

Tax Parcel No: 3-34-12.00-515
thru 654 Development

Prepared by and return to:
William E. Wright, Esq.
1632 Savannah Road,
Lewes, DE 19958

ARNELL CREEK

RESTATED AND FORTH AMENDED DECLARATION OF RESTRICTIONS

THIS DECLARATION, is made on 28 Day of December, 2005 by The Arnell Creek Homeowner's Association, Inc., a Delaware Corporation (hereinafter called "HOA" or Declarant")

WITNESSETH

WHEREAS, the developer of Arnell Creek held title in fee simple absolute to all that certain tract or parcel of land situated in Lewes and Rehoboth Hundred, Sussex County, Delaware, known as Arnell Creek, being more particularly shown on a Record Subdivision Plan prepared by P. C. Woodin Associates, engineers and planners, and recorded in the office of the Recorder of Deeds in and for Sussex County, Delaware, in Plot Book 38, Page 97 which survey plan or plot shows the number, size, location and boundaries of various residential lots located in Arnell Creek and

WHEREAS, the Developer desired to control and restrict the improvements constructed in Arnell Creek and the use to which such improvements and the lots are put so as to promote and facilitate the development of a healthful, safe, harmonious, attractive and valuable residential community a Declaration of Restriction was recorded on October 21, 1981 in Deed Book 1526 Page 37 and amended by First Amendment recorded in 2418-049 and Second Amendment 2710-128.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, Declarant, intending hereby to establish a legally binding plan of neighborhood restrictions and covenants on which prospective purchasers, lot owners, mortgagees and other interested parties may rely, hereby covenants and declares that it henceforth stands seized of Arnell Creek and all lots and streets therein under and subject to the following limitations, restrictions, easements, obligations and conditions, which shall run with the land and with each and every lot and street in Arnell Creek, and shall be binding upon Declarant, its successors and assigns and all subsequent owners, occupants and visitors of Arnell Creek:

1. Single Family Residences Only. All lots excluding the community area shall be used solely for private, single family residential purposes, unless otherwise hereinafter expressly provided. No buildings or other improvements shall be constructed, placed or maintained on any lot except detached, single family residential dwelling houses with attached garages, carports, greenhouses, and porches. No detached outbuildings, garages, or tool sheds, shall be permitted.

No more than one dwelling shall be constructed, placed or maintained on each lot, and the dwelling and structures appurtenant thereto on each lot shall be occupied by no more than one family. All outbuildings, garages, tool sheds, or any addition to the original residential dwelling must be incorporated into the original structure by a common wall or a part thereof and must conform, as closely as possible, in color and style to the original structure. Every garage constructed, placed or maintained on a lot shall be used exclusively by the owners or occupant of the lot on which it is located. The foregoing provisions shall not, however, prohibit the placement on any lot of temporary construction trailers, sheds or portable toilets during construction, maintenance, repair of, or addition to, any improvements on such lots.

2. Restrictions as to Types of Construction. No trailer, manufactured home, mobile home, double wide, or oversize vehicles, of similar type structure or structures, which move to a building site on wheels attached to it's own under carriage, nor any tent, shack, garage, barn or other type of outbuildings shall at any time be parked or positioned, or constructed on site, temporarily or permanently with the sole exception being the placement of temporary construction trailers, sheds, or portable toilets, during the construction, maintenance, repair or addition to, or any improvements, on such lots..

3. Business and Institutional Use Prohibited. No trade, business or profession shall be regularly conducted or pursued on any or within or without any structure in Arnell Creek, nor shall any structure, vehicle or equipment be constructed, placed, maintained or operated, temporarily or permanently, on any lot for any trade, business, manufacturing, drilling, mining or other commercial, institutional or charitable purposes, except as necessary or advisable from time to time in connection with the construction, maintenance or repair of any street, single family residence or the attached additions appurtenant thereto. The foregoing provisions shall not, however, prohibit Declarant from maintaining a temporary office on any lot or lots as a field and/or sales office during the construction of Arnell Creek and the improvements thereon, and such office may remain as long as lots or houses constructed by the Declarant remain unsold, or prevent Declarant from erecting on any lot or lots a sample or speculation house or houses for exhibition and/or sale to the public, nor prohibit any lot owner from selling or renting any single family dwelling.

4. Limitations on Animals. Except for dogs and cats kept as domestic pets, not to exceed three (3) such pets per lot, and except for other small pets always kept indoors, there shall be no animals permitted on any lot or portion thereof, whether mammal, bird, or reptile or insect, without the declarant's prior written consent, if given, may at any time after be withdrawn upon thirty (30) days written notice to lot owner or occupant keeping such pet. No pet house, pen, cage, run or other improvement made for any pet shall be constructed, placed or maintained on any lot or street, except no consent shall be required for any fence otherwise permitted under this Declaration of Restrictions. In no event shall livestock, poultry, or horses be kept on any lot or portion thereof, nor shall Declarant permit same.

5. Nuisances Prohibited. 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, which will tend to substantially decrease the beauty of the development as a whole or the beauty of the specific area. No noxious, offensive, or dangerous activity shall be permitted upon

or about any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the Property. Prohibited activities shall include, but shall not be limited to, unusual quantities of explosives, open or smoking fires, outdoor burning of leaves, brush, trash or any other object of fluid at any time, unfenced swimming pools, fresh manure, and uncovered refuse. All garbage, trash or other refuse shall be kept in tight, enclosed containers with lids and removed from the lots at reasonable frequent intervals.

6. Limitation on Vehicles. No vehicles of any kind may be parked or stored on any undeveloped lot at any time, with the exception of vehicle(s) needed for the construction of a dwelling, and/or the dwelling's utilities, during the period of that construction. Except for the aforementioned condition, no mobile homes(s), motor homes(s), trailer(s), airplane(s), helicopter(s), snowmobile(s), motorcycle(s), dune buggy(ies), commercial truck(s), or other commercial vehicle(s), or specialized recreational vehicle(s) shall be brought upon any lot, or parked on any street, except for such time as it is necessary to clear, load, or unload same, or to pick up, or discharge, passengers therefrom, provided however, that such vehicles may be kept on any lot if kept out of sight in a garage. No vehicle(s) requiring a Commercial Driver's License (CDL) shall be permitted to be parked on the street, except for the purpose as defined herein this section.

7. Approval of Construction Plans. No main dwelling shall be erected which contains less than 1400 square feet. No building, wall, fence, pool, porch, or other appurtenant structure, driveway, paved area or patio shall be constructed on any lot unless and until plans and specifications for same showing the location of the item to be constructed on the lot, final grade lines, shape, height, floor plans, materials and lot scheme, shall first have been submitted to and approved in writing by the Declarant. Said plans and specifications shall be sent to Declarant by certified mail, return receipt requested, shall automatically be deemed approved, and Declarant shall demand so signify in writing, unless within thirty (30) days after such plans and specifications have been received by Declarant or made available for him to obtain from the Post office, Declarant has placed in the mail or delivered to the lot owner submitting such plans and specifications, written objection thereto with a complete statement of the reasons thereof. In passing upon such plans and specifications, Declarant shall consider, among other things, the aesthetic suitability and harmony of the item to be constructed, to and with the lot on which it is to be located; the compatibility of the height, profile and color scheme with neighboring residences whether same existent, under construction or approved for construction; the impact of the item to be constructed on the environment, including without being limited to preservation of trees and open spaces, and surface water drainage; the effect of the proposed building, structure or other item, and its planned usage and purpose, on the outlook of neighboring lots and/or residences; and the quality of materials to be used in construction and the proposed method of construction. Declarant shall have the absolute, sole and unqualified right to require that the proposed building or appurtenant structure be situated and positioned on the lot in a location and manner other than as proposed by the Lot owner; that its height be lowered or raised by excavation, fill and grading and that the quality of materials and the methods used in its construction be improved and upgraded as specified by Declarant so as to conform with the average quality of materials and methods of construction used in like improvements elsewhere in Arnell Creek. With respect to improvements other than buildings and appurtenant structures, including but not limited to driveways and turnarounds, fences, alls, tennis courts, swimming

pools and patios, Declarant shall have the absolute and sole right, but good faith discretion, to prohibit such improvements, other than buildings and appurtenant structures, altogether if in its opinion the construction and use of same will either necessitate the removal of valuable trees, cause drainage problems or have a harmful effect on the outlook from neighboring lots.

8. Garbage Receptacles. Each lot shown on the recorded plot shall provide receptacles for garbage not generally visible from any interior road, except on day of collection.

9. Fuel Storage Receptacles. No fuel tanks or similar storage receptacles, or any installations attached or appurtenant thereto, may be exposed to view. All such fuel tanks or similar storage receptacles, including any such installations attached or appurtenant thereto, shall be installed within the main dwelling, buried under ground or properly screened from view provided the method of screening is approved by the Association. Methods of screening shall include, but shall not be limited to, enclosure by shrubbery or an enclosure constructed in an attractive manner which conforms to the dwelling on the lot."

10. Construction and Demolition. Once construction or demolition of any building has been commenced on any numbered lot, such construction or demolition shall proceed without delay until the same is completed, except where such completion is impossible or results in great hardship to the owner or builder to strikes, fires, national emergencies or national calamities. Cessation of work upon the construction or demolition of any building once started and before completion roof 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, construction must commence pursuant to said approved plans within (1) year of the date of approval and must be completed within (1) year. Failure to commence construction within (1) year the date of approval of plans will void the approval.

11. Fences. No boundary fence or wall shall be constructed to a height of more than four (4) feet. No wall or fence of any height shall be constructed upon any lot until the height, design and approximate location thereof has been approved in writing by the Declarant, its successors or assigns. No boundary fence or wall shall be constructed around any front yard or within any front yard set back area. Fences enclosing pools or garbage receptacles may be constructed to a height of up to six (6) feet. Chain link fences shall be prohibited except around the community pool area.

12. (a) Landscaping. Hedging and/or mass groupings of shrubs and/or trees will be allowed provided that when any of the above mentioned plantings reach maximum growth, they may not impinge, or grow over, any neighboring lot and/or street. Plantings may not be placed where, at maximum growth, they would restrict sight lines at or near intersections or driveways. Hedges and mass groupings of shrubs are not permitted in any front yard or within any front yard setback area. Individual trees are permitted in front yard. Individual bushes are permitted in front yard with their maximum growth limited to a height of 6 feet.

(b) Grading or excavation and Fill. Sand, gravel, crushed stone, brick, asphalt, concrete or the like, placed or poured on any lot that will change the material appearance of a Lot from the street or will affect the natural drainage of the Lot or any neighboring Lot are not permitted. (Second Amendment DB 2418-049)

13. Lawns, Gardens and Signs. All lawns and plantings shall be mowed and trimmed by the owners or any designatee of the owner, of the lot on which same is located so as to present a reasonably neat and cared-for appearance. No grass shall be permitted to grow in excess of six (6) inches in height. In the event the grass on any lot exceeds six (6) inches in height, the Association shall provide notice to the lot owner as set forth in paragraph 21 hereof with respect to weeds and undergrowth, and shall have the same rights and powers as set forth in paragraph 21 in order to enforce this restriction. None of the foregoing shall prevent lot owners from creating and maintaining vegetable and/or flower gardens on their lot for their own use (as opposed to sale for profit), provided no vegetable garden shall exceed thirty-three (33%) percent of the total area of the lot, nor shall same be placed forward of the nearest front corner of the single family residence on the same lot, nor nearer than fifteen (15) feet from any side, or rear, lot line.

Small sign(s) indicating the owner's name and/or the lot's street address are allowed to be erected, placed, or maintained on any lot. Temporary signs, such as contractor-owned signs, political candidate and/or issue(s), or signs owned by a licensed realtor indicating the lot/home is for sale, are allowed. Said signs shall not exceed two feet by three feet (2' x 3') in size. At no time shall there be more than two (2) such signs at any given time placed on the same lot. Said signs must be removed within two (2) weeks after the obvious purpose of the signage has been accomplished. The street number of all residences shall be identified by a sign which is easily read from the street.

14. Antennas, Aerials and Satellite Dishes. No outside television (TV) or citizen's band (CB) antennas or aerials shall be erected or maintained upon any lot or structure without prior written consent of declarant. No overhead electrical lines or wires of any kind shall be erected, or maintained, upon any lot or structure. All external antennas, aerials and satellite dishes shall be small and unobtrusive, not to exceed twenty-four (24) inches in height or diameter, as the case may be, and must be firmly and properly attached to the residential structure.

15. Property Rights in the Community Area.

A. Owner's Easement Of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Community Area, and such easement shall be appurtenant to and shall pass with the title to every lot.

B. Title to Community Area. The Declarant has conveyed legal title in the Community Area to the Maintenance Corporation.

C. Extent of Member's Easement. The rights and easements of enjoyment created hereby shall be subject to the following:

(1) The right of the Corporation as provided in its Certification of Incorporation and By-Laws, to suspend the enjoyment rights of any member for any 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 Corporation published rules and regulations.

(2) The right of the Declarant prior to the conveyance of the Community Area to the Corporation, and of the Corporation, to grant and reserve easements and rights of way through, under, over, and across the Community Area, for installation, maintenance and inspection of lines and appurtenances for water, sewer, drainage, gas, electricity, phone, cable television and other utilities.

(3) The right of the Corporation to adopt rules and regulations governing the use by the Owners of the Community

D. Delegation of Use. Any Owner may delegate his rights of enjoyment to the Community Area and facilities to the members of his family and/or tenants.

16. Compliance With Laws. No building, appurtenant structure or other improvement shall be constructed, placed or maintained on any lot nearer to any front, side or rear property than is permissible without variance under the Zoning Code Sussex County, Delaware, as enacted and in force on the date when this Declaration of Restrictions is recorded. All construction, and all parts and phases thereof including, without being limited to, electrical work and plumbing, shall be performed in accordance with applicable building codes and regulations and shall be subject to inspection and approval by properly authorized inspectors.

17. Assignment by Declarant. Any or all of the rights and powers, titles, and estates reserved or given to the Declarant be assigned to any one or more individuals, corporations, or associations that will agree to assume said rights, powers duties obligations and carry out and perform the same. Any such assignment or transfer shall be made by appropriate instrument in writing to which the assignee or transferee shall join for the pose of evidencing its consent to the acceptance of such rights and powers; and such assignee or transferee shall thereupon have the same rights and powers and be subject to the obligations and duties as are herein given and assumed by said Declarant, the said Declarant thereupon being released therefrom.

At such time as Declarant is no longer the owner of any lots in Arnell Creek and upon written demand therefore, signed by the owners of seventy five percent (75%) of the lots in Arnell Creek sent to Declarant by certified mail, return receipt requested, at its last registered office address, Declarant shall make such assignment and transfer as referred to above in the Paragraph 15, to such individual, corporation or association designated by the said owners in their demand. Such assignment and transfer, in accordance with such demand, shall automatically be deemed made if Declarant does not respond to such demand within sixty (60) days of receipt of such mailing by its registered agent.

18. No Waiver. Failure by the Declarant, the Association or any lot owner to enforce any restrictions, conditions, covenants, or agreements herein contained shall in no event be deemed a

waiver of the rights to do so thereafter as to the same breach or as to the one occurring prior or subsequent thereto

19. Modification of Restrictions. The said Declarant hereby expressly reserves the right at any time to annul, waive, change or modify any of the restrictions, conditions, covenants, agreements or provisions contained herein so long as it shall be the owner of at least fifty percent (50%) of the lots shown upon said plan, and thereafter the said Declarant, with a sufficient percentage of consent of the owners to constitute, with the Declarant, at least fifty percent (50%) of the lots in Arnell Creek, may likewise annul, waive, change or modify any of the restrictions, covenants, agreements or provisions contained herein.

At such time as Declarant is no longer the owner of any lots in Arnell Creek the foregoing rights vested in Declarant and other owners of lots in Arnell Creek, in this Paragraph 19, to annul, waive, change or modify these restrictions shall automatically pass to any individual, corporation or association designated by the owners of fifty one percent (51%) of the lots in Arnell Creek, as set forth above in Paragraph 17. At this time, the consent of fifty one percent (51%) of the lot owners is required to modify the restrictions as described above.

20. Enforcement of Declaration. The Association, or any lot 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 said violation, to require specific performance, and/or to recover damages; and to proceed against any lot to enforce any lien created by these restrictions or those restrictions set forth in the Maintenance and Easement Declaration which is of record in the Office of the Recorder of Deeds, in and for Sussex County, Delaware in Deed Book 1526, Page 47. The expense of enforcement by the Association shall be chargeable to the owner of the lot, including the costs of reasonable attorneys' fees, in the event any legal action is taken by the Association and such fees, approved by a court of competent jurisdiction, shall constitute a lien on the lot, collectable in the same manner as assessments in the aforesaid Maintenance and Easement Declaration.

In addition, any lot owner deemed to be in violation of any restriction contained in the within Declaration and its Amendments by the Board of Directors of the Homeowners Association shall incur a fine at the rate of One Hundred Dollars (\$100.00) per month from the time notice is given to the lot owner by the Board of the existence of said violation, until said violation has been corrected, as determined by the Association's Board of Directors. Said fine, in the event any legal action is taken by the Association and if approved by a court of competent jurisdiction, shall constitute a lien on the lot, collectable in the same manner as assessments.

21. Weeds and Undergrowth. No noxious weeds, undergrowth accumulated trash of any kind shall be permitted to grow or maintain upon any lot by the owner or occupier thereof. The association, its successors and assigns, reserves the right to notify the owner or occupier to cut and/or remove any such sending growth or trash. Within ten (10) days of the giving of notice in writing by the Association to the owner or occupier of such lot to remove trash or control undergrowth or weeds, and, if the owner or occupier shall fail or neglect to comply with any such notice, then in such an event, the Association, its successors or assigns, shall be empowered

to enter upon 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 trespasser, and all at the expense of the Owner of said lot. Any expense incurred by the Association or its successors in conjunction with this Section, shall be billed to the Owner, and the Owner agrees to remit same within ten (10) days of billing. Failure to remit within ten (10) days of such bill, on the receipt thereof by the owner, shall entitle the Association, its successors or assigns, to bring suit for such charges; and in any such suit, the Association shall be entitled to treble such amount of such expenses it has incurred, plus the costs of said it, and the reasonable attorneys fees, incurred by it, in enforcing this restriction. By the acceptance of any lot in the subdivision, each owner thereof, hereby accepts this Section, and agrees that the treble damages and reasonable attorney fees to collect same, for non-remittance of the expenses of the Association, its successors or assigns, incurred to remove trash noxious growth is reasonable and will constitute liquidated damages for the cost and expense of the Association, its successors and assigns in enforcing this restriction through litigation. This Section and any part hereof shall not be construed as an obligation on the part of the Association or its successors or assigns to provide garbage or trash removal services, nor shall it be construed as an obligation upon the Association to remove the underbrush or rubbish or to cut grass brush from any of the lots in the subdivision, after same have been out conveyed by the Developer. However, the Association, its successors and assigns reserve the right and privilege to enter on any said lot for the purpose as set forth herein, being to maintain the appearance of any lots so as not to cause detriment to the community at large.

22. Parking spaces. Each main dwelling unit or each lot shall have provided space for parking two (2) automobiles off the roads of the subdivision prior to occupying any dwelling constructed on any lot. There shall be no storage of commercial vehicles, or trucks other than standard size pick-ups or vans, or unusual vehicles upon any lot or on the, roads of the subdivision. This restriction shall not prohibit the temporary parking of commercial trucks supplying goods or services to residents of the subdivision. There shall be no parking of any kind of vehicles on any of the internal streets in the subdivision. This Association and the Delaware Department of Transportation prohibit parking on or crossing over the berm along Old Landing Road

23. Stone Driveways. No loose stones from driveways on lots shall be permitted to lay on the streets adjacent thereto. All lot owners whose lots contain a loose stone driveway shall be required to maintain said driveways such that any loose stones which migrate onto adjacent streets shall be swept back onto the driveway, or otherwise removed, from the streets in Arnell Creek

24. Rules and Regulation: The Rules and Regulations of Arnell Creek Homeowners Association, Inc., are attached hereto as Exhibit "A" and are incorporated herein by reference. Said Rules and Regulations shall be binding upon all lot owners in Arnell Creek.

IN WITNESS WHEREOF, pursuant to paragraph 19 of the Arnell Creek Declaration of Restrictions of record in the Office of the Recorder of Deeds in and for Sussex County, Delaware in Deed Book 1526, Page 37, as amended and pursuant to the consents of the owners of 51% of the lots in the development ARNELL CREEK HOMEOWNERS ASSOCIATION, INC. hereby

makes and files this RESTATED AND FORTH AMENDED DECLARATION OF RESTRICTIONS.

ARNELL CREEK HOMEOWNERS ASSOCIATION, INC.

Bayard Holleger, Jr. (Seal)
Bayard Holleger, Jr., President

ATTEST: *David Schluck*
David Schluck, Secretary

STATE OF DELAWARE

COUNTY OF SUSSEX

BE IT REMEMBERED, that on this 28 day of December, 2005, personally appeared before me, the Subscriber, a Notarial Officer for the State of Delaware, Bayard Holleger, Jr., president of Arnell Creek Homeowners Association, Inc., party to the foregoing Indenture, known to me personally to be such and acknowledged this Indenture to be his act and deed and the duly authorized act and deed of the Association.

GIVEN under my hand and seal of office in the day and year aforesaid.

Carol M. Weyant
Notary Public

CAROL M. WEYANT
Notary Public, State of Delaware
My Commission Expires January 13, 2008

RECORDER OF DEEDS
JOHN F. BRADY
L2002-051 AmalRest
06 FEB -6 PM 1:34
SUSSEX COUNTY
DOC. SURCHARGE PAID

Received

FEB 07 2006

ASSESSMENT DIVISION
OF SUSSEX CITY