

BK 2101 PG 022

### DECLARATION OF RESTRICTIONS

96 MAY 15 P 12:10.5

MEMORANDUM FOR THE RECORD

WHEREAS, Declarant desires to provide for the orderly preservation of property values for the individual dwelling lots and individual dwelling units in said community and, to that end, desires to subject the Property to the covenants and restrictions hereinafter set forth, each and all of which is and are for the benefit of the said Property and each owner thereof.

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## ARTICLE I.

GENERAL USE RESTRICTIONS

Section 1. Private Residences. Each lot in the Property shall be used for private residential purposes only and no buildings of any kind, except private dwelling units together with outbuildings appurtenant to same, such as storage sheds and play houses, shall be erected or maintained on any lot. No such outbuilding or appurtenant erected or maintained on any lot shall be more than eight (8) feet in height or have floor area in excess of sixty-five (65) square feet; no such outbuilding or appurtenant structure shall be erected or maintained closer to the front street line than the rear-most wall of the principal structure on the lot; no prefabricated metal sheds or buildings shall be permitted on any lot. In any event, no such outbuildings or appurtenant structures shall be constructed upon any lot unless the plans for the same have first have approved by the Declarant in accordance with the provisions of Section 19 herein.

Section 2. Trailers, Mobile Homes, Etc. No temporary structure, including trailers and mobile homes, shall be permitted or maintained upon any lot.

Section 3. Animals and Pets. No animals of any kind other than usual household pets shall be kept or maintained on any part or portion of the lots, and no horses, cows, goats, hogs, poultry, pigeons, or similar animals shall be kept on any part or portion of the lots. Breeding of domestic animals of any kind on any part or portion of any lot or lots or in any building or structure thereon, is expressly prohibited. Outbuildings, such as dog houses, rabbit hutches, and similar structures shall be constructed of wood, of high quality craftsmanship, be no more than four (4) feet in height, and have a floor area no greater than twelve (12) square feet. In any event, no such outbuildings shall be erected or maintained upon any lot until the required approvals have been obtained in accordance with Section 19, 17 herein.

Section 4. Vegetable Gardens, Firewood and Storage: No vegetable gardens or storage areas for firewood or other debris shall be kept or maintained on the front yards or side yards of any lots, nor on the rear yards of any lots where such garden can be seen by pedestrian or vehicular traffic using the walkways or roads adjoining such lot.

Section 5. Television and Radio Antennas, Satellite Dishes and Exterior Mechanical Devices, Etc. No television antennas, radio antennas, satellite dishes, television or radio receiving or transmitting devices, solar energy panels or any other exterior mechanical devised shall be installed, constructed, placed or maintained on any lot, except that the same may be installed, constructed, placed and/or maintained if it is confined within the interior of the dwelling unit. Exterior holiday lights and/or ornaments shall be permitted, provided that such lights and ornaments are removed no later than January 15 of any year.

Section 6. Trash Receptacles. Trash receptacles shall be kept in clean, sanitary and enclosed areas, hidden from view, excepting that they may be placed temporarily at street side on the regular day of collection if required by the collection agency.

Section 7. Prohibited Vehicles. No trucks, buses, travel trailers, boat trailers, boats, utility trailers, commercial vans, tractors, campers or vehicles immobilized for any reason, shall be kept or maintained on any street, lot or driveway, except that pick-up trucks up to and including three-quarter (3/4) ton and enclosed vans up to 10,000 pounds G.V.W. shall be permitted, provided they do not exceed a height of seven (7) feet.

Section 8. Signs. No signs of any nature whatsoever shall be erected, placed or maintained on any lot within the property, described, except that a single real estate "For Sale" sign may be so placed and maintained, but must be removed within five (5) days of settlement on such lot.

Section 9. Fences. No enclosing or non-enclosing fence or barrier (hereinafter the "fence") shall be erected on any lot closer to the front street line than the rear-most wall of the principal building on said lot except for fences on corner lots that may extend from the rear yard toward the side street, but under no circumstances may the fence be closer to the street than the building setback line. No fences, except as provided for in Section 11 and Section 12 herein, shall be of a height of more than four (4) feet and all such fences shall be post and rail, or split rail, hardwood constructed, with three (3) horizontal rails. The height and width of the entire interior perimeter of such fences may be fully covered with green wire mesh. In any event, no such fences shall be constructed or maintained upon the lots until the plans for the same have been approved by Declarant, in accordance with the provisions of Section 19 herein.

Section 10. Swimming Pools. No above-ground swimming pools shall be constructed or maintained on any lot, except that children's wading pools, not exceeding two feet in height, shall be permitted.

Section 11. Trees, Shrubs and Landscaping. Any and all trees, shrubs and/or landscaping planted or provided by the Declarant, its successors or assigns on any lot to comply with the Record Landscape Plan for Perch Creek III, must remain undisturbed for a period of ten (10) years, except for ordinary maintenance, feeding and disease control.

Section 12. Lawn Mowing. The owner of each lot shall be responsible for the maintenance of grass and weeds thereon and shall mow said lot at least once during each of the months from March through November of each year.

Section 13. Yards. No statues, sculptures, painted trees, bird baths, ornaments, or replicas of animals or other like objects may be affixed to or placed on any lot or building.

Section 14. Trampolines, Basketball Goals. No trampolines of any kind whatsoever shall be erected or maintained on any lot. No basketball goals shall be permitted, except that the same may be erected, installed, constructed, placed and/or maintained in the rear yard, no closer to the front street line than the rear-most wall of the principal structure on the lot.

Section 15. Window Treatment. All windows from the exterior shall show white or off-white fabric or color compatible with the color of the exterior finish of the dwelling.

Section 16. Clothes Lines. No permanent outside clothes lines or clothes line posts, including similar structures used as "dog runs" or to otherwise control pets outdoors, shall be erected or maintained on any lot, except that portable outside clothes lines are permitted, provided same are utilized for clothes during daylight hours only.

Section 17. Review of Plans. Notwithstanding anything contained herein to the contrary, no houses, outbuildings, buildings, structures of a temporary or permanent nature, swimming pools, fences or other construction or improvements shall be constructed, erected, or placed upon any lot, nor shall any exterior addition to or change or alteration thereof, including but not limited to exterior facade, color change and/or change in grade or drainage be made until the plans and specifications, with illustrations, showing the nature, kind, shape color, height, materials and proposed location of same, shall have been 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 receipt of said plans and specifications, approval thereof will be deemed to have been given by the Declarant.

The Declarant, its successors or assigns, in connection with the review of said plans, specifications and illustrations, shall have the right to approve or disapprove any such matters which in his, her or its opinion are not suitable or desirable to the community. In passing upon such plans and specifications, Declarant or its successors or assigns, shall consider the following factors:

a) The quality, aesthetic suitability, nature, kind, shape of the proposed building or other structure;

b) The color, height and materials of which it is to be constructed;

c) The specific site upon which it is proposed to construct or erect the same;

d) The harmony of the proposed change, alteration, addition, building or structure with structures on neighboring properties and the outlook and view from the neighboring properties;

e) The effect on the reasonable passage of light and air to the neighboring properties.

For purposes of this Declaration, the Declarant shall have the sole and exclusive right to determine when lot lines and/or street lines shall be "front" or "side" lines.

Notwithstanding any other provisions of this section, the following minimum requirements shall apply:

a) Any home which does not have a deck onto which an individual exiting the rear door of the home would first step, must have treated wood steps from the rear door down to ground level.

b) All homes shall maintain a concrete walkway from the edge of the driveway to the front door.

c) Any home built on Lots 37 thru 46 shall at all times have a deck (made of treated wood and measuring at least one hundred forty-four square feet of area) onto which an individual exiting the rear door of the home would first step.

Section 18. Day Care Centers, Kindergarten, Preschools. No day care, kindergarten, or preschool will be permitted on any lot except that a Family Day Care Home shall be permitted provided it meets all applicable county and state standards and licensing requirements. A Family Day Care Home means a facility in a private home that is operated by one or more persons duly licensed, or qualified to be licensed, by the State of Delaware for the purpose of providing child day care for one (1) to not more than six (6) children at any one time who are not relatives of the day care provider.

## ARTICLE II

### CHANGES IN THE DECLARATION AND RECORD PLAN

1.) These covenants and restrictions may be changed, altered, modified or extinguished in whole or in part, at any time, by an instrument in writing signed by the record owners of two-thirds (2/3) of the lots described at Exhibit "A", which shall be recorded in the Office of the Recorder of Deeds, New Castle County, State of Delaware, excepting, however, that the Declarant, so long as it is the owner of any of said lots shall have the absolute right to amend this Declaration from time to time without the joinder of any other owners by executing and recording an amendment in the Office aforesaid, if such amendment is:

a) required by Federal, State, County or local law, ordinance, rule or regulation; or

b) required by any mortgagee of improved lots and/or dwelling houses in the premises; or

c) required by any title insurance company issuing title insurance to owners and/or mortgagees of same; or

d) required by the Federal Housing Administration, Department of Housing and Urban Development, Veterans Administration, Farmers Home Administration, Delaware State Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association 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 premises.

2.) As long as it owns one or more lots in Perch Creek III, Declarant reserves to itself or its successor, the right to amend the Record Plan of Perch Creek III.

By acceptance and recording of a Deed for a property in Perch Creek III, the grantee, for himself and his successors in title, shall be deemed to have given to Declarant his irrevocable power of attorney for the purpose of executing any such resubdivision plan as owner deems desirable provided such resubdivision plan does not change the boundaries of any lot already conveyed from the developer to a homeowner.

### ARTICLE III

#### ENFORCEMENT

★ Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages; and failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter or a waiver to enforce the other restrictions contained herein. In the event Declarant incurs any expenses, including attorneys' fees, in connection with its efforts to enforce the terms hereof, the lot owner in violation of these covenants shall also be obligated to reimburse Declarant for all such expenses. Action of enforcement may be brought by the Declarant, its successors and assigns, or any owner of any land which is the subject of this Declaration. Declarant reserves the right to assign its power to modify or enforce these covenants and restrictions by an appropriate instrument in writing, recorded in the Office of the Recorder of Deeds, in and for New Castle County.

ARTICLE IV

SEVERABILITY

Invalidation of anyone of these covenants or restrictions or any portion thereof by judgment or court order shall in no way affect any other provisions herein, which shall remain in full force and effect.

ARTICLE V

INTERPRETATION

This Declaration shall bind all lots in the Property owned by Declarant as of the date on which this Declaration is recorded and all other lots in the Property as to which the owners thereof have joined in this Declaration by separate writing.

Notwithstanding anything contained in this Declaration, its provisions shall not be applied or construed as to prohibit or impede the construction by Declarant or its successors in title to vacant lots from building or selling dwelling houses, maintaining an office or offices (including trailers) for construction and/or sales, storing construction materials and equipment, or generally carrying on its business as to the development of the Property.

IN WITNESS WHEREOF, the Said Nichols Development, has caused its name and seal, by Stephen J. Nichols, its general partner, to be hereunto set, the day and year first above written.

Sealed and Delivered  
in the Presence of:



NICHOLS DEVELOPMENT

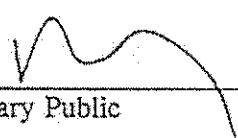
By:  (SEAL)  
General Partner

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STATE OF DELAWARE )  
NEW CASTLE COUNTY )

BE IT REMEMBERED that on this 13<sup>th</sup> day of May, A.D. 1996, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Stephen J. Nichols, general partner of NICHOLS DEVELOPMENT, a Delaware general partnership, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed and the act and deed of said general partnership, that the signature of the general partner thereto is in his own proper handwriting and that his act of sealing, executing, acknowledging and delivering said Indenture was duly authorized by a resolution of the general partners of said general partnership.

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

  
\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



BK 210 | PG 023

PG 226

EXHIBIT "A"

PROPERTY DESCRIPTION - PERCH CREEK III

ALL that certain lot, piece or parcel of land located in Pencader Hundred, New Castle County, Delaware, on the Southeasterly side of Frenchtown Road (at 60' wide) at a corner for lands now or formerly of Henry J. Fleiner and Carolyn A. Fleiner. Thence from the point of Beginning and along the said lands of Fleiner, South  $02^{\circ} 37' 16''$  East, 777.32 feet to a point; thence continuing along said lands of Fleiner, South  $78^{\circ} 40' 24''$  East, 122.12 feet to a corner for lands now or formerly of H. Edward Short, Jr. and Lucille Z. Short; thence thereby, South  $00^{\circ} 51' 48''$  East, 1,062.76 feet to a point in line of Melody Meadows Subdivision; thence thereby, South  $89^{\circ} 41' 25''$  West, 574.99 feet to a point, a corner for Perch Creek II Subdivision; thence thereby, North  $00^{\circ} 18' 35''$  West, 294.32 feet to a point in line of Lot 22, Perch Creek II; thence continuing along line of Perch Creek II, North  $25^{\circ} 03' 40''$  West, 1,245.44 feet to a point on the Southeasterly side of Frenchtown Road; thence thereby, North  $64^{\circ} 56' 20''$  East, 406.37 feet to a point; thence continuing thereby, North  $64^{\circ} 18' 49''$  East, 626.63 feet to a point a place of Beginning.

Excepting thereout and therefrom all the portions of Lots 22, 22A and 23, Perch Creek II, as the same are shown on the Record Major Subdivision Plan for Perch Creek III of record in the Office of the Recorder of Deeds, in and for New Castle County, Delaware in Microfilm No. 12819.