

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

**MAINTENANCE AND EASEMENT AGREEMENTS OF
THE VILLAGES OF OLD LANDING, SECTION II**

This Declaration, made this 22nd day of October, 2001 by Atlantic Land Company, L.L.C., a Limited Liability Company of the State of Delaware, hereinafter referred to as "Declarant" and Gemcraft Homes of Delaware, Inc. a Maryland Corporation.

WHEREAS, Declarant is the owner of a certain tract of land situate in Lewes and Rehoboth Hundred, Sussex County and State of Delaware, more particularly bounded and described in Exhibit "A" hereto attached (the "Land"). Declarant, its successors and assigns, intends to construct residences on the Land with appurtenant private open spaces in accordance with the Final Subdivision Plat of The Villages of Old Landing, Section II, prepared by Woodin, Wentling & Associates, Inc., dated 7/1/99, and recorded in the Office of the Recorder of Deeds, in and for Sussex County, Delaware in Plat Book 65, Page 324 (the "Plan").

WHEREAS, in connection with the final approval of the said Plan, Declarant desires to impose on all of the lots identified on the said Plan an obligation concerning maintenance of the Private Open Space Areas and to bind itself, its heirs, successors and assigns as owners of the Land; and

WHEREAS, the Declarant shall set aside certain interest in real estate to be known as the Private Open Space Areas in which owners of the Lots on said Plan shall have an "in common interest", the ultimate title of which shall be placed in a non-profit maintenance corporation.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Declarant hereby covenants and declares for itself, its successors and assigns, that Declarant shall hold and stand seized of the Land under and subject to the following covenants and agreements which shall be covenants running with the land and which shall be binding upon Declarant, its successors and assigns, for the benefit of Sussex County (the "County"), a political subdivision of the State of Delaware, its successors and assigns:

1. **DEFINITIONS.** The following definitions are applicable hereto:

- (a) "Corporation" shall mean and refer to the "Maintenance Corporation", its successors and assigns, and to the proper named corporate entity to be formed as provided hereunder.
- (b) "Lot" shall mean and refer to the separately subdivided residential Lot as shown on the Plan.

(c) "Member" shall mean and refer to every person or entity who holds membership in the Corporation.

(d) "Owner" shall mean and refer to the record owner of a fee simple title to any Lot.

(e) "Declarant" shall mean and refer to the undersigned, Atlantic Land Company, L.L.C., its legal successors and its assigns by express assignment or the Declarant's rights hereunder.

(f) "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 the aforesaid, Declarant.

(g) "Plan" shall mean the most currently recorded subdivision, re-subdivision, or land development plan for the Land, or portions thereof, as may be amended, re-subdivided or enlarged from time to time by Declarant, its successors and assigns.

2. MAINTENANCE CORPORATION. Prior to the conveyance of any Lot hereunder and incident to the maintenance of certain portions of the Land, Declarant shall cause to be organized under 8 Del. C., Subchapter I, a Delaware non-profit corporation entitled The Villages of Old Landing Section II Maintenance Corporation,, (the "Corporation") for the benefit of all Owners, which shall be charged with the duty of maintaining the Private Open Spaces in the condition required by the Declaration.

(a) The purchaser of any Lot, by the acceptance of a deed thereto, obligates and binds himself, his heirs and assigns, to become a Member of the Corporation and to be bound by all of its rules and regulations and to be subject to all of the duties and obligations imposed by membership in the Corporation.

(b) Each Owner of any Lot, by the acceptance of a deed thereto, is deemed to covenant and agree to pay to the Corporation when necessary, annual and special assessments or charges, such assessments to be fixed, established, and collected from time to time as hereinafter provided. All such assessments must be fixed at a uniform rate for all Lots, regardless of size. At the time of initial settlement on any Lot, excluding conveyances of Lots in bulk to a successor developer or builder with the intentions to construct residences on Lots for sale to home purchasers, the Declarant, on behalf of the Corporation, shall collect the equivalent of two (2) years of assessments for the costs associated with the maintenance of the Private Open Spaces. The assessments levied by the Corporation shall be used exclusively for the purpose of maintaining the Private Open Spaces.

(c) Other than during the period in which the Declarant controls the Board of Directors, when the annual assessment will be set by the Board of Directors, an annual assessment shall be set by a majority vote of the votes represented by Members who are voting in person or by proxy at the annual meeting, and any special assessments, if necessary, shall be set by a majority vote of the Members who are voting in person or by proxy at the annual or special meeting duly called for this purpose. Each Lot shall be entitled to one vote regardless of size.

(d) Any assessments which are not paid when due shall be delinquent. If an assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the legal rate of interest then in effect, and the Corporation may bring an action at law or in equity against the Owner personally obligated to pay the same, or foreclose the lien against the Lot, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Private Open Spaces, or by abandonment of his Lot.

(e) It is expressly declared that the assessments referred to above shall be a lien or encumbrance on the Lot in respect to which assessments are made and it is expressly stated that by acceptance of title to any Lot, the Owner from the time of acquiring title thereto shall be held to have covenanted and agreed to pay assessments to the Corporation, including prior unpaid assessments.

(f) By his acceptance of title, each Owner shall be held to vest in the Corporation the right and power in the Corporation's own name, to take and prosecute all actions or suits, legal, equitable, or otherwise, which may be, in the opinion of the Corporation, necessary or advisable for the collection of such assessments.

(g) Assessments shall be subordinate in lien to the lien of any mortgage or mortgages on any Lot which is subject to charges regardless of when such mortgage or mortgages were created or when such charges accrued; provided that such subordination shall apply only to charges that shall have become payable prior to the passing of title under foreclosure of such mortgage or mortgages (or under deed in lieu thereof), and the transferees shall not be liable for payment of any assessment accruing prior to said foreclosure (or deed in lieu thereof), but nothing herein shall be held to affect the rights herein given to enforce the collection of such charges accruing after the sale under foreclosure of such mortgage or mortgages (or under deed in lieu thereof); and provided, further, that such charges accruing after the sale shall also be subordinate in lien to the lien of any further mortgage or mortgages which are placed on any Lot subject to such charges, with the intent that no such charges shall at anytime be prior in lien of any mortgage or mortgages whatsoever on such Lot. Nothing herein contained shall impair or subordinate the lien of any judgement obtained against any Lot Owner for unpaid assessments as to subsequent mortgages.

(h) All Lots owned by the Declarant, its successors or assigns, shall be exempt from assessments.

3. TRANSFER OF CONTROL. Not sooner than the completion and conveyance of fifty percent (50%) of the Lots, but no later than the completion and conveyance of one hundred per cent (100%) of the Lots, as shown on the Plan or any re-subdivision thereof, Declarant shall (a) transfer control of the Board of Directors for the maintenance corporation to the owners of lots and (b) convey good title to the Private Open Spaces, storm water management areas, and any other common amenities to the maintenance corporation free of liens (collectively, the "Affirmative Acts"). Upon conveyance of title of Private Open Spaces, the maintenance responsibility for the area conveyed and other facilities located within right of way areas for roads and within easement areas shall become the responsibility of the Corporation.

4. OWNERS BOUND. The provisions of this Declaration shall bind all the Lots and Owners of Lots shown on the Plan, and shall apply to and govern all Lots created by any subsequent plan which may supersede the Plan, in whole or in part.

5. RIGHTS OF USE. Declarant, for itself, its successors and assigns, grants to the Owner of each Lot, their guests, invitees and licensees after transfer to the maintenance corporation, the free uninterrupted use of the Private Open Spaces in common with others thereto, other than the areas located within easements on Owners' Lots for which use shall be limited solely to required maintenance, other than normal lawn maintenance which shall be the responsibility of the Lot Owner.

6. COVENANTS AND RESTRICTIONS. The foregoing covenants and restrictions shall be taken to be real covenants running with the Land and binding thereupon perpetually. The covenants may not be modified, amended or altered in whole or in part, except by the consent of the then Owners of two-thirds (2/3) of the Lots together with the approval of Declarant or Declarant's express assignees of its right of approval hereunder, and of Sussex County, provided however:

(a) The approval of Declarant or its assignees shall not be required after such time as Declarant, its successors and assigns, no longer hold title to any Lot.

(b) Declarant reserves the right, power and privilege without the consent of Sussex County and the record Owners of Lots to impose additional covenants and restrictions upon the Land in order, among other things, to supplement or effectuate the terms of this Declaration.

(c) The Plan may be amended, re-subdivided and enlarged (including, without limitation, changes to the location, configuration and boundaries of Private Open Spaces) from time to time by Declarant, its successors and assigns, in accordance with applicable subdivision ordinances and regulations, and such amendments, re-subdivisions, and enlargements shall not be deemed to amend or modify this Declaration. Further, in connection with such Plan amendments, re-subdivisions or enlargements, this Declaration may be modified or amended without the consent of Sussex County Council if in the opinion of Sussex County Department of Planning and Department of Law such modifications or amendments are necessary to conform to the Plan and applicable subdivision ordinances and regulations.

IN WITNESS WHEREOF, the said Declarant has executed this Declaration the day and year first above written.

**SEALED AND DELIVERED
IN THE PRESENCE OF:**

**ATLANTIC LAND COMPANY, L.L.C.
BY: Chartwell Homes, Inc., Managing Member**

By: [Signature] (SEAL)
President

ATTEST: [Signature] (SEAL)
Secretary

GEMCRAFT HOMES of DELAWARE, INC.

By: [Signature] (SEAL)
President

ATTEST: M. Morrow (SEAL)
Secretary

STATE OF DELAWARE)
) ss.
NEW CASTLE COUNTY)

BE IT REMEMBERED, that on this 22nd 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., a corporation existing under the laws of the State of Delaware, party to 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 [Signature]
NOTARIAL OFFICER

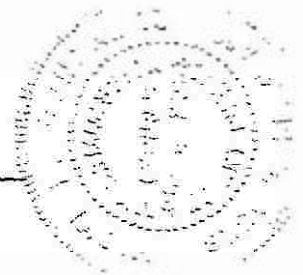


STATE OF DELAWARE)
) ss.
NEW CASTLE COUNTY)

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 Hoherr, 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

OCT 26 2001

ASSESSMENT DIVISION
OF SUSSEX CTY.

VICKI L. GONZALEZ
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires June 1, 2003