

DRAFT

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LEWES WATERFRONT PRESERVE

This Declaration is made and executed this _____ day of _____, _____ by Setting Properties, Inc., and/or assigns, hereinafter referred to as the ("Developer"):

WHEREAS, the Developer is the fee simple owner of certain real property located on New Road, City of Lewes, Delaware as set forth in Exhibit "A" attached hereto and made a part hereof and further shown on a Final Site Plan for Lewes Waterfront Preserve, 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 called Lewes Waterfront Preserve.

WHEREAS, the Developer desires to provide for the preservation of the values and amenities 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 Lewes Waterfront Preserve Homeowners 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. "Annual Budget" shall mean the budget established by the Board of Directors for the upcoming calendar year delineating projected income and expenses for the Property.
- B. "Association" shall mean and refer to Lewes Waterfront Preserve Homeowners Association, Inc., or such other nonprofit corporation as the Developer shall form, and its successors and/or assigns.
- C. "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 (by deed or easement), erosion and sediment control, water supply facilities, if any, sanitary sewer facilities, if any, and all community recreation 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.
- D. "Developer" shall mean and refer to Setting Properties, Inc., and its successors and assigns.
- E. "Development" shall mean and refer to Lewes Waterfront Preserve residential lot subdivision.
- F. "Lot" shall mean and refer to any unimproved or improved plot of land intended and subdivided for an attached single unit residence, shown upon the Record Plot as a numbered Parcel, but shall not include any "Common Areas" as hereinabove defined.
- G. "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article II, Section I of this Declaration as well as the Developer.
- H. "Mortgage" shall mean and refer to any mortgage, deed of trust, or similar instrument granted as security for the performance of any obligation.
- I. "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.
- J. "Preferred Builder" shall mean one or more than one builder that is designated by the Developer to market and sell lot/home packages to third party purchasers.
- K. "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 approved by the City of Lewes, and endorsed as an amendment by the Developer.
- L. "Storm Water Management System" shall mean and refer to components of the approved storm water management system, including but not limited to, pipes, conduits, culverts and appurtenances, swales, retention and detention ponds over and across the Property as may be necessary to comply with any drainage plans approved by Sussex County Conservation District.

ARTICLE III
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 and Preferred Builders 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 of any nature.

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. Any vote required pursuant to this Declaration shall be taken in the form of a written ballot; the form of said ballot shall be established by the Association.

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 the Property located on New Road, City of Lewes, 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 within ninety (90) days of the conveyance of the last lot to an Owner.

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 or, in accordance with its Certificate of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage the Common Areas, except the roads as shown on the Record Plot, and the rights of such mortgagee in the property shall be subordinate to the rights of the Owners hereunder, provided, however, that no such borrowing or mortgaging shall be made unless approved by the vote of two-thirds (2/3) of the eligible votes at a meeting duly called for such purpose. This provision shall not preclude the Developer from obtaining financing and allowing a mortgage to be placed on the Common Areas prior to the conveyance of the Common Areas to the Association.

(b) The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosure.

(c) 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 infraction of the Association's published rules and regulations.

(d) 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.

(e) 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.

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

(g) The right of the Association, by and through its Board of Directors, to levy a reasonable liquidated damage assessment in an amount to be determined by the Association's Board of Directors after a hearing, against an Owner for violation of this Declaration of Covenants, Conditions and Restrictions, duly adopted By-Laws, or any duly adopted rules and regulations by the Owner, members of the Owner's household, or the guests, invitees, tenants, agents or employees of the Owner. The liquidated damage assessment will be imposed at a hearing held no sooner than ten (10) days after the Association provides written notice of the violation to the Owner and informs the Owner of a date, time and place for the Owner to appear for a hearing before the Board of Directors, or its designated committee, to determine the reasonable liquidated damage assessment or a method of cure, at which hearing the notice Owner shall have an opportunity to appear and fully participate, together with counsel. After the hearing and if a liquidated damage assessment is imposed, the liquidated damage assessment so imposed shall be an assessment pursuant to Article V of this Declaration and collection may be enforced in any manner permissible for collection of any assessment.

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 resides on the lot or to such other persons as may be permitted by the Association.

Section 4. Obligations of the Association. The Association shall under an Open Space Management Plan:

(a) Take title to, own, manage and maintain the Common Areas, particularly the recreational areas, buffers and areas for storm water management, erosion and sedimentation control, including but not limited to the landscaping buffer/berm that is installed on any part of the 50' private right-of-way.

(b) Operate, maintain and protect, for the use and benefit of all Members of the Association, all Common Areas and facilities and improvements developed thereon (along with the management of invasive vegetation including phragmites, according to the Lewes Hazard Mitigation Planning Team's policies) and provide guidelines limiting the use of herbicides, pesticides, insecticides, fungicides, and practices for automobile washing.

(c) Operate and maintain all facilities and/or landscaping on all Common Areas, including but not limited to the overflow parking off River Birch Drive and Bayberry Drive along with the adjacent sidewalks.

(d) Maintain and restrict the use or uses to be made on or to the Common Areas.

(e) Operate and maintain all grass and/or landscaping on all Owner's Lots.

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, subject to the terms delineated herein, and each Owner of any Lot, by acceptance of a deed or other transfer document therefore, 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 Board of Directors of the Association as set forth herein; (2) special assessments for capital improvements and operating repair and replacement, reserve funds; and (3) liquidated damage assessments, if imposed, pursuant to the provisions of Article IV, Section 2(g). Said assessments to be fixed, established and collected as hereinafter provided. In addition thereto, an initial assessment in the amount of \$ _____ shall be due upon the conveyance of any Lot from the Developer to a third party purchaser for value. An additional assessment in the amount of \$ _____ shall be due upon the conveyance of any Lot from a current Owner to a third party (the "Ongoing Assessment"). The annual assessment, special assessment, liquidated damage assessment, ongoing assessment, and initial assessment (hereinafter collectively referred to as "Assessments" and individually as "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. A personal obligation for delinquent assessment shall not pass to the Owner's successor in title (other than as a lien on the land), unless expressly assumed by them. Notwithstanding anything to the contrary hereto, no assessment, being the annual assessment, special assessment, liquidated damage assessment or initial 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. In the event the third party purchaser is a Preferred Builder, such Preferred Builder shall not be subject to any Initial Assessment but shall be required to pay all other Assessments after one hundred twenty (120) days from the date that the Preferred Builder receives a building permit for any such Lot. Notwithstanding the above, any Lot used for a sales office by either the Developer or Preferred Builder(s) shall not be subject to Assessments.

Section 2. Purpose of Assessments. Assessments levied by the Association shall be for the purpose of promoting the recreation, health, safety and welfare of the residents in the Property, or for the improvement, maintenance, repair, and replacement of all items and additions to and within the Common Areas of the Property, which shall include but not be limited to the Storm Water Management System, and for services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, the payment of taxes and insurance thereon, repair, replacement and additions thereto for the cost of labor, equipment, materials management and supervision thereof, or for operating reserve funds and reserve funds for repair and replacement of the Common Areas and the facilities and improvements thereon, including the Storm Water Management System or for a purpose of discharging a duty or obligation of the Association. In addition, an accruing amount for the future replacement of the roof shingles and the siding on the individual townhouse units.

Section 3. Basis and Maximum Annual Assessment. Each respective Lot sold by the Developer to any Owner shall, immediately subsequent to such conveyance, 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 ("Annual Assessment"). The first assessment year shall be the date of this Declaration and expire on _____ and thereafter each assessment shall be made for each subsequent calendar year commencing as of January 1 of each year and ending on December 31st (Assessment 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 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. Notwithstanding the above, the Annual Assessment shall be paid in full by Owner by December 31st of the year said Annual Assessment is due.

Section 4. Establishment of Annual Assessment Rate. The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, set the annual assessment in an amount deemed appropriate ("Annual Assessment Rate") 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 ("Initial Assessment"); and the amount of such initial assessment is set at \$_____. 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. The Associate reserves the right to establish an initial assessment to be paid by any party purchasing a lot upon the conveyance of any Lot in Lewes Waterfront Preserve.

Section 6. Ongoing Assessment. In addition to the Annual Assessment or other assessments, the Developer hereby establishes an ongoing assessment to be paid by the purchaser upon the conveyance of each Lot from any Owner to a third party purchaser for value ("Ongoing Assessment"); and the amount of such Ongoing Assessment is set at \$_____. The Developer, its successors and/or assigns, 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. The Association reserves the right to change the rate of the Ongoing Assessment to be paid by any party purchasing a lot upon the conveyance of any Lot in Lewes Waterfront Preserve.

Section 7. 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, but not limited to, the necessary fixtures and personal property related thereto, and for operating the Common Areas, for which a reserve fund does not exist or is not adequate ("Special Assessment"). 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 8. 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 ("Liquidated Damages"). Such assessment shall be imposed at a hearing conducted in the manner set forth in Article IV, Section 2(g).

Section 9. 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 thereof shall be fixed in any resolution authorizing such assessment. The due date of any Liquidated Damage assessment shall be established at the hearing by the Board of Directors or its designated committee in establishing the liquidated damage assessment.

Section 10. Effect of Nonpayment of Assessment. The Personal Obligation of the Owner; the Lien; Remedies of the Association. Any Assessment 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, however, the personal obligation shall not pass to his successors in title (other than as a lien on the land) unless expressly assumed by them. If the Assessment is not paid within thirty (30) days after the 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. No Owner of a Lot may waive or otherwise escape liability for an Assessment of his or her Lot. The Association reserves the right to suspend the enjoyment rights of any Member in any easement or Common Area including improvements thereon for the period during which any assessment against such Member remains unpaid.

Section 11. 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 12. 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;
- (c) All Lots owned by the Developer and not sold or leased by the Developer to third persons and all Lots owned by a preferred Builder for a period of less than one hundred twenty (120) days from such Preferred Builder obtaining a building permit for such particular Lot.

Section 13. Developer's Contribution. Notwithstanding anything herein to the contrary, up until 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 the Annual Budget 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;

ARTICLE VI RESTRICTIVE AND PROTECTIVE COVENANTS

Section 1. Utility Easements.

(a) 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, 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 where available from; (a) the right-of-way in "the front yard; (b) the rear yard; and (c) centered on all side lines. Developer further reserves a ten-foot (10') drainage and/or utility easement along the interior side of all perimeter boundary lines.

Section 2. 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) attached single unit dwelling, with attached garage. The use of any such main dwelling shall not include any activity normally conducted as a business. Residential rentals by Owners of less than 2 weeks shall not be permitted. Notwithstanding the other provisions of this Section 3, certain areas as shown on the Record Plot may be dedicated to the Association for the recreational General Common Area, and such may be improved by recreational amenities.

Section 4. Restrictions as to Trailers. No trailer, mobile home, double wide or similar type structure, which moves to a building site on wheels attached to its own undercarriage or by trailer, 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, manufactured 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 all approvals have been obtained by the appropriate governmental agencies to legally occupy the building, according to the plans and specifications approved therefore, 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. Notwithstanding the above, models used to facilitate sales of Lots within the Development shall be permitted.

Section 6. Architectural Review Committee. In order to ensure the development and maintenance of Lewes Waterfront Preserve as a residential development of high standards, there shall be three (3) members of the Lewes Waterfront Preserve Architectural Review Committee (LWPARC). The initial members shall be appointed by the Developer and shall serve until such time as their successors are designated by the Association after the sale and conveyance of the last lot by the Developer. The LWPARC is vested with the power to control all buildings, structures, improvements and landscaping to be placed upon any-Lot within Lewes Waterfront Preserve. The Architectural Review Committee may, at its sole discretion retain an architect to assist the Committee in its responsibilities.

Section 7. Resubdivision. No Lot shall be resubdivided, sold or otherwise alienated in a lesser or smaller parcel.

Section 8. 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 of the Developer or its agents regarding sale of Lots/Homes.

Section 9. Nuisance. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly, or unkempt conditions of buildings or grounds upon a Lot or the swale adjacent thereto, 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. No trucks, campers, motor homes, dump trucks or vehicles in

excess of 10,000 pounds gross volume weight shall be permitted on any Lot (unless enclosed within a garage structure), roadway or Common Area, except in connection with the construction, maintenance and repair of residences and Common Areas within the Property.

Section 10. Landscaping. No landscaping, shrubs or trees to be placed on any Lot in conjunction with the erection of any main dwelling shall be planted, until complete and comprehensive landscaping plans shall be submitted to and approved in writing by the LWPARC.

Section 11 Pets. Only domestic household pets shall be permitted on Lots or within homes in Lewes Waterfront Preserve. All pets must live indoors in the house or garage, and outdoor kennels are not permitted.

Section 12. Sales and Marketing Office. Notwithstanding anything herein to the contrary, the Developer, its successors and assigns shall be permitted to place and maintain a sales and marketing office on any Lot, including any recreational Lot or Common Area, or may use the structural facilities located on any recreational areas, including the exclusive use of the buildings, patio area and the parking spaces in connection with sales and marketing. The Developer shall permit the reasonable use of the structural facilities located on any recreational area or Common Area by Lot Owners which do not interfere with the Developer's sales and marketing activities provided that said determination shall be at the sole discretion of the Developer. The above use shall terminate when the Developer, in its sole discretion, so determines, but in any event said use shall terminate after the sale and conveyance of the last Lot.

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 fifty-one percent (51%) of the eligible votes of the Owners, 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. The Association shall have the right to assess a penalty for a violation of any provisions of this Declaration in the minimum amount of \$100 per violation up to a maximum of \$1,000 per violation for each year (excluding cost and

damages). Failure to remedy any violation within thirty (30) days of written notice shall constitute an additional violation and subsequent violation subject to fine. In the event the Developer or Association is required to remedy a violation by an Owner, the Developer or Association shall have the right to demand reimbursement from such Owner for all costs and expenses to remedy such violation.

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 the 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 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 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 phrase 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 their 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, or adjacent waters, 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.

Section 8. Wetlands Notice. This site contains regulated wetlands. Activities within these wetlands may require a permit from the U.S. Army Corps of Engineers and/or the State of Delaware.

(Signature Page to Follow)

IN WITNESS WHEREOF, Developer has caused its name and its seal to be affixed hereto
this _____ day of _____, _____.

Setting Properties, Inc.

Witness

By: _____ (SEAL)
Joseph Setting II, President

STATE OF DELAWARE)
)
COUNTY OF NEW CASTLE)

S.S.

BE IT REMEMBERED, that on this _____ day of _____, _____, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, Joseph Setting II, President of Setting Properties, Inc., a Delaware Corporation, party to this Declaration, known to me personally to be such, and he acknowledged this 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: _____

My Commission Expires: _____