

Tax Map # 335-8.15-41.00  
Prepared by and Return to:  
Parkowski, Guerke & Swayze, P.A.  
19354C Miller Road  
Rehoboth Beach, DE 19971

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
VIRDEN SUBDIVISION**

This Declaration is made and executed this \_\_\_\_ of \_\_\_\_\_, 2021, by  
Jerome W. R. Virden (hereinafter referred to as the "Developer").

**WITNESSETH**

WHEREAS, the Developer is the fee simple owner of certain real property located in Lewes and Rehoboth Hundred, Sussex County, Delaware as set forth in Exhibit "A" attached hereto and made a part hereof and further shown on a Final Site Plan for Virden Subdivision recorded in the Office of the Recorder of Deeds in and for Sussex County at Plot Book\_\_\_\_, Page \_\_\_\_, (hereinafter referred to as the "Property"), and desires to develop therein a residential community; and

WHEREAS, the Developer desires to provide for the preservation of the land values in said community and for the maintenance of said common lands and facilities and to this end desires to subject the Property to the covenants, restrictions, easements, charges and liens (hereinafter referred to collectively as the "Restrictions"), as hereinafter set forth, for the benefit of the Property and each owner thereof; and

WHEREAS, the Developer deems it desirable for the efficient preservation of values and amenities in said community to create an entity to which will be delegated and assigned the powers of maintaining and administering the community facilities, common lands and recreational amenities, and administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Developer will cause a nonprofit corporation, known as Virden Subdivision Property Owners Association, Inc., to be incorporated under the laws of the State of Delaware for the purpose of exercising the functions aforesaid.

NOW THEREFORE, the Developer hereby declares that the following Restrictions shall run with, burden and bind the Property, and the Developer hereby declares the Property, as described in Exhibit "A," is and shall be held, transferred, sold, conveyed, occupied and used subject to the restrictions hereinafter set forth and during the period of time hereinafter set forth; and subject to all easements, rights of way and restrictions previously placed upon the Property as recorded in the Office of the Recorder of Deeds in and for Sussex County by the Developer, or its predecessors in title.

## **ARTICLE I**

### **DEFINITIONS**

The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

A. "Association" shall mean and refer to Virden Subdivision Property Owners Association, Inc., or such other nonprofit corporation as the Developer shall form, and its

successors and/or assigns.

B. "Common Areas" shall mean and refer to those areas of land so designated on the Record Plot and including all lands not otherwise included within any Lot and incorporated herein by reference. The Common Areas shall be designated as Common Areas (including but not limited to, all areas for storm water management, landscaped buffer, open space and erosion and sediment control facilities,). All Common Areas are intended to be devoted to the common use and enjoyment of the members of the Association, as herein defined, and are not dedicated for use by the general public. All Common Areas shall be subject to the restrictions created herein, and shall be subject to all restrictions, easements and rights-of-way previously granted by the Developer or its predecessors in title.

C. "Developer" shall mean and refer to Jerome W. R. Virden and his successors and assigns.

D. "Lot" shall mean and refer to any unimproved or improved plot of land intended and subdivided for a detached single unit residence, shown upon the Record Plot as a numbered parcel, but shall not include any "Common Areas" as hereinabove defined.

E. "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article II, Section 1 of this Declaration.

F. "Mortgage" shall mean and refer to any mortgage, deed of trust, or similar instrument granted as security for the performance of any obligation.

G. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, holding a fee simple title to any Lot, but shall not mean or refer to any mortgagee or subsequent holder or a mortgage, unless and until such mortgagee or holder has acquired title

pursuant to foreclosure or any proceeding in lieu of foreclosure.

H. "Record Plot" shall mean the plot of record in the Office of the Recorder of Deeds, in and for Sussex County, recorded in Plot Book\_\_\_, at Page \_\_ and any amendment thereto.

## ARTICLE II

### **MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every Owner of a Lot, which is subject to assessment or shall be eligible for a later assessment shall be a Member of the Association provided, however, that any such person or entity who holds such interest merely as security for performance of an obligation shall not be a Member, unless and until such person or entity has succeeded to such Owner's interest by enforcement of such security interest. Membership shall be appurtenant to and may not be separated from the ownership of any Lot, which is subject to assessment. Provided, however, that the Developer shall be considered an Owner of each Lot held by it and a Member of the Association whether such Lot or Lots are or are not subject to assessment.

Section 2. The Association shall have one class of voting membership. A member shall be entitled to one (1) vote for each Lot owned by said Member. When more than one person holds an interest in any Lot all such persons shall be members. The vote of such Lot shall be exercised as the Owners themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Section 3. The Developer shall establish the Association by the filing of a Certificate of Incorporation of the Association when the Developer, in its sole discretion, deems the creation of such Association appropriate.

### ARTICLE III

#### **PROPERTY SUBJECT TO DECLARATION**

Section 1. Property. The real property subject to this Declaration is all that property located in Lewes and Rehoboth Hundred, Sussex County, Delaware as shown on the Record Plot, and as described in Exhibit "A," and this Declaration and the lands subject to this Declaration shall also be subject to restrictions, easements or rights of way previously granted by the Developer, or its predecessors in title as recorded in the Office of the Recorder of Deeds, in and for Sussex County, or as such land has been duly dedicated to any public authority.

### ARTICLE IV

#### **PROPERTY RIGHTS IN THE GENERAL COMMON AREA**

Section 1. Title to Common Areas. The Developer shall convey legal title in the Common Areas to the Association, but it may retain legal title to the Common Areas until such time as the Developer has completed improvements thereon, and until such a time as, in the sole opinion of the Developer, the Association shall be able to maintain the same, but, notwithstanding any other provision herein, the Developer hereby covenants for itself, its successors and assigns, that it shall convey all its right, title and interest in the Common Areas to the Association, free and clear of all liens, but subject to all previous restrictions of record and this Declaration.

Section 2. Extent of Member's Easements. The rights and easements of enjoyment created hereby in the Common Areas shall be subject to the following:

A. The right of the Association as provided in its Certificate of Incorporation and By-Laws, to suspend the enjoyment rights of any Member in any easement or in any Common Areas, for a period during which any assessment against such Member remains unpaid, and for

any period not to exceed sixty (60) days for any other infraction of the Association's published rules and regulations.

B. The right of the Association to dedicate or transfer all or any part of its interest in the Common Areas (subject to easements created hereunder, or previously created of record) to any public agency authority or utility.

C. The right of the Developer prior to the conveyance of the Common Areas to the Association, and of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Areas, for the installation, maintenance and inspection of lines and appurtenances for public water, sewer, drainage, gas, electricity, telephone, cable television and other utilities.

D. The right of the Association to adopt rules and regulations governing the use by the Owners of the Common Areas.

Section 3. Delegation of Use. Any Owner may delegate his rights of enjoyment to the Common Areas and facilities to the members of his family, tenants, guests, or contract purchasers (and members of the family of any tenant or contract purchaser) who reside on the lot or to such other persons as may be permitted by the Association.

Section 4. Obligations of the Association. The Association shall:

A. Take title to, own, manage and maintain the Common Areas, particularly buffers and areas for storm water management, erosion and sedimentation control.

B. Operate and maintain, for the use and benefit of all Members of the Association, all Common Areas and facilities and improvements developed thereon.

C. Operate and maintain all facilities and/or landscaping on all Common Areas.

D. Maintain and restrict the use or uses to be made on or to the Common Areas.

Section 5. Obligations of Individual Lot Owners. Each Lot Owner shall be responsible for the maintenance, including but not limited to grass cutting, of that portion of the Common Elements between each Owner's Lot and the paved right of ways directly adjacent to said Lot.

## ARTICLE V

### COVENANT FOR MAINTENANCE AND TO ACCEPT AND DISCHARGE ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation of Assessments. The Developer, for itself and its successors and assigns, and for each Lot within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed or other transfer document therefor, whether or not it shall be expressly established in such Deed or other transfer document, hereby covenants and agrees to pay the Association: (1) annual assessments or charges established by the Association as set forth herein; and (2) special assessments for capital improvements and operating repair and replacement, reserve funds. Said assessments to be fixed, established and collected as hereinafter provided. In addition thereto, an initial assessment in the amount of Dollars (\$ .00) shall be due upon the conveyance of any Lot from the Developer to a third party purchaser for value and shall be paid by said third party at the time of conveyance. The annual assessment, special assessment and initial assessment, together with interest and costs and reasonable attorney's fees, shall be a charge on the Lot, and if unpaid when due shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, for the collection thereof, shall also be the personal obligation of the person who was the Owner of such property at

the time when the assessment was due. No assessment shall be due from any Lots owned by the Developer until such Lot is sold and conveyed to a third party purchaser for value.

Section 2. Purpose of Assessments. Assessments levied by the Association shall be for the purpose of promoting the health, safety and welfare of the residents in the Property, or for the improvement and maintenance of the Common Areas of the Property, and for services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, including, but not limited to: repair and replacement of the road within the easements on Lots C and D; the payment of taxes and insurance; repair, replacement and additions to the road or other Common Areas; the cost of labor, equipment, materials, management and supervision thereof; operating and reserve funds for repair and replacement of the Common Areas and the facilities thereon; or for the purpose of discharging any duty or obligation of the Association.

Section 3. Basis and Maximum Annual Assessment. Each respective Lot sold by the Developer to any Owner shall thereafter be subject to an annual assessment to be paid to the Association. The amount of such annual assessment shall be established by the Association and shall be charged or assessed in equal proportions against each Lot within the Property. **The first assessment year shall begin on \_\_\_\_\_, 2021,** and thereafter each assessment shall be made for each subsequent calendar year commencing as of January 1 of each year. Each annual assessment shall be due and payable on or before thirty (30) days after it has been fixed and levied. It shall be the duty of the Association to notify all Owners, whose addresses are listed with the said Association, within thirty (30) days after said annual assessment has been fixed or levied, giving the amount of the charge of the assessment for said year, when due, and the amount due on each Lot or parcel of land owned by each such Owner. Failure of the Association to levy the



assessment for any one year shall not affect the right of the Association to do so for any subsequent year.

Section 4. Establishment of Annual Assessment Rate. The Association may, after consideration of current maintenance costs and future needs of the Association, set the annual assessment in an amount deemed appropriate and may provide for the payment in monthly or quarterly installments; provided however, that if any periodic payment obligation is not paid on its due date, the full annual amount of the assessment shall be due.

Section 5. Initial Assessment. In addition to the annual assessment or other assessments, the Developer hereby establishes an initial assessment to be paid by the purchaser upon the conveyance of each Lot from the Developer to a third party purchaser for value; and the amount of such initial assessment is set at \_\_\_\_\_ Dollars (\$ \_\_\_\_\_.00). The Developer may use that fund to pay the cost of any obligation of the Association, including but not limited to the maintenance of the Common Areas pending transfer of the fund and the Common Areas to the Association.

Section 6. Special Assessment for Capital Improvements and Operating Reserve. In addition to the Annual Assessment authorized by **Section 3** hereof, the Association may levy in any assessment year a special assessment (which must be fixed at one uniform rate for each Lot) applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, repair and replacement of the roads within the easements found on Lots C and D, and for operating the Common Areas, for which a reserve fund does not exist or is not adequate. No assessment shall be

due from any Lots owned by the Developer until such Lot is sold and conveyed to a third party purchaser for value.

Section 7. Liquidated Damage Assessments. The Board of Directors has the power and duty to impose liquidated damage assessments for violations of these Restrictions and/or By-Laws or Rules of the Association.

Section 8. Date of Commencement Assessment; Due Date. The annual assessments as to any Lot shall commence on the conveyance of such Lot, prorated for the remaining portion of said year. The due date of any special assessment under Section 6 hereof shall be fixed in any resolution authorizing such assessment.

Section 9. Effect of Nonpayment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of the Association. If any Assessment is not paid on the date when stated to be due in the notice of assessment, then the Assessment shall be deemed delinquent, and if the delinquent payment is a periodic payment (i.e. monthly, quarterly, etc.), the entire assessment shall be delinquent, and shall, together with such interest thereon and cost of collection thereof, including reasonable attorney's fees, as hereinafter provided, continue as a lien on the Lot and any structure built thereon which shall bind such Lot in the hands of the Owner, his heirs, devisees, personal representatives, successors and assigns. In addition to such lien rights, the obligation of the assessment shall be a personal obligation of the then Owner to pay such Assessment. If the Assessment is not paid within thirty (30) days after the delinquency, the Assessment shall bear interest from the date of delinquency at the rate of the legal interest rate authorized by 6 Del. C. §2301 as may be amended or replaced and the Association may bring legal action against the Owner personally obligated to pay the same or may enforce or foreclose the lien

against the Lot; and in the event a judgment is obtained, such judgment shall include interest on the Assessment from its due date and reasonable attorney's fees to be fixed by the Court, together with the costs of collection. The Association reserves the right to suspend the enjoyment rights of any Member in any easement or Common Area for the period during which any assessment against such Member remains unpaid.

Section 10. Subordination of the Lien to the First Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage on the Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, sale or transfer of any Lot by foreclosure of any first mortgage or any proceedings in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

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

B. All Common Areas; and

C. All Lots owned by the Developer and not sold by the Developer to third persons.

Section 12. Developer's Contribution. Notwithstanding anything herein to the contrary, prior to the transfer of 80% of the Lots, the Developer shall contribute to the Association as a Developer Assessment the following:

A. Annual Assessment. An amount to pay the difference between actual annual

assessments paid by Lot owners and actual expenses of the Association except that the Developer shall not be responsible for any portion of the assessment related to the operating reserve fund and reserve funds for repair and replacement;

B. Special Assessment. An amount per Lot owned by the Developer equal to the uniform rate for each Lot as established by a special assessment imposed under **Article V, Section 6.**

## ARTICLE VI

### **RESTRICTIVE AND PROTECTIVE COVENANTS**

#### Section 1.

A. Utility Easements. The Developer, its successors and assigns, and the Association, hereby reserve the right to grant easements over, under, on and through the Common Areas, all roads, and the designated areas of the Lots as shown on the Record Plot for the installation, construction, reconstruction, relocation, removal, maintenance, repair, operation, inspection of sewer, water drainage, electric, gas, television, telephone, internet and cable telephone and television facilities and wires, lines, conduits and other necessary and proper attachments in connection therewith, for the benefit of the property, the Developer, any federal, state or local authority, commission or agency having jurisdiction thereover or any corporation, either public, quasi public or private, supplying or serving such facilities.

B. The Developer reserves unto itself, its successors and assigns, **a ten foot (10') drainage and/or utility easement on all Lots from:** (a) the right-of-way in the front yard; (b) the rear yard; and (c) centered on all side and rear Lot lines. Developer further reserves a **ten foot (10') drainage and/or utility easement along the interior side of all perimeter boundary lines.**

Section 2. Utility Easements. Prior Restrictions. The Property is subject to all those prior easements, rights of way and restrictions placed upon the Property by the Developer's predecessors in title as such be recorded among the land records in the Office of the Recorder of Deeds in and for Sussex County.

Section 3. Residential Use. All Lots in the Property shall be used for residential purposes exclusively. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain upon any such Lot other than one (1) detached single unit dwelling, with attached garage building (hereinafter sometimes referred to as the main dwelling), and one (1) accessory building. The accessory building may be a detached garage. The use of any such main dwelling or accessory building shall not include any activity normally conducted as a business. No such accessory building may be constructed prior to the construction of a main dwelling. All such accessory buildings may be used only in connection with the main dwelling.

Section 4. Restrictions as to Trailers and Modulars. No trailer, mobile home, double wide or similar type structure, which moves to a building site on wheels attached to its own undercarriage, tent, shack, garage, barn or other type outbuildings, shall at any time be used as a residence, temporary or permanently, and no trailer, mobile home, double wide, tent, shack, garage, or barn shall be utilized as a main or single dwelling unit on any Lot in the Property.

Section 5. Restrictions Against Business Use and Use Before Completion. No numbered Lot within the Property shall be used at any time to conduct business, or for the conduct on said Lot of any trade or business of any description nor shall said premises be used for any purpose whatsoever except for the purpose of private dwelling or residence. No building shall be used as a residence until the exterior is fully completed, according to the plans and specifications

approved therefor, as such approval is hereinafter provided. No one shall reside on any Lot, casually, temporarily or permanently except in a dwelling house completed according to the plans and specifications approved as hereinafter provided.

Section 6. Resubdivision. No Lot shall be resubdivided, sold or otherwise alienated in a lessor or smaller parcel.

Section 7. Signs and Advertising Regulated. No signs, notice or advertising matter of any nature and description shall be erected, used or permitted upon any of the Lots, except after securing the written permission of the Developer and/or the Association or its successors or assigns, except for signs regarding sale of Lots.

Section 8. Setback Restrictions - Height Limitation. The front, rear and side yard setbacks and the building height limitations shall be the same as those established by the City of Lewes for lots within the Development.

Section 9. Garbage Receptacles. Each Lot shall provide receptacles for garbage in a screened area not generally visible from any interior road.

Section 10. Storage Receptacles. No fuel tanks or similar storage receptacles may be exposed to view. If buried, they must adhere to all Department of Natural Resources and Environmental Control guidelines and specifications.

Section 11. Pools. Only in-ground pools shall be permitted, except that temporary children's pools of a depth not more than twenty (20) inches shall be permitted in the back yard.

Section 12. Construction and Demolition. Once construction or demolition of any building has been commenced on any Lot, such construction or demolition shall proceed without delay until the same is completed, including the driveway, except where such completion is

impossible or results in great hardship to the Owner or builder due to strikes, fires, national emergencies or national calamities. Cessation of work upon the construction or demolition of any building once started and before completed thereof for a continuous period of sixty (60) days shall be prima facie evidence of an attempt to abandon the same in its partially completed or demolished state and shall be deemed to be a public nuisance. In the event construction plans have been approved pursuant to Section 6, construction must commence pursuant to said approved plans within one (1) year of the date of approval. Failure to commence construction within one (1) year of the date of approval of plans will void the approval.

Section 13. Nuisance. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly, or unkept conditions of buildings or grounds upon a Lot which shall tend to substantially decrease the beauty of the Property as a whole, or the beauty of the specific area. No noxious or offensive activity shall be permitted upon any Lot nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance of the Property. There shall not be maintained upon any Lot any plant, animal, device or thing of any sort of the normal activities of which is in any way noxious, dangerous, unsightly, unpleasant or of such a nature as may diminish or destroy the enjoyment of the Property. Specifically included under this section is the prohibition against any livestock being kept on any Lots. The keeping of any non-domestic animals shall be deemed a nuisance per se under this section; but the keeping of domestic cats and dogs, or other traditional household pets, unless the activity of such pets is in any way noxious, dangerous, unsightly or unpleasant, shall not be prohibited under this section. No disabled vehicle will be allowed to remain in view as a nuisance, nor shall any unlicensed vehicle be allowed to remain more than a reasonable period of time, not to exceed 15 days.

Section 14. Weeds. No noxious weeds, accumulated trash of any kind nor grass taller than 5" in height shall be permitted to grow or be maintained upon any Lot by the Owner or occupier thereof. The Developer or the Association may first notify the Owner or occupier to cut and/or remove any such offending growth or trash within thirty (30) days from the giving of such notice. Any such notice must be in writing. If the Owner or occupier shall fail or neglect to comply with any such notice, then and in such an event, the Developer or the Association shall be empowered to enter upon any such Lot, together with such assistance and equipment as may be required and thereupon to cut and/or remove the same, all without being deemed a trespass and all at the expense of the Owner of the Lot. This covenant shall not be construed as an obligation on the part of the Developer or the Association to provide garbage or trash removal services.

Section 15. Square Footage. The square footage of all improvements (being under roof heated interior space, exclusive of porches and decks, garage or similar non-year-round heated space) shall not be less than One Thousand Five Hundred (1,500) square feet for a two-story home and One Thousand Four Hundred (1,400) square feet for a one-story home.

Section 16. Driveways and Parking Spaces. Each Lot shall provide for outside parking for at least two (2) automobiles on site and off all roadways and a driveway, which shall be made of either concrete, "hot-mix" asphalt or stone pavers.

Section 17. Flagpoles. Flagpoles shall be permitted upon a Lot provided that only one flagpole shall be permitted per Lot. Flagpoles shall not exceed 20 feet in height. Any flags flown at night shall be lighted with directional lighting that does not otherwise shine on any street or road nor neighboring or adjacent property.



Section 18. A specimen Ginkgo Tree exists upon Lot A within the Development. No Lot Owner, and specifically the Owner of Lot A, shall take any action (or inaction) that may harm this Ginkgo Tree. In addition, the Developer and the Association shall have a non-exclusive ten (10') foot wide permanent easement from CeBB Lane to the Ginkgo Tree and within a circular area that has a radius of fifteen (15') feet from the center of the Ginkgo Tree for the purpose of (a) access to the Ginkgo Tree; (b) maintenance of the Ginkgo Tree; and (c) such other purposes necessary to enable the preservation of the Ginkgo Tree. The maintenance of the Ginkgo Tree shall be an obligation of the Developer and the Association.

Section 19. Easements for Emergency Vehicles, Maintenance Vehicles. A \_\_\_ square foot easement exists upon Lot C, and a \_\_\_ square foot easement exists upon Lot D for the purpose of allowing access emergency vehicles, City maintenance vehicles, snow removal, delivery vehicles, and the like to navigate CeBB Lane without backing onto Kings Highway. These easement areas shall at all times be kept free and clear of any and all temporary or permanent obstructions of any kind whatsoever such that these areas may be used for the aforementioned purpose. Maintenance and repair of paving and signs within these easements shall be the responsibility of the Developer and Association.

## **ARTICLE VII**

### **General Provisions**

Section 1. Duration and Amendment. The Restrictions of this Declaration run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, as the case may be, in perpetuity. Subject, however, to the provision that

the Association or its successors, by and with the vote or written consent of seventy percent (70%) of the eligible votes of the membership, shall have the power to waive, abandon, terminate, modify, alter, change, amend, eliminate or add to these Restrictions and this Declaration at any time hereafter. Any such waiver, abandonment, terminated, modification, alteration, change, amendment, elimination or addition shall take effect when a copy thereof, executed and acknowledged by the Association or its successors in accord with the usual form of execution and acknowledgment of deeds, together with written consents of the requisite number of Owners, has been filed for record in the Office of the Recorder of Deeds, in and for Sussex county, and the same shall thereafter remain in effect in perpetuity unless otherwise provided.

Section 2. Remedies. The Developer, the Association or any Owner shall have the right to enforce this Declaration and the Restrictions contained herein by any proceeding at law or in equity, against any person or persons violating or attempting to violate any provision of this Declaration or any Restrictions contained herein, to restrain violation, to require specific performance, and/or to recover damages; and to proceed against any Lot to enforce any lien created by these Restrictions. The expense and cost in enforcement by the Association shall be chargeable to the Owner of the Lot, including the costs of reasonable attorney's fees. In the event any legal action is taken by the Association, such fees, approved by a court of competent jurisdiction, shall constitute a lien on the Lot, collectible in the same manner as assessments hereunder.

Section 3. Assignability. The Developer, his successors and assigns, shall at all times have the right to fully transfer and assign any or all of its rights and powers under this Declaration, subject to the Developer's obligations hereunder.

Section 4. Nonwaiver. Failure of the Developer, the Association or any Owner, or their respective legal representatives, heirs, successors and assigns, to enforce any Restrictions contained in this Declaration shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior to subsequent thereto.

Section 5. Construction and Interpretation. The Developer or Association to the extent provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and the enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Developer or Association shall take into consideration the best interest of the Owners to the end that the Property shall be preserved and maintained as a viable community.

Section 6. Severability. All the covenants, conditions, restrictions, and reservations contained in this Declaration are hereby declared to be severable, and a finding by any court of competent jurisdiction that any of them or any clause or phrase thereof is void, unlawful or unenforceable, shall not affect the validity or enforceability of any other covenants, conditions, restrictions, reservations or clause or phase thereof.

Section 7. Non-liability. Nothing contained in this Declaration shall be construed in any manner as to impose upon the Association or the Developer, or its successors or assigns, any liability whatsoever for property damage and/or personal injury occurring to any person or persons whomsoever, or by reason of any use of any Common Areas, or roads depicted on

Exhibit "A" hereto. Any and all persons using any such roads, Common Areas, or any of them, shall do so at their own risk and without any liability whatsoever on the part of the Association, the Developer or their respective successors or assigns, as the case may be.

**IN WITNESS WHEREOF**, the said has executed this Declaration of Covenants, Conditions and Restrictions, the day and year first above written.

**DEVELOPER**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Jerome W. R. Virden (Seal)

STATE OF DELAWARE :  
                                  : SS  
COUNTY OF SUSSEX :

BE IT REMEMBERED, that on \_\_\_\_\_, 2014, personally came before me, the Subscriber, Jerome w. R. Virden party to this Indenture, known to me personally to be such, and acknowledges this Indenture to be his act and deed.

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

\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_