

Tax Map Parcel no.: 3-35-9.00-20.00  
Prepared By: E. Scott Bradley, Esquire  
Young Conaway Stargatt  
& Taylor, LLP  
110 West Pine Street  
P.O. Box 594  
Georgetown, DE 19947

**Declaration of Covenants, Conditions and Restrictions of Wolfe Pointe**

This Declaration is made and executed this 19<sup>th</sup> day of May, 2000, by Wolfe Pointe, L.L.C. (hereinafter referred to as the "Developer").

WITNESSETH

WHEREAS. The Developer is the fee simpler 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 (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 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 the Wolfe Pointe 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 the Wolfe Pointe Property Owners Association, Inc., or such other nonprofit corporation as the Developer shall form, its successors and assigns.
- B. **"Common Areas"** shall mean and refer to those areas of land designated on the Record Plot and incorporated herein by reference. The Common Areas shall be designated as Common Areas (including but not limited to, all private streets and entrance, whether within or adjacent to the Property, all areas for stormwater management, erosion and sediment

control, water supply facilities, sanitary sewer facilities, 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.

- C. **“Developer”** shall mean and refer to Wolfe Pointe, L.L.C. and its 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 the “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 67, at Page 8 and any amendment thereto approved by the Planning and Zoning Commission of Sussex County, and endorsed as an amendment by the Developer.
- I.

## 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 assessment. Provided, however, that the Developer shall be considered an Owner of each Lot held by it whether such Lot or Lots are or are not subject to assessment.

(Amended 15 Jan01) “Except that the owner of Lots 43 and 44, so long as lots 43 and 44 are used as one building site as herein provided, shall be treated as on member of the Association for the purposes of voting and assessment.”

Section 2. The association shall have one class of voting membership. A member shall be entitled to one (1) vote for each Lot. When more than one person holds an interest in any Lot all such persons shall be members. The vote of such Lot shall by exercised as the Owners themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. (Amended 15 Jan01) “Except that the Owner of Lots 43 and 44 shall be entitled to only one (1) vote so long as lots 43 and 44 are used as one building site.”

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 AREAS**

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 opinion of the Developer, the Association shall be able to maintain the same, but, notwithstanding any other provision herein, the Developer here by 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, 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 properties, 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.
- (b) The right of the Association to take such steps as the 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 for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer or determination as to purpose or as to the conditions thereof, shall be effective unless an instrument of consent signed by the Members entitled to case two-thirds (2/3) of the votes has been recorded.
- (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 Commons 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 the violation of this Declaration of Covenants, Conditions and Restrictions, duly adopted By-Laws, Architectural Guidelines, 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 in forms 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 for the Association.** The Association shall:

- (a) Take title to, own, manage and maintain the Common Areas, particularly the roads, recreational areas, 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.
- (e) (Amended 15 Jan 01) "Maintain the stormwater drainage easement, pond and swale loted on lots 43 and 44."
- (f) (Amended 15 Jan 01) "In the event that lots 43 and 44 are used as one building site, and the Owner of lots 43 and 44 elects to construct a driveway crossing the swale referred to in subsection (e) above, and said driveway as constructed prohibits reasonable access by heavy equipment to the aforesaid pond, then in that event access to the pond by the Association may be had within the side and rear yard setback areas between lots 43 and 42, with the Association being responsible to reasonably restore any disturbed areas to their prior condition"

#### 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 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; (2) special assessments for capital improvements and operating repair and replacement, reserve funds; (3) liquidated damage assessments, if imposed, pursuant to the provisions of Article IV, Section 2(g); and (4) an initial assessment in the amount of Five Hundred Dollars (\$500.00) due upon the conveyance of any Lot from the Developer to a third party purchaser for value, such assessments to be fixed, established and collected as hereinafter provided. The annual, special assessment, liquidated damage assessment and initial assessment, together with interest and costs and reasonable attorney's fees, shall be a charge on the Lot, and shall be 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 lien on the land), unless expressly assumed by them. 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.

(Amended 15 Jan01) "Except that lots 43 and 44 so long as lots 43 and 44 are used as one building site, shall be treated as one lot for assessment purposes. Accordingly, the Owner of Lots 43 and 44 shall pay one annual assessment, one special assessment as such assessments may from time to time be assessed as provided in this Declaration, and one initial assessment which shall satisfy the charges for both lots."

(Third Amendment to the Covenants, 14 Jul 06) In addition to the annual assessment or other assessments, the Association hereby establishes a Reserve Transfer Assessment of two thousand dollars (\$2,000), which sum, after the initial conveyance from each lot from the Developer to a third party purchaser for value as set forth in Section 5 of this Article V, shall be paid to the Association by each and every person, firm, or entity of whatever type or nature acquiring title to each Lot upon each subsequent conveyance or transfer of each Lot. The Reserve Transfer Assessment shall be due and payable to the Association upon the date of conveyance or other transfer of each Lot, and shall be deposited by the Association into the Association Reserve accounts to be used for a purpose of discharging a duty or obligation of the Association in maintaining, repairing, or replacing the Common Areas, and as provided in Section 1 of this Article V, shall, together with interest, costs and reasonable attorney fees, be a charge on the Lot conveyed or transferred and shall be a continuing lien upon each Lot against which each such Reserve Transfer Assessment is due.

**The Reserve Transfer Assessment shall not apply to any of the following conveyances or transfers:**

- 1) A conveyance or transfer by an Owner to an Owner's spouse or to a natural or adopted child or children of an Owner;
- 2) A conveyance or transfer by an Owner to an intervivos or testamentary trust created by an Owner primarily for the benefit of the Owner or any of the persons named in subparagraph 1;
- 3) A conveyance or transfer by an Owner to a corporation, partnership, limited liability company or other business entity in which the Owner is the primary Owner with more than fifty-one percent (51%) ownership in the stock or other ownership interest in such entity;
- 4) A conveyance or transfer by an Owner to any of the persons or entities set forth in subparagraphs 1, 2 or 3 by will or through intestate succession.

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 and maintenance of the Common Areas of 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 roads, 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 thereon, or for the purpose of discharging a duty or obligation of the Association.

Section 3. **Basis and Maximum Annual Assessment.** Each respective Lot to be 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 be January 1, 2000, 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 for any subsequent year.

**(Amended 15 Jan 01)** "Except that lots 43 and 44 so long as lots 43 and 44 are used as one building site, shall be treated as one lot for the purposes of the annual assessment and the Owner of lots 43 and 44 shall pay one annual assessment to satisfy the annual assessment for both lots."

Section 4. **Establishment of Annual Assessment Rate.** The Board 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 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 Five Hundred Dollars (\$500.00) The Developer may use that fund to pay the cost of any obligation to maintain the Common Areas pending transfer of the fund and the Common Areas to the Association.

**(Amended 15 Jan 01)** "Except that lots 43 and 44 shall be treated as one lot for the purposes of the initial assessment. The owner of lots 43 and 44 shall pay a total of \$500.00 which shall satisfy the initial assessment for both lots 43 and 44."

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, 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.

**(Amended 15 Jan 01)** "Except that lots 43 and 44 so long as lots 43 and 44 are being used as one building site, shall be treated as one lot for special assessment purposes."

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. Such assessment shall be imposed at a hearing conducted in the manner set forth in Article IV, Section 2(g).

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, providing such conveyance is after January 1, 2000. In the event a Lot is conveyed prior to January 1, 2000, the annual assessment will commence January 1, 2000. The due date of any special assessment under Section 6 hereof 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 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 (ie. 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 amended 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 waiver or otherwise escape liability for an Assessment of his or its Lot. 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.

(Amended 15 Jan 01) "Except that the Owner of lots 43 and 44 shall not be subject to any sanctions by the Association as a result of lots 43 and 44 being treated as one lot for assessment purposes as herein provided."

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 or leased by the Developer to third persons.

Section 12. **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 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 the 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, and 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 from the right-of-way in the front yard and/or rear yard of all Lots and 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 the 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 and other than (1) detached single unit dwelling, with attached garage building (hereinafter sometimes referred to as the main dwelling), and one (1) accessory building. The use of any such main dwelling or accessory building shall not include and 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. All improvements shall be in conformity with WOLFE POINTE ARCHITECTURAL GUIDELINES attached hereto as Exhibit B. Notwithstanding the other provisions of 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 tennis courts, in ground swimming pool and structures related to the use and enjoyment of such

recreational facilities. Satellite antennas are allowed provided that they are no larger than 24 inches in diameter and are located behind the apex line of the roof of the main dwelling.

**(Amended 15 Jan 01)** "Except that lots 43 and 44 may be used as one building site, and if so the residence may be located on one lot and a detached garage may be located on the other lot. Notwithstanding any provisions of the section, if lots 43 and 44 are used as one building site, a detached garage shall be permitted and shall be located on the lot adjacent to the detached single unit dwelling lot; and notwithstanding a detached garage, one (1) accessory building, as described in this section, shall also be permitted."

Section 4. **Restriction as to Trailers and Modular.** No trailer, mobile home, modular home, manufactured home, sectional home pre-fabricated 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, modular home, manufactured home, sectional home, pre-fabricated home, double wide, tent, shack, garage, or barn shall be utilized as main or single dwelling unit on any Lot in the Property. Additionally, no structure manufactured offsite in modules or sections to be connected on site shall be allowed. This restriction shall not prohibit the manufacture off site of structural frames and roof membranes. Notwithstanding the above restrictions, boat trailers for boats less than 30 feet long shall be permitted, but only for no longer than two consecutive weeks, provided that they are located in the driveway behind the front line of the main dwelling.

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 the residence until the exterior is fully completed, 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.

Section 6. **Architectural Review Committee. Approval of Building Plans.**

- A) In order to insure the development and maintenance of Wolfe Pointe as a residential development of high standards, there shall be a three (3) member Wolfe Pointe Architectural Review Committee (WPARC). The initial members shall be appointed by the Developer and shall serve until such time as their successors are designated by the Association. The WPARC is vested with the power to control all buildings, structures, improvements and landscaping to be placed upon any Lot within Wolfe Pointe. The Architectural Review Committee may retain an architect to assist the Committee in its responsibilities.
- B) No building, structure, fence, wall or other erection shall be commenced, erected, maintained or used, nor shall any addition to or change or alterations therein, or in the use thereof, be made upon any of the Lots which are the subject matter of the Restrictive Covenants, no matter for what purpose or use, until complete and comprehensive plans and specifications showing the nature, kind, shape height, materials, floor plans, exterior architectural scheme, location and frontage on the Lot, approximate cost of such building structure or other erection, the grading and landscaping of the Lot to be build upon or improved, the location of the driveway and the type of driveway material, which shall be either hot-mix asphalt or concrete, and such other required information shall be submitted to and approved in writing by WPARC or its successors.

The plans shall be submitted to WPARC for approval along with a check in the amount of Three Hundred Dollars (\$300) payable to the said Association as a review fee. A copy of all such plans and specifications, finally approved as aforesaid, shall be lodged permanently with the said Committee, or its successors; PROVIDED, HOWEVER, that nothing herein shall require the aforesaid approval as to interior decorations, alterations or changes.

- C) WPARC, or its successors shall have the right to refuse to approve any such plans or specifications, grading or landscaping plans or changes, which are not suitable or desirable in the sole discretion of the WPARC, or its successors, for purely aesthetic or other reasons; and in passing on such plans. WPARC shall take into consideration the suitability of the proposed building or other improvements or erections and/or the materials of which the building or other improvements or erection are to be built, and the site upon which it is proposed to be built, the harmony thereof with the surrounding, and the effect of such improvements, additions, or changes used, as planned, on the adjacent or neighboring property, and any and all factors which in its opinion, would affect the desirability or suitability of such proposed improvements erections, alteration or changes.

(Amended 15 Jan 01) "Except that if lots 43 and 44 are used as one building site, a driveway between the detached garage and residence on the other lot shall not be disapproved solely due to the fact that it crosses over a swale."

- D) In addition to the powers stated above, WPARC shall administer and enforce WOLFE POINTE ARCHITECTURAL GUIDELINES which is a document containing information regarding the review procedures and design requirements. **A copy of the Wolfe Pointe Architectural Guidelines is attached hereto as Exhibit B and incorporated herein by reference. Each Lot purchaser shall receive a copy of the Wolfe Pointe Architectural guidelines at the time of purchase and agrees to be bound by said standards and any changes thereto.** Developer may amend or modify the Wolfe Pointe Architectural Guidelines in its sole discretion, at any time up until it establishes the association pursuant to Article II, Section 3 of this Declaration. After the Developer establishes the Association, the Wolfe Pointe Architectural Guidelines may be amended or modified by a vote of two-thirds (2/3) of the eligible votes of the membership. Any amendments or modifications of the Standards shall be sent to each Lot Owner within thirty (30) days of its approval.
- E) Wolfe Pointe, the Association, and the Developer shall have the right to enforce the provisions of this section and the requirements of the Wolfe Pointe Architectural Guidelines against any person or persons violating or attempting to violate said requirements by appropriate legal action.

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

Section 8. **Sanitation.** No individual wastewater disposal system, or water well shall be constructed, maintained or used upon any numbered Lot. Public sewer and water mains are available to all Lots and all premises shall connect to such sewer and water mains with all impact and connection fees to be paid by the Owner of such Lot at the time of connection or hookup. All user fees shall be the sole and exclusive expenses of the owner of said Lot.

Section 9. **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.

Section 10. **Setback Restrictions – Height Limitation**

- A) No building or improvement, of any kind, including accessory buildings shall be erected on any Lot, nearer than forty (40') to the front Lot line.
- B) Each side yard setback line of any Lot shall be fifteen (15') from the respective sidelines of such Lot.  
(Amended 15 Jan 01) "Except that there shall be a side yard setback of zero (0) feet from the Well Site as depicted on lot 44 of the record major subdivision plan of Wolfe Pointe recorded in the Office for the Recorder of Deeds in and for Sussex County in Plot Book 68, Page 236-239 as the same may be amended."
- C) In the case of a single ownership of more than one Lot which are contiguous, the foregoing side set back lines shall apply to the parcel owned as whole, if the Owner or occupier thereof makes use of the same thereof as a whole.
- D) No main building or accessory building shall be erected on any Lot nearer than, twenty feet (20') to the rear line.
- E) The height of any building shall be as determined pursuant to the Sussex County Comprehensive Zoning Ordinance.
- F) (Second Amendment to the Covenants, 26 Jan 01) The Developer, on its own behalf and on behalf of the WPARC, shall have the right to grant variances from the setback requirements set forth in Article VI Section 10 of the Declaration of Covenants, Conditions, and Restrictions of Wolfe Pointe as it, in its sole discretion, determines and deems appropriate; AND FURTHER, the WPARC does hereby grant a variance from the 40-foot front yard setback requirement for both front yards of Lot 165, which is a corner lot fronting on Black Marlin Drive and Blue Runner Lane, to a front yard setback requirement for both yards of 30 feet. (Variance Granted 26 Feb. 04) NOW THEREFORE, the Undersigned, on behalf of the Developer, the Wolfe Pointe Property Owners Association, Inc., and on behalf of the Wolfe Pointe Architectural Review Committee does hereby grant a variance from the 40 foot front yard setback requirement for both front yards of Lot 148, which is a corner lot fronting on Tarpon Drive and Black Marlin Drive, to a front yard setback requirement for both yards of 30 feet. This variance will run with the land and benefit the current owner and all future owners of the Property.

Section 11. **Garbage Receptacles.** Each Lot shall provide receptacles for garbage in a screened area not generally visible from any interior road.

Section 12. **Storage Receptacles.** No fuel tanks or similar storage receptacles may be exposed to view; but some may be installed within the main dwelling, or within an accessory building or buried underground or properly screened from view, in accordance with the Wolfe Pointe Architectural Standards.

Section 13. **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 14. **Fences.** No fence whatsoever shall be erected or allowed to remain on any Lot, except as provided in the Wolfe Pointe Architectural Standards.

Section 15. **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. Yard sales are prohibited. 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 8000 pounds gross volume weight shall be permitted on any Lot, roadway or Common Area, except in connection with the construction, maintenance and repair of residences and Common Areas within the Property.

Section 16. **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 WPARC. The land area not occupied by structures, and hard surfacing, vehicular driveways or pedestrian paths shall be kept planted with grass, trees or shrubs or other ground covering or landscaping in conformance with the requirements set by the Wolfe Pointe Architectural Guidelines.

Section 17. **Weeds.** No noxious weeds or accumulated trash of any kind shall be permitted to grow or be maintained upon any Lot by the Owner or occupier thereof. The Association or its successors and assigns may first notify the Owner or occupier to cut and /or remove and 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 Association or its successors 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 Association or its successors to provide garbage or trash removal services.

Section 18. **Square Footage.** The square footage of all improvements on any Lot shall be in accordance with the Wolfe Pointe Architectural Guidelines, But in no case shall the under roof heated interior space, exclusive of porches and decks, garage or similar non-year-year round heated space be less than two thousand five hundred (2,500) square feet for a two story home and two thousand (2000) square feet for a one-story home.

Section 19. **Driveways and Parking spaces.** Each Lot shall provide for outside parking for (2) automobiles on site and off all roadways and a driveway, which shall be made of either concrete or hot-mix asphalt.

Section 20. **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 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 and reasonable use of the structural facilities located on any recreational 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 on December, 2005.

## 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 (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 of any time hereafter. Any such waiver, abandonment, terminated, modification, alternation, 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 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 or any Owner, or their respective legal representatives, heirs, successors and assigns, to enforce and 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 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 and the Wolfe Pointe Architectural Guidelines incorporated herein by reference. 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 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 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, marina, 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. **Agricultural Uses Notice.** This property is located in the vicinity of land used primarily for agricultural purposes on which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of the agricultural chemicals and nighttime farm operations. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities.

Section 9. **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.

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

WOLFE POINTE, L.L. C.

Witness

BY:

STATE OF DELAWARE )  
                                  ) ss.  
County of Sussex )

                  This instrument was acknowledged before me on \_\_\_\_\_, 2009  
By \_\_\_\_\_, an authorized member of the Wolfe Pointe, L.L. C.

Notary Public or Notarial Officer  
My Commission Expires: \_\_\_\_\_

Reference: Tax Map 3-35-9-20

All that certain piece, parcel and tract of land, lying and being situate in Lewes & Rehoboth Hundred, Sussex County and the State of Delaware, depicted on a survey prepared by Charles D. Murphy Associates, Inc., dated 9 October 1998, fronting on the easterly side of County Road 267, adjoining land now or formerly of Judith B. West, et vir, lands now or formerly of Tom Mandel, et al, lands now or formerly of Foster I. Walls, III, et ux, lands now or formerly of Flossie S. Roach, lands now or formerly of Hazel M. Smith, lands now or formerly of the The State of Delaware, and Wolfe Rune Subdivision, and being more particularly described as follows, to wit:

Beginning at point on aforementioned easterly right-of-way line of County Road 267, at fifty (50) feet wide, and at the northwest corner of the Open Area of the subdivision Wolfe Runne, the plot plan of which is recorded at Plot Book 42 at Page 1 in the office of the Recorder of Deeds, in and for Sussex County at Georgetown, Delaware; thence proceeding along said right-of-way line of County Road 267 North 38degrees 14 minutes 18 seconds East 750.41 feet to a point of curvature; thence continuing along said right-of-way line of County Road 267 and deflecting left along a 218.69 foot radius curve, the chord of which bears North 23 degrees 38 minutes 55 seconds East 110.17 feet, an arc distance of 111.37 feet to a corner for lands now or formerly of Judith B. West, et vir; thence following said West Lands North 36 degrees 08 minutes 59 seconds East 407.01 feet to a found iron pipe at a corner for lands now or formerly of Mom Mandel, et al; thence running with said Mandel lands the following tow (2) courses and distances:

- 1) North 43 degrees 02 minutes 09 seconds East 131.17 feet to a found iron pipe, and
- 2) North 33 degrees 35 minutes 59 seconds East 167.70 feet to a found iron pipe at a corner for lands now or formerly of Foster I Walls, III, et ux

Thence proceeding along said Walls lands North 36 degrees 14 minutes 42 seconds East 131.94 feet to a found iron pipe at a corner for lands now or formerly of Flossie S. Roach; thence running with said Roach lands North 40 degrees 23 minutes 43 seconds East 330.00 feet to a corner for lands now or formerly of Hazel M. Smith; thence following said Smith lands North 40 degrees 23 minutes 43 seconds East 154.55 feet to a found capped rebar at a corner for lands now or formerly of the State of Delaware; thence proceeding along said lands of The State of Delaware the following thirty-two (32) courses and distances, the termini of which are monumented by capped rebars:

- 1) South 36 degrees 10 minutes 50 seconds East 180.26
- 2) North 70 degrees 46 minutes 23 seconds East 263.48 feet
- 3) South 45 degrees 14 minutes 09 seconds East 95.38
- 4) South 16 degrees 20 minutes 20 seconds East 519.68 feet
- 5) North 68 degrees 48 minutes 22 seconds East 532.93 feet
- 6) South 54 degrees 39 minutes 31 seconds East 537.37 feet
- 7) South 58 degrees 25 minutes 59 seconds East 66.89 feet
- 8) South 15 degrees