

Tax Parcel Nos.:

Prepared By and Return To:

Jonathan E. Horner, Esq.  
20184 Phillips Street  
Rehoboth Beach, DE 19971

## **RESIDENTIAL HOUSING RESTRICTION FOR DUTCHMAN'S HARVEST**

This Residential Housing Restriction for Dutchman's Harvest, (this "Restriction") is made this \_\_\_ day of \_\_\_\_\_, 2019, by Lewes Attainable Housing, LLC, a Delaware limited liability company (together with its successors and assigns, the "Declarant").

### **RECITALS:**

**WHEREAS**, Declarant is the owner of that certain real estate located in the City of Lewes, Sussex County (the "County"), State of Delaware, and legally described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property"); and

**WHEREAS**, Declarant, acting as the declarant, intends to create a valid and enforceable covenant running with the land that assures that all of the Units to be developed on the Property will be used solely by individuals who are Residents (as such terms are hereinafter defined), subject to limited exceptions provided for herein; and

**WHEREAS**, under this Restriction, Declarant intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use of the Units described and provided for herein shall be and are hereby made covenants running with the land and are intended to be and shall be binding upon Declarant, any entity to whom the Declarant conveys the Property for the purpose of construction of the Units (as hereafter defined), and all subsequent Owners (as hereinafter defined) of such Units as provided for herein, unless and until this Restriction is released and terminated in the manner hereafter described.

**NOW THEREFORE**, in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby declares that the Property shall hereafter be held, sold, and conveyed subject to the following covenants, restrictions, and conditions, all of which shall be covenants running with the land, and which are for the purposes of ensuring that the Property remains available for purchase and occupation by persons working in the County and protecting the value and desirability of the Property, and which covenants, restrictions, and conditions shall be binding on all parties having any right, title, or interest in the Property, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner (as defined in Article 1) of a Unit within the Property, the City of Lewes (as defined in Article 1), and Owner.

**ARTICLE 1**  
**DEFINITIONS**

1.1 **Definitions.** The following words, when used in this Restriction, shall have the following meanings and the use of capitalization or lowercase letters in references to the following terms shall have no bearing on the meanings of the terms:

A. "Authorized Lessee" means any tenant approved by the Owner, who shall meet the definitions of Resident, and who shall lease a Unit at such rental rates as shall be established by the Owner.

B. "City of Lewes" means the City of Lewes, Delaware and its officers, individuals, elected officials, boards, council, employees, officers or individuals appointed by the City. City of Lewes shall also mean and refer to any third-party appointed by the City of Lewes to perform the City of Lewes' obligations and enforce the City of Lewes' rights under this Restriction.

C. "Dependent" means a person, including a spouse of a child of, a step-child of, a child in the permanent legal custody of or a parent of, a Resident, in each case whose principal place of residence is in the same household as such Resident, and who is financially dependent upon the support of the Resident. Dependent shall also include any person included within the definition of "Familial Status" as defined in 42 U.S.C. § 3602(k), as that act shall from time to time be amended.

D. "First Mortgage" means a mortgage that is recorded senior to any other deeds of trust or liens against the Property to secure a loan used to purchase the Property made by a Mortgagee.

E. "Greater Lewes Area" means an area which includes the city limits of the City of Lewes together with the corridor along Delaware Route 1 from Cave Neck Road (Delaware Route 88) to Route 24 extending east to the coast and west for one-half (1/2) mile but specifically including Beacon Middle School and Love Creek Elementary School.

F. "Household" means one or more persons who intend to live together in a Unit as a single housekeeping unit.

G. "Mortgagee" means any bank, savings and loan association, or any other institutional lender that is licensed to engage in the business of providing purchase money mortgage financing for residential real property and that is the beneficiary of a deed of trust or mortgage encumbering any Unit.

H. "Non-Qualified Transferee" means an Owner that is not a Qualified Owner.

I. "Owner" means the record owner at any time taking and holding fee simple title to a Unit.

J. "Purchase Price" shall mean all consideration paid by the purchaser to the seller for a Unit, but shall EXCLUDE any proration amounts, taxes, costs and expenses of obtaining financing, cost of furnishings or personal property, lenders fees, title insurance fees, closing costs, inspection fees, real estate purchase and/or sales commission(s) or other fees and costs related to the purchase of a Unit but not paid directly to Seller.

K. "Qualified Owner" means either (a) a natural person(s) that meet(s) the definition of a Resident, or (b) a non-qualified Owner under Section 5.1.B., qualified and approved by the Declarant, in such a manner as will allow the Declarant to execute the Memorandum of Acceptance of Residential Housing Restriction for Dutchman's Harvest set forth in **Exhibit B** of this Restriction. Notwithstanding the foregoing, no single Qualified Owner under (b) above may own more than ten (10) total Units, whether through affiliates, subsidiaries or nominees. Additionally, no more than forty (40) total Unit may be owned by Qualified Owners under (b) above.

L. "Resident" means a person and his or her Dependents, if any, who (i) at all times during ownership or occupancy of the Unit, earns his or her living from a business operating in and serving the County, by working in the County at such business an average of at least thirty (30) hours per week on an annual basis, or (ii) is a person who is approved in writing by the Declarant, which approval shall be based upon criteria including, but not limited to percent of income earned within the County, place of voter registration, place of automobile registration, and driver's license address and other qualifications established by the Declarant from time to time. Compliance with each of the foregoing criteria is not necessary in certifying Residents, the Declarant shall consider the criteria cumulatively as they relate to the intent and purpose of this Restriction. A person over 65 years of age shall remain a Resident regardless of his or her working status, so long as he or she has owned and occupied a Unit, or leased a Unit as an Authorized Lessee, for a time period of not less than seven (7) years. A Resident or Authorized Lessee who becomes disabled after commencing ownership or occupancy of a Unit such that he or she cannot work the required number of hours each week required by this Restriction shall remain a Resident or Authorized Lessee; provided that such person is permitted to occupy the Unit only for a maximum period of one (1) year following the commencement of said person's disability, unless a longer period of occupancy is authorized by the Declarant. The term "business" as used in this Article I, Subsection P, and Section 5.1.B. shall mean an enterprise or organization providing goods and/or services, whether or not for profit, and shall include, but not be limited to, educational, religious, governmental and other similar institutions.

P. "Transfer" or "transferred" means any sale, assignment or transfer that is voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in a Unit, including, but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, or any interest evidenced by a land contract by which possession of a Unit is transferred and the Owner obtains title.

Q. "Unit" means a Unit as defined by 25 Del. C. §81-103(48). There will be a total of 140 Units built within the Property.

## ARTICLE 2

**PURPOSE**

2.1 The purpose of this Restriction is to restrict ownership, occupancy and sale of each Unit in such a fashion as to provide housing to be occupied by Qualified Owners or Authorized Lessees, which Qualified Owners or Authorized Lessees, may not otherwise be in a position to afford to purchase, own, occupy or lease other properties in this area, and to help establish and preserve a supply of housing to help meet the needs of the locally employed residents of the County.

**ARTICLE 3**

**RESTRICTION AND AGREEMENT BINDS THE PROPERTY**

3.1 This Restriction shall constitute covenants running with title to the Property as a burden thereon, for benefit of, and enforceable by, the Declarant, and its successors and assigns, including, without limitation, the City of Lewes acting as Declarant's designee, and this Restriction shall bind Declarant and all subsequent Owners and occupants of a Unit. Each Owner and Authorized Lessee, upon acceptance of a deed or lease to a Unit, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the Owner's period of ownership or Authorized Lessee's tenancy, as may be appropriate. Each and every Transfer or lease of a Unit, for all purposes, shall be deemed to include and incorporate by this reference, the covenants contained in this Restriction, even without reference to this Restriction any document of conveyance.

**ARTICLE 4**

**NATURAL PERSONS**

4.1 Other than by the Declarant, the use and occupancy of a Unit shall be limited exclusively to housing for natural persons who meet the definition of Qualified Owner or Authorized Lessee.

**ARTICLE 5**

**OWNERSHIP RESTRICTIONS**

5.1 Ownership and Occupancy Obligation.

A. Ownership of a Unit is hereby limited exclusively to a Qualified Owner, which shall include the parties described and approved as set forth in Section 5.1.B. In the event that a Unit is occupied without compliance with this Restriction, the Declarant shall have the remedies set forth herein, including, but not limited to, the rights under Section 8.4.

B. Upon the written consent of the Declarant, which consent is in Declarant's sole discretion and which may be recorded, a non-qualifying natural person or entity that owns and/or operates a business located in and serving the County may purchase a Unit; provided, however, that by taking title to a Unit, such Owner shall be deemed to agree to the rental restrictions set forth herein, and further that any Owner who does not meet the definitions of a Resident shall rent the Unit to a natural person(s) that does meet the definitions of a Resident,

and shall not occupy or use such Unit for such Owner's own use or leave such Unit vacant except as otherwise provided herein. Any occupancy of a Unit pursuant to this Section 5.1.B shall not exceed two (2) persons per bedroom, unless the Declarant approves otherwise.

5.2 Sale, Resale and Lease. In the event that a Unit is Transferred or leased without compliance with this Restriction, the Declarant shall have the remedies set forth herein, including but not limited to, the rights set forth in Section 8.4. Except as otherwise provided herein, each and every Transfer or lease of a Unit, for any and all purposes, shall be deemed to include and incorporate the terms and conditions of this Restriction.

5.3 Compliance. Along with the recorded instrument of conveyance evidencing a Transfer of a Unit, any such Transfer of a Unit shall include a completed copy of the "Memorandum of Acceptance of Residential Housing Restriction for Dutchman's Harvest" in the form attached hereto as **Exhibit C**, which copy is executed by the transferee and acknowledged by the transferee before a notary public. The instrument of conveyance evidencing such Transfer, or some other instrument referencing the same shall bear the following language followed by the acknowledged signature of the authorized officer of the Declarant or its designee, to wit:

"The conveyance evidenced by or referenced in this instrument has been approved by the City of Lewes or Declarant as being in compliance with the Residential Housing Restriction for Dutchman's Harvest, recorded in the Office of the Recorder of Deeds in and for Sussex County, Delaware in Deed Book \_\_\_\_, Page \_\_\_\_."

Each sales contract, or lease as the case may be, for a Unit shall also (a) recite that the proposed purchaser or lessee, as applicable, has read, understands and agrees to be bound by the terms of this Restriction, and (b) require the proposed purchaser and/or lessee to submit such information as may be required by the Declarant, under its rules and regulations or policies adopted for the purpose of ensuring compliance with this Restriction.

5.4 Refinance Restriction. An Owner shall not encumber a Unit in a principal amount in excess of the Purchase Price.

5.5 Records and Inspection. An Owner's records with respect to the Owner's use and occupancy of a Unit shall be subject to examination, inspection and copying by the Declarant, or their authorized agents, upon reasonable advance notice. The Declarant or its authorized agent, shall also have the right to enter into or upon a Unit for the purpose of determining compliance with the provisions of this Restriction; provided, however, that the Declarant or its agent, shall first attempt to secure the permission of any occupants of the Unit prior to making entry. An Owner shall submit any information, documents or certificates requested from time to time by the Declarant with respect to the occupancy and use of the Owner's Unit that the Declarant reasonably deems necessary to substantiate the Owner's continuing compliance with the provisions of this Restriction. Such information shall be submitted to the Declarant within such reasonable time period as the Declarant may establish. All lessee's of a Unit shall be bound by the terms of this Section 5.5 and shall cooperate with all requirements

herein.

5.6 Relief in Extraordinary Circumstances. The Declarant or City of Lewes may grant a variance, exception or waiver from the requirements of this Section 5 based upon the written request of the Owner or prospective Owner of a Unit. Such variance, exception or waiver may be granted by the Declarant or the City of Lewes only upon a finding that: (i) the circumstances justifying the granting of the variance, exception or waiver are unique; (ii) a strict application of this Section 5 would result in an extraordinary hardship; and (iii) the variance, exception or waiver is consistent with the intent and purpose of this Restriction. No variance, exception or waiver shall be granted by the Declarant or the City of Lewes if its effect would be to nullify the intent and purpose of this Restriction. In granting a variance, exception or waiver of the provisions of this Section 5 the Declarant or the City of Lewes may impose specific conditions of approval and shall fix the duration of the term of such variance, exception or waiver. A determination not to grant a waiver by the Declarant or the City of Lewes shall be final and unappealable.

5.7 Temporary Ownership Restriction. Notwithstanding anything contained in this Restriction to the contrary, for the first six (6) months from the date the Declarant begins accepting reservations and/or contracts on specific Units (the "Initial Restriction Period"), Declarant shall ensure that a minimum of forty (40) Units are available to be sold to Qualified Owners working in the Greater Lewes Area. A determination on whether or not a particular Resident works in the Greater Lewes area shall be made by the Declarant in its reasonable discretion. Following the Initial Restriction period this Section 5.7 shall be considered null and void.

## **ARTICLE 6** **SUCCESSOR DECLARANT**

6.1 City of Lewes as Successor Declarant. Upon the sale of all Units such that the Declarant no longer owns any of the Property, Declarant shall assign all of its rights, titles and obligations as Declarant under this Restriction to the City of Lewes. Upon the happening of such assignment, all references to the term Declarant in this Restriction shall mean and refer to the City of Lewes.

## **ARTICLE 7** **USE RESTRICTIONS**

7.1 Occupancy. Except as otherwise provided in this Restriction, each Unit shall, at all times, be occupied as a principal place of residence by a Qualified Owner (along with Dependents), or as the case may be an Authorized Lessee (along with Dependents) who, at the time of purchase, or in the case of an Authorized Lessee at the time of occupancy, of a Unit, is qualified as a Resident. Notwithstanding anything contained herein to the contrary, in no event shall any Household consist of a group of four (4) or more persons unrelated by blood, adoption or marriage.

7.2 Rental. Under no circumstances shall any Unit be leased or rented for any period of time without the prior written approval of the Declarant. In the event that any Unit, or any portion thereof, is leased or rented without compliance with this Restriction, the Declarant shall have the remedies set forth herein, including but not limited to the rights set forth in Section 8.4. Any tenancy approved by the Declarant shall be to an Authorized Lessee and shall not be for a term of less than three (3) consecutive months. In the event a Unit is leased to an Authorized Lessee, the Owner may not charge more for rent than an amount set by Declarant based on an amount outlined and updated annually by the U.S. Department of Housing and Urban Development that is equal to 30% of 120% of the Sussex County, Delaware area median income and as apportioned per household size appropriate for each Unit type (i.e. 1 bedroom, 2 bedroom and 3 bedroom Units).

7.3 Vacancy. In the event that a Qualified Owner ceases to occupy a Unit as his or her principal place of residence for a period of ninety (90) consecutive days (as reasonably determined by the Declarant), or any non-qualified Owner permitted to purchase a Unit as set forth in Section 5.1.B leaves a Unit unoccupied by an Authorized Lessee for a period of ninety (90) consecutive days (as reasonably determined by the Declarant), the Declarant may, in its sole discretion and in addition to any other remedies the Declarant may have hereunder, determine that the Unit shall be offered for sale pursuant to the provisions of Section 8.4 or require the Qualified Owner or non-qualified Owner to rent the Unit to an Authorized Lessee.

7.4 Ownership Interest in Other Residential Property. Except with respect to a non-qualified Owner permitted to purchase a Unit as set forth in Section 5.1.B, if at any time the Owner also owns any interest alone or in conjunction with others in any other developed residential property in the County, the Owner shall immediately list such other property interest for sale and sell his or her interest in such property. In the event said other property has not been sold by the Owner within one hundred twenty (120) days of its listing required hereunder, then the Owner shall immediately list his or her Unit for sale pursuant to Section 8.4 of this Restriction. It is understood and agreed between the parties hereto that, in the case of an Owner whose business is the construction and sale of residential properties or the purchase and resale of such properties, the properties that constitute inventory in such Owner's business shall not constitute "other developed residential property" as that term is used in this Section 7.4.

## **ARTICLE 8**

### **RESALE OF A UNIT**

8.1 Resale. For a period of twenty (20) years following the initial conveyance of a Unit from the Declarant, no Unit shall be Transferred subsequent to the original purchase from Declarant except upon full compliance with the procedures set forth in this Article 8.

8.2 Notice. In the event that an Owner shall desire to Transfer a Unit within twenty (20) years of the original conveyance of such Unit from the Declarant, or in the event that an Owner shall be required to Transfer such Unit within twenty (20) years of the original conveyance of such Unit from the Declarant pursuant to the terms of this Restriction, the Owner shall notify

the Declarant, or such other person or entity as may be designated by the Declarant, in writing of Owner's intention to Transfer such Unit.

A. Each Owner shall be responsible for ensuring that at the Transfer of his or her Unit, the same is clean, the appliances are in working order, and that there are no health or safety violations regarding such Unit. During the period of the listing contract, the Declarant is authorized (but not required) to take necessary actions and incur necessary expenses for bringing the relevant Unit into saleable condition. Such actions and expenses include, but are not limited to, cleaning the Unit and making necessary repairs to or replacements of appliances and/or Unit fixtures, such as windows, doors, cabinets, countertops, carpets, flooring and lighting fixtures, and/or correcting any health or safety violations on such Unit. Declarant is additionally authorized to charge an administrative fee of ten percent (10%) in connection with performing the foregoing actions and incurring the foregoing expenses. Expenses incurred by the Declarant to bring a Unit into a saleable condition shall be itemized and documented by the Declarant and deducted from Owner's proceeds at closing of the Transfer of such Unit.

8.3 Non-Qualified Transferees. In the event that title to a Unit vests in a Non-Qualified Transferee by descent, by foreclosure and/or redemption by any lien or mortgage holder, or by operation of law or any other event, the Declarant may elect to notify the Non-Qualified Transferee that it must sell the Unit in accordance with Section 8.4. The Non-Qualified Transferee(s) shall not: (i) occupy a Unit; (ii) rent all or any part of a Unit, except in strict compliance with this Restriction; (iii) engage in any business activity on or in a Unit; (iv) sell or otherwise Transfer a Unit except in accordance with this Restriction; or (v) sell or otherwise Transfer a Unit for use in trade or business.

8.4 Sales to Preserve Unit as Restricted.

A. In the event a Unit is occupied, used, transferred, leased, or rented in violation of this Restriction, or whenever the provisions of this Section 8.4 are expressly made applicable by any section or provision of this Restriction, the Declarant may, at its sole discretion, notify an Owner that it must immediately list the Unit for sale. The highest bid by a Qualified Owner for not less than ninety-five percent (95%) of the appraised value of the Unit shall be accepted by the Owner; provided, however, if the Unit is listed for a period of at least ninety (90) days and all bids are below ninety-five percent (95%) of the appraised value of such Unit, the Unit shall be sold to a Qualified Owner that has made the highest offer, as determined by the Declarant in its reasonable good faith judgment, after such ninety (90) day period.

B. If required by the Declarant, the Owner shall: (i) consent to any sale, conveyance or transfer of such Unit to a Qualified Owner; (ii) execute any and all documents necessary to do so; and (iii) otherwise reasonably cooperate with the Declarant to take actions needed to accomplish such sale, conveyance or transfer of such Unit. For this purpose, Owner constitutes and appoints the Declarant its true and lawful attorney-in-fact with full power of substitution to complete or undertake any and all actions required under this Section 8.4.B. It



is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. Owner specifically agrees that all power granted to the Declarant under this Restriction may be assigned by it to its successors or assigns.

C. In order to preserve the restriction of the Units, the Declarant, or its respective successor, as applicable, shall also have and is hereby granted the right and option to purchase a Unit, exercisable within a period of fifteen (15) calendar days after notice is sent by the Declarant to the Owner that requires the Owner to sell the Unit pursuant to this Section 8.4. The Declarant shall complete the purchase of such Unit within thirty (30) calendar days after exercising its option hereunder for a price equal to the appraised market value of the Unit, as determined by the Declarant based on an appraisal obtained by the Declarant, with the cost of such appraisal being the responsibility of the Owner. The Declarant may assign its option to purchase hereunder to an eligible purchaser that, for the purpose of this Section 8.4(c), shall be a Qualified Owner.

D. In all situations in which the provisions of this Section 8.4 apply, the Declarant may alternatively require the Owner to rent a Unit to an Authorized Lessee in accordance with the requirements of this Restriction.

## **ARTICLE 9** **FORECLOSURE**

### 9.1 Declarant's Rights During Foreclosure.

A. Notice of Default to Declarant. Within ten (10) days after Owner's receipt of any notice of default from a Mortgagee or the home owner's association governing the Units, the Owner shall give written notice of such default to the Declarant.

B. Foreclosure/Declarant's Notice Requirements. In the event of a foreclosure of a First Mortgage or the assessment lien of the home owner's association governing the Units, the Declarant shall be entitled to receive notice of the foreclosure proceedings as is required by law to be given by the public trustee or the sheriff, as applicable, to lienors of a Unit that are junior to the First Mortgage.

9.2 Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Restriction shall be unlawful or void for violation of: (i) the rule against perpetuities or some analogous statutory provision; (ii) the rule restricting restraints on alienation; or (iii) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the shorter of (x) the term of this Restriction, or (y) the period of the life of former President Barack Obama, his now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

## **ARTICLE 10** **ENFORCEMENT**

10.1 Enforcement of This Restriction. The Declarant and each Owner hereby grants and

assigns to the Declarant (or its designated assignee, nominee or representative) the right to review and enforce compliance with this Restriction. Compliance may be enforced by the Declarant by any lawful means, including without limitation, seeking any equitable relief (including, without limitation, specific performance and other equitable relief as set forth in Section 10.2 below), as well as a suit for damages. As part of any enforcement action on the part of the Declarant, the applicable Owner shall pay all court costs and reasonable legal fees incurred by the Declarant, or its agents, in connection with these claims, actions, liabilities or judgments, including an amount to pay for the time, if any, of the Declarant's, or its agents, attorney spent on such claims at the rates generally charged for similar services by private practitioners within the County. In enforcing violations of this Restriction, Declarant will first provide notice to an Owner identifying the violation and requiring the Owner to correct such violation within sixty (60) days. In the event the Owner does not correct such violation within sixty (60) days, Declarant is hereby authorized to fine an Owner an amount equal to \$100.00 per day for such continued violation (each a "Violation Fine"). Violation Fines shall be secured as liens against the applicable Unit subordinate only to any First Mortgage on the Unit. Declarant will be entitled to enforce such liens through judicial foreclosure proceedings should Declarant so elect. The foregoing notice and cure periods and fine procedures shall in no way serve as Declarant's sole remedy, it being understood that Declarant has all other remedies set forth in Sections 10.1 and 10.2, nor shall they restrict Declarant's ability to seek other relief in the event Declarant feels it could be prejudiced by any delay in enforcing its rights. The Declarant hereby appoints Diamond State Community Land Trust as its representative for the purpose of enforcing compliance with this Restriction. This appointment shall be revocable by the Declarant.

10.2 Injunctive and other Equitable Relief. Each Owner agrees that in the event of his or her default under or non-compliance with the terms of this Restriction, the Declarant shall have the right to seek such equitable relief as it may deem necessary or proper, including, without limitation, the right to: (a) seek specific performance of this Restriction; (b) obtain a judgment from any court of competent jurisdiction granting a temporary restraining order, preliminary injunction and/or permanent injunction; and (c) set aside or rescind any sale of a Unit made in violation of this Restriction. Any equitable relief provided for in this Section 10.2 may be sought singly or in combination with such legal remedies as the Declarant may be entitled to, either pursuant to this Restriction, under the laws of the State of Delaware or otherwise.

## **ARTICLE 11** **GENERAL PROVISIONS**

11.1 Equal Housing Opportunity. Pursuant to the Fair Housing Act, the Declarant shall not discriminate on the basis of race, creed, color, sex, national origin, familial status, disability or sexual orientation in the lease, sale, use or occupancy of a Unit.

11.2 Rules, Regulations, and Standards. The Declarant shall have the authority to promulgate and adopt such rules, regulations and standards as it may deem appropriate, from time to time, for the purpose of carrying out its obligations and responsibilities described

herein.

11.3 Waiver of Exemptions. Every Owner, by taking title to a Unit shall be deemed to have subordinated to this Restriction any and all right of homestead and any other exemption in, or with respect to, such Property under state or federal law presently existing or hereafter enacted.

11.4 Severability. Invalidation of any one of the covenants or restrictions contained herein by judgment or Court order shall in no way affect any other provisions, it being the intent of the Declarant that such invalidated provision be severable.

11.5 Term. Except as expressly set forth in this Restriction, the restrictions contained herein shall run with the land and bind the land in perpetuity.

11.6 Amendment. This Restriction may be amended only by an instrument recorded in the records of the County executed by the Declarant and the then-Owner of a Unit; provided, however, the Declarant reserves the right to unilaterally amend this Restriction without the approval or consent of any Owner, Mortgagee, or any other person or entity for the purpose of either: (a) making non-material changes such as for correction of technical, typographical, or clerical errors, or for clarification of a statement; or (b) without regard to (a), if such amendment lessens the ownership, use, sales and lease restrictions placed upon the Owners as provided herein. The Declarant may unilaterally execute and record such amendments at any time.

11.7 No Third Party Beneficiaries. This Restriction is made and entered into for the sole protection and benefit of the Declarant, the City of Lewes and the Owner. Except as otherwise specifically provided for herein, no other person, persons, entity or entities, including without limitation prospective buyers of a Unit, shall have any right of action with respect to this Restriction or right to claim any right or benefit from the terms provided in this Restriction or be deemed a third party beneficiary of this Restriction.

11.8 Non-Liability. The Declarant and its respective employees, members, officers and agents shall not be liable to any Owner or third party by virtue of the exercise of their rights or the performance of their obligations under this Restriction. The parties understand and agree that they are relying on, and do not waive or intend to waive by any provision of this Restriction, the monetary limitations, or any other limitation, right, immunity or protection otherwise available to the parties.

11.9 Exhibits. All exhibits attached hereto are incorporated herein and by this reference made part hereof.

11.10 Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and use of the singular shall include the plural and vice versa.

11.11 Personal Liability. Each Owner shall be personally liable for any of the transactions contemplated herein, jointly and severally with his or her co-owners.

11.12 Further Actions. The Owner and Owner's successors and assigns agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Restriction or any agreement or document relating hereto or entered into in connection herewith.

11.13 Notices. Any notice, consent or approval that is required or permitted to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Restriction. Said notices, consents and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant: Lewes Attainable Housing, LLC  
c/o Preston Schell  
18949 Coastal Hwy, Suite 301  
Rehoboth Beach, DE 19971  
e-mail: preston@oacompanies.com  
ph: 302-227-6115

To City of Lewes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To a Unit Owner: Address of the applicable Unit.

11.15 Choice of Law. This Restriction and each and every related document shall be governed and constructed in accordance with the laws of the State of Delaware, exclusive of its conflict of law rules.

11.16 Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.

11.17 Headings. Article and Section headings within this Restriction are inserted solely for convenience or reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

11.18 Signatures. Signatures to this Restriction may be in counterparts and by facsimile or scanned emailed document.

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, Declarant has caused this Restriction to be executed under seal as of the day and year first written above.

**SIGNED SEALED AND DELIVERED  
IN THE PRESENCE OF:**

\_\_\_\_\_

**DECLARANT:**

**LEWES ATTAINABLE HOUSING, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_(SEAL)

Name: Preston A. Schell

Title: Manager

STATE OF DELAWARE                    )  
  )SS:  
COUNTY OF SUSSEX                 )

BE IT REMEMBERED THAT on this \_\_\_\_ day of \_\_\_\_\_, 2019, personally appeared before me, the subscriber, a Notary Public for the State aforesaid, Preston A. Schell, the Manager of Lewes Attainable Housing, LLC, a Delaware limited liability company, and acknowledged this instrument to be the act and deed of said limited liability company; and that his act of executing, sealing and delivering this instrument was duly authorized by said limited liability company.

\_\_\_\_\_  
Notary Public  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**EXHIBIT A**

**Property**

**EXHIBIT B**

**UNITS**

**EXHIBIT C**  
**MEMORANDUM OF ACCEPTANCE**  
**OF**  
**RESIDENTIAL HOUSING RESTRICTION**  
**FOR DUTCHMAN'S HARVEST**

WHEREAS, \_\_\_\_\_ [Buyer Name] \_\_\_\_\_, the "Buyer" is purchasing from \_\_\_\_\_ [Seller Name] \_\_\_\_\_, the "Seller," the real property identified as \_\_\_\_\_ (the "Unit"); and

WHEREAS, the Seller of the Unit is requiring, as a prerequisite to the sale transaction, that the Buyer acknowledge and agree to the terms, conditions and restrictions found in that certain instrument entitled "Residential Housing Restriction for Dutchman's Harvest" recorded in the Office of the Recorder of Deeds in and for Sussex County, Delaware (the "Recorder's Office") in Deed Book \_\_\_\_, Page \_\_\_\_ (as amended, the "Restrictions").

NOW, THEREFORE, as an inducement to the Seller to sell the Unit, the Buyer:

1. Acknowledges that Buyer has carefully read the entire Restriction, has had the opportunity to consult with legal and financial counsel concerning the Restriction and fully understands the terms, conditions, provisions, and restrictions contained in the Restriction.
2. Agrees to be bound by and comply with the terms, conditions and requirements of the Restrictions.
3. States that Notice of Buyer should be sent to:  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_
4. Directs that this memorandum be placed of record in the Recorder's Office.

**[SIGNATURE PAGE TO FOLLOW]**



IN WITNESS WHEREOF, the parties hereto have executed this instrument on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BUYER(S):

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

STATE OF DELAWARE            )  
  ) ss.  
COUNTY OF SUSSEX         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_