

81192

2642 2013

Tax Parcel No.: 3-34.00-18.00-075

RETURN TO:

Prepared By: Daniel J. Anker, Esq.  
1100 Lovering Ave, Suite 20  
Wilmington, DE 19806

**DECLARATION OF RESTRICTIONS FOR THE VILLAGES OF OLD LANDING- SECTION II**

**THIS DECLARATION, made this 18<sup>th</sup> day of October, 2001, by Atlantic Land Company, L.L.C. ("Declarant"), a Limited Liability Company of the State of Delaware and Gemcraft Homes, of Delaware a Maryland Corporation.**

**WHEREAS, Declarant is seized of all that certain tract or parcel of land (the "Property") situate in Lewes and Rehoboth Hundreds, Sussex County and State of Delaware, as shown on the Final Subdivision Plat of The Villages of Old Landing-Section II, recorded in the Office of the Recorder of Deeds in and for Sussex County, Delaware in Plat Book 65, Page 324, and prepared by Woodin, Wentling and Associates, Inc., and dated July 1, 1999.**

**WHEREAS, Declarant desires to control and restrict the improvements constructed in The Villages of Old Landing-Section II 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.**

**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 The Villages of Old Landing-Section II 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 The Villages of Old Landing-Section II, and shall be binding upon Declarant, its successors and assigns and all subsequent owners, occupants and visitors of The Villages of Old Landing-Section II.**

**ARTICLE I - DEFINITIONS**

The following words and terms when used in this Declaration shall have the following meaning:

1. "Declaration" shall mean and refer to this Restrictive Covenant Agreement for The Villages of Old Landing-Section II.
2. "Declarant" shall mean and refer to Atlantic Land Company, LLC a Delaware Limited Liability Company.

3. "Successor Declarant" shall mean each person or entity to which Declarant shall have specifically, by writing, assigned or conveyed any or all of Declarant's rights, interests or obligations as Declarant hereunder.

4. "Plan of Development" shall mean and refer to the Final Subdivision Plat of The Villages of Old Landing-Section II, as same appears of record as hereinabove recited, and any and all amendments, additions, revisions or deletions to or from said plan.

5. "The Villages of Old Landing-Section II Subdivision" shall mean and refer to the residential community to be constructed pursuant to the Plan of Development.

6. "Lot" shall mean and refer to all residential Lots in The Villages of Old Landing-Section II Subdivision.

7. "Private Open Spaces" shall mean any and all private open spaces designated and established as such on the Plan, including and together with any sidewalks therein or in the right of way for roads, any landscaping and berms therein or in landscape easements, any stormwater management areas and facilities therein or in stormwater management area easements, any private common driveways therein or in the right of way for the roads, any community center, and other common amenities located or constructed on the Land, as determined by Declarant, its successors and/or assigns.

8. "Owner" shall mean and refer to the legal title holder of record of a Lot in The Villages of Old Landing-Section II. If a Lot is owned by joint tenants, co-tenants, or tenants by the entireties, the joint tenants, co-tenants, or tenants by the entireties shall collectively comprise a single Owner.

9. "Architectural Committee" shall mean and refer to the Declarant or Successor Declarant until such time as all Lots on the Plan of the Development are no longer owned by the Declarant. Thereafter, the Architectural Committee shall be comprised of a group of elected individual Owners of Lots in The Villages of Old Landing-Section II. The Architectural Committee shall have the authority to regulate the appearance, construction, and/or alteration of any of the homes on the Lots in The Villages of Old Landing-Section II.

ARTICLE II - RESTRICTIONS

1. Use and Structures. Each Lot shall be used for residential, single family purposes only, and shall not be further subdivided into two or more Lots. No more than one single family dwelling shall be erected or maintained on any Lot. No accessory structures, such as, but not limited to, sheds or storage buildings, shall be permitted on any Lot. Detached garages may be permitted, subject to the prior approval of the Architectural Committee.

No use of any Lot which creates a nuisance or which is dangerous or offensive to the neighborhood is permitted.

Lot Owners specifically grant to Declarant the right, but not the obligation, to come onto rights-of-way, Private Open Spaces, and/or Lots to do such grading, landscaping, maintenance or other activities which, in the sole opinion of Declarant, is necessary or desirable to develop or maintain these areas.

2. Architectural Restrictions. No building or structure (i.e., swimming pool, gazebo, deck, porch, etc.) or additions shall hereafter be erected, altered or placed on any Lot unless the plans have been approved by the Architectural Committee. Prior to the construction or alteration of a building or structure or addition, the Lot Owner shall submit two (2) sets of plans showing all four (4) elevations together with a description of the exterior materials and their color. Owner must also submit a site plan showing the location of the building or structure or addition on said Lot. The Architectural Committee shall approve or disapprove said plans within thirty (30) days of receipt of same.

No trailer, mobile home, tent, shack, barn, or similar structure shall be permitted to be placed on any Lot. The foregoing shall not, however, prohibit the placement of a temporary construction trailer or portable toilet on any Lot by Declarant or Successor Declarant during the construction of any improvements on the Lots.

Each Owner who intends to construct any dwelling or structure on his Lot shall prepare a grading plan in conformance with all applicable soil and erosion control laws, ordinances, and standards. Said plan shall be filed with the Architectural Committee. Owner shall be solely responsible for the implementation of same, and shall implement said plan.

In passing upon such plans and specifications the Committee may take into consideration 1) the suitability of the proposed building or other structure and the materials of which it is to be built, (2) the site upon which it is proposed to erect same, 3) the harmony thereof with the surroundings and 4) the effect of the building or the structure as planned on the outlook from the adjacent or neighboring properties.

No clearing, grading or construction upon the Lot is to begin until the Architectural Committee issues written approval of all plans which are required to be submitted to the Committee by this Declaration.

The exterior colors shall be within a group of colors known as soft tones as pre-approved by the Architectural Committee. Any other colors must be approved by the Architectural Committee.

*Color*

*Color*

The exterior of any dwelling being constructed on any Lot shall be completed within twelve (12) months from the time of the first excavation or grading.

No outside TV or CB aerials, antennas, or satellite dishes, in excess of 24" and no overhead electrical, telephone or optical lines, wires, or apparatus of any kind shall be erected or maintained upon any Lot or structure thereon except with the written consent of the Architectural Committee, which shall only be permitted if cable television service is unavailable to the Lot and the antenna or satellite dish is completely screened from view. Any approved satellite dish must be mounted on the roof of the structure.

No structural artifact or planting that acts as a barrier, shall be erected, planted, placed or

maintained on any Lot, except with the written approval of the Architectural Committee.

3. 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 locations thereof has been approved in writing by the Architectural Committee. No boundary fence or wall shall be constructed any closer to the front of any lot than the back side of any residence. Fences enclosing garbage receptacles may be constructed to a height of up to four and one-half (4.5) feet. However, decorative fences may be permitted within the front area subject to prior written approval from the Architectural Committee. No chain link fences shall be permitted.

4. Pools. No above-ground pools shall be permitted on any Lot. In ground pools, whirlpools, and/or hot tubs may be permitted subject to prior written approval by the Architectural Committee.

5. 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 The Villages of Old Landing-Section II, 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 The Villages of Old Landing-Section II and the improvements thereon, and such office may remain as long as Lots or houses constructed by the Declarant remain unsold, nor 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.

6. Signs. No advertising, signs or notices, except a small sign identifying the owner of a Lot, shall be erected or displayed, except with the written consent of the Architectural Committee. This provision shall not apply to Declarant or Successor Declarant, or to temporary real estate for sale signs, if any.

7. Temporary Residences, Vehicle Parking. No trailer, camper, tent, out-building or structure of temporary nature shall be used at any time as a residence on any Lot, street or driveway. No trailer (whether occupied or not), camper, boat, truck, commercial or abandoned, disabled or unused vehicle shall be parked on any Lot. Vehicles commonly identifiable as commercial vehicles (including but not limited to vehicles displaying the name of a trade or business) are prohibited unless kept within an enclosed garage. Declarant may designate an area within the Private Open Spaces for parking and storage of campers, motor homes, and boats for the exclusive use by the Lot Owners of The Villages of Old Landing-Section II.

8. Window Treatment. All windows from the exterior shall show white or off white fabric or color. The Architectural Committee shall have the sole authority to determine whether a particular window treatment is consistent with this provision.

9. Animals. No owl shall be raised or kept and no kennel for the breeding or boarding of animals shall be erected, maintained or used upon any Lot, and no horses, ponies or

livestock shall be housed or maintained on any Lot. Only dogs or cats, not to exceed three such pets on any Lot may be kept, provided that they are not kept, bred, or maintained for any commercial purpose.

10. Garbage and Rubbish. Garbage and rubbish shall not be dumped or allowed to remain on any Lot, except in a closed receptacle which shall be placed outside the front of the dwelling only for collection on regular collection dates in accordance with the regulations of the collecting agency or applicable law.

11. Lawn Mowing. The Owner of each Lot shall be responsible for the maintenance of grass and weeds thereon and shall mow said Lot in accordance with the Sussex County Code, and shall mow said Lot at least twice each month between April 15th and November 15th of each year, whichever is more frequent. All lawns and plantings shall be regularly mowed and trimmed by the owners of the Lot on which same are located so as to present a reasonably neat and cared-for appearance. None of the foregoing shall prevent Lot Owners from creating and maintaining vegetable and/or flower gardens on their Lots for their own use (as opposed to sale for profit), provided no vegetable garden shall exceed twenty-five percent (25%) 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, or nearer than fifteen (15) feet to any side or rear Lot line.

Declarant reserves to itself, its Successors and Assigns, the right to enter peaceably upon any Lot whose Owner has not complied with this covenant, for the purpose of mowing same, at the expense of the Owner. Such expense shall constitute a lien against said Lot until paid.

No statues, sculptures, painted trees, bird baths, replicas of animals or other like objects may be affixed to or placed on any Lot or building, where they would be visible from any street, without prior written approval of the Architectural Committee. No permanent or temporary clothes drying line or other facility shall be installed, erected or maintained in any side, rear or front yard within the development, nor attached to any exterior wall surface at any time.

12. Approval of Landscaping Plans. No hedges, or mass groupings of shrubs or trees which could serve as a barrier to view, of the open space, comparable to a hedge or fence, or any shrub or tree which can grow over twenty-five (25) feet in height, shall be planted or permitted, nor shall any excavation be made, or fill, sand, gravel, crushed stone, brick, asphalt, concrete or the like be placed, set or poured on any Lot so as to cause any blatant and material change in the appearance of such Lot from the street or from the neighboring Lots, unless and until plans and specifications therefore shall first have been submitted to and approved in writing by the Architectural Committee which submission and approval shall take place as provided regarding plans and specifications in Paragraph 2 above. The Architectural Committee shall have the right to disapprove of and prohibit, any removal of trees, or any work or plans for work to or on or affecting the contours of any Lot or the plantings of any Lot which in its sole and absolute but good faith discretion obstructs the view from any other neighboring Lot, or detracts from the appearance of The Villages of Old Landing-Section II by unnecessarily replacing grass, trees, shrubs with artificial or inert materials, or otherwise unnecessarily disturbing the natural state of the land.

13. Water Supply. No application for an individual well permit shall be filed for any Lot for any purpose. The foregoing shall not prohibit a central well or wells being placed within the Private Open Spaces of The Villages of Old Landing-Section II for public water supply nor the placement of irrigation wells to maintain the water levels within the stormwater management ponds.

14. Waiver. Nothing herein shall impose upon Declarant, its successors or assigns, any liability for property damage or personal injury occurring to any person, firm, or corporation by reason of the use of the streets, or open space, as shown and laid out on the Plan of Development or by reason of the use of easements reserved herein. All persons, firms or corporations using such streets and easements shall do so at their own risk and without liability on the part of the Declarant, its successors or assigns.

15. Changes to Plan of Development. With respect to any Lot or Lots on the Plan of Development, the Declarant reserves the right to itself, its successors and assigns, to make application at any time under the Sussex County Code to resubdivide any such Lot or Lots, within any residential zoning classification, without the consent of any Lot Owners. Said "re-planned" Lots and any Open Space may contain more or less square footage than the Lots appearing on the originally approved Plan of Development.

16. Enforcement. The restrictive covenants contained herein shall be enforceable at law or in equity by Declarant, its successors, assigns or any party claiming under Declarant, including any Lot Owner; Declarant hereby expressly reserves the right to assign the power to enforce these restrictive covenants to any incorporated association of Lot Owners by appropriate instrument in writing, filed of record in the Office of the Recorder of Deeds aforesaid. If the Declarant, its successors or assigns shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any Lot in The Villages of Old Landing-Section II to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate such covenants and either to prevent it or them from so doing.

17. Severability. Invalidations of any of these covenants or parts thereof by judgement or court order shall in no way affect any of the other of the remaining provisions which shall remain in full force and effect.

18. Environmental Permits, Wetlands. No construction of any nature shall be permitted on any portion of any numbered Lot designated or found to be within the jurisdiction of the United States Corps of Engineers or the Delaware Department of Natural Resources and Environmental Control, Wetlands Section, without obtaining, in addition to the approval of such proposed construction of the Architectural Committee, a permit, if required, from such agencies for said construction activity.

19. Agricultural Land Preservation Provision. 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 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 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.

20. Assignment by Declarant. Any or all of the rights and powers, titles, and estates reserved or given to the Declarant may be assigned to any one or more individuals, corporations, or association that will agree to assume said right, powers duties and 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 purpose 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 same obligations duties as are herein given and assumed by the said Declarant, the said Declarant thereupon being released therefrom.

21. No Waiver. Failure by Declarant or any land 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 subsequently thereto.

22. 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 The Villages of Old Landing-Section II, 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 of the Lots in The Villages of Old Landing-Section II, the right to annul, waive, change, or modify these restrictions shall automatically pass to any individual, corporation, or association designated by the Owners of seventy-five percent (75%) of the Lots in The Villages of Old Landing-Section II, as set forth above in Paragraph 21. At such time, the consent of seventy-five percent (75%) of the Lot Owners is required to modify the restrictions as described above.

IN WITNESS WHEREOF, the said Atlantic Land Company, L.L.C. has caused its name to be hereunto set, the day and year first above written.

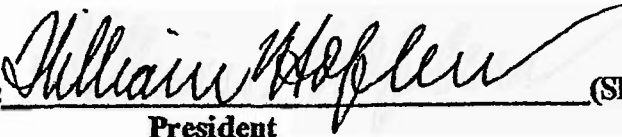
**ATLANTIC LAND COMPANY, L.L.C.**


By: Chartwell Homes, Inc., Managing Member

By:  (SEAL)  
President

Attest:  (SEAL)  
Secretary

**GEMCRAFT HOMES of DELAWARE, INC.**

By:  (SEAL)  
President

Attest:  (SEAL)

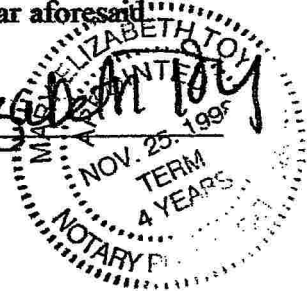
Secretary

STATE OF DELAWARE )  
: SS  
NEW CASTLE COUNTY )

BE IT REMEMBERED, That on this 22 day of October, 2001, personally came before me, the Subscriber, a Notarial Officer for the State of Delaware, Keith E. Adams, President of Chartwell Homes, Inc., member of Atlantic Land Development Company, L.L.C., a limited liability company of the State of Delaware, 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 corporation, that the signature of the president thereto is in his own proper handwriting and the seal affixed is the common and corporate seal of said corporation, and that his act of sealing, executing, acknowledging and delivering said Indenture was duly authorized by a resolution of the Board of Directors of said corporation.

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

Mary Elizabeth Tom  
Notarial Officer

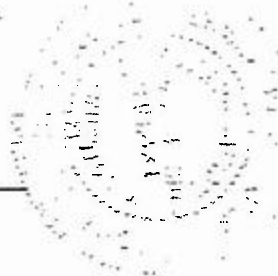


STATE OF DELAWARE )  
: SS  
NEW CASTLE COUNTY )

BE IT REMEMBERED, That on this 22 day of October, 2001, personally came before me, the Subscriber, a Notarial Officer for the State of Delaware, William Hotherr, President of Gremcraft Homes, of Delaware, Inc., a corporation of the State of Maryland, 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 corporation, that the signature of the president thereto is in his own proper handwriting and the seal affixed is the common and corporate seal of said corporation, and that his act of sealing, executing, acknowledging and delivering said Indenture was duly authorized by a resolution of the Board of Directors of said corporation.

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

Vicki L. Gonzalez  
Notarial Officer



RECORDER OF DEEDS  
RICHARD H. BELL, II

01 OCT 25 PM 1:24

SUSSEX COUNTY  
DOC. SURCHARGE PAID

Received

OCT 26 2001

VICKI L. GONZALEZ  
NOTARY PUBLIC  
STATE OF DELAWARE  
My Commission Expires June 1, 2002