

Tax Parcel No. 14-008.01-055 through 151
14-008.30-001 through 013

Prepared by:

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DECLARATION OF RESTRICTIONS

THIS DECLARATION, made this _____ day of February, 1997, by ROTTLUND HOMES OF NEW JERSEY, INC., a Minnesota corporation t/a KEVIN SCARBOROUGH HOMES and KELLY ANN, INC., a Delaware corporation (hereinafter referred to as the "Declarants").

WITNESSETH

WHEREAS, Declarants are the owners of all those certain lands situate in Blackbird Hundred, New Castle County, State of Delaware, being known as AMBERVILLE, as shown on that certain Record Major Subdivision Plan prepared by Ramesh C. Batta Associates, P.A., dated August 23, 1995, and of record in the Office of the Recorder of Deeds, in and for New Castle County and the State of Delaware, at Microfilm No. 12862 (as the same may be amended, supplemented, superseded, or resubdivided hereafter from time to time) ("Record Plan"), and being more particularly bounded and described as set forth in the attached Exhibit "A" (hereinafter the "Property"); and

WHEREAS, the Declarant did execute a Maintenance Declaration dated May 7, 1996 and recorded in the Office as aforesaid in Deed Book 2197, Page 13 (the "Maintenance Agreement") for the maintenance of the Open Space and Active Recreation Area identified therein (the "Open Space"); and

WHEREAS, the Declarant has incorporated or intends to incorporate under the laws of State of Delaware a nonprofit maintenance corporation known as _____ Maintenance Corporation (the "Corporation"), for the purpose of exercising the functions set forth in the Maintenance Agreement and as supplemented herein;

NOW, **THEREFORE**, the Declarants hereby covenant and declare that they shall hold and stand seized of the Property under and subject to the following covenants, agreements and restrictions, which shall be covenants running with the land and which shall be binding upon the Declarants, their successors and assigns, for the benefit of each lot or parcel of land as set forth on the Record Plan.

ARTICLE I

GENERAL USE RESTRICTIONS

Section I. Land Use and Building Type: No lot shall be used except for residential purposes. Residential purposes may include a professional office (i.e., physician, lawyer, dentist, architect, psychologist, etc.) when the same is a) actually part of and attached to a dwelling house, b) which dwelling house is principally occupied as the residence of the said professional and c) if permitted by and in accordance with the New Castle County Zoning Code.

Section II. Dwelling Cost, Quality and Size: No dwelling shall be permitted on any lot at a cost of less than \$60,000.00 based upon cost levels prevailing on the date these covenants

are recorded, it being the intention and purpose of this covenant to assure that all dwellings shall be a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded at the minimum cost stated herein for the minimum permitted dwelling size.

Section III. Architectural Control: No building or other structure shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevation. Approval shall be as provided in Section (VIII) below.

Section IV. Building Location: No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines, as shown on the Record Plan.

Section V. Easements: Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Record Plan on and over the rear ten (10) feet of each lot, or as the same may be amended.

Section VI. Nuisances: No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section VII. Temporary Structure: No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

Section VIII. Architectural Control Procedure: No building, fence, wall or other structure as built shall be altered, extended, added to or modified, nor shall any additional structures of any nature be erected, nor shall any exterior change or alteration be made (including, but not limited to, exterior facade color changes or change in grade or drainage) unless the Declarant shall determine that any such action is necessary for the mutual benefit of the Owners. In the event that repair, replacement or other work on existing structures is necessary, or the erection of any additional structures is necessary, any such work must, to the extent practicable, be performed such that the condition and appearance is equal to and identical to the condition and appearance of the structure as originally constructed, or with respect to additional structures, the construction and appearance is in architectural harmony with the Property as originally built and developed. No work as above described shall be performed until plans and specifications as to the nature, kind, appearance, materials and location of the work to be performed has been submitted to the Declarant and approved by the Declarant, or its designated committee, in writing as to compliance with the above requirements, as follows:

a. Plans and specifications with illustrations showing the nature, kind, shape, color, height, materials and proposed location of the addition, alteration or change shall be submitted to and approved in writing by the Declarant. In the event the Declarant, or its successors or assigns, fails to approve or disapprove such architectural change request within thirty (30) days after said plans and specifications have been submitted to it, approval thereof will be deemed to have been given by the Declarant.

b. The Declarant, its successors and assigns, in connection with the review of said plans, specifications and illustrations, shall consider them in terms of: the harmony of

the proposed change, addition, construction or alteration with the structures on surrounding properties and the outlook therefrom onto the subject property; the effect it will have on the reasonable passage of light and air to the surrounding properties; the consistency and harmony of the architectural design, color, height, size, shape, proposed location and materials with the subject property and with the surrounding structures; and with respect to the physical impact thereof, including, but not limited to drainage on surrounding properties.

c. For the purpose of this Declaration, the Declarant shall have the sole right to determine which Lot lines and/or street lines shall be "front" or "side" lines.

d. Requests for architectural change which have been rejected hereunder may be appealed by the applicant in writing and upon the receipt of same, the Declarant, or its successor or assignee, shall schedule a special meeting with the applicant to review applicant's appeal, which meeting shall be held within two (2) weeks after receipt of notice. The decision upon review shall be communicated in writing to the applicant within thirty (30) days after the review meeting and the failure of the Declarant, or its successor or assignee, to give written notice of such decision within said thirty (30) days shall be construed as a rescission of the initial rejection.

e. The Declarant may appoint an Architectural Control Committee to assist the Declarant in architectural control matters. The Architectural Control Committee will automatically be dissolved upon assignment of the architectural control responsibilities to the Corporation.

f. Declarant may at any time assign all of the foregoing architectural contract responsibilities and rights to the Corporation by instrument duly recorded. Such responsibilities and rights shall be conclusively deemed to have been assigned immediately following the last conveyance of a Lot to an Owner by Declarant.

Section IX. Signs: No sign of any kind shall be displayed to the public view on any lot except one (1) professional sign of not more than one (1) square foot, one (1) sign of not more than five (5) square feet advertising the property for sale, or signs used by a builder to advertise the property during the construction and sales period, and community identification sign(s). Declarant reserve the right to remove any sign that violates the provisions of this covenant.

Section X. Oil and Mining Operations: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon, in or on any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon, in or on any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

Section XI. Livestock and Poultry: No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose or purposes.

Section XII. Garbage and Refuse Disposal: No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition, and shall be shielded from public view.

Section XIII. Sight Distance at Intersection: No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section XIV. Land Near Parks and Water Courses: No building shall be placed, nor shall any materials or refuse be placed or stored on any lot within twenty (20) feet of the property line of any part (open space) or edge of any open water course, except that clean fill may be placed nearer, provided that the natural water course is not altered or blocked by such

Section XV. Fences. Hedges. Etc.: No fence, wall, hedge or mass planting shall be erected or permitted in front of the front wall line of the main house structure. If an owner elects to erect a fence, wall, hedge or small planting to the rear of his home structure, it must meet with the approval of the Architectural Control Committee as well as all government requirements.

Section XVI. Television and Radio Towers or Antennas: No radio, television or other tower, pole or antenna or similar structure shall be erected on any part of any lot covered hereby, except that a radio or television mast or antenna may be placed upon the roof or other

part of any dwelling for the reception or transmission of radio or television, provided it does not protrude more than five (5) feet above the highest part of the roof. In no event shall any external or visible "dish" or similar structure be installed or affixed above the property or elsewhere on the property. A "dish" may be installed at ground level only, if and only if such "dish" is properly shielded from public view and provided it meets all government requirements. The determination of what is "properly shielded" shall be made exclusively by the Architectural Control Committee, and the decision of the Architectural Control Committee shall be final.

Section XVII. Alterations or Additions.: Any addition, exterior alteration, modification or change to an existing building shall be compatible with the design character of the original building and any new detached structure shall also be compatible with the design character of the parent structure, and shall be allowed only with the written approval of the Architectural Control Committee.

Section XVIII. Boats. Trailers. Motor Vehicles, Trucks and Mobile Homes: No boats, trailers or motor vehicles of any nature shall be permitted on the premises from the rear of the residence building forward other than valid, registered and inspected private passenger automobiles, pick-up trucks and vans. The parking or storage of commercial trucks (one average size pick-up truck or van used by a resident for employment purposes excepted), truck tractors, truck trailers and all mobile homes or unregistered or disabled motor vehicles of any nature on the premises is prohibited. The parking of a small pleasure boat will be permitted on the premises provided it is parked to the rear of the building. The maximum size of the boat shall be determined by the Architectural Control Committee.

Section XIX. Grading: No grading or adding of fill material to any lot shall be permitted which alters the drainage on any lot.

ARTICLE II

DEFINITIONS

The following definitions shall be applicable to the words defined as used herein:

1. The "Corporation" shall mean and refer to the Amberville Maintenance Corporation, as identified above, and its successors and assigns.
2. "Lot" shall mean and refer to any plot of land intended for private individual residential use as shown on any Record Plan of the Property.
3. "Owner" shall mean and refer to the record title owner, whether one or more persons or entities, of fee simple title to any Lot, but shall not include a mortgagee who has not obtained fee simple title.
4. "Member" shall mean and refer to members of the Corporation.
5. The "Property" shall mean and refer to all properties, including Lots and Open Space, which are included in the Record Plan and the description in Exhibit "A".
6. The "Record Plan" shall mean and refer to the aforesaid Record Major Land Development Plan, as hereafter amended, supplemented, superseded or resubdivided from time to time.

ARTICLE III

PROVISIONS RESPECTING THE MAINTENANCE CORPORATION

1. Each Owner of any Lot, by acceptance of the deed therefor, shall be deemed to covenant and agree that the annual and special assessments, together with such interest thereon and cost of collection thereof, including reasonable attorney's fees which shall become a part of the assessment, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof shall also be the personal obligation of the person who was the Owner of such property at the time the assessment fell due. Without limiting the rights and remedies of the Corporation for the collection of assessments, each Owner, by acceptance of a deed, assigns to the Corporation all rents due and payable for leases and rental agreements for that Owner's Lot as collateral for all assessment obligations; provided, however, that each Owner shall have a license to collect such rents unless and until there has occurred a default by the Owner hereunder.

2. The assessments levied by the Corporation shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in Amberville and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Open Space and Active Recreation Area, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof. Such purposes shall include, but not be limited to

landscaping, grass cutting, snow plowing of all vehicular areas, maintenance of the storm water management area and other similar purposes.

3. The following properties subject to the Maintenance Declaration shall be exempt from the assessments, charges and liens created therein and herein: (a) all properties dedicated to and accepted by a governmental body, agency or authority, and devoted to public use; (b) all Open Space; (c) Lots standing in the name of the Declarant not occupied or used for residential purposes. Notwithstanding any provisions herein, no land or improvements devoted to a dwelling use shall be excepted from said assessments, charges or liens.

4. The Corporation shall keep an Assessment Lien Docket (the "Docket") at the registered agent of the Corporation as indicated in the records of the Secretary of State. Immediately upon an assessment's becoming delinquent as hereinabove provided, the Treasurer of the Corporation shall cause an entry thereof to be made in the Docket, which entry shall disclose the date the entry is made, the names of the Owners of the Lot as shown in the Corporation's records, the number of the Lot, the amount of the delinquent assessment, the due date and the assessment period of the delinquent assessment.

Upon written inquiry of any Owner or any attorney-at-law who certifies to the Corporation that he represents either an Owner of a Lot or a prospective purchaser thereof, the Treasurer, upon receipt of a reasonable service charge (as established by the Corporation from time to time), shall certify to the inquiring Owner or attorney-at-law as to the assessment status of the Lot which is the subject of the inquiry, stating:

- a. Whether the current assessment is paid; and/or

b. If there are any delinquent assessments, all of the information entered in the Docket with respect to the Lot which is the subject of the inquiry, together with the per diem interest thereon, to be computed on each delinquent assessment from its respective due date to the date of receipt by the Corporation of payment thereof in full.

The Certificate of the Corporation shall be binding on the Corporation. In the event a certificate, postage paid and addressed to the inquiring party at its mailing address provided by him, is not deposited in the United States mails by the Corporation within ten (10) business days after receipt of written inquiry and service charge, all assessments affecting the Lot which is the subject of the inquiry shall be deemed to have been paid in full.

Upon receipt by the Corporation of payment of any delinquent assessment, with interest and costs, if applicable, as hereinabove provided, the Treasurer shall enter in the Docket the date and amount of the payment received, together with the notation "Paid in Full".

5. The Members may delegate to the Board of Directors of the Corporation the right and power to establish annual and special assessments, as well as to determine when such assessments shall be paid by Owners.

6. The foregoing provisions are intended to supplement the provisions of the Maintenance Agreement. In the event of any conflict between the provisions of the Maintenance Agreement and the provisions herein, the provisions of the Maintenance Agreement shall control.

ARTICLE IV

PROPERTY RIGHTS IN OPEN SPACES

1. Subject to the provisions of paragraph 2 of this Article, every Member shall have a right and easement of enjoyment in and to the Open Space and such easement shall be appurtenant to and shall pass with the title to every Lot.

2. Subject to the requirements of the Maintenance Declaration, the Declarant may retain the legal title to the Open Space until such time as in the opinion of the Declarant, the Corporation is able to maintain the Open Space. The Declarant further covenants for itself, its successors and assigns, that when required by the Maintenance Declaration but in any event prior to January 1, 2008, it will convey by special warranty deed fee title to the Open Space to the Corporation free and clear of all encumbrances and liens, except those created by or pursuant to this Declaration or the Maintenance Declaration and any easements and rights of way of the type disclosed in paragraph 3(e) below; subject, however, to the following covenant which shall be deemed to run with the land and shall be binding upon the Corporation, its successors and assigns:

In order to preserve and enhance the property values and amenities of the community, the Open Space and all facilities now or hereinafter built or installed thereon, shall at all times be maintained in good repair and condition, fir for their intended purposes.

3. The rights and easements of enjoyment created hereby shall be subject to the following:

a. the rights of the Corporation, in accordance with its Certificate of Incorporation and Bylaws, to borrow money for the purpose of improving the Open Space and, in aid thereof, to mortgage said properties; and the rights of such mortgagee in said properties

shall be subordinate to the right of the Owners hereunder; provided however that no such mortgage by the Corporation shall be effective unless an instrument signed by two-thirds of the Members (excluding Declarant) has been recorded, agreeing to such mortgage;

b. the right of the Corporation to take such steps as are reasonably necessary to protect the above-described properties against foreclosures;

c. the right of the Corporation, as provided in its Certificate of Incorporation and Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations, as the same may be amended from time to time;

d. the right of the Corporation to dedicate or transfer all or any part of the Open Space to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless an instrument signed by two-thirds of the Members of the corporation having a right to vote (excluding Declarant) has been recorded, agreeing to such dedication or transfer;

e. the right of the Declarant, and of the Corporation, to grant and reserve easements and rights-of-way through, under, over and across the Open Space, for ingress, egress and regress and for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, fuel oil and other utilities;

f. the right of the Corporation to make such reasonable rules and regulations as to the use of the Open Space as in its discretion will be for the mutual benefit of all of the Owners.

ARTICLE V

MISCELLANEOUS

1. Neither the Corporation nor any of its directors, officers or members shall have liability to any Lot Owner, tenant, occupant, invitee or other person for any failure to perform any duty herein created, or for any negligent performance, nor shall the Corporation or its directors, officers or members have any liability for failure to enforce this Declaration, or for any other alleged negligent act or omission.

2. The Declarant hereby expressly reserves the right at any time and from time to time, and so long as it owns any Lot, with the consent of the Owners of fifty-one percent (51%) or more of the Lots in Amberville (other than Lots owned by the Declarant) to waive, extinguish or reduce the requirements of all or any of the foregoing declarations, covenants, restrictions, conditions, agreements and/or provisions; provided, however, that any such waiver, extinguishment or reduction shall be applicable to all the Lots; and provided, further, that Declarant shall not modify or change the requirement that all Lots be used for single family residential purposes; and provided further that if and to the extent any such waiver, extinguishment or reduction would constitute a modification or amendment of the Maintenance Declaration, such modification must be effected in accordance with the requirements of the Maintenance Declaration as well.

3. The Declarant reserves the right to waive or modify any requirement as to any individual Lots necessary to avoid hardship resulting from unintentional noncompliance with this Declaration, provided the Board of Adjustment for New Castle County shall have granted a variance for such noncompliance if the same also violates the applicable Zoning Code.

4. This Declaration shall be regarded as consisting of real covenants running with and binding upon all Lots in Amberville. It shall be binding upon the Declarant, its successors, assigns and grantees (while it or they hold title to any such Lot) until the first day of January 2008, and thereafter shall automatically continue in full and likewise binding force and effect for successive ten (10) year periods, unless and until at least two (2) years before January 1, 2008, and until at least two (2) years before the expiration of any subsequent ten (10) year period, the Owners of sixty percent (60%) or more of the Lots shall execute and acknowledge a declaration or declarations releasing, after such time period or periods, all or any part of the land affected hereby from all or any of the provisions herein contained, and shall record such declaration or declarations in the aforesaid Office where this Declaration lies recorded.

5. This Declaration shall be construed to effectuate its purposes, under and in accordance with the laws of the State of Delaware; but the invalidation of any part or portion hereof shall in no way affect or invalidate the remaining parts or portions, which shall remain on full force and effect. In no event shall any provision be construed more strongly against or less strongly in favor of the Declarant as the author hereof. The singular and the plural, the masculine, feminine and neuter, and the tense of verbs shall be interchangeable as the context may require.

6. The Declarant shall have the right, power and authority at any time and from time to time, without notice to, action by, or consent of any other Lot owner or owners, to assign all or any part of its rights, powers, privileges and authorities hereunder, in whole or in part, to the Corporation and/or to any other party or parties by written document specifically reciting the

intent so to assign which shall be executed and acknowledged by such other party or parties, and recorded in the aforesaid Office where this Declaration lies recorded. In no event shall Declarant's conveyance of any Lot be deemed to include any such assignment, but such assignment must be by a separate instrument to be effective.

7. Notwithstanding any other provision in this Declaration to the contrary, no restriction, limitation, covenant or other provision in this Declaration or promulgated pursuant hereto, shall be so applied, construed or enforced as to interfere with the construction and sale of homes in Amberville by the Declarant. Without limiting the foregoing, the presence of construction vehicles, materials, equipment, trailers, portable toilets and temporary sheds, the existence of noise, dust, dirt and other inconveniences of construction, the pursuit of construction and sales activities utilizing on-site sales offices and signs, and the showing for sale and/or temporary rental of homes, shall not be deemed violative of this Declaration.

8. Each Lot Owner, by accepting a deed to his or her Lot, and each occupant of any Lot or dwelling thereon, is thereby deemed to have agreed that breach of this Declaration (other than by Declarant for construction purposes as permitted above) will result in irreparable harm to the other Lot Owners, that the breach may be enjoined, that specific performance hereof may be awarded, and that any Lot Owner (other than Declarant) found to have breached this Declaration shall be liable for attorney's fees and court costs incurred in its enforcement. Each Lot Owner further empowers the Corporation, as agent for all Lot Owners, to bring any action to enforce this Declaration.

9. The Declarant, so long as it is the owner of any Lots, shall have the absolute right to amend this Declaration without the joinder of any Owners by executing and recording amendments in the Office aforesaid if such amendments are:

- a. required by Federal, State, County or local law, ordinance, rule or regulations; or
- b. required by any title insurance company issuing title insurance to Owners and/or mortgagees of same; or
- c. required by the Federal **Housing Administration, Department of Housing** and Urban Development, Veterans Administration, Farmers Home Administration, Delaware State Housing Authority, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, GNMA or by any like public or private institution acquiring, guaranteeing or insuring mortgages or providing any type of financial assistance with respect to dwelling units in the Property; or
- d. required to correct errors or technical deficiencies or imperfections or to clarify ambiguities.

So long as the Declarant is an owner of any Lots, this Declaration may not be amended without the written approval of the Declarant.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused its seal to be affixed and these presents to be signed by its officer thereunto duly authorized the day and year first above written.