, Quartermaster District, and Grassdale District.

“District Common Areas” means all Common Areas (including all Common Area Improvements) located within and/or assigned by Declarant to a specific District as identified on Exhibit B attached hereto, as may be amended from time to time.

“District Common Area Improvements” shall mean and refer to any Common Area Improvement Constructed and Maintained on a Common Area located within a specific District.

“District Common Area Expenses” means any Common Area Expenses incurred with respect to a District within the Complex.

“DUCIOA” shall mean and refer to the Delaware Uniform Common Interest Lot Ownership Act, 25 Del. C. §81-101, et seq., as amended.

“Emergency” and its various derivations shall mean and refer to any event, circumstance or condition created by, arising out of, or effecting the use, operation, or occupancy of all or any portion of the Complex, which may, in the absence of immediate action by Declarant: (i) pose an immediate threat of irreparable harm to Declarant, a Lot Owner, their respective Permittees, or any other Person, or (ii) pose an immediate threat of irreparable harm or significant property damage to all or any portion of the Complex, or (iii) violate or result in the revocation of any or all Permits, or (iv) Declarant, a Lot Owner, their respective Permittees, or any other Person; or (v) as reasonably determined by Declarant.

“Executive Director” shall mean the Executive Director of the Fort DuPont Redevelopment and Preservation Corporation or any person appointed by the Declarant Board to serve in the Executive Director’s stead.

“Fort DuPont DHP Committee” means that certain committee established by Declarant for the purpose of administering, reviewing and enforcing the DHP Guidelines, and whose members shall be appointed by Declarant Board, subject to the terms of Section 6.5 below.

“Fort DuPont Maintenance Committee” means that certain committee established by Declarant for the purpose of providing for the ongoing operation and Maintenance of the Common Areas within the Complex including the establishment and collection of all Common Area Expenses whose members shall be appointed by the Board. Notwithstanding the terms of the preceding sentence to the contrary, the Fort DuPont Maintenance Committee shall include a minimum of: (a) one (1) representative from the Grassdale District who shall be designated by the Lot Owner of the Grassdale District, (b) one (1) representative who resides in a Residential District, and (c) one (1) individual who is an owner or employee of a business within a District comprised solely of Non-Residential Lots within the Complex. No tenant, either residential or commercial, shall be permitted to serve as a member of the Fort DuPont Maintenance Committee unless appointed by Declarant as one of Declarant’s representatives.

“Future Residential Lots” shall mean any lot that will be created or subdivided in accordance with any subdivision plan in any District within the Complex that will be intended for a residential use, except as may be provided for in Section 5.1(B) hereof.

“Governmental Authority” means the City of Delaware City, New Castle County, the State of Delaware or another other federal, state, local, or municipal governmental or quasi-governmental entity (or any department or agency thereof) having jurisdiction over all or any portion of the Project.

“Governing Documents” means this Declaration (including, but not limited to, all exhibits and schedules attached hereto, Articles of Incorporation, By-Laws, Master Plan, DHP Guidelines, Complex Rules and Regulations, RV Park Rules and Regulations, and any other rules and regulations that may be adopted by the Fort DuPont DHP Committee, the Fort DuPont Maintenance Committee and any other committee established by the Board in connection with



this Declaration, as amended from time to time, all of which shall govern the use and operation of the Complex.

“Grassdale District” means that certain area identified on Exhibit B attached hereto and which is expected to be developed by a third party purchaser through contract with the Declarant for the operation of an RV Park.

“Interruption” or any variation thereof shall mean any material or unreasonable interruption, obstruction, interference with or prevention, through the acts or omissions of any Responsible Party which adversely affects the use and enjoyment of any one or more of the rights, easements, privileges, right of ways, uses and licenses granted in favor of and for the benefit of Declarant, Lot Owner, or Permittees under this Declaration.

“Laws” shall mean and refer to any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, administrative order, authorization, permit, license, judgment, decree, injunction or other lawful requirement of any Governmental Authority, with respect to all or any portion of the Project, in effect at any time during the duration of this Declaration, ordinary or extraordinary, foreseen or unforeseen. The term “Laws” includes any regulation or order of any quasi-official or quasi-public entity, such as boards of fire examiners and fire insurance rating organizations as well as all applicable building, zoning, subdivision, environmental, and health and safety codes, ordinances, statutes, regulations or rules.

“Lease Document” shall mean and refer to any written lease, sublease, license or other agreement, together with any amendments or modifications thereto, entered into by and between Declarant and any tenant with respect to any possessory interest in or to all or any portion of one or more Lots.

“Lot” shall mean any parcel of real property located within the Complex including, but not limited to, subdivided, improved and unimproved lots and, to the extent that such Lot is improved, shall also include any Buildings and other improvements located on such Lot.

“Lot Owner” shall mean and refer to every Person who owns a Lot in fee simple (including Declarant with respect to any improved and/or developed Lot in the Complex that is leased by Declarant to a tenant pursuant to a Lease Document or used directly by Declarant); provided, however, that the term Lot Owner shall not include (i) any developers who are subject to a development, purchase and sale, or building contract with Declarant (a “Developer”), mortgagees and secured parties (unless and until such mortgagee or secured party takes possession of any Lot through foreclosure or other means) and other secured parties; and (ii) the Declarant with respect to any Lot that is presently or will be developed or restored by Declarant in the future.

“Maintain” or “Maintenance” and any variation thereof shall mean any and all activities related to the operation, use, connection to and occupancy (including, but not limited to Maintenance, management, monitoring, surveillance cleaning, security, trash removal, sanding and snow removal, lighting, striping, as well as the installation, repair, restoration, addition, demolition, removal, replacement, enlargement, reduction or any other modification or change)

of or to any portion of the Complex (including by way of illustration and not limitation any Common Areas, Utilities and Conduits, as applicable, or any portion or component thereof required to keep any of the foregoing or such portion thereof, as applicable, in a reasonable working order, operation, condition and repair and in compliance with all applicable Laws, Permits, and as otherwise required under the terms of this Declaration).

“Marina Village District” means that certain area of the Complex identified on Exhibit B hereto and the Master Plan, as may be amended from time to time, which is expected to include a full service marina, a conference center with hotel and a mix of one to three story buildings what will combine residential living with commercial retail and office use.

“Officers Row District” means that certain portion of the Project as identified on Exhibit B hereto and designated on the Master Plan and the Canal Subdivision Plan, which will be developed by Declarant and/or by a third party developer under contract with Declarant for the development of residential lots strictly for residential use including single family and duplex style homes.

“Non-Residential Lot” shall mean and refer to those parcels, lots, buildings and/or units which are not intended for residential occupancy as outlined in Section 5.2 hereof.

“Permittee(s)” shall mean and refer to and include the respective mortgagees, officers, directors, employees, agents, sales agents, contractors, subcontractors, materialmen, workmen, customers, visitors, licensees, invitees, guests, members, managers, family members, tenants, subtenants, occupants (other than Lot Owner) and concessionaires of Declarant or any Lot Owner.

“Permits” or any variation thereof shall mean and refer to all authorizations, approvals, certificates or permits (including building permits and certificates of occupancy), or other instruments or documents that are issued by and from any Governmental Authority which governs the occupancy, use and operation of all or any portion of the Complex.

“Person(s)” shall mean and refer to and include individuals, partnerships, co-tenancies, joint ventures, firms, associations (including any Condominium Association and the Declarant), corporations, limited liability companies, business trusts, real estate investment trusts, trusts, banking associations or institutions, Governmental Authority, or any other form of business or entity.

“Project” shall mean and refer to the development of the Complex as a whole as identified on Exhibit B and the Master Plan.

“Quartermaster District” means that that certain area of the Complex identified on Exhibit B hereto and the Master Plan, as may be amended from time to time, which will feature restored and renovated quartermaster housing and auxiliary buildings for residential use as well as a restored and repurposed bunker for anticipated commercial and retail use.

“Quartermaster Residential Lots” means that certain subdivided lot located within the Quartermaster District commonly known as Tax Parcel No. 220.009-00-174, intended for a residential use, except as may be provided for in Section 5.1(B) hereof.

“Reeves Farm District” means that certain area of the Complex identified on Exhibit B hereto and the Master Plan, as may be amended from time to time, which will feature restored and renovated residential housing and auxiliary buildings for residential use as well as anticipated commercial and retail uses.

“Responsible Party” shall mean the Declarant, Lot Owner or Lot Owner who either individually or through its Permittees is responsible for any Damages or Interruptions.

“Residential Lot” and/or “Residential Unit” shall mean and refer to those parcels, lots and/or units identified by either a single numbered lot or a single parcel which contains a residential dwelling titled to the same owner.

“RV” shall mean a recreational vehicle.

“RV Park” shall mean a recreational vehicle park and campground.

“RV Park Rules and Regulations” means the rules and regulations specific to the RV Park as will be written by the Lot Owner of the Grassdale District upon development of the Grassdale District.

“Shared Common Area” means those Common Areas (including the Common Area Improvements located thereon) located in one or more Districts which, (i) pursuant to the Master Plan, shall be developed for benefit of all Lot Owners, Permittees, visitors and the public; and/or (b) in the reasonable discretion of the Declarant, together with the approval by the Fort DuPont DHP Committee, provide a substantial benefit to all Districts contained therein such that the costs associated with their Maintenance and repair should reasonably be shared, in a proportionate manner, amongst all Lot Owners regardless of District.

“Shared Common Area Expenses” means and includes all Common Area Expenses incurred by Declarant with respect to a Shared Common Area.

“Subdivision” means any subdivision or other land development plan located within the Complex that contains Lots including lots subdivided for use as an RV Park which lots, from time to time, may contain RV’s, cottages, cabins and/or tents, as the case may be.

“Theater District” means that certain area of the Complex identified on Exhibit B hereto and the Master Plan, as may be amended from time to time, which will feature restored and modernized historic buildings including the theater and post-exchange building for commercial, entertainment and special event uses.

“Unavoidable Delay” shall mean and refer to any delay not due to the act, fault, neglect or omission of the party claiming the same, and shall include delays attributable to acts of God, war or terrorism, strikes, labor disputes, governmental restrictions or moratoriums,

unavailability of (as well as the inability to secure at commercially reasonable prices) materials, fixtures, merchandise or labor, acts of a public enemy, casualty, defaults or delays by third parties not induced by the party claiming such delay, delays resulting from the inability of a party to obtain financing or to proceed with its obligation because of lack of funds and other similar or dissimilar reasons beyond the control of the party obligated to perform such term, covenants, condition or agreement under this Declaration and shall include the consequential delays resulting from any such cause or causes.

“Unit” shall mean and refer to any residential unit and/or non-residential unit as may be demised spaces within a Building for residents, tenants or businesses and which may be, but is not necessarily, a Condominium Unit.

“Unit Owner” shall mean and refer to any Person or any combination thereof, which possesses a title interest to a Unit and may be one or more Persons that individually or collectively owns, manages, operates and/or leases one or more Units.

“Utilities” and any variation thereof shall mean and refer to electric power, natural gas, telephone, cable or satellite television, internet services, sanitary and storm sewer, potable water, storm drainage and sewer lines, and other related utility services reasonably necessary for the servicing of all or any portion of the Project.

“Utility Provider” shall mean and refer to any Governmental Authority, utility company, water utility, gas, fuel oil or other energy distributor, telecommunication company or other Person, including, Declarant, which provides any Utilities.

The word “including” or any variation thereof shall mean “including, without limitation,” or any variation thereof, and shall be construed as a word or phrase of illustration and not a term of limitation.

Whenever in this Declaration the context so requires, the singular of any capitalized or non-capitalized term, definition or word shall include the plural and the converse, and the use of any gender shall be deemed to include all genders.

## **ARTICLE 2.**

### **GENERAL**

2.1 Governing Documents. The Complex shall be owned, conveyed, encumbered, leased, used and occupied subject to the Governing Documents, as amended from time to time. All covenants, restrictions and obligations set forth in the Governing Documents are in furtherance of the Master Plan for the Complex, and shall run with the Complex and be a burden and benefit to all Lot Owners, Permittees and to any other Person acquiring or owing an interest in the Complex, their heirs, personal representatives, successors and assigns.

2.2 Binding Upon Lot Owners. Each Lot Owner, by acceptance of a deed thereto, obligates and binds itself, its successors, heirs, executors, administrators and assigns, to be bound by the provisions of this Declaration and all of the Complex Rules and Regulations and to be subject to all of the duties and obligations imposed by the Declaration upon a Lot Owner.

2.3 Payment Obligations. Each Lot Owner, by acceptance of a deed thereto, is deemed to covenant and agree to pay to the Declarant, when necessary, all charges, fees and assessments in accordance with the provisions of this Declaration.

2.4 Compliance with Complex Rules and Regulations. Each Lot Owner, by acceptance of a deed to a Lot, covenants and agrees on behalf of itself and its Permittees to comply with the Complex Rules and Regulations. Nothing contained in this Declaration shall be construed to impose upon Declarant any duty or obligation to promulgate or otherwise enforce the Complex Rules and Regulations or the terms, covenants or conditions in any other document as against any Lot Owner, and Declarant shall not be liable to any Lot Owner for violation of any Complex Rules and Regulations by any other Lot Owner or its Permittees. A copy of the Complex Rules and Regulations as approved by the Declarant Board are attached hereto as Schedule 2, and Declarant shall maintain a current and updated form of the Complex Rules and Regulations in its office at all times for review.

2.5 Declarant's Ongoing Development Rights. Notwithstanding any other provision in this Declaration to the contrary, no restriction, limitation, covenant or other provision in this Declaration, the DHP Guidelines, the Complex Rules and Regulations or promulgated pursuant hereto, shall be so applied, construed or enforced as to interfere with the redevelopment and preservation of the Complex by Declarant or any Lot Owner, including, but not limited to, the development, construction, sale or leasing of Lots in the Complex or the general operation of the Complex by Declarant. Without limiting the foregoing, the presence of construction vehicles, materials, equipment, trailers, portable toilets and temporary sheds, the existence of noise, dust, dirt and other inconveniences of construction, the pursuit of construction, sales, leasing and overall development activities utilizing on-site sales offices and signs and the showing for sale, rental or other type of agreements shall not be deemed a violation of this Declaration.

2.6 Requisite Consent of Grassdale District Lot Owner. Notwithstanding any other provision in this Declaration or any of the other Governing Documents to the contrary, no amendment to this Declaration, the Complex Rules and Regulations, the DHP Guidelines, the below-defined Access License, or any other Governing Documents which would directly effect the use, enjoyment or operation of the Grassdale District's RV Park may be made without the written consent of the Lot Owner of the Grassdale District or its designated agent.

### **ARTICLE 3.**

#### **USE OF, ACCESS TO AND MAINTENANCE OF COMMON AREAS**

3.1 Common Areas in General. Common Areas of differing types and intended uses will be located throughout the Complex for the intended use by Lot Owners and Permittees including, but not limited to, the general public. Common Areas may include roads, active open space, passive open space, recreational amenities, and parks (but shall not include any parkland leased to and/or operated by the National Park Service or any agency of the State of Delaware) and such other areas on the subdivision plan as the Declarant may create from time to time which serve an essential function for the specific District. Common Areas shall be limited to those areas as specifically delineated on the subdivision or other land use plan for the specific subdivision. In order to achieve and promote the goals of the FDRPC Act, the Master Plan and

in accordance with Delaware City zoning code, all Subdivision Amenities within the Complex will be owned, operated and maintained by the Declarant (or its designee) subject to the certain rights granted by Declarant to Lot Owners and Permittees for the use and enjoyment of such Common Areas in exchange for the reimbursement of a proportionate share of the actual costs to operate and maintain such Common Areas. Common Areas shall not include facilities located within the Grassdale District which are common to the RV Park and not open to the general public.

3.2 District Common Areas and Shared Common Areas. Common Areas are divided into two categories hereunder based upon their location and overall use and benefit to Lot Owners. District Common Areas are those Common Areas (including the Common Area Improvements located thereon) located within a District as identified on Schedule 1 hereto, which provide a primary benefit to the Lot Owners within said District. Shared Common Areas are Common Areas (including the Common Area Improvements located thereon) located in one or more Districts which, (i) pursuant to the Master Plan, shall be developed for benefit of all Lot Owners, Permittees, visitors and the public; and/or (b) in the reasonable discretion of the Declarant, together with the approval of the Fort DuPont DHP Committee, provide a substantial benefit to all Districts contained therein such that the costs associated with their Maintenance and repair should reasonably be shared, in a proportionate manner, amongst all Lot Owners regardless of District.

3.3 General Grant and Reservation of Non-Exclusive Access Licenses. Declarant hereby reserves, establishes, grants, conveys and creates, in favor of and for the benefit of itself, Lot Owners and Permittees a non-exclusive, irrevocable right, privilege and license, in common with Declarant, Lot Owners and Permittees, to use the Common Areas for the purposes for which such Common Areas are designed and intended, subject to the terms and conditions set forth in this Declaration (the "Access License"). The Access License is herein granted to lessees and tenants of the Grassdale District's RV Park; provided, however, that the Access License to a particular lessee or tenant of the RV Park is subject to revocation at the reasonable discretion of the Declarant together with the approval of either the Grassdale District's Lot Owner or by a majority vote of the Fort DuPont DHP Committee. The Access License includes rights-of-way and passage for pedestrian and designated vehicular traffic over, across and upon the Common Areas, as such Common Areas are from time to time Maintained by Declarant, and the Access License shall be subject to the restrictions, obligations and duties imposed and established hereunder (or as may reasonably be determined and published by Declarant) with respect to the use and enjoyment of the Common Areas as determined by Declarant, in its sole subjective and absolute discretion, from time to time.

3.4 Declarant's Obligations. Subsequent to completion of Construction of any Common Areas intended for use by a Lot Owner, and in consideration of the obligations of the Lot Owner to pay its respective allocation of the Common Area Expenses as provided under this Declaration, Declarant covenants and agrees to Maintain and otherwise operate and manage, either directly or by contract with a designee to act on behalf of Declarant, all Common Areas as required by this Declaration and otherwise to the standard by which Common Areas of a regional mixed use residential, retail, office, and hotel complex in New Castle County, State of Delaware are Constructed, Maintained, operated and managed, as reasonably determined by Declarant, including the following:

A. Reasonable preventative Maintenance of the Common Areas including sidewalks, boardwalks, walkways and roadways in a good, safe and clean condition, including repairing, restriping and replacing all surface paving, curbs and sidewalks, including parking spaces, fire lane and drive aisles;

B. Removing promptly, to the extent reasonably practicable, snow, ice, sand, rubbish, litter and debris (including installation and Maintenance of sidewalk and other refuse and recycling containers, to the extent applicable) from the Common Areas;

C. Landscaping (including reasonable services with respect to mulching) and all types and forms of landscaping, including watering and irrigation of the Common Areas, and maintaining and replacing plants, shrubs and trees located in the Common Areas, as needed, and trimming and pruning trees located in the Common Areas;

D. Maintaining entrance and exit monuments and other signage located in the Common Areas;

E. Maintaining all storm water collection, detention and retention facilities inclusive of bio-basins and levee, sanitary sewer, pump stations, substations and other Utility facilities and Conduits located in the Common Areas, that service the Project, including all electric, mechanical or other form of equipment, fixtures, machinery or betterment in good condition, order and repair and in compliance with all applicable Laws, Permits and directives of any Governmental Authority and Utility Provider; provided, however, that nothing herein shall require the Declarant to continue the Maintenance obligations set forth herein in the event that such obligations shall be duly undertaken by a third party including, but not limited to, any governmental agency or authority.

F. Maintaining light fixtures in the Common Areas and light bulbs and ballasts therefore, as may be necessary;

G. Maintaining all parking facilities in the Common Areas, including surface parking area below ground and/or structured parking garages and appurtenant improvements or betterments, including stairwells, elevators, signage, security gates and entrance and exit equipment, security structures and facilities, and lighting; and

H. Providing reasonable administrative and management services and personnel and office and Maintenance related facilities to operate, perform, and manage as may be reasonably required by Declarant to undertake and perform the Maintenance of the Common Areas, from time to time in accordance with the terms of this Declaration and in connection with the use and enjoyment of the Common Areas by the Declarant, Lot Owners and Permittees.

If Declarant fails to satisfy its obligations under this Section 3.4 and then does not cure such failure within thirty (30) days of a Lot Owner delivering written notice to Declarant identifying the subject failure, then such Lot Owner or any of the other Lot Owners may satisfy the subject obligation and charge the Declarant for the amount incurred by such Lot Owner(s) in the satisfaction thereof, in which case the Declarant shall have ten (10) business days to reimburse the applicable Lot Owner(s) unless the Declarant is disputing in good faith such invoice.

3.5 Continuous Access. During the term of this Declaration, no entrances, exits, approaches and means of ingress and egress to, from, and/or within the Complex shall be interrupted or disturbed by any act or omission of Declarant or its Permittee in such a manner as to adversely impact any Lot Owner's use and enjoyment of its property, except: (i) in the event of an Emergency or as may be otherwise required under any applicable Laws or Permits or by any Governmental Authority, in which event Declarant shall use reasonable efforts to give affected Lot Owners advance notice of such interruption or disturbance and to minimize interference to the Lot Owner's normal operations as a result thereof; or (ii) in the event that Declarant is required to temporarily close all or any portion of the Common Areas, or restrict or limit access and/or use to all or any portion of the Common Areas to prevent a dedication thereof or an accrual of any rights in any Person or the public generally therein; provided that Declarant shall make reasonable efforts to give each Lot Owner reasonable prior notice thereof, or (iii) Declarant shall have the right, on a temporary basis, to reasonably suspend, restrict, limit, reduce, modify or otherwise alter access to or use of all or any portion of the Common Areas for the limited purpose of undertaking any Construction or Maintenance required of Declarant under this Declaration or in connection with any other obligation or duty imposed upon Declarant, as well as to adequately respond to adverse weather conditions or as may be reasonably necessary to accommodate special events, including grand openings, parades, and holiday festivals, or for any other reasonable purposes whatsoever whether such purpose is similar or dissimilar to the foregoing.

3.6 Declarant's Modifications to Common Areas. Notwithstanding anything contained in this Declaration to the contrary, each Lot Owner's right, privilege and license to use the Common Areas is a non-exclusive right, privilege and license to use, in common with others entitled to the use thereof, of the Common Areas, subject to the following retained and reserved rights of the Declarant:

A. Declarant shall at all times have the right and privilege of determining the nature and extent of the Common Areas, and of making such changes, rearrangements, additions or reductions therein and thereto from time to time which in its opinion are deemed to be desirable and for the best interests of the Declarant, Lot Owners and Permittees or which are made as a result of, or, as applicable, at the direction of, any Laws, Permits, Governmental Authorities or Utility Providers, including the location, relocation, enlargement, reduction or addition of driveways, entrances, exits, parking spaces, parking garages, employee and customer parking areas (if any), the direction and flow of traffic, establishment of prohibited or restricted areas, landscaped areas, and any and all other Common Area Improvements within the Common Areas ; provided any such changes, rearrangements, additions or reductions do not interfere with the ability of each Lot Owner and Permittees to access and use its Lot.

B. Declarant may from time to time make alterations, reductions, or additions anywhere to the Common Areas, or other parts of the Project or incorporate or add any lands or improvements thereto, construct additional buildings, structures or improvements on the Common Areas, or elsewhere and make alterations thereto, build additional stories on any buildings, construct additional parking facilities, and construct roof, walls, and any other improvements over, or in connection with any part of, or all of, the Common Areas, or enclose the same; provided any such alterations, changes, rearrangements, additions or reductions do not interfere with the ability of each Lot Owner and Permittees to access and use its Lot. Declarant



may at any time and from time to time close, restrict, or otherwise maintain sole and exclusive authority, control and supervision of all or any portion of the Common Areas in order to undertake and perform all reasonable or necessary Maintenance or changes, or to such extent as may, in the opinion of Declarant, be necessary to prevent a dedication thereof or the accrual of any rights to any Person or to the public therein, to close temporarily any or all portions of the Common Areas and to do and perform such other acts in and to Common Areas as, in the exercise of a good business judgment, Declarant shall determine to be advisable with regard to use thereof by the Declarant, Lot Owners and their respective Permittees; provided any such activities do not interfere with the ability of a Lot Owner and Permittees to access and use its respective property in connection with this Declaration.

C. In addition, Declarant expressly reserves and retains the right to modify, adjust, enlarge, reduce and otherwise change the size, location, configuration, scope, or arrangement of such Common Areas, or the type of facilities at any time forming a part thereof, so long as such modifications do not cause a material adverse impact upon any Lot Owner and such Lot Owner's use of its Lot and otherwise comply with all applicable Laws and Permits and otherwise in accordance with this Declaration. Declarant shall not be subject to any claims, costs, losses, expenses or liability of any nature whatsoever with respect to any Declarant Common Areas Modifications, nor shall any Lot Owner or its Permittees be entitled to any compensation or diminution or abatement of rent or Common Area Expenses under this Declaration nor shall any such Declarant Common Areas Modifications be deemed an actual or constructive taking.

3.7 Damages to Common Areas. Any and all Damages (together with all resulting Construction and/or Maintenance) to any Common Areas which arise or are attributable to the entry upon or the use thereof by a Lot Owner or its Permittees (together with the operation and/or use of any vehicles, equipment, machinery, or materials in, on or around the Common Areas, the Subdivision Amenities, and/or Common Area Improvements by the a Lot Owner or its Permittees) shall be the responsibility of and shall be paid solely and exclusively by the Responsible Party who either individually or through its Permittees is responsible for the Damages. Any Damages to the Common Areas shall be promptly remedied by the Declarant in a good and workmanlike manner in accordance with all applicable Laws and Permits and otherwise in accordance with this Declaration. Any Damages to any Common Areas shall be restored by the Declarant to the same or comparable condition and level of service or production as it was immediately prior to such Damages. The Declarant shall provide an invoice for all actual costs and expenses incurred in connection with restoring the Common Area or the Subdivision Amenities to the Responsible Party which shall be due and payable within ten (10) business days of receipt by the Responsible Party unless the Responsible Party is disputing in good faith such invoice. In the event any damages to a Common Area are caused by the Declarant or Declarant's Permittee, the Declarant shall be solely responsible for the costs and expenses incurred to repair and restore the Common Area.

**ARTICLE 4.**  
**COMMON AREA EXPENSES**

4.1 Lot Owner's Obligation to Pay Allocated Share of Common Area Expenses. In consideration of the grant of the various rights and entitlements granted and established under this Declaration for the benefit of each Lot Owner and its Permittees, each Lot Owner covenants and agrees to pay Declarant, without any right of offset, deduction or other withholding, such Lot Owner's allocated share of, as applicable, (a) Common Area Expenses, which shall be divided into two separate components comprised of (i) District Common Area Expenses; and (ii) Shared Area Common Area Expenses, in accordance with the formulas provided on Schedule 1, attached hereto and made a part hereof (each, an "Expense Allocation"). Each Lot Owner's Expense Allocation shall be prorated and equitably adjusted for any partial year, as applicable, based on the conveyance of a Lot to such Lot Owner. The Expense Allocation for the Lot Owner of the Grassdale District shall be calculated in accordance with formulas provided on Schedule 1, attached hereto. Each Lot Owner's Expense Allocation shall be paid within thirty (30) days of receipt of an invoice from Declarant, which shall be mailed by Declarant to each Owner on July 5<sup>th</sup> of each calendar year.

4.2 Annual Common Area Expense Reconciliation Statements. No later than one hundred eighty (180) calendar days after December 31<sup>st</sup> of each calendar year, the Declarant shall provide to each Lot Owner a reasonably detailed written statement documenting the Common Area Expenses for such year just ending, prepared in accordance with generally accepted accounting principles consistently applied and certified as correct by an independent public accountant or an authorized representative of the Declarant (the "CAE Reconciliation Statement"). The CAE Reconciliation Statement shall be accompanied by a calculation of each Lot Owner's Expense Allocation. The Declarant's failure to provide such CAE Reconciliation Statement by the date provided herein shall in no way excuse or relieve any Lot Owner from its obligation to pay its Expense Allocation as billed or constitute a waiver of the Declarant's right to bill and collect such Expense Allocation from such Lot Owner in accordance with the terms of this Declaration; provided, however, that each Lot Owner does not have to pay its Expense Allocation which otherwise may be due and owing after July 1 of a particular calendar year unless and until such time as the Declarant provides the CAE Reconciliation Statement to such Lot Owner for the prior calendar year.

4.3 Special Assessments for Common Areas. In addition to Expense Allocations, and subject to the limitations set forth hereafter, Declarant may levy in any year a special assessment against any Lots for the purpose of defraying in whole or in part (i) the cost of any unforeseen or unbudgeted Common Area Expense, (ii) general or specific reserves for Maintenance, repair or replacement, or (iii) the reconstruction or replacement of the Common Areas. Notwithstanding the foregoing, any special assessment shall be subject to majority recommendation in favor of such special assessment by the Fort DuPont Maintenance Committee to the Declarant Board. Written notice of the meeting shall be sent to all Lot Owners not less than 21 days and not more than 30 days in advance of the meeting; provided, however, that the Declarant shall not have the power to levy a special assessment against any Lot located in the Officer's Row District or the Canal District if, by virtue of such special assessment, the annual aggregate amount of common area expense liability and special assessment liability exceeds \$500 or as then specified under 25 Del. C. §81-118(a)(2)

4.4 Lot Owner Audit Rights. Each Lot Owner shall have the right to audit the Declarant's books and records relating to the Common Area Expenses to verify the Declarant's calculation and assessment of the Expense Allocation and any CAE Reconciliation Statement in accordance with and subject to the following:

A. Provided the Lot Owner is not in default under this Declaration with respect to its obligations to pay such Lot Owner's Expense Allocation or any other monetary obligation under this Declaration, beyond any applicable cure or grace period, then Lot Owner shall have the right, within ninety (90) calendar days after receiving the any Expense Allocation or CAE Reconciliation Statement to audit the Declarant's books and records relating to such charges to verify the Declarant's calculations. Upon Lot Owner's request, the Declarant shall make available at the offices of the Declarant or its property management representatives copies of relevant backup materials (including contracts, correspondence and paid invoices) reasonably requested by Lot Owner. In the event of an error in Lot Owner's favor, the Declarant shall credit such overpayment towards the next installment(s) of such Lot Owner's Expense Allocation, as applicable, and if the overcharge exceeds three (3%) percent of charges to the Lot Owner, the Declarant shall reimburse Lot Owner for the reasonable expenses of the audit within thirty (30) calendar days after Lot Owner's demand therefore. In the event of an error in the Declarant's favor, Lot Owner shall remit the underpayment to the Declarant within thirty (30) calendar days after the Declarant's demand therefore.

B. Any dispute between the Declarant and any Lot Owner with respect to any CAE Reconciliation Statement or Expense Allocation or any audit permitted hereinabove shall be submitted and resolved in accordance with the process as set forth in Section 9.3 below.

4.5 Exclusions to Common Area Expenses. Notwithstanding the foregoing, the Common Area Expenses shall not include: (a) mortgage amortization and interest; (b) leasing commissions; (c) the cost of tenant installations and decorations; (d) rental payments made under any ground lease; (e) unreasonable management fees; (f) wages, salaries and benefits paid to or taxes paid for any persons not directly involved with the management of the Premises or Complex or the oversight thereof; (g) legal and accounting fees; (h) costs that are reimbursed out of insurance, warranty or condemnation proceeds, or otherwise; (i) costs in the nature of penalties or fines; (j) costs to correct any non-compliance with legal requirements that exists as of the date of this Agreement; (k) costs for services, supplies or repairs paid to any related entity in excess of costs that would be payable in an "arm's length" or unrelated situation for comparable services, supplies or repairs; (l) any costs or expenses (including fines, interest, penalties and legal fees) arising out of Declarant's failure to timely pay operating costs or taxes; (m) costs incurred in connection with the removal, encapsulation or other treatment of asbestos or any other hazardous materials; (n) any costs actually reimbursed under any service contracts or under the warranty of any general contractor, subcontractor or supplier and realized by Declarant; (o) Declarant's political or charitable contributions; (p) expenses resulting from the negligence or willful misconduct of Seller or its agents or employees; and (q) costs of selling, syndicating, financing, mortgaging or hypothecating any of Seller's interest in the Complex or any of the CAM Areas, including brokerage commissions, attorneys' and accountants' fees, closing costs, title insurance premiums, transfer taxes and interest charges.

4.6 Adjustments for Payments of Common Area Expenses by Other Persons. In the event any Person other than Declarant or a Lot Owner, pursuant to any agreement with Declarant or any other agreement or contract which impacts the Complex is required to pay a fee or charge to Declarant in connection with said Persons right to use a Common Area, then the amounts attributable to any of the foregoing, as reasonably determined by the Declarant, taking into account all relevant facts and circumstances, may be used to offset the total amount of Common Area Expenses s charged to a Lot Owner.

4.7 Liability of Lot Owners for Common Area Expenses. The obligation of a Lot Owner to pay all charges, assessments and/or other fees set forth herein shall commence at the later of (i) the time at which the Lot Owner acquires title to the Lot, (ii) the date of any contract for deed whereby the Lot Owner acquired an interest in the Lot; or (iii) the due date of the first assessment levied by the Declarant. The Lot Owner at the time an assessment is payable with respect to the Lot shall be immediately responsible for payment of their share of the Common Area Expenses then assessed against each Lot. The obligation is absolute and unconditional, and shall run with the land. Declarant may invoke the charges, sanctions and remedies set forth in this Declaration, in addition to any remedies provided elsewhere in the Governing Documents, or by Law, for the purpose of enforcing its rights hereunder.

4.8 Failure to Pay Expense Allocation.

A. No Abandonment/Non-Use Exceptions. No Lot Owner may waive or otherwise escape liability for its Expense Allocation for the Common Area Expenses provided for under this Declaration based on non-use of the Common Areas, whether by abandonment or non-use of its Lot or for any other reason or basis.

B. Assessment Lien. In the event of a Lot Owner's failure to pay its applicable Expense Allocation in a timely manner, then the Declarant shall have a lien on the subject Lot, or in the case of such a failure by the Grassdale District's Lot Owner the Declarant's lien shall be on the entirety of the Lot(s) which comprise the RV Park, for any charge, assessment and/or fee levied against that Lot from the time the assessment becomes due. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. Fees, charges, late charges, fines and interest charges imposed by the Declarant are liens, and are enforceable as assessments, under this Section. Recording of the Declaration constitutes record notice and perfection of any lien under this Section, and no further recordation of any notice of or claim for the lien is required.

C. Foreclosure of Lien; Remedies. A lien for Common Area Expenses may be foreclosed against a Lot under the laws of the State of Delaware in any manner provided for thereunder.

D. Lien Priority: Foreclosure. A lien under this Section is prior to all other liens and encumbrances on a Lot except (i) liens and encumbrances recorded before the Declaration, (ii) any first mortgage on the Lot, and (iii) liens for real estate taxes and other governmental assessments or charges against the Lot.

E. Voluntary Conveyances; Statement of Assessments. In a voluntary conveyance of a Lot the buyer shall not be personally liable for any unpaid assessments and other charges made by the Declarant against the seller or the seller's Lot prior to the time of conveyance to the buyer, unless expressly assumed by the buyer. However, the lien of such assessments shall remain against the Lot until satisfied, and may be foreclosed or otherwise enforced. Any seller or buyer shall be entitled to a statement, in recordable form, from the Declarant setting forth the amount of the unpaid assessments against the Lot, including all assessments payable in the Declarant's current fiscal year, which statement shall be binding on the Declarant, seller and buyer.

**ARTICLE 5.**  
**RESTRICTIONS ON USE OF COMPLEX**

5.1 Use of Residential Lots.

A. Residential Use. All Residential Lots or Units shall only be used by Lot Owners and Permittees exclusively as private, single or two family Residential Units, and not for transient, hotel, commercial, business or other non-related purposes, except as provided in 5.1(B) below. Any lease of a Residential Lot (except for occupancy by guests with the consent of the Lot Owner) for a period of less than 30 days, or any occupancy which includes any services customarily furnished to hotel guests, shall be presumed to be for transient purposes. The restrictions and guidelines placed on residential use of a Residential Lot are in addition to and not in lieu of any of the restrictions and guidelines for a Residential Lot and/or the Complex as may be set forth in the Complex Rules and Regulations, as amended from time to time. To the extent of discrepancy, the Complex Rules and Regulations shall apply.

B. Business Use Restricted on Residential Lots. No business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted on any Residential Lot; except a Lot Owner or Permittee residing on a Residential Lot may keep and maintain his or her business or professional records on such Residential Lot and handle matters relating to such business by telephone or correspondence therefrom, provided that such uses are incidental to the residential use, do not involve physical alteration of the Residential Lot and do not involve any observable business activity such as signs, advertising displays, bulk mailings, or deliveries.

C. Leasing of Residential Lots. In the event that any Residential Unit is leased or rented to a third party by a Lot Owner, such Lot Owner shall promptly furnish a copy of the lease to the Declarant, and shall furnish a copy of this Declaration, the DHP Guidelines and the Complex Rules and Regulations to the tenant. If, during such tenancy, the Residential Unit is not being maintained to the highest standards elsewhere evident in the Complex, or if this Declaration, the DHP Guidelines or the Complex Rules and Regulations are being violated by the tenant, the Declarant shall have the right to so notify the tenant and the Lot Owner in writing, by certified mail, return receipt requested, sent to their last known address. Thereafter, unless such lack of Maintenance or tenant's violation has been rectified within fourteen (14) calendar days and does not re-occur for at least ninety (90) days, the Declarant may, at the Lot Owner's expense, accomplish such Maintenance as it deems reasonably necessary to preserve the

Complex's highest standards of appearance and care, and/or terminate the lease and evict the tenant, as applicable. Any violation of this Declaration, the DHP Guidelines or Complex Rules and Regulations shall be deemed a breach of the lease and shall entitle the Declarant, as the agent for the Lot Owner, to proceed accordingly against tenant.

D. Parking on Residential Lots. The parking of vehicles on or at Residential Lots shall be restricted to designated parking areas, and shall be prohibited in any yards. The use of garages, driveways and other parking areas on a Residential Lot, and the types of vehicles and personal property permitted thereon, shall be subject to regulation by the Declarant, including without limitation the right of the Declarant to tow illegally parked vehicles or to remove unauthorized personal property. No unlicensed motor vehicles shall be stored on a Residential Lot. No on-site uncovered storage shall be allowed on a Residential Lot. Storage of snowmobiles, boats, trailers, campers, golf carts, and other seasonal property shall be allowed, subject to such restrictions as may be contained in any Complex Rules and Regulations. No disabled motor vehicles shall be stored on a Residential Lot. All driveways and parking areas on Residential Lot shall have a finished surface in conformity with the DHP Guidelines.

E. Dwelling Houses. No Buildings of any kind shall be erected or maintained on a Residential Lot except private Residential Units and, to the extent permitted, detached or attached private garage for the exclusive use of the Lot Owner or Permittee.

F. Exterior Changes. Except as provided in Section 6 below, all improved structures shall be maintained in their original configuration and outward appearance including without limitation the color of all surfaces exposed to outside view and the type of trim, siding and roofing materials.

G. Outbuildings, Pools and Antennas. Except as otherwise provided in Section 6 below, no unattached outbuilding, no above ground pool and no outside antenna, aerial or disk for television or radio or other reception or transmission, except a television disk permissible under the DHP Guidelines, shall be placed, installed or permitted on any Lot.

H. Landscape, Fences and Trees. No fences, hedges or other bulk landscaping or landscaping screens (in contrast with isolated trees or shrubbery) shall be placed forward of the front of any Residential Unit on any Residential Lot. Except as otherwise provided in Section 6, fences in excess of a height of four feet shall not be erected on any Residential Lot and only fences that are approved in writing by the Declarant shall be erected. Lawns, shrubs and landscaping shall be kept neatly mowed, trimmed and tidy. No Historic Trees may be altered or cut down without the written consent of the Declarant.

I. Grades and Elevations. Except as otherwise provided in Section 6 below, no change in the elevation, grade or surface composition of any Residential Lot as properly established by Declarant when each Residential Unit thereon is constructed or conveyed to Lot Owner shall be made which adversely affects surface water drainage to or from any other Lot or Common Area.

J. Vehicles. The presence of travel trailers, mobile homes, motor homes, boats, vans trucks or other recreational or commercial or special purpose vehicles, equipment or

items, except for the temporary purpose of loading, unloading, construction or rendering services (not including work performed on such vehicle, boat, equipment, etc.), or except for light trucks or vans used by the Lot Owner or Permittee in his or her vocation, is prohibited on or at Residential Lots for more than 48 hours unless such vehicles, equipment or items are kept completely garaged. The permitted 48 hours is applicable to Residential Lot owners and their guests only. Commercial use guests shall not park the above listed vehicles in a Residential area. RV's are permitted in the Grassdale District so long as that District operates as an RV Park. RV's may also be parked on designated areas, including but not limited to the Playground, during special events identified as such by the DIIP Guidelines or the Complex Rules and Regulations.

K. Animals. No livestock and no pets except dogs and small domestic cats shall be brought or kept on any Residential Lot. The number, kind and management of pets shall be as set forth in the Complex Rules and Regulations.

L. Noises/Nuisances.

(i) No offensive, dangerous or unlawful substance, activity or condition shall be brought, conducted or permitted within any District which includes Residential Lots or Residential Units. Loud and unreasonable noise, as well as any other behavior or activities, or property condition which constitutes a nuisance arising out of the acts or omission of any Lot Owner and its Permittees, shall be prohibited at all times. Additionally, any and all electrical devices subject to volume control, including radios, stereos, televisions and musical instruments, may only be used and operated at such levels so as not to unreasonably disturb any Lot Owner and its Permittees. Notwithstanding anything contained herein to the contrary, the normal generation and/or transmission of sound and noise occurring as a result of the normal and customary use and occupancy of any Lot or Common Areas or Common Area Improvements in keeping with a mixed use community and as further set forth in Section 5.1 L(ii), shall not be prohibited and shall not be deemed to be a nuisance hereunder.

(ii) It is understood and acknowledged by each Lot Owner that some of the Lots, Common Areas within the Complex shall be used and occupied for commercial, and/or retail purposes or other permitted uses in accordance with all applicable Laws which may include, but may not be limited to, restaurants, pubs, bars, saloons, tap rooms (all of which may include the serving of alcohol), hair salons, retail shops, and other retail uses (collectively, "Retail Activities"), as well as for entertainment purposes including, but not limited to, concerts, festivals and other outdoor public gatherings and events ("Outdoor Events"), and such uses may generate a variety of orders, noise, sound and other activities, including by way of illustration and not limitation, food oriented odors, aromas, music, crowd-related noises, vibrations, emissions and lights associated with eating, drinking, dancing and similar normal and customary activities associated with such Retail Activities, Outdoor Events or other permitted retail and/or commercial or other lawful use. Provided such Retail Activities and/or Outdoor Events comply with all Applicable Laws, including any noise or sound ordinance, any such Retail Activities and Outdoor Events shall not constitute a nuisance or a violation of this Section, and shall be permitted.

M. Quiet Enjoyment; Interference Prohibited. All Lot Owners and Permittees shall have a right of quiet enjoyment in their respective Residential Lots, and shall use such Lots in such a manner as will not cause a nuisance, nor unduly restrict, interfere with or impede the use of the Complex by other Lot Owners and Permittees.

N. Compliance with Law. Notwithstanding anything to the contrary herein, no use shall be made of a Residential Lot which would violate any applicable ordinances (including zoning ordinances), or state or federal laws, nor shall any act or use be permitted which could cause waste to the Complex, cause a material increase in insurance rates on the Complex, or otherwise cause any unusual liability, health or safety risk, or expense, for the Declarant or any Lot Owner or Permittee.

## 5.2 Use of Non-Residential Lots within Complex.

A. Permitted Use. Lots located in the Grassdale District have been approved and designated for use as an RV Park. Lots in the Marina District and Theater District, as well as any lots in the Quartermaster District, Battery Row District, Barracks District or Reeves Farm District (other than any Residential Lots located in said districts) and any other Lots in the Complex which are intended for commercial use under the Master Plan (collectively, the “Non-Residential Lots”) shall only be used by Lot Owners and Permittees for (a) a use which is consistent with the Master Plan; (b) approved by the Declarant; and (c) consistent with any and all applicable Laws, statutes, ordinances, rules and regulations; provided, however, that to the extent that any of the Lots located within a District comprised solely of Non-Residential Lots are presently owned by Declarant and are used for a purpose that does not comply with the mandates of this Section, such use shall not be deemed a violation of this Declaration and shall, instead, be considered a grandfathered permitted use until such time as the permitted use ceases for a period of twelve (12) consecutive months. The use of any elements necessary for the development, construction, use and operation of a business on a Non-Residential Lot, to the extent that such elements will be owned, operated and maintained by a Lot Owner including, but not limited to, interior means of ingress and egress from a Common Area, parking areas and, parking garages, shall be governed by the final subdivision plan approved by the City of Delaware City, with the advice and consent of Declarant; provided, however that the Lot Owner of a Non-Residential Lot shall be able to establish reasonable rules and regulations with respect to the access to and use by Lot Owners and Permittees of such elements.

B. Leasing of Non-Residential Lots. Leasing of a Non-Residential Lot, with the exception of those Lots in the Grassdale District which shall be governed by Section 5.3 below, shall be allowed, subject to reasonable regulation by the Declarant and subject to the following conditions: (i) all leases shall be in writing, (ii) that all leases shall provide that they are subordinate and subject to the provisions of the Governing Documents, and any Complex Rules and Regulations, and (iii) that any failure of the lessee to comply with the terms of such documents shall be a default under the lease. The Declarant may impose such reasonable Complex Rules and Regulations as it may deem necessary to implement procedures for the leasing of Non-Residential Lot, consistent with this Section.

C. Pools. Upon application and approval by the Declarant, a pool may be installed by a hospitality business within the Marina Village District and the Grassdale District



for the use of its guests so long as the Lot Owner or Permittee maintains an insurance policy insuring the Lot Owner for liabilities arising from the facility and naming the Declarant as an additional insured. Such approval will not be unreasonably withheld.

D. Noise/Nuisances.

(i) Loud and unreasonable noise which violates the Complex Rules and Regulations or any State, County or Town Ordinances well as any other behavior or activities, or property condition which constitutes a nuisance arising out of the acts or omission of any Lot Owner and its Permittees, shall be prohibited at all times. Additionally, any and all electrical devices subject to volume control, including radios, stereos, televisions and musical instruments, may only be used and operated at such levels so as not to unreasonably disturb any Lot Owner and its Permittees. Notwithstanding anything contained herein to the contrary, the normal generation and/or transmission of sound and noise occurring as a result of the normal and customary use and occupancy of any Lot or Common Areas or Common Area Improvements in keeping with a mixed use community, shall not be prohibited and shall not be deemed to be a nuisance hereunder.

(ii) It is understood and acknowledged by each Non-Residential Lot Owner that some of the Lots, Common Areas within the Complex shall be used and occupied for Retail Activities and Outdoor Events and such uses may generate a variety of orders, noise, sound and other activities, including by way of illustration and not limitation, food oriented odors, aromas, music, crowd-related noises, vibrations, emissions and lights associated with eating, drinking, dancing and similar normal and customary activities associated with such Retail Activities, Outdoor Events or other permitted retail, commercial and/or other lawful use. Provided such Retail Activities and/or Outdoor Events comply with all Applicable Laws, including any noise or sound ordinance, any such Retail Activities and Outdoor Events shall not constitute a nuisance or a violation of either (i) the prohibited uses in the HPR zoning district, or (ii) the Noise/Nuisances provisions of this Section, and shall be permitted.

(iii) Quiet Enjoyment: Interference Prohibited. All Lot Owners and Permittees shall have a right of quiet enjoyment in their respective Non-Residential Lots, and shall use such Lots in such a manner as will not cause a nuisance, nor unduly restrict, interfere with or impede the use of the Complex by other Lot Owners and Permittees.

5.3 Use of the RV Park.

Permitted Use. The Grassdale District shall be used by the Lot Owner of the Grassdale District and Permittees exclusively as an RV Park unless otherwise approved by the Declarant. Residency in the Grassdale District shall be seasonal, short-term occupancy. Any lease or rental of a lot in the RV Park shall be subject to the RV Park Rules and Regulations as well as the Complex Rules and Regulations. The RV Park Rules and Regulations shall be available in the RV Park's office and the Declarant's office and incorporated herein, and as amended from time to time, as applying to the Grassdale District. To the extent of discrepancy between the RV Park Rules and Regulations and the Complex Rules and Regulations, the Complex Rules and Regulations shall apply.

**ARTICLE 6.**  
**ARCHITECTURAL CONTROL**

6.1 Development Requirements. The Complex shall only be developed (which term shall include, the design, construction, and/or rehabilitation) and used in a manner and for a purpose that is consistent with the FDRPC Act, the Master Plan (as may be amended from time to time), or any other applicable land use plan, historic preservation requirement regulation, rule, law or guideline developed by the Declarant or any Governmental Authority or otherwise impacting the Complex (collectively, the "Development Requirements"). To implement the Development Requirements, Declarant, in its sole discretion, shall adopt the DHP Guidelines, which may be amended from time to time as the Complex's redevelopment progresses. These DHP Guidelines shall be binding upon all present and future owners of any land that currently comprises the Complex subject to this Declaration. These DHP Guidelines, which may only be amended by the Declarant, are expressly incorporated herein by reference herein and will constitute covenants that run with the land and shall be binding on all owners and subsequent owners of the Complex as if they were set forth fully herein. Such DHP Guidelines as in effect from time to time shall be subject to and shall require approval of the Declarant Board. The DHP Guidelines need not be uniform for each phase of development or amongst Districts on the Complex. The DHP Guidelines will serve as the basis for Declarant's oversight, approval and management of Complex in accordance with the Development Requirements. The DHP Guidelines will provide the basis for design review and shall determine the appropriate location and characteristics of future reuse and new construction projects and for ensuring that redevelopment occurs in a manner that is consistent with the overall vision for the Complex. The current and enforceable form of DHP Guidelines shall be made available by Declarant at its principal offices during normal business hours and copies of same shall be available to Lot Owners or perspective Lot Owners free of charge.

6.2 Application. These restrictions and the requirements set forth herein shall apply to the Complex without regard to whether the Complex is sold for development by the Declarant or leased by the Declarant for private or public use. All present and future owners of lands sold or leased that are currently subject to this Declaration expressly consent to and agree to abide by the Development Requirements and the DHP Guidelines.

6.3 Design and Historical Review and Approval. No clearing, grading, building, improvements, material alterations, material modifications, repairs or other work which in any way materially alters any Lot or the exterior of any improvements located therein from its natural or improved state shall be made or done without the prior written approval of the Declarant, except as otherwise expressly provided in this Declaration. The Declarant may, without limitation, restrict the architectural design, color, building materials, driveway and parking locations and surfaces, exterior lighting, size, height and location of a structures and improvements, to maintain the values, aesthetics, views, natural vegetation and natural setting of the Complex and of each Lot within the Complex as well as to ensure adherence to and compliance with the DHP Guidelines. Any development or any use of the lands comprising the Complex including any Lot that deviates from or is otherwise not consistent with the Development Requirements and/or DHP Guidelines shall only be permitted with the advance consent of the Declarant, and any decision shall be at the reasonable discretion of the Declarant.

6.4 Approval of Grassdale Plans. Notwithstanding the terms of the other Sections of this Article 6 to the contrary: (a) Declarant herein affirms that as of the Effective Date of this Declaration, the proposed purchaser of the Grassdale District has submitted architectural plans for the two currently free standing buildings in the Grassdale District and various other alterations and improvements associated with the development and Construction of the RV Park (collectively, "Grassdale Plans"); (b) Declarant has approved those Grassdale Plans which are in existence as of the Effective Date of this Declaration; and (c) no further approvals are necessary, excepting any desired material changes from the now existing Grassdale Plans would require approval as outlined herein.

6.5 Fort DuPont DHP Committee. Declarant shall establish the Fort DuPont DHP Committee which will have the power and authority to review, approve and/or deny any requests for development of and, following such development, any exterior modifications (including, but not limited to, the design, appearance, use, location and Maintenance of Lots and the improvements thereon) on any Lot in accordance with the DHP Guidelines once said Lot is conveyed to a Lot Owner along with any other powers and authority delegated to it by the Declarant. The Fort DuPont DHP Committee shall include a minimum of: (a) one (1) representative from the Grassdale District who shall be designated by the Lot Owner of the Grassdale District; (b) one (1) representative who resides in a Residential District; and (c) one (1) individual who is an owner or employee of a business within a Commercial District within the Complex. No tenant, either residential or commercial, shall be permitted to serve as a member of the Fort DuPont DHP Committee unless appointed by Declarant as one of its selected representatives. Declarant shall retain all power and authority to develop the Complex in accordance with the Development Requirements and the DHP Guidelines prior to the conveyance of any Lot to a Lot Owner and/or for so long as a Lot is owned by Declarant.

6.6 Application and Review Procedures.

(A) Any requests relating to the initial development or redevelopment of any Lot or other area of land within the Complex shall be directed to the Executive Director of the Corporation, which will forward such request to the Fort DuPont DHP Committee. The Fort DuPont DHP Committee will then determine the process for reviewing and considering such request in accordance with the rules and procedures of such committee along with the nature of the request.

(B) Approvals of requested changes and modifications to the exterior elements of any developed and/or improved Lot may be allowed by the Fort DuPont DHP Committee in accordance with such DHP Guidelines, upon written application to and written permission from the Fort DuPont DHP Committee. The Fort DuPont DHP Committee shall be permitted to establish application and review procedures as it deems reasonable and necessary to carry out its obligations and duties as set forth in this Declaration and the By-Laws including, but not limited to, the manner in which application shall be made, the documentation required to be submitted with such application, and the time period for review and response by the Fort DuPont DHP Committee. These requirements will be established by and set forth in the rules and procedures of the Fort DuPont DHP Committee.

(C) Each person making such application, and all other Lot Owners affected thereby, shall accept and be bound by the good faith decision of the Fort DuPont DHP Committee in granting or denying such application, or in qualifying and limiting any permission granted subject to the appeal procedures in Section 6.6 below.

6.7 Appeal Procedures. A Lot Owner or other aggrieved person affected by the decision may appeal a Fort DuPont DHP Committee decision including any decision made upon a Lot Owner's request to change, modify or otherwise alter the DHP Guidelines to the Declarant who may reverse or modify such decision by a two-thirds vote of the total membership of its Board. The Declarant will prescribe the procedures for an appeal in the rules and procedures of the Fort DuPont DHP Committee including, but not limited to, the timing for taking an appeal, the specific appeal process, the form of an appeal application and documentation requirements.

6.8 Remedies for Violations. The Declarant may undertake any measures, legal or administrative, to enforce compliance with this Section including, but not limited to, setting forth specific violation remedies in the rules and procedures of the Fort DuPont DHP Committee, and shall be entitled to recover from the Lot Owner causing or permitting the violation all attorneys' fees and costs of enforcement, whether or not a legal action is started. Such attorneys' fees and costs shall be a lien against the Lot Owner's Lot and a personal obligation of the Lot Owner.

## ARTICLE 7.

### EASEMENTS AND RIGHTS OF WAY

7.1 Lot Line Easements. Easements and rights-of-way are hereby reserved over, under and along the side and rear boundary lines of each Lot, being twelve (12) feet in width centered on such boundary lines so that the outmost six (6) feet of each Lot along its side yard and rear yard boundary lines shall be subject to such reserved easements and rights-of-way. Easements and rights-of-way shown on any recorded document affecting the Complex or otherwise created during the construction and development of the Complex are also reserved and shall not be limited to or by the foregoing.

7.2 Purposes. The purpose of such easements and rights-of-way shall be for: (a) the Construction and Maintenance of storm water drainage and management systems as required by the City of Delaware City or otherwise installed or authorized by Declarant; (b) the Construction and Maintenance of public or private sanitary sewer lines; and (c) the construction, installation and Maintenance of utility lines, pipes, conduits and cables for electricity, telephone, television, water, gas, fuel oil, and for any other public or quasi-public utility or function serving the Lots and conducted, furnished or maintained by any method on, in, below or above the surface of the ground; however, the creation of easements for the above listed purposes shall not obligate Declarant to install all or any of the improvements for such purposes. Each lot shall also be burdened by such blanket utility easement(s) as previously recorded.

7.3 Limitations. No Lot Owner, Utility, public agency or other party shall make use of the easements herein created without the express, separate written consent of Declarant. All parties rightfully using such easements may from time-to-time and at any time enter upon said above-reserved easements and rights-of-way, for any of the purposes for which same have been

reserved and as necessary may remove or trim without replacement any growing or other thing thereon. During the time that any work is rightfully being performed within any easement or right-of-way area, the party performing such work shall also have a temporary easement to either side of the easement area for purposes of conveniently performing the work in question, without harm to structures or plantings. Disturbed earth shall promptly be graded and seeded.

7.4 Non-Interference. The Lot Owner and Permittees of the Lots shall at all times maintain and occupy their Lots so as not to interfere with the purposes for which said easements and rights-of-way have been created and are used. All conveyances of Lots by Declarant or others shall be subject to the said easements and rights-of-way without necessity of any further reservation being mentioned therein. Lot Owners shall not be permitted to erect any permanent Building in such easements and right of ways or to place or cause the presence of plants, trees, shrubs or other landscaping to hinder or impede the ability of the Declarant to readily access such areas by the plan. In the event that any such actions by a Lot Owner hinders or impedes access to the easements and right of ways, Lot Owner shall immediately remove all such items at its sole cost. If the Lot Owner shall fail to do so, Declarant may remove all offending items in order to access the easement and rights of way at the cost and expense of the Lot Owner.

7.5 Construction Activities. All Lot Owners, Permittees and other interested Persons shall at all times permit the Declarant and/or its successors, assignees, agents and designees the right to go upon any and all Lot or Lots to accomplish and to complete construction, grading or landscaping in accordance with the approved plans or required by any Governmental Authority.

7.6 Easements for Maintenance, Repair, Replacement and Reconstruction. Each Lot, and the rights of the Lot Owners and Permittees thereof shall be subject to the rights of the Declarant to an exclusive, appurtenant easement on and over the Lots for the purposes of and to the extent necessary to fulfill the Declarant's obligations under the Governing Documents.

7.7 Continuation and Scope of Common Area Easements. Notwithstanding anything in this Declaration to the contrary, in no event shall a Lot Owner or Permittee be denied reasonable access to his or her Lot or the right to utility services thereto. The easements set forth in this Section shall supplement and not limit any easements described elsewhere in this Declaration or recorded, and shall include reasonable access to the easement areas through the Lots and the Common Areas for purposes of Maintenance, repair, replacement and reconstruction.

**ARTICLE 8.**  
**INDEMNIFICATION**

8.1 Indemnification. Each Lot Owner covenants and agrees to and shall defend, indemnify, save and hold harmless Declarant and the other Lot Owners (hereinafter referred to as the “Injured Party”) against and from any and all claims, judgments, liabilities, loss, suits, interest, fines, penalties, damages, costs and expenses, including reasonable counsel fees (before trial, at trial or appellate levels), because of personal injury to or death of persons or damage to or destruction of property occurring upon or within the Complex or the Common Areas located thereon or resulting from or arising out of each Lot Owner’s occupancy or possession of its Lot or portion thereof or the conduct or operation of any business thereon or arising from any acts or omissions of Lot Owner or its Permittees or any default of such Lot Owner in the performance of any of its obligations hereunder or exercising any of its rights under this Declaration. Declarant covenants and agrees to and shall defend, indemnify, save and hold harmless any Lot Owner against any and all claims, judgments, liabilities, loss, suits, interest, fines, penalties, damages, costs and expenses, including reasonable counsel fees (before trial, at trial or appellate levels), because of personal injury to or death of persons or damage to or destruction of property occurring solely through a failure by Declarant to satisfy its obligations under this Declaration or due to the gross negligence or intentional misconduct of the Declarant.

**ARTICLE 9.**  
**DEFAULTS/REMEDIES**

9.1 No Right to Terminate. Notwithstanding any contrary provision in this Declaration, it is expressly agreed that no breach of this Declaration shall entitle any Lot Owner or the Declarant to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other right or remedies that the Declarant or any Lot Owner may have hereunder or under law or equity by reason of any breach of this Declaration.

9.2 No Release of Liability. The provisions of this Article are for protection, and are not designed to release any Lot Owner or Declarant from the performance of the terms, provisions, covenants and conditions herein provided to be performed by such Lot Owner or Declarant or to deprive any of the parties of any legal rights which any such Lot Owner or Declarant may have at law or in equity or by virtue of this Declaration.

9.3 Litigation. The state courts of the State of Delaware having jurisdiction over the Complex shall have sole and exclusive jurisdiction and venue for any dispute arising under this Declaration. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Declaration in any jurisdiction other than that specified in this Section. Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against such party as contemplated by this Section by Notice delivered in accordance with this Declaration. Any final judgment rendered against a party in any action or proceeding litigated in accordance with this Section shall be conclusive as to the subject of such final judgment, and may be enforced in other jurisdictions in any manner provided by law.

9.4 Injunctive Relief. Declarant declares that there are certain circumstances in which it may be necessary or appropriate for a non-breaching party to seek injunctive relief, if and to the extent legally available, in order to avoid irreparable harm or further harm to the non-breaching party. If a party desires injunctive relief, it may pursue such relief in any court of competent jurisdiction in the State of Delaware; provided, however, that, if granted, any injunctive relief shall apply only to prevent a breach or further breaches of any affirmative covenants by any party under this Declaration and shall remain in effect only so long as the court deems necessary or appropriate to permit resolution of the underlying disputes in accordance with this Section.

**ARTICLE 10.**  
**CASUALTY, INSURANCE AND EMINENT DOMAIN**

10.1 Casualty Losses and Damage. If any of the Common Areas are damaged or destroyed by fire or other cause, the Declarant shall promptly cause the Construction of the Common Areas and the Common Area Improvements located therein to the extent necessary to restore the Common Areas located therein to the previously improved condition, subject to and in compliance with all applicable Laws and Permits; provided, however, if the damage is to an immaterial portion of the Common Areas and does not adversely affect the access to any Lot or the Complex, then Declarant shall have the right to raze any such damaged Common Areas, fill any excavation and perform any other work reasonably necessary to put the Common Areas in a clean, sightly and safe condition in compliance with all applicable Laws and Permits.

10.2 Insurance. Declarant shall at all times carry and maintain insurance with respect to the Complex including, but not limited to, the Common Areas and Common Area Improvements in amounts as determined by the Declarant.

10.3 Eminent Domain. In the event the whole or any part of the Common Areas shall be taken by right of eminent domain or similar authority (a "Taking"), the entire award for the value of the Common Areas so taken shall belong to the Declarant and no Lot Owner shall have a right to claim any portion of such award by virtue of any interest created by this Declaration. In the event of a partial Taking which results in the necessity of Construction and/or Maintenance of any portion of the Common Areas, the Declarant shall utilize the condemnation award to undertake and complete such Construction and/or Maintenance to the extent of any condemnation award received. In the event the condemnation award is inadequate to affect the Maintenance and/or Construction of the Common Areas Constructed thereon, the Declarant shall have no obligation or duty to perform any such Maintenance and/or Construction.

**ARTICLE 11.**  
**NOTICES**

11.1 Notices. Any notice, request, demand, approval or consent given or required to be given under this Declaration shall be in writing and shall be deemed to have been given when mailed, registered or certified mail, postage prepaid, return receipt requested or by overnight

mail, to the address stated below or at the last changed address given by the party to be notified as hereinafter specified.

If to Declarant: Fort DuPont Redevelopment & Preservation Corporation  
c/o Executive Director  
206 Old Elm Street  
P.O. Box 521  
Delaware City, Delaware 19706

With a copy to: Connolly Gallagher LLP  
267 East Main Street  
Newark, Delaware 19711  
Attention: Max B. Walton, Esquire

If to Lot Owner: Street Address and/or registered address on tax records for New  
Castle County, Delaware

A party may at any time change its address for notification purposes by mailing a notice stating the change and setting forth the new address. In addition, Declarant may change its address for notice and copies of such notice by filing an amendment to this Declaration with such information in the Recorder's Office without the consent or joinder of any other Person.

**ARTICLE 12.**  
**SUCCESSORS AND ASSIGNS**

12.1 Binding Covenants. All the covenants, agreements, conditions, restrictions and licenses set forth in this Declaration are intended to be and shall be construed as covenants running with the leasehold interest of Declarant in the Project, binding upon, inuring to the benefit of, and enforceable by Declarant, the Lot Owners and their respective successors and assigns, but shall not be enforceable by any Permittee of any Lot Owner. All licenses shall be irrevocable.

12.2 Third Persons. Except as otherwise expressly provided for above, this Declaration shall not constitute or create rights in Persons not parties hereto, or create obligations or responsibilities to such third Persons on behalf of the parties hereto.

**ARTICLE 13**  
**RESERVATION OF RIGHTS**

13.1 Amendment of Declaration. Notwithstanding anything contained in this Declaration to the contrary (but subject to the consent of the Lot Owner of the Grassdale District or its designated agent that is more fully described in Section 2.6 above), Declarant shall have the absolute right (but not the obligation), after a hearing and approval by a majority vote of the Fort DuPont DHP Committee, at any time and from time to time, to amend, modify or otherwise change all or any portion of this Declaration, and execute, acknowledge and record any



amendments or other modifications to this Declaration, including any one or more the terms, covenants, conditions, agreement, easements, or other provisions contained in this Declaration, for any reason whatsoever, as determined by Declarant in its sole subjective and absolute discretion including, but not limited to, to comply with any Laws or Permits, to correct errors or technical deficiencies, or imperfections or to clarify ambiguities contained herein, or to update, adjust, correct or otherwise modify any proportionate share formulas necessary to determine a Lot Owners proportionate share of Common Area Expenses. Notwithstanding anything contained in this Declaration to the contrary, (i) no amendment to this Declaration shall be made without the prior written consent and approval (which consent and approval shall not be unreasonably withheld, conditioned or delayed) of any mortgagee of Declarant having a mortgage or other security interest with respect to any portion of the Project and (ii) no amendment to this Declaration shall be effective until fifteen (15) calendar days after the provision of notice to all Lot Owners.

13.2 Declarant's Reserved Rights. Notwithstanding anything contained in this Declaration to the contrary, during the term of this Declaration, Declarant hereby expressly reserves and retains, as applicable, and establishes, grants, conveys, and creates, in favor of and for the benefit of Declarant and its Permittees, from time to time, the following free, exclusive and uninterrupted rights, easements, privileges, right of ways, uses, licenses and other rights, any one or more of which may be exercised by Declarant from time to time and at any time and without the consent or approval of any Lot Owner, Permittee or other Person as follows (collectively the "Declarant's Reserved Rights"):

A. Project Modifications. Notwithstanding anything contained herein to the contrary, Declarant hereby reserves, and shall have, the absolute right and authority, with or without consideration, and without the consent or approval of any other Person, including, but not limited to, any Lot Owner, from time to time and at any time, for any reason or no reason whatsoever, in its sole subjective and absolute discretion, to undertake and perform any and all Project Modifications, including the right to amend, change, alter, reduce, enlarge, expand, reconfigure, rezone, re-subdivide or otherwise modify all or any portion of the Complex, in whole or in part and in any manner whatsoever (including the expansion into, and incorporation of, adjacent or adjoining lands into the Complex, and the creation of one or more Condominiums with respect to any portions of the Project) for any Lot or Parcel which the Declarant still owns. Declarant covenants and agrees to undertake and perform any Project Modifications in compliance with all applicable Laws, Permits and as permitted by the applicable Governmental Authorities, provided that such Project Modifications do not materially interfere with the access to and from any Lot Owner's Parcel, the Complex, or any of the rights granted hereunder to Lot Owner and their respective Permittees. This provision shall not apply to the Grassdale District or the Lot Owner thereof.

B. To Construct and Maintain Common Areas and Utilities. Declarant hereby expressly retains and reserves, as applicable, and establishes, grants, conveys, and creates, in favor of and for the benefit of Declarant, the free, exclusive and uninterrupted right, easement, privilege, right of way, use, license and other rights over, upon, under, across and above all and every portion and part of the Complex that are reasonably necessary to enable Declarant to Construct and Maintain all and every portion of the Common Areas, including any one or more

of the Utilities, subject to the rights of Lot Owner's and their respective Permittees, as provided under this Declaration.

C. To Create Condominiums. Declarant hereby expressly retains and reserves, as applicable, and establishes grants, conveys, and creates, in favor of and for the benefit of Declarant, the free, exclusive and uninterrupted right to submit one or more of the Parcels in any District to DUCIOA and create one or more Condominiums consisting of Units in its sole and absolute discretion. This provision shall not apply to the Grassdale District or the Lot Owner thereof.

D. Declarant Not Obligated to Perform. Notwithstanding anything contained in this Declaration to the contrary, Declarant shall not be responsible for, liable for or obligated to, perform or otherwise exercise any one or more of the rights, easements, privileges, right of ways, uses and licenses retained and reserved, as applicable, and established, granted, conveyed, and created, in favor of and for the benefit of Declarant, in accordance with this Declaration, including, the rights, easements, privileges, right of ways, uses and licenses granted, retained and/or reserved in favor of and for the benefit of Declarant under this Article 13.

E. No Waiver. Notwithstanding anything contained in this Declaration to the contrary, no delay or omission of Declarant in exercising any one or more of the rights, easements, privileges, right of ways, uses and licenses retained and reserved, as applicable, and established, granted, conveyed, and created, in favor of and for the benefit of Declarant, in accordance with this Declaration, shall impair any one or more such rights, easements, privileges, right of ways, uses and licenses or be construed to be a waiver thereof, and each and every such rights, easements, privileges, right of ways, uses and licenses may be exercised by Declarant at any time and from time to time, as determined by Declarant in its sole subjective and absolute judgment and discretion.

F. No Interference. Notwithstanding anything contained in this Declaration to the contrary, no Lot Owner, Permittee or other Person shall interfere with, or build, construct or create, or permit others to build, construct or create, any buildings or other structures which unreasonably interferes with, any one or more of the rights, easements, privileges, right of ways, uses and licenses retained and reserved, as applicable, and established, granted, conveyed, and created, in favor of and for the benefit of Declarant, in accordance with this Declaration, including, the rights, easements, privileges, right of ways, uses and licenses granted, retained and/or reserved in favor of and for the benefit of Declarant under this Article 13.

G. Declarant's Reserved Rights Exercised in Accordance with All Laws and Permits. Any Construction or Maintenance by Declarant in connection with the Declarant's Reserved Rights shall be undertaken, performed and completed in a good and workmanlike manner in accordance with all applicable Laws and Permits, as expeditiously as is reasonably possible, and in such a manner as to cause as little disturbance to or interference with the use of the Common Areas by Lot Owners as may be practicable and reasonable under the circumstances.

**ARTICLE 14.**  
**LIMITATIONS ON LIABILITY**

14.1 Limitations on Liability. Notwithstanding anything contained in this Declaration to the contrary, the Declarant shall not be liable for any failure of any services to be obtained by the Declarant with respect to the Common Areas or paid for out of the Common Area Expense Allocations collected by Declarant hereunder, or for injury or damage to persons or property, caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas or other property within the control or supervision of the Declarant, or from any wire, pipe, drain, conduit or the like. The Declarant shall not be liable to any Lot Owner or its Permittees for loss or damage, by theft or otherwise, of articles which may be left upon the Common Areas or other property within the control or supervision of the Declarant. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from any Construction or Maintenance to the Common Areas, or other property within the control or supervision of the Declarant, or from any action taken by the Declarant to comply with any of the provisions of this Declaration or with any Laws, Permits or with the orders or directives of any Governmental Authority or Service Provider.

**ARTICLE 15.**  
**MISCELLANEOUS**

15.1 No Partnership/Joint Venture. Nothing contained in this Declaration (or by the reason of use of a signage) shall be construed to make the parties hereto partners or joint venturers or to render any Lot Owner liable for the debts or obligations of any Lot Owner.

15.2 Severability. If any clause or provision of this Declaration is held to be illegal, invalid or unenforceable, then and in such event, it is the express intention of the parties hereto that the remainder of this Agreement shall not be affected thereby and each clause or provision of this Declaration other than those declared illegal, invalid or unenforceable shall be legal, valid and enforceable to the fullest extent permitted by law.

15.3 Entire Agreement. This Declaration contains the entire agreement with respect to no agreements or understandings not embodied herein with regard to such matters shall be of any force and effect.

15.4 Attorneys' Fees and Costs. Any reasonable costs, fees and expenses incurred by the prevailing party, including reasonable attorneys, fees, arising out of or relating to breaches and disputes under this Declaration will be paid by the non-prevailing party.

15.5 Assignment/Delegation. Except as otherwise expressly provided herein, no Lot Owner, Permittee and/or Person shall have any right, title or interest in or to any one or more of the rights, easements, privileges, right of ways, uses and licenses granted, retained and/or reserved in favor of and for the benefit of Declarant under this Declaration until or unless Declarant expressly assigns or delegates (whether temporary or otherwise) such right, easement, privilege, right of way, use or license by express assignment in a written instrument as provided

herein below. Declarant hereby expressly retains and reserves the right to assign and/or delegate any one or more of the rights, easements, privileges, right of ways, uses, and licenses granted, retained and/or reserved in favor of and for the benefit of Declarant under this Declaration and/or any one or more of Declarant's duties, obligations or liabilities under this Declaration, in whole or in part, to any one or more Persons that agree to assume, carry out and perform the same. Any such assignment or delegation shall be made by appropriate instrument in writing to which the assignee or delegate shall join for the purpose of evidencing its consent to and assumption of the rights, easements, privileges, right of ways, uses, licenses, duties, obligations and liabilities assigned or delegated to, and assumed by, such assignee therein, which assignment shall be recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware.

15.6 Rule Against Perpetuities. If any right or license granted in or obligation or liability imposed by this Declaration would violate the rule against perpetuities, or analogous common law or statutory provision, such right, easement, obligation or liability shall terminate one day prior to the expiration of 21 years after the death of the last survivor of the descendants of Donald J. Trump, current President of the United States of America, who were living on the Effective Date of this Declaration.

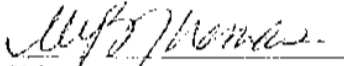
15.7 Estoppel/Sale/Resale Certificates. At any time and from time to time, Declarant agrees to execute, acknowledge and deliver to any Lot Owner (the "Requesting Party"), not later than thirty (30) calendar days after a Requesting Party has submitted a statement in writing, requesting that the Declarant certify that this Declaration is in full force and effect and unmodified (or if there have been modifications, that this Declaration is in full force and effect as modified and stating the modifications) and certifying such other matters pertaining to this Declaration as may be reasonably requested by the Requesting Party including the assessment for a given Lot, the amount of assessments due and owing for a Lot or confirmation that all billed assessments are current. In the event any Requesting Party requests a written statement pursuant to this Section more frequently than two (2) times within any twelve (12) month period measured from the Effective Date from Declarant, then the Requesting Party agrees to pay to the Party the sum of Two Hundred and Fifty Dollars (\$250.00) to defray the Declarant's reasonable administrative and related costs and expenses associated with the such statements (the "Certificate Fee"). The Certificate Fee shall be periodically adjusted by Declarant to account for inflationary factors and other reasonable cost and expense considerations.


15.8 Counterparts. This Declaration, and any amendment hereto, may be executed in one or more counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument.

[END OF TEXT - SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Declarant has caused its name by its Executive Director and its seal to be affixed this 19<sup>th</sup> day of June, 2020.

FORT DUPONT REDEVELOPMENT AND PRESERVATION CORPORATION

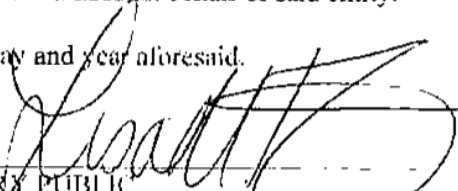
  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
By: Jeffrey D. Randol, Executive Director

STATE OF DELAWARE )  
                                  ) SS:  
COUNTY OF NEW CASTLE )

BE IT REMEMBERED, that on this 19<sup>th</sup> day of June 2020 personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, Jeffrey D. Randol, Executive Director, Fort DuPont Redevelopment and Preservation Corporation, a Delaware corporation, party to this Declaration, known to me personally to be such, and he acknowledged this Amended and Reinstated Declaration to be his act and deed on behalf of said entity.

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

  
\_\_\_\_\_  
NOTARY PUBLIC  
PRINT NAME: Lisa R. Hatfield  
COMMISSION EXPIRES: Perpetual

**Lisa R. Hatfield, Esq.**  
Notary Public  
State of Delaware  
My Commission Expires - Perpetual

**EXHIBIT A**

**TAX PARCEL NUMBERS**

22-009.00-156 (portion of)  
22-009.00-157 through and including 22-009.00-262  
22-011.00-008  
22-011.00-011  
22-013-00-001  
22-013-00-002

### LEGAL DESCRIPTIONS

**ALL THOSE CERTAIN** tracts of land with all the improvements thereon erected, situate in Red Lion Hundred, New Castle County and State of Delaware, more particularly bounded and described as follows, to-wit:

**Parcel Nos. 22-013.00-001 and 22-013.00-002 (Consisting of Parcels 2 and 1)**

**BEING** the same lands and premises which were conveyed unto the State of Delaware by deed of 108, Inc. dated September 15, 1994, and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware, on September 19, 1994 in Decd Book 1809, Page 267.

**128.95 ACRES ± (Parcel 2)**

All that certain lot, piece or parcel of land, with improvements thereon erected, situated in the Red Lion Hundred, New Castle County Delaware, lying on the westerly side of North Reedy Point Road, being bounded on the east in part by the westerly right-of-way of North Reedy Point Road and other lands now or formerly of the State of Delaware (Governor Bacon Health Center and Parcel 1), on the south and west by lands now or formerly United States of America (Chesapeake & Delaware Canal and Delaware City Branch Channel), and on the north by lands now or formerly Overboard Corp. and being all of the lands of the State of Delaware (Parcel 2) as shown on a recent boundary survey prepared by Becker Morgan Group, Inc., in March of 2016 and being more particularly described as follows to wit:

Beginning at a set iron rod with cap in line with the westerly right-of-way of North Reedy Point Road and a corner for this parcel and other lands of the State of Delaware (Governor Bacon Health Center) being locate just southwest of the intersection of North Reedy Point Road and Wilmington Avenue; thence with said westerly right-of-way of North Reedy Point Road the four following courses and distances 1) South 32°14'00" East 176.18 feet to a point; thence 2) South 32°02'57" East 1336.84 feet to a point; thence 3) along the arc of a circle curving to the right having a radius of 1368.00 feet and an arc length of 400.48 feet, chord bearing and distance of said arc being South 23°39'45" East 399.05 feet to a point; thence 4) South 15°16'33" East 177.76 feet to a set iron rod with cap at a corner for this parcel and other lands of the State of Delaware (Parcel 1); thence with said Parcel 1 the following three course and distances 5) South 74°43'27" West 800.00 feet to a point; thence 6) South 15°16'33" East 370.00 feet to a point; thence 7) North 74°43'27" East 800.00 feet to a point at a corner for this parcel and in line with westerly right-of-way line of North Reedy Point Road; thence with said right-of-way of North Reedy Point Road 8) South 15°16'33" East 811.49 feet to a point in the northerly right-of-way line of the Chesapeake and Delaware Canal near a found metal fence post; thence with said Chesapeake and Delaware Canal right-of-way the following two courses and distances 9) South 76°01'39" West 759.22 feet to a found monument with disk; thence 10) South 78°52'45" West 2415.16 feet to a point near a found iron pipe at the intersection of the Chesapeake and Delaware Canal right-of-way and the Delaware City Branch Channel right-of-way; thence with said Delaware City Branch Channel right-of-way the following seventeen courses and distances 11) North 00°13'49" East 173.52 feet to a point; thence 12) North 43°46'22" East 451.73 feet to a point; thence 13) North 13°19'02" East 125.48 feet to a point; thence 14) North 43°28'41" East 54.00 feet to a point; thence 15) North

64°24'29" East 85.00 feet to a point; thence 16) North 43°06'27" East 43.36 feet to a point; thence 17) North 30°45'54" East 55.89 feet to a point; thence 18) North 14°42'07" East 78.81 feet to a point; thence 19) North 25°46'53" East 105.84 feet to a point; thence 20) North 44°12'50" East 70.67 feet to a point; thence 21) North 37°02'15" East 76.20 feet to a point; thence 22) North 13°41'39" East 164.02 feet to a point; thence 23) North 01°36'36" East 168.26 feet to a point; thence 24) North 09°33'08" East 57.25 feet to a point; thence 25) North 21°22'41" East 34.31 feet to a point; thence 26) North 47°03'43" East 25.18 feet to a point; thence 27) North 11°03'42" East 1763.67 feet to a point at a corner for this parcel and in line with abandoned right-of-way of Dutch Neck Road; thence in part with said abandoned right-of-way of Dutch Neck Road and with lands of Overboard Corp. 28) North 55°21'41" East, passing over a stone at 755.85 feet running a total length of 771.84 feet, to a point at a corner for this parcel and other lands of the State of Delaware (Governor Bacon Health Center); thence with said Governor Bacon Health Center the following two courses and distances 29) South 42°25'46" East 58.18 feet to a point; thence 30) South 46°39'11" East 17.74 feet to a point and place of beginning, containing 128.95 acres of land be the same, more or less.

**6.7952 ACRES ± (Parcel 1)**

All that certain lot, piece or parcel of land, with improvements thereon erected, situated in the Red Lion Hundred, New Castle County Delaware, lying on the westerly side of North Reedy Point Road, being bounded on the east by westerly right-of-way of North Reedy Point Road, on the south, west, and north by other lands now or formerly of the State of Delaware (Parcel 2) and being all of the lands of the State of Delaware (Parcel 1) as shown on a recent boundary survey prepared by Becker Morgan Group, Inc., in March of 2016 and being more particularly described as follows to wit:

Beginning at a set iron rod with cap in line with the westerly right-of-way of said North Reedy Point Road and a corner for this parcel and other lands of the State of Delaware (Parcel 2) being located approximately 2,134 feet south from the intersection of North Reedy Point Road and Wilmington Avenue; thence with said westerly right-of-way of North Reedy Point Road 1) South 15°16'33" East 370.00 feet to a point at a corner for this parcel and other lands of the State of Delaware (Parcel 2); thence with said Parcel 2 the following three courses and distances 2) South 74°43'27" West 800.00 feet to a point; thence 3) North 15°16'33" West 370.00 feet to a point; thence 4) North 74°43'27" East 800.00 feet to a point and place of beginning, containing 6.7952 acres of land be the same, more or less.

**Parcel Nos. 22-009.00-156 (portion of) (Consisting of Parcels A, B and C which description includes the real property assigned to the Canal District Parcel Numbers and Officers Row Parcel Numbers plus an additional 5,707 S.F. ± as detailed below).**

**BEING** part of the same lands and premises which were conveyed unto the State of Delaware by deed of United States of America dated January 28, 1947, and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware, on May 12, 1949 in Deed Record D, Volume 49, Page 96.



**260.82 ACRES ± (Parcel A)**

All that certain lot, piece or parcel of land, with improvements thereon erected, situated in the Red Lion Hundred, New Castle County, Delaware, and lying on the northerly side of Delaware City Port Penn Road and being bounded on the west in part by the easterly right-of-way line of East Canal Street, lands now or formerly of the United States of America and lands now or formerly of New Castle County (Delaware City Wastewater Treatment Plant), on the north by the mean low water of the Delaware River and on the south in part by lands now or formerly of United States of America and other lands now or formerly of the State of Delaware (McConnell Tract) and being all of the lands of the State of Delaware (Parcel A) as shown on a recent boundary survey prepared by Becker Morgan Group, Inc., in March of 2016 and being more particularly described as follows to wit:

Beginning at a set iron rod with cap at the intersection of the northerly right-of-way line of Delaware City Port Penn Road and easterly right-of-way line of East Canal Street; thence with said easterly right-of-way line of East Canal Street 1) North  $11^{\circ}03'42''$  East 1700.18 feet to a found monument at a corner for this parcel and lands of the United States of America; thence with lands of United States of America the following three courses and distances 2) South  $49^{\circ}24'17''$  East 95.16 feet to set iron rod with cap; thence 3) North  $40^{\circ}35'42''$  East 58.33 feet to a set iron rod with cap; thence 4) North  $46^{\circ}14'42''$  East 1000.00 feet to a set iron rod with cap at a corner for this parcel and lands of New Castle County; thence with said lands of New Castle County the following three courses and distances 5) South  $44^{\circ}16'31''$  East 394.00 feet near a found iron pipe; thence 6) North  $46^{\circ}14'42''$  East 330.00 feet to a point; thence 7) North  $44^{\circ}16'31''$  West 394.00 feet to a point at a corner for this parcel and lands the United States of America; thence with said lands of Unites States of America 8) North  $46^{\circ}14'42''$  East 36.83 feet to a point at a corner for this parcel and at the mean low water line of the Delaware River; thence with the following four tie lines intended to be the meanderings of the mean low water of the Delaware River 9) South  $45^{\circ}27'56''$  East 1400.10 feet; thence 10) South  $82^{\circ}38'38''$  East 543.99 feet; thence 11) South  $17^{\circ}36'15''$  East 584.72 feet; thence 12) South  $45^{\circ}14'34''$  East 1815.21 feet to a point at a corner for this parcel and lands of United States of America; thence in part with said lands of United States of America and other lands of the State of Delaware (McConnell Tract) ; 13) South  $48^{\circ}55'49''$  West 3136.17 feet to a found monument at a corner for this parcel and other lands of the State of Delaware (McConnell Tract); thence with said McConnell Tract 14) North  $46^{\circ}39'11''$  West 812.19 feet to a found iron pipe in the northerly right-of-way line of Delaware City Port Penn Road; thence with the northerly right-of-way line of Delaware City Port Penn Road the following five courses and distances 15) along the arc of a circle curving to the left having a radius of 4628.66 feet and an arc length of 1498.63 feet, chord bearing and distance of said arc being North  $34^{\circ}22'55''$  West 1492.09 feet to a found iron pipe; thence 16) North  $25^{\circ}15'00''$  East 85.64 feet to a found iron pipe; thence 17) North  $50^{\circ}51'06''$  West 205.96 feet to a found iron pipe; thence 18) North  $54^{\circ}50'48''$  West 306.53 feet to a found iron pipe; thence 19) North  $50^{\circ}54'20''$  West 208.97 feet to a point at a corner for this parcel and lands of unknown ownership; thence with lands of unknown ownership the following three courses and distances 20) North  $40^{\circ}35'42''$  East 66.64 feet to a point, thence 21) North  $49^{\circ}37'53''$  West 85.80 feet to found monument; thence 22) South  $38^{\circ}19'28''$  West 93.21 feet to a point in line with the northerly right-of-way line of Delaware City Port Penn Road; thence with said northerly right-of-way line 23) along the arc of a circle curving to the left having a radius of 676.62 feet and

an arc length of 19.16 feet, chord bearing and distance of said arc being North 45°18'44" West 19.16 feet to a point and place of beginning, containing 260.82 acres of land be the same, more or less.

**9,583 SQ. FT. ± (Parcel B)**

All that certain lot, piece or parcel of land, situated in the Red Lion Hundred, New Castle County, Delaware, and lying on the southerly side of Delaware City Port Penn Road; being bounded on the north by southerly right-of-way of Delaware City Port Penn Road, on the east by lands of unknown ownership and on the south by the northerly right-of-way of Polktown Place and being all of the lands of the State of Delaware (Parcel B) as shown on a recent boundary survey prepared by Becker Morgan Group, Inc., in March of 2016 and being more particularly described as follows to wit:

Beginning at a point at the intersection of the southerly right-of-way line of Delaware City Port Penn Road and northerly right-of-way line of Polktown Place, south of the intersection of Delaware City Port Penn Road and New Castle Avenue; thence with said southerly right-of-way line of Delaware City Port Penn Road 1) South 46°27'51" East 235.20 feet to a point at a corner for this parcel and lands of unknown ownership; thence with lands of unknown ownership 2) South 44°06'11" West 81.50 feet to a found monument in the northerly right-of-way line of Polktown Place; thence with northerly right-of-way line of Polktown Place 3) North 27°17'38" West 248.15 feet to a point and place of beginning, containing 9,583 sq. ft. of land be the same, more or less.

**5.2650 ACRES ± (Parcel C)**

All that certain lot, piece or parcel of land, situated in the Red Lion Hundred, New Castle County, Delaware, and lying on the southerly side of Delaware City Port Penn Road; being bounded on the north by southerly right-of-way of Delaware City Port Penn Road, on the east by other lands of the State of Delaware (McConnell Tract), and on the south in part by North Reedy Point Road, other lands now or formerly of the State of Delaware (Grassdale Center), and lands now or formerly of Overboard Corp. and on the west by lands of unknown ownership and being all of the lands of the State of Delaware (Parcel C) as shown on a recent boundary survey prepared by Becker Morgan Group, Inc., in March of 2016 and being more particularly described as follows to wit:

Beginning at a point in the southerly right-of-way line of Delaware City Port Penn Road at a corner for this parcel and lands of unknown ownership being located approximately 404 feet south from the intersection of Delaware City Port Penn Road and New Castle Avenue; thence with said Delaware City Port Penn Road right-of-way the following three courses and distances 1) South 39°31'36" East 275.18 feet to a point; thence 2) North 67°35'50" East 80.58 feet to a point; thence 3) along the arc of a circle curving to the right having a radius of 4538.66 feet and an arc length of 1224.74 feet, chord bearing and distance of said arc being South 35°55'37" East 1221.03 feet to a set iron rod with cap at a corner for this parcel and other lands of the State of Delaware (McConnell Tract); thence with said McConnell Tract the following two courses and distances 4) North 46°39'11" West 494.29 feet to a found stone; thence 5) South 51°47'22" West 125.89 feet to a set nail in the center line of North Reedy point Road; thence in part with said centerline the

following five courses and distances 6) North 32°02'57" West 264.74 feet to a point; thence 7) North 38°54'17" West 132.96 feet to a point; thence 8) North 51°00'23" East 39.53 feet to a found monument; thence 9) North 46°39'11" West 193.84 feet to a point; thence 10) North 42°25'46" West 85.51 feet to a point; thence 11) South 32°14'00" East 105.60 feet to a point at a corner for this parcel and other lands of the State of Delaware (Grassdale Center); thence with said Grassdale Center 12) North 46°39'11" West 17.74 feet to a point; thence in part with said Grassdale Center and lands of Overboard Crop. 13) North 42°25'46" West 243.78 feet to a point at a corner for this parcel and in line with the right-of-way of Polktown Place; thence with Polktown Place right-of-way 14) North 55°08'21" East 20.18 feet to a found monument at a corner for this parcel and lands of unknown ownership; thence with lands of unknown ownership the following three courses and distances 15) North 37°41'17" East 110.89 feet to a point; thence 16) North 27°18'53" West 176.41 feet to a point; thence 17) North 57°57'57" East 2.19 feet to a point and place of beginning, containing 5.2650 acres of land be the same, more or less.

**TOGETHER WITH** all that certain lot, piece or parcel of land, situated in the Red Lion Hundred, New Castle County, Delaware, and lying on the northerly side of Delaware City Port Penn Road and being bounded on the west, north and east by lands now or formerly of Fort Dupont Redevelopment & Preservation Corporation and on the south by said Delaware City Port Penn Road and being all of the lands entitled "Unknown Ownership" as shown on a recent boundary survey prepared by Becker Morgan Group, Inc., in March of 2016 and being more particularly described as follows to wit:

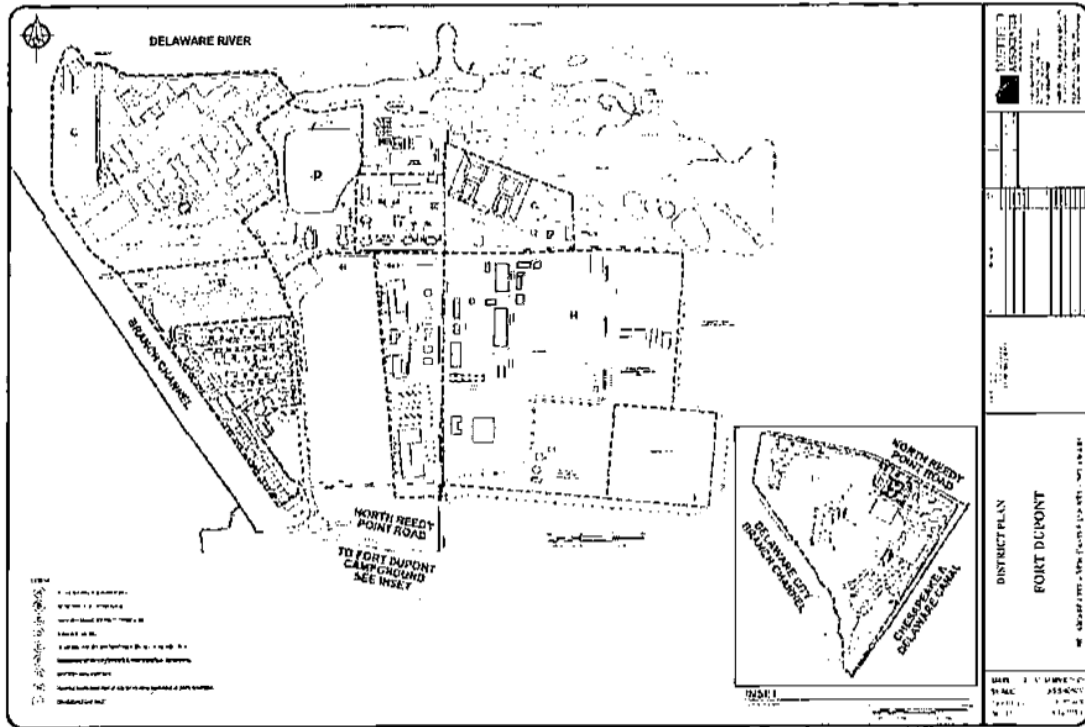
Beginning at a point on the northerly right of way line of Delaware City Port Penn Road and at a corner for this parcel and lands of Fort Dupont Redevelopment & Preservation Corporation; said point being the following two courses and distances as measured from the intersection of the northerly right-of-way line of Delaware City Port Penn Road and easterly right-of-way line of East Canal Street; South 45°18'44" East 19.16 feet; thence North 38°19'28" East 24.68 feet to the said point of beginning; thence with lands of Fort Dupont Redevelopment & Preservation Corporation the following three courses and distances 1) North 38°19'28" East 68.53 feet to a found concrete monument; thence 2) South 49°37'53" East 85.80 feet to a point; thence 3) South 40°35'42" West 66.64 feet to a point in line with the northerly right of way line of Delaware City Port Penn Road; thence with said right of way of Delaware City Port Penn Road 4) North 50°54'20" West 83.11 feet to a point and place of beginning, containing 5,707 square feet of land be the same, more or less.

**SAVE AND EXCEPT THEREFROM, HOWEVER ALL** that certain lot, piece or parcel of land, with improvements thereon erected, situated in the Red Lion Hundred, New Castle County, State of Delaware, lying in the southwest limits of Fort DuPont State Park, and known as the Delaware Army National Guard facility and as shown on an exhibit prepared by Becker Morgan Group, Inc., dated February 16, 2016 and being more particularly described as follows to wit:

Beginning at a point in line with the westerly side of Powers Lane and at a corner for this new parcel; thence from said point of beginning and running the following six courses and distances within the limits of Fort DuPont State Park 1) South 39°08'43" East 140.05 feet to a point; thence 2) North 51°45'10" East 58.63 feet to a point; thence 3) South 39°08'43" East

827.91' feet to a point; thence 4) South  $51^{\circ}45'10''$  West 697.01 feet to a point; thence 5) North  $39^{\circ}08'43''$  West 967.97 feet to a point; thence 6) North  $51^{\circ}45'10''$  East 638.38 feet to a point and place of beginning and containing 15.30 acres of land, be the same more or less.

**EXHIBIT B**



## SCHEDULE 1

### ALLOCATION OF COMMON AREA EXPENSES

#### I. District Common Area Expenses and Shared Common Area Expenses for Residential Lots Within Complex.

Owners of Residential Lots located in all Districts shall be responsible for, and obligated to pay, their respective proportionate share of all District Common Area Expenses attributable to the District in which the Residential Lot is located as well as Shared Common Area Expenses related to the use and enjoyment of the Complex as a whole. To the extent that any Lots located within any District are leased by the Declarant to a Tenant, nothing herein or in any Lease Document shall relieve or otherwise terminate the Declarant's obligation to pay its proportionate share of the District Common Area Expenses or Shared Common Area Expenses as and when due.

##### A. District Common Area Expenses, Residential

Owners of Residential Lots located in any District within the Complex shall each be responsible for, and obligated to pay, their proportionate share of one hundred percent (100%) of the District Common Area Expenses for the District in which the Residential Lot is located. The proportionate share of the Shared Common Area Expenses for each Owner shall be determined by the Declarant Board, upon recommendation from the Fort DuPont Maintenance Committee each year. The proportionate share of the District Common Area Expense for each Owner of a Residential Lot shall be based on the total number of Residential Lots located within a given District divided by the total amount of the District Common Area Expenses for that District (i.e. if the District Common Area Expenses total \$25,000 for the fiscal year and there are 80 Residential Lots within the District, the District Common Area Expense will be \$312.50 per Lot Owner).

##### B. Shared Common Area Expenses, Residential

Each Residential Lot Owner shall be responsible for, and obligated to pay, such Lot Owner's respective proportionate share of the Shared Common Area Expenses applicable to, or incurred in connection with, any Shared Common Areas and Shared Common Area Improvements in the Complex. The proportionate share of the Shared Common Area Expenses for each Residential Lot Owner shall be determined by the Declarant Board, upon recommendation from the Fort DuPont Maintenance Committee each year.

##### C. Limitation on Officers Row District & Canal District

Anything in this Declaration to the contrary notwithstanding, for residential lots in the Officers Row District or the Canal District, the annual average common expense liability of each Residential Lot, exclusive of optional user fees and any insurance premiums, but including, without limitation, any liability for Common Area Expenses (including both District and Shared) under this Declaration, as such Declaration may be amended, restated, replaced or otherwise

revised from time to time, shall not exceed the cap specified in Section 81-118(a)(2) of DUCIOA on an annual basis, subject to any adjustment to that sum as permitted pursuant to Section 81-118(b)(2) of DUCIOA. Declarant, at Declarant's sole cost and expense, shall be responsible for any and all costs and expenses incurred or payable in connection with ownership, improvement, development, operation and/or maintenance in excess of the annual sum payable on each Lot in accordance with Section 81-118 of DUCIOA.

**II. District Common Area Expenses and Shared Common Area Expenses for Non-Residential Lots Within Complex.**

**A. District Common Area Expenses, Non-Residential**

Owners of Non-Residential Lots located in any District in the Complex shall each be responsible for, and obligated to pay, their proportionate share of one hundred percent (100%) of the aggregate District Common Area Expenses for said District. The proportionate share of the District Common Area Expense Allocation for each of the Non-Residential Lot Owners in a District shall be determined by the DHP each year. The DHP shall base the allocation upon several factors including but not limited to, lot square footage, building square footage, number of guests patronizing the non-residential site, toll on the roads due to ingress and egress and any maintenance costs that are specific to any one particular District. The DHP shall provide each Non-Residential Lot Owner an invoice for said expenses thirty (30) days prior to the due date of the invoice.

**B. District Common Area Expenses, Grassland District**

The Owner of the Grassdale District, as long as it operates as an RV Park or Campground with the entire District owned by one owner, shall be responsible for, and obligated to pay, 100% of the District Common Area Expense for the entire Grassdale District. In the event that there is more than one owner, or the lots are subdivided and sold to multiple owners, each shall be responsible for, and obligated to pay, their proportionate share of one hundred percent (100%) of the District Common Area Expenses for the Grassdale District.

**C. Shared Common Area Expenses, Non-Residential**

Each Non-Residential Lot Owner shall be responsible for, and obligated to pay, such Lot Owner's respective proportionate share of the Shared Common Area Expenses applicable to, or incurred in connection with, any Shared Common Areas and Shared Common Area Improvements in the Complex. The proportionate share of the Shared Common Area Expenses for each Non-Residential Owner in a District shall be determined by the DHP each year. The DHP shall base the allocation upon several factors including but not limited to, lot square footage, building square footage, number of guests patronizing the non-residential site and toll on the roads due to ingress and egress. The DHP shall provide each Non-Residential Lot Owner an invoice for said expenses thirty (30) days prior to the due date of the invoice.

D. Shared Common Area Expenses, Grassland District

The Owner of the Grassdale District, so long as it operates as an RV Park or Campground, shall be responsible for, and obligated to pay, a proportionate share of the Shared Common Area Expenses applicable to, or incurred in connection with, any Shared Common Areas and Shared Common Area Improvements in the Complex. The proportionate share of the Shared Common Areas expenses for the Grassdale District, so long as it is purchased and developed by the Blue Water Development group, shall follow the allocation attached hereto as Schedule 1, Exhibit A. Any Common Area expenses not listed in Schedule 1, Exhibit A shall be determined by the Declarant Board, upon recommendation from the Fort DuPont Maintenance Committee each year. In the event that Blue Water Development group should not purchase and develop the property, Schedule 1, Exhibit A shall be void. In the event there is more than one owner, or the lots are subdivided and sold to multiple owners, each be responsible for, and obligated to pay, their proportionate share of the Shared Common Areas expenses for the Grassdale District as determined by the Declarant Board, upon recommendation from the Fort DuPont Maintenance Committee each year.

E. Disputes

The DHP Committee shall provide each Non-Residential Lot Owner an invoice for said expenses thirty (30) days prior to the due date of the invoice. If an Owner disputes the amount, written notice must be provided to the DHP Committee within ten (10) days of dispute. The DHP Committee will call a special meeting within thirty (30) days of receipt of the dispute, for the sole purpose of allowing Lot Owners who have provided notice an opportunity to be heard. The Committee has sole discretion to amend the invoice or find the invoice is due and owing in full. The decision of the Committee is final. The due date for a disputed invoice is extended to ten (10) days after a decision by the DHP Committee. The calculation as determined, updated and documented by Declarant from time to time to determine any and all proportionate share allocations under this Schedule shall be maintained and available for review by any interested Person upon request.



## SCHEDULE 3

### RESIDENTIAL RULES AND REGULATIONS

#### ARTICLE 1. DEFINITIONS

“Common Areas” means those outside your property lines, including the recreation areas, parklands, walkways, berms, stormwater facilities, lawns (including the parade ground), landscaping and buildings and areas open to the public at the Complex.

“Owner Area” means are all structures, exterior and interior surfaces of perimeter walls, ceilings, floors, roofs, windows, doors, driveways, sidewalks, and yards of each home.

“Corporation” means the Fort DuPont Redevelopment & Preservation Corporation.

“Complex” means Fort DuPont.

“Declaration” means the *Declaration of Covenants, Conditions, Agreements, Restrictions and Licenses*, as may be amended from time to time, for the Complex.

“RV Park Rules and Regulations” means the Rules and Regulations specific to the RV Park/Campground as will be written upon development of the area.

#### ARTICLE 2. COMMON AREAS - GENERALLY

- Any common sidewalks, driveways, or passageways shall not be obstructed or used by any owner for any purpose other than entrance to and exit from the homes.
- Loitering is strictly prohibited at all times.

#### ARTICLE 3. PROTECTION OF COMMON AREAS

- Any damage to buildings, recreational area or equipment, or any other Common Area property caused by an owner, their family, their household, their tenants, their guests, their pets, and their employees or contractors shall be repaired at the expense of the applicable Lot Owner. Any damage caused to Common Areas within the Complex by a lessee or renter of a site in an RV Park or Campground shall be repaired at the expense of the Lot Owner. Nothing herein shall prevent the Owner from recovering the cost from the lessee or renter.
- Tree climbing or trimming is prohibited. The responsible Lot Owner will be billed for the cost to replace any tree broken, damaged or killed due to actions of the Lot Owner or their guests/tenants.
- It is prohibited to discard any item onto the Common Areas.
- No Lot Owner is permitted to paint, repair, maintain, alter, or modify any installation in the Common Area.
- There shall be no vehicle repairs allowed in any Common Area.

- Common Area modification or additions are prohibited, except as authorized by the Corporation.

#### ARTICLE 4. MAINTENANCE OF PROPERTY

- Each Lot Owner shall be responsible for maintenance of his or her Lot and improvements thereto including the equipment and fixtures therein, the interior and exterior walls, the ceiling and roof, the windows and doors thereof, in a first class, clean, sanitary, workable and attractive condition. Windows may be covered by shades, drapes or shutters only and may not be painted or covered by foil, cardboard or other similar materials. Each owner shall also be responsible for the repair, replacement, and cleaning of the windows and glass of his or her property both exterior and interior. Each owner shall also be responsible for cleaning and maintaining any exclusive easements to his or her property over the Common Area and shall maintain air conditioners for the use of individual properties.
- Articles of clothing, linens, towels, or bathing suits are not to be hung outside, including, but not limited to, hanging such items on patio fences, gates, landings, balconies or from windows.
- Driveways shall be properly maintained, and free of oil and grease.
- Lawns, patios, and yards must be maintained to preserve and protect the attractive appearance of the Complex. Plants and trees must be trimmed to prevent growth which extends over walls or property lines and when the plants and trees detract from the surroundings. Lot Owners will be billed for any damage to walls or walkways by branches or roots from plants and trees.
- All Lot Owners must promptly repair and maintain their Lot to the extent it affects any other Lot. All external installations such as doors, windows, water, power, sewage, and gas are to be maintained at Lot Owner expense and with the approval of the Corporation.
- No Lot Owner may modify or add to the exterior of any Building on their Lot without prior approval of the Corporation and shall be in compliance with the Delaware City Code.
- Residents, tenants and guests shall not cause to be done, nor permit to be done to any other resident, tenant or guest any act that would be considered harassment, threatening or disorderly under the Delaware City Code, the New Castle County Code or laws of the State of Delaware.
- Residents, tenants and guests shall not use barbecues, grills or other outdoor cooking equipment indoors or use them outdoors in such a way as to create a fire hazard or substantial risk of damage to the Common Areas or any neighboring properties.
- No signs, notices or advertisements other than those associated with non-residential uses shall be attached or displayed; provided, however, that the limited

display of garage/yard sale signs shall be permitted so long as same are removed immediately after the conclusion of the sale; provided further however, that nothing herein shall limit any Lot Owner from displaying a “for sale” sign on the property. Any Lot Owner who purchases a lot within the Complex for the sole purpose of constructing a home on the lot for the purpose of resale to third party shall be exempt from the provisions of this section for purposes of advertising the development of the lots so long as the advertising is approved in advance by the Corporation.

- Non-Residential uses must comply with the HPR District permitted uses and comply with HPR District guidelines.
- Signage for Non-Residential uses will require approval of the DHP Committee as outlined in the Declaration.
- Lot Owners shall be required to maintain the exterior areas of their Lot, including grass cutting, landscaping, snow and ice removal, etc.
- Except to the extent provided by law, the Corporation is not responsible for the illegal acts of others including burglary or theft. The Corporation does not provide insurance coverage for the benefit of the owner or lessee. The owner and/or lessee are solely responsible for securing such insurance, including the contents of the property, as he or she deems prudent.

#### **ARTICLE 5. FENCES, ETC.**

- Construction or installation of fences, awnings, ornamental screens, screen doors, storm doors, sunshades or walls of any nature shall be in compliance with the original construction of the development and as set forth in the Standards and Guidelines for each District of the Complex and shall not be installed, modified or removed without the prior consent and approval of the Corporation.

#### **ARTICLE 6. TERMITES**

- Lot Owners are responsible for the total treatment and repair of termites and termite damage to Buildings on their Lot

#### **ARTICLE 7. REFUSE REMOVAL AND TRASH**

- Proper disposal of trash is essential to the health of our residents and visitors. Trash and litter in the Common Area will have a negative effect on property values. Trash shall be deposited inside trash containers, which are to be kept in the garage or, if no garage is present, in the rear of the Building or otherwise out of view from the front of the Building until being picked up by the trash vendor.
- Lot Owners may opt to construct an outside Storage Unit for the storage of trash receptacles. Units must be no greater the 72” in width, 48” in depth and 52” in height and constructed of either durable resin or wood. The color of the unit must match as best as possible to the color of the siding or brick wall where it is being placed. The Unit must be screened by fencing on both sides in one of the three ways depicted on Schedule 3, Exhibit A attached herein, Lot Owners must submit detailed plans to the DHP and must receive approval *in writing* prior to beginning

construction. If, at any time, a Lot Owner determines use of the Unit is necessary for a purpose other than the trash receptacles, they are permitted to do so provided all trash receptacles are kept in the garage.

- Trash is picked up regularly, except holidays, and then it is picked up the following day. Trash must be placed inside the trash containers and placed at the curb no earlier than 5:00 p.m. on the evening preceding pick-up and removed the following day.
- Residents, tenants and guests are encouraged to pick up papers and debris from the Complex when observed and to keep the area around their respective Buildings clean at all times.
- Storage of trash containers in the Common Area is prohibited.

#### **ARTICLE 8. PATIOS AND PATIO COVERS**

- Patio covers and enclosures are permitted with Corporation approval only.

#### **ARTICLE 9. RENTALS AND OPEN HOUSES**

- The Lot Owner in Residential Districts shall be responsible for keeping the Corporation informed of any change in occupancy. Should there be a change, the Lot Owner is required to report the names of the Person(s) who are living in or leasing the home or building to the Corporation within ten (10) days, and the report shall include:
  - The name, address, and telephone number of each person or business renting or occupying the unit.
  - An acknowledgment in writing that the tenant, lessee, or contract purchaser fully understands and has received a copy of these Rules and Regulations and the Declaration of Covenants, Conditions, Agreements, Restrictions and Licenses.
  - Lot Owners will be held responsible for the actions of their tenants, including any penalty assessments for violations of the Rules and Regulations of the Association, as well as any costs for repairing damage to the Common Area or other property damage caused by the tenants.
  - Provide tenant/owner emergency information on the required form available from the Corporation.
  - Provide tenant and vehicle information on a form provided by the Corporation.

#### **ARTICLE 10. PETS**

- Dogs must be kept under owner's control. If any pets become a general nuisance, restrictive action will be taken. All animals shall be the exclusive responsibility of the Lot Owner, tenant or guest, including cleanup of animal's waste products. Damage to shrubbery, etc., by animals will be repaired at the expense of the owner. Control should be exercised over the noise made by pets.

- No animals of any kind shall be raised, bred or kept in any home, or in the Common Areas, except that dogs, cats or other household pets may be kept in homes provided that no animal shall be kept for breeding or maintained for any commercial purpose and provided the number of dogs or cats shall not exceed three (3) in number at any given time.

#### **ARTICLE 11. NOISE**

- Lot Owners, tenants and guests shall exercise reasonable care to avoid making or permitting to be made loud, disturbing or objectionable noises and in using, playing or permitting to be used or played musical instruments, radios, phonographs, televisions, amplifiers and any other instruments or devices in such manners as may unreasonably disturb owners, tenants or occupants of other homes.
- Quiet hours for residents and guests between the hours of 11:00 o'clock PM until 8:00 o'clock AM will be enforced; provided, however, that construction contractors shall be permitted to start work at 7:00 a.m. and must cease work no later than 5:30 p.m. Monday through Friday and 8:30 a.m. until 5:30 p.m. on Saturday and Sunday. To the extent that any ordinance or other applicable law of the City of Delaware City contains a contradictory time frame for any such actions, the City of Delaware City's rules shall govern.
- Barking dogs shall be controlled by the animal's owner. Complaints received by the Corporation regarding a barking dog could result in removal of the dog at owners' expense.
- All noise must be kept to a minimum throughout the Complex, but nothing herein shall prevent special events, such as festivals, fireworks, parades, concerts authorized by the Fort DuPont Redevelopment and Preservation Corporation and/or the City of Delaware City.
- Loud music from automobile radios and other electronic devices are not permitted at any time within the Complex. Volume should be turned down when entering the Complex.

#### **ARTICLE 12. DISPOSAL OF TOXIC WASTE**

- No Lot Owner, tenant or guest shall dispose of any toxic material on the Complex in a manner which is inconsistent with local and federal law. The Corporation shall be empowered to levy a severe fine against the Lot Owner whose occupants have been observed illegally disposing of any toxic material. Toxic materials include, but are not limited to, oil, antifreeze, solvents, gasoline, paint, etc.

#### **ARTICLE 13. WINDOW COVERINGS**

- All windows, sliding doors, etc. shall be properly covered with appropriate window dressing. Sheets, blankets, boards or other such items shall be specifically prohibited. Window dressing shall be of reasonable quality and shall complement the property. Curtains, drapes, blinds, etc., are recommended.

**ARTICLE 14. PARKING AREA RULES**

- Residents are to park their cars in their garages (where available), driveways or in designated parking areas. No parking is permitted on grass areas or on the street.
- Parking signs are to be strictly adhered to at all times. Fire lanes cannot be obstructed. Violators will be subject to automatic tow-away.
- All thoroughfares are considered fire and emergency access roads. Parking on Common Areas other than in parking stalls is prohibited.
- Parking on or in a manner that obstructs sidewalks is prohibited unless the vehicle is attended by a licensed operator while: a) loading or unloading; or b) washing and/or waxing their vehicle.
- Double-parking is prohibited at all times.
- All vehicles in parking lots or designated parking areas must park within designated parking stalls.
- Commercial vehicles may be temporarily parked in or off the streets while making deliveries.
- Storage of any motor vehicle, mobile home, R.V., camper, commercial vehicle, boat, trucks larger than 3/4 ton, or trailer in Common Area parking is strictly prohibited in the residential areas. Boat and boat trailer parking is limited to the marina district or other areas that may be designated by the Corporation. No unregistered automobiles shall be parked in Complex.
- Lessees or tenants of any RV Park or Campground may park their RV and Vehicle(s) in the District where the RV Park or Campground is located and only in areas designated by the RV Park or Campground.
- Golf carts are permitted in areas designated within the Complex. Golf cart operators must be at least sixteen (16) years of age and must adhere to the traffic laws at all times.
- Residents and tenants are responsible for removal of any oil or grease marks on driveways or sidewalks. Cost for any oil or grease marks, or damage to any Common Area having to be removed or repaired by the Corporation will be assessed to the responsible Lot Owner.
- Any parking on the lawns or landscape is absolutely prohibited at all times without the advance permission of the Corporation.
- Vehicles are specifically prohibited from parking in areas designated as "NO PARKING".
- The Corporation is not responsible for the maintenance, insurance, liability, theft, vandalism or any damage which may come to any vehicle. THE VEHICLE'S OWNER SHALL BE TOTALLY RESPONSIBLE FOR ANY VEHICLE PARKED UPON CORPORATION PROPERTY AND/OR PERSONAL AND/OR PRIVATE PROPERTY.

- THE AFOREMENTIONED AUTOMOBILE AND PARKING REGULATIONS WILL BE STRICTLY ENFORCED. All unauthorized and/or illegally parked vehicles are subject to automatic (no warning given) towing or immobilization at the owner's expense and shall be subject to penalty assessments of Fifty Dollars (\$50.00) for each occurrence.

#### ARTICLE 15. OTHER REGULATIONS.

- No toys, bikes, skateboards or other items of personal property is to be left or stored in driveways or in Common Areas.
- Mechanical work on cars in the Complex is not permitted at any time except for emergency repair (flat tire, charge battery, add fluid) or in designated areas approved by the Corporation.
- No outside storage sheds (except as permitted in Article 7, Refuse and Trash) or above ground swimming pools are permitted in residential neighborhoods. Swing sets are permitted after request for and approval by the DHP. Swing sets must be made of wood or plastic/pvc (no metal swing sets), may be placed in the backyard only and may not encompass an area larger than 25% of the square footage of the backyard.
- Flagpoles are permitted on any Lot within the Complex provided the flagpole does not exceed 25' in height or 4" in diameter. Poles must be constructed of aluminum and if the Lot Owner elects to paint the pole, the paint must be kept in good repair. The display of flags is limited to the American Flag, State flags and Military flags only. Lighting of the flag is permitted however, lighting must be upcast to the top of the flagpole and must not illuminate adjacent buildings. Lot Owners must submit detailed plans to the DHP and must receive approval *in writing* prior to beginning construction
- Lessees or tenants of any RV Park or Campground shall adhere to the Rules and Regulations as set forth by both the Park and the Complex. To the extent of any discrepancy between the Park Rules and Regulations and the Complex Rules and Regulations, the Complex Rules and Regulations shall apply.

#### ARTICLE 16. ARCHITECTURAL RULES

- All alterations, modifications or additions to the exterior of any Building must have the approval of the DHP committee of the Corporation under the then applicable design guidelines, which may be amended from time to time in the manner prescribed by the Declaration. Permits for exterior modifications approved by the design committee of the Corporation must be obtained from the City of Delaware City when required.
- The following exterior attachments are not permitted without Corporation approval:
  - TV antennas, including Cable TV and Satellite dishes
  - Shutters

- Awnings
  - Exterior sun shades
  - Hinged screen doors at the front of the home (must obtain type and model approved by the Corporation).
- The repainting or refinishing of the exterior surface of any Building or other structure by anyone is not authorized, unless approved in advance by the Corporation.
  - Any exterior surface in need of paint or other exterior repair shall be reported to the Corporation.

#### **ARTICLE 17. NOTICES**

- Posting of notices, advertisements, etc. are only permitted in designated areas.

#### **ARTICLE 18. ENFORCEMENT**

- FAILURE TO COMPLY WITH THE RULES IN THIS SECTION WILL SUBJECT THE LOT OWNER TO A HEARING BY THE CORPORATION AND PENALTY ASSESSMENTS OF \$50.00 FOR EACH DAY OF NON-COMPLIANCE
  - Schedule of Notices
    - First Offense: Warning Letter to Owner
    - Second Offense: Hearing Letter to Owner, possible Fine
    - Third Offense: Hearing Called by Corporation plus Fine
    - Reoccurring Offenses: Enforcement in Accordance with the Determination of the Corporation at a show cause hearing.
  - Schedule of Costs
    - First Violation --- First Notice \$0.00
    - First Violation --- Second Notice \$50.00
    - First Violation --- Third Notice \$100.00
    - First Violation --- Additional Notice \$150.00
    - Fines - Subsequent Violations by Previous Offenders - As Determined by Corporation
- The list above is not intended to be all-inclusive. Additions may be made as required. Fines etc. may vary and may increase depending upon the circumstances. Fines etc. may be at the discretion of the Corporation; the amounts shall be predicated upon the severity of the violation and may include legal action. A clerical fee may also be assessed in addition to the fine for processing the violation notice.
- Failure to pay the fines in the time as set forth herein may result in the filing of appropriate legal action.



- All legal fees or costs incurred by the Corporation to enforce violations or collect fines will be the responsibility of the Lot Owner.
- Anyone wishing to report an alleged violation of the Rules and Regulations may do so by contacting the Corporation. Violations should be reported in writing. The identity of the person reporting the violation will not be disclosed to any parties involved.

**ARTICLE 19. AMENDMENT**

- These Rules and Regulations may be amended at any time at the sole discretion of the Corporation provided that, any changes which will impact the Grassdale District cannot be made without the consent of the owner of the Grassdale District or his or her authorized representative. The Corporation shall not be liable for enforcement or non-enforcement of these Rules and Regulations.