



floodway ordinances; land use, environmental resources, hazardous materials laws; and such general laws of all appropriate jurisdictions as may effect the Subdivision.

- (c) **Architectural and Site Guidelines**-Those rules, regulations and guidelines promulgated from time to time by the Architectural Review Committee pursuant to the power set forth in Article VIII, Section 3. All Architectural and Site Guidelines, whenever promulgated shall have the same force and effects as if they were originally set forth in this Declaration as Restrictions.
- (d) **Association**-Osprey Pointe Home Owners Association, Inc., a South Carolina not-for-profit corporation which will be formed by Declarant, once 75% or more of the lots have been sold by Declarant.
- (e) **Buffer Area**- The area located within 50' of the shoreline's visible high water mark. The only trees and other vegetation which may be cleared within the Buffer Area must be 6" or less in diameter at 48" height. All Dead, diseased, or dying trees or vegetation may be removed in order to protect and preserve the other vegetation and aesthetic views.
- (f) **Bylaws**-Shall mean the Bylaws for the Association adopted by the initial Board of Directors of the Association.
- (g) **Committee**-The Architectural Review Committee established pursuant to Article VIII.
- (h) **Common Area or Common Areas**-Shall mean any Amenity Area, Parking Area, Entrance Monuments, and any other property designated on the Map as "Common Area", "Common Open Space", "COS", and any other property designated as Common Area in this Declaration or any amendment or supplement hereto. The Common Areas shall be owned by the Association (except as otherwise provided in this Declaration) for the common use, benefit and enjoyment of the Owners, as designated in this Declaration. **The preceding listing and description of possible components of the Common Area is illustrative only.** The Declarant reserves the right, but not the obligation, to provide additional Common Areas within the Subdivision. Lots owned by Declarant may be converted to Common Area at Declarant's election and the Filing of an amended Map indicating such conversion.
- (i) **Declarant**-Diamond Pointe II, LLC or an assignee of the powers granted herein to Diamond Pointe II, LLC.
- (j) **Declaration**-This declaration of Covenants, Conditions and Restrictions as executed by the Declarant and Filed.

- (k) **Entrance Monument**-Shall mean and refer to any monument and entrance sign located thereon, together with lighting, irrigation system, landscaping and other improvements which may be constructed as an entryway for the Subdivision.
- (l) **File**-Recording in the Office of the Clerk of Court for Chester County, South Carolina.
- (m) **Heated Living Area**-as applied to residential dwelling: shall require a minimum of 1,500 square feet; any structure over a one story dwelling shall require a minimum of 1,200 square feet on the main floor. EXCLUSIONS are as follows: Basement areas (defined as any level in which at least one perimeter wall is below, or partially below, grade), unless such basement areas have two or more perimeter walls above surrounding grade, and such basement areas are fully heated and air-conditioned and have interiors finished to a quality equal to the above grade levels of the dwelling; vaulted ceiling areas; attics; unheated porches; attached or detached garages; porte-cocheres; unheated storage areas; decks; and patios.
- (n) **Improvements**-All buildings, out buildings, underground installations, roads, driveways, parking areas, fences, screens, retaining walls, stairs, decks, windbreaks, plantings, poles, signs, cuts and fills, and all other structures or landscaping improvements of every variety and nature.
- (o) **Interior Lots**-Shall mean those Lots in the Subdivision, if any, which are not Waterfront Lots.
- (p) **Lot**-Shall mean the separately numbered single-family lots depicted on the Map, including all Waterfront Lots and Interior Lots, but not including any Common Areas.
- (q) **Map**-Shall mean (i) the plat of Osprey Pointe recorded in Plat Cabinet Slide \_\_\_\_\_ Page \_\_\_\_\_, in the Office of the Clerk of Court for Chester County, South Carolina; (ii) any Filed plats of other portions of the Property described in Article II, Section 1., for the purpose of subdividing those lands into Lots, dedicating roadways, Common Area, or any other purpose; (iii) any Filed plats of Additional Property subjected to this Declaration, and (iv) any revisions of such Filed map or maps.
- (r) **Mortgage**-Any deed of trust, security interest, lien or other encumbrance resulting from a monetary obligation of an Owner or other party in interest, which attaches to any Lot and is perfected or Filed.
- (s) **Occupant**-Any party, whether or not an Owner, who is regularly present upon a Lot pursuant to either express or implied license or right.

- (t) **Offsite Septic Lot**-Shall mean any Lot, to be designated as such on the Map which shall have the right to utilize all or a portion of the Septic Easement Areas for its Septic System.
- (u) **Outbuilding**-A storage building, workshop, utility building, greenhouse or any similar buildings WHICH ARE SPECIFICALLY APPROVED BY THE COMMITTEE for construction upon any Lot. The Committee may exercise its discretion and may withhold approval of any such proposed structure which is not in keeping with the standard of construction and appearance of Osprey Pointe.
- (v) **Owner**-Any person or entity other than Declarant who holds the fee simple title to any Lot individually or as a co-owner.
- (w) **Parking Area**-Shall mean any parking lot which may be constructed for the common use, benefit and enjoyment of some or all Owners, their families, guests and invitees.
- (x) **Private Road(s)**-Shall mean any roads, streets, cul-de-sacs and turnaround circles in the Subdivision, specifically including (even though they have been offered for dedication to the public), which shall be maintained by the Association until such time as they are accepted for state or municipal maintenance.
- (y) **Private Road Easement**-Shall mean the non-exclusive perpetual easements for any Private Roads which are granted to all Lots for the purpose of vehicular and pedestrian access, ingress and egress to and from all Lots. The Private Road Easements are also reserved unto the Declarant and the Association, their successors and assigns, for access, ingress and egress to the Lots, for the installation of Private Roads, and for the installation and maintenance of any utilities and drainage facilities.
- (z) **Property**-All that real estate described in Article II, Section 1., plus such other real estate which may be additionally made subject to this Declaration as provided in Article II, Section 3.
- (aa) **Rear Setback**-The Setback Distance from the rear (opposite the street side) boundary line of a Lot which shall be at least 20' on all Lots.
- (bb) **Setback Distance**-The distance between either a Lot boundary line or the edge of a street right of way, to a line within the Lot and parallel to the boundary line or the right of way, and within which distance no improvements, as more specifically described in Article X, Section 5., are permitted. Setback distances shall be the larger of the setbacks (rear, side, or street) defined in the Declaration, or as noted on the Map for any specific Lot.

- (cc) **Side Setback**-The Setback Distance from a side boundary line of a Lot which shall be not less than 15'.
- (dd) **Story**-Shall mean a finished horizontal division of Heated Living Area in a dwelling extending from the floor of such division to the ceiling above it.
- (ee) **Street Setback**-The Setback Distance from the edge of a street right of way (whether a public right of way or a Private Road) which shall be not less than 25'.
- (ff) **Subdivision**-All property described in Article II, Section 1., any Additional Property added and made subject to this Declaration as provided in Article II, Section 3., and such residential lots, streets, Amenities, and Improvements as shall come to be constructed therein, also known as "Serenity Shores".
- (gg) **Utilities**-Those lines and services in the nature of electric, telephone, catv, water, sewer and natural gas which may be laid or distributed throughout the Subdivision.
- (hh) **Waterfront Lot**- Shall mean any Lot with boundaries extending into or adjacent to a body of water or any lot with boundaries which are adjacent to publicly owned property that may not be developed that is adjacent to a body of water.

**Dock** – A structure protruding into or over the body of water commonly known as the lake which is used for recreation, access, or as a place to tie up a boat. A Dock may not exceed 5' in width and 32' in length unless special circumstances such as shallow water exist and a variance is granted by the Architectural Review Committee. Construction materials and styles of Docks must be approved by the Architectural Review Committee.

## **ARTICLE II Property**

**Section 1. Subdivision Name.** The Property, the homes constructed therein and the Amenities and infrastructure of the Subdivision shall henceforth, collectively, be known as "Osprey Pointe".

**Section 2. Additions.** At any time hereafter, Declarant may add additional real estate to the Property, which additional real estate shall be subject to this Declaration upon the Filing of amended or supplementary declarations. Upon the Filing of such amended or supplementary declaration, the real estate added to the Property shall be subject to and entitled to the benefit of this Declaration and all terms of the subsequent supplementary or amended declarations.

**Section 3. Form of Amendment.** Each amendment or supplementary declaration as referred to immediately above shall contain the following provisions:

- (a) Reference to this Declaration and the date, book and page of its Filing in Chester County, South Carolina;
- (b) A precise legal description of the additional real estate (if any);
- (c) Language subjecting the additional real estate (if any) to this Declaration and its subsequent amendments or supplementary declarations; and
- (d) Such other covenants, restrictions or easements as Declarant shall, in its discretion, additionally impose upon the subject real estate.

**Section 4. Adjacent Property Not Specifically Described.** From time to time, Declarant, its predecessors or successors, may hold title or other interests in real estate adjacent to the Property. Unless such adjacent property is specifically described or included in Article II, Section 1. or the legal description of future supplementary or amended declarations, such adjacent real estate shall not be deemed a part of the Property or the Subdivision.

### **ARTICLE III Declaration**

The property shall hereafter be held, sold, leased, transferred, conveyed and encumbered subject to the herein contained covenants, conditions, restrictions, reservations, and easements which: (1) are made for the direct, mutual and reciprocal benefit of each and every portion of the Property and shall create mutual, equitable servitudes upon each part of the Property in favor of every other part of the Property; (2) create reciprocal rights and obligations between the respective Owners and privity of estate between all grantees of portions of the Property, their successors and assigns; (3) shall operate as covenants running with the land; and (4) shall inure to the benefit of Declarant and each Owner. By acceptance of any deed conveying title to a portion of the Property, execution of a contract of purchase or acceptance of a lease or license concerning any portion of the Property or by taking possession of any portion of the Property; whether from Declarant or a subsequent owner or lessee, any future owner, lessee, licensee or occupant shall accept such deed, contract, lease, license or possession upon and subject to each and all of the covenants, conditions, restrictions, reservations and easements set forth herein. Each person or entity who hereafter owns or acquires any right, title or interest in or to any portion of the Property shall be conclusively deemed to have consented and agreed to the covenants, conditions, restrictions, reservations and easements set forth herein, and in all future supplementary or amended Declarations, whether or not any reference thereto is contained in the instrument by which such person or entity acquires an interest in the Property.

**ARTICLE IV**  
**Common Area**

**Section 1. Ownership of Common Areas.** Declarant shall, not later than the date when 85% of all Lots have been sold to Owners, convey to the Association any Common Areas which are to be owned and maintained by the Association. The Declarant reserves the right to construct: (i) Parking Areas; (ii) Entrance Monuments to be located at the entrances to the Subdivision; (iii) Private Roads; (iv) Septic Systems; and (v) one or more Amenity Areas for the use and enjoyment of the Owners who are entitled to the use of such Common Areas as provided in this Declaration. Common Areas may be subject to Septic Easements and may also be used for burial of stumps (not within Septic Easement Areas) by Declarant during initial construction of the Subdivision provided all such uses are done in compliance with Applicable Laws. All Common Areas shall remain private property and shall not be dedicated to the use and enjoyment of the general public.

**Section 2. Owner's Rights to Use and Enjoy Common Areas.** Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas, and such right shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the following:

- (a) The right of the Association to promulgate and enforce regulations to insure reasonable availability of the right to use the Common Areas to the Owners and the safety of the Owners on the Common Areas;
- (b) The right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use certain or all of the Common Areas by an Owner for any period during which any assessment against the Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) The right of the Declarant or the Association to grant utility, drainage, septic, and other easements across the Common Areas; and
- (d) The right of the Declarant or the Association to restrict the use of certain Common Areas to specific designated Owners as described in this Declaration.

**Section 3. Delegation of Use.** Any Owner may delegate, subject to the rules promulgated by the Association, the Owner's right of enjoyment to certain Common Areas and facilities located thereon to the members of the Owner's family, guests or invitees.

**Section 4. Rights in the Private Roads.** Each Owner, the Declarant, and the Association, their successors and assigns, are hereby granted the perpetual, non-exclusive right to use the Private Roads within the Private Road Easements for the purpose of pedestrian and vehicular access, ingress, egress and regress to and from each Lot and the Common Areas, and for installation and maintenance of drainage facilities and other utilities facilities to serve the Lots. The private easements granted herein shall terminate at such time as any Private Roads are accepted for maintenance by state or municipal authorities, at which time, the Private Roads shall become publicly maintained roads which shall no longer be maintained by the Association.

## **ARTICLE V Property Owner's Association**

**Section 1. Membership.** Every Owner shall be a Member of the Association. Membership is appurtenant to the ownership of each Lot and is only available to Declarant and Owners. Membership shall be extinguished upon the complete transfer of all Property held by any Member.

**Section 2. Classes of Membership.**

- (a) **Owners Class Membership.** The Owners Class Members shall consist of all Owners, but will exclude Declarant prior to its termination of its Founders Class Membership. If at any time, Declarant owns one or more Lots subsequent to the termination of its Founders Class Membership, Declarant shall then be an Owners Class Member.
- (b) **Founders Class Membership.** The Declarant or its successor or assign only, shall be the sole Founders Class Member. The Founders Class Membership shall terminate at such time as Declarant has conveyed all of its interest in the Property (including any Additional Property).

**Section 3. Duties.** The Association will maintain in its files up-to-date copies of its organizational documents, the Declaration, rules concerning use of the Common Areas, financial records, records of the current ownership of the Lots, and such other documentation and records as are necessary for its management and oversight functions. All documentation maintained by the Association shall be available to the Owners for inspection during Association business hours upon reasonable notice. The Association may employ an individual or business entity to



act as managing agent. The length of engagement and the compensation to be paid to such managing agent shall be determined by the Board of Directors of the Association.

Beginning on a date selected by the Association which shall not be earlier than January 01, 20\_\_\_\_, (the "Assessment Start Date") the Association may begin collection of annual assessments from each Owner for maintenance of any Common Areas.

Prior to the Assessment Start Date, the Common Areas shall be maintained by the Declarant, but after such date, the Common Areas shall be maintained by the Association, except that Declarant reserves the right, at Declarant's discretion, to repair or maintain any portion of the Common Areas which Declarant, in good faith, determines is not maintained to acceptable standards and shall be reimbursed for such maintenance by the Association.

Common Area Maintenance, which shall be the duty of the Association, shall include the following:

- (a) Maintenance of any Entrance Monuments, to include irrigation, plantings of both permanent and seasonal nature, lighting, mowing, weeding, other landscaping, utility charges for irrigation and lighting, maintenance of signage;
- (b) Liability insurance shall be maintained upon all portions of the Common Areas, with such companies and in such coverage amounts as the Board of Directors may deem appropriate;
- (c) The Common Areas, including any Private Roads, open areas, playgrounds and Amenities (if any), shall be kept in a clean and orderly condition, neatly mowed and landscaped with appropriate irrigation. Utility bills for lighting and irrigation and the cost of maintenance and repair of any pathways, facilities, and the like, shall be appropriate expenditures for the Association; and
- (d) Private Roads shall be maintained by the Association in a state of good repair and maintenance such that the roads will qualify for acceptance for maintenance by the state or appropriate municipality upon fulfillment of any other conditions.

The Association is charged with the duty to establish and maintain adequate reserve funds for periodic repair, reconstruction or replacement of portions of the Common Area which may occur on an irregular basis.

## ARTICLE VI

### Voting

- Section 1. Owners Class.** The Owners of each Owners Class Lot shall be entitled to one (1) vote for each Lot owned. The vote for any one Lot owned by more than one person or entity shall be exercised as they among themselves shall determine, but in no event shall the vote or votes with respect to any jointly owned Lot be split or cast separately.
- Section 2. Founders Class.** The Declarant shall be entitled to four (4) votes for each Lot owned by the Declarant.
- Section 3. Actions.** Special Assessments may only be assessed upon receiving seventy-five percent (75%) of a vote.

## ARTICLE VII

### Assessments

- Section 1. Creation of Lien and Personal Obligation of Assessments.** Each Owner of any Lot shall, by acceptance of a conveyance thereof, whether or not it is so expressed in any conveyance, be deemed to covenant and agree to all the terms and provisions of this Declaration specifically including the duty to pay to the Association both Annual and Special Assessments ("Annual Assessments" and "Special Assessments") and charges as hereinafter provided. The Annual and Special Assessments and charges, together with such interest thereon and costs of collection as are hereinafter provided, shall be a charge and continuing lien upon the Lot against which assessment is made as of the effective date of said assessment. Each assessment, together with interest thereon and any costs of collection, shall also be the personal obligation of the person or entity who was Owner of such Lot at the time when the assessment became due. In the case of co-ownership of a Lot, all of such co-owners shall be jointly and severally liable for the entire amount of any assessment.
- Section 2. Purpose of Annual Assessments.** The Annual Assessments levied by the Association shall be used for the improvement, maintenance, operation, repair, replacement of and additions to the Common Area, including, but not limited to, the payment of taxes and insurance thereon, the payment of utility charges related thereto (including water for any sprinkler or irrigation systems), maintaining, operating and improving (but not initial construction) of Private Roads and other Common Area facilities and amenities, collection and disposal of garbage, rubbish and the like, employing security service, maintenance personnel, and for the cost of labor, equipment, materials, and the management and supervision thereof. Declarant may employ a related entity or entities to manage the maintenance, operation and repair of the Common Area. In addition, the Association may use Annual Assessments for the purpose of doing any other

things necessary or desirable, in the discretion of the Association, to keep Common Area facilities and amenities in neat and good order, to provide for the health, welfare and safety of the Owners and Occupants of the Property, to advance or maintain the general appearance and function of the Subdivision, and to carry out the goals described in the preliminary statement of this Declaration.

Without limiting the general statements set forth in the immediately preceding paragraph, Annual Assessments shall specifically be used as follows:

- (a) to repair maintain, reconstruct (when necessary), keep clean and free from debris, the Common Areas (see Article V, Section 3. concerning Common Area Maintenance) and any Amenities and Improvements located thereon, including but not limited to the Private Roads, Entrance Monuments and Septic Easement Areas, and to maintain the landscaping thereon in accordance with the highest standards for private parks, including any necessary removal or replacement of landscaping
- (b) to maintain and repair the Private Roads to the standards of the maintenance (if one is ascertainable) which would be required by the South Carolina Department of Transportation for acceptance for state maintenance;
- (c) to pay all costs except initial construction and installation, associated with any street lights, Entrance Monuments, or similar Common Area amenities, including but not limited to, lease payments and utility costs;
- (d) to pay all ad valorem taxes levied against the Common Areas and any other property owned by the Association;
- (e) to pay the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws;
- (f) to pay all legal, accounting, and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws; and
- (g) to maintain contingency reserves as to the amounts described in subsections (a) and (b) above for the purposes set forth in this Section 2 in amounts determined by the Board of Directors of the Association.

By acceptance of any conveyance of any Lot, each Owner acknowledges that neither the precise location, acreage or dimensions of the Common Area, nor the type of Amenities, Improvements and structures to be located within the Common Area (if any) will be specifically defined until the sale of the last Lot within the Subdivision.

**Section 3. Maximum Annual Assessment.** The initial maximum Annual Assessment shall be One Hundred Fifty Dollars (\$150.00) for each Lot, with fractions of the calendar year to be computed and prorated equitably. For each calendar year after the initial year, the maximum Annual Assessment may be increased by the Association at the rate of up to ten percent (10%) of the prior year's assessment. In the event the Annual Assessment is not increased by the maximum amount permitted during any calendar years, the difference between any actual increase in the maximum permitted increase for such years shall be computed, and the Annual Assessment may be increased by that amount in a future year, in addition to the maximum increase otherwise permitted. The ten percent (10%) limit on annual increases may be increased for one or more years, but only by a vote of no less than two-thirds (2/3) of the Lot Owners with the approval of the Declarant.

**Section 4. Supplemental Annual Assessment.** In the event the Association fixes the Annual Assessment in an amount less than the permitted maximum Annual Assessment, the Association shall have the right to later increase (the increase being a "Supplemental Annual Assessment") the total Annual Assessment for such calendar year if the Board of Directors determines that the required duties and functions of the Association cannot be funded by the originally determined Annual Assessment. The Association shall set the due date for such Supplemental Annual Assessment which shall not be less than 45 days following after the mailing of notice to the Owners of such Supplemental Annual Assessment. The original Annual Assessment and the Supplemental Annual Assessment shall not, under any circumstance, exceed the permitted maximum Annual Assessment for the subject calendar year.

**Section 5. Special Assessments.** In addition to the Annual Assessments hereinabove authorized, the Association may levy Special Assessments ("Special Assessments") for the purpose of defraying, in whole or in part, the cost of any reconstruction, unexpected repair or replacement of the Common Area including the Private Roads.

**Section 6. Commencement.** Assessments shall commence on the date fixed by the Association, as the Assessment Start Date or upon purchase of a Lot from Declarant, whichever later occurs. Assessments shall be billed on a calendar year basis with appropriate prorations.

**Section 7. Due Date.** Unless otherwise provided herein, assessments shall be due and payable in full within 30 days after they are billed to an Owner.

**Section 8. Effect of Non-Payment of Assessment.** If any assessment is not paid on the date when due, then such assessment shall be delinquent and shall accrue interest thereon at the "prime rate" of interest announced from time to time by The Wall Street Journal, plus two -percent (2%) per annum (such rate to change from time to time as The Wall Street Journal prime rate changes) never to exceed a maximum of 18% per annum, unless a lesser rate is required under Applicable Law in which event interest will accrue at the maximum required lesser rate. If such assessment is not paid within ten (10) days after the due date, then the Association may bring an action at law against the Owner directly and/or foreclose the lien against the Lot, and there shall be added to the amount of such assessments all reasonable attorneys' fees and costs incurred by the Association in such action, and in the event a judgment is obtained, such judgment shall include interest on the Assessments as indicated above.

**Section 9. Contribution by Declarant.** Declarant agrees to contribute to the Association such funds as may be required to maintain the Common Area, to the extent that the maximum Annual Assessments are insufficient to pay the cost thereof, through the year 2007.

**Section 10. Assessment Rate.**

- (a) Except as set forth in subsection (b) below, general Annual Assessments, Supplemental Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots;
- (b) General Annual Assessments, Supplemental Assessments, and Special Assessments for each Lot owned by Declarant shall be one-third (1/3) of the Annual Assessments, Supplemental Assessments and Special Assessments for each other Lot in the Subdivision not owned by Declarant.

## **ARTICLE VIII**

### **Architectural Review Committee**

**Section 1. Membership.** There is hereby established an Architectural Review Committee whose members will be appointed by the Declarant. The Committee will consist of three (3) members. One of the members must be selected from the following groups: licensed architects, engineers, landscape architects and persons with building construction experience. The second and third members need not have any specific professional certification and may be representatives of the Declarant. Declarant will select the initial membership of the Committee. In the event of future vacancies upon the committee, Declarant shall appoint successor

members. Declarant may also appoint members to terms of limited duration or replace any or all members at intervals. By written notice to the Association, Declarant may delegate its power to appoint members of the Committee to the Association.

**Section 2. Duties and Powers.** The Committee shall: (1) review and act upon proposals and plans submitted to it by Owners pursuant to the terms of this Declaration, (2) adopt Architectural and Site Guidelines, and (3) perform all other duties delegated to and imposed upon it by this Declaration.

**Section 3. Architectural and Site Guidelines.** The Committee may promulgate certain rules, guidelines and statements of policy which will be known as the "Architectural and Site Guidelines." At all times, the Committee shall maintain copies of the most recently adopted Architectural and Site Guidelines in writing so that copies are available, upon request, to all Owners. Said Guidelines may interpret and implement the provisions of this Declaration by detailing the standards and procedures for review, guidelines for building and site design, landscaping, lighting, parking, exterior materials which may be used, or are required, within the Subdivision. Such guidelines may be interpretations and expansions of, but not in contradiction to, the terms of this Declaration.

Any Architectural and Site Guidelines as well as all such rules, guidelines and statements of policy as may be approved and adopted, from time to time, by the Committee as Architectural and Site Guidelines shall be deemed incorporated as a part of this Declaration.

**Section 4. Right of Inspection.** Members and agents of the Architectural Review Committee, and the Declarant and its agents may, at any reasonable and safe time enter upon the Lot of an Owner for the purpose of inspecting the Improvements and site development and their compliance with the Architectural and Site Guidelines.

**Section 5. Variances.** The Committee is hereby authorized and empowered to grant reasonable variances from the provisions of this Declaration or the Architectural and Site Guidelines in order to overcome specific development problems or hardship caused by strict application of the provisions of either this Declaration or the Architectural and Site Guidelines. Such variances, however, must not materially injure any of the Property, Amenities or Improvements in the Subdivision and must be made in furtherance of the spirit and purpose of this Declaration. The Committee is specifically empowered to, at its sole discretion, grant variances of setback requirements up to ten percent (10%) of the total Setback Distance required. The Committee will not, however, grant any variance for setbacks less than those required by applicable zoning ordinances unless the Owner also obtains a variance from the appropriate governmental authority empowered to grant such variances.

**Section 6. Limitation of Scope of Approval.** Approval by the Committee of any Improvement or use for a designated Lot shall not be a waiver of the Committee's right to reject a similar or identical Improvement or use upon another Lot (or the same Lot at another time) if such Improvement or use is of a nature that it may be rejected under the terms of this Declaration or the Architectural and Site Guidelines. Similarly, in light of the purpose of this Declaration, approval by the Committee of any specific set of plans does not bind the Committee to approve an identical set of plans submitted at another time.

## **ARTICLE IX Review Procedures**

**Section 1. Meeting.** The Committee may meet informally, by meeting, telephone, written communication, facsimile transmissions or such other means as the members may agree upon and as may be sufficient to conscientiously, and fully, perform its duties.

**Section 2. Materials to be Submitted for Site Plan Approval.** Before initiating any construction, alteration of existing Improvements, grading or any site or structural work upon any Lot, the Owner must first submit construction, site and landscape plans plus such other materials as the Committee may request. At a minimum, the plans shall show in detail:

- (a) The grading work to be performed on the Lot;
- (b) The nature, materials and location of all Improvements including buildings, paving, wells, septic fields, plantings and screening;
- (c) Setback Distances; and
- (d) The location of Improvements on adjoining Lots.

The plans shall provide specific detailed information concerning (1) landscaping for the Lot, (2) exterior lighting and (3) a building elevation plan showing dimensions, materials and exterior color scheme.

**Section 3. Filing Fee.** In order to defray the expense of the Committee, the Committee will require a reasonable fee for review of plans. The initial filing fee shall be Two Hundred Fifty Dollars (\$250.00). The filing fee may only be increased to defray actual out-of-pocket costs to the Declarant, such as attendance fees or travel reimbursements to the Committee Members, and in no event may the fee exceed Three Hundred and Fifty Dollars (\$350.00).

**Section 4. Approval Criteria.** The Committee shall have the right to disapprove plans, specifications or details submitted to it for any of the following reasons:

- (a) The submission fails to comply with the terms of this Declaration or the Architectural and Site Guidelines (including payment of the review fee);
- (b) Insufficient information or failure to provide detail reasonably requested by the Committee;
- (c) The submission fails to comply with the appropriate zoning ordinance or other Applicable Laws that may be in effect from time to time;
- (d) Objection to the grading plan for any portion of the Lot;
- (e) Objection to the color scheme, finish, proportions, style, height, bulk or appropriateness of any structures; or
- (f) The plans are not prepared by licensed architects, engineers or landscape architects.

**Section 5. Time for Review.** Upon submission of all detail reasonably requested by the Committee (received in the office of Declarant or other office as designated by Declarant), the submitting Owner shall receive, in writing, the decision of the Committee within thirty (30) business days. Failure of the Committee to render a written decision within thirty (30) business days shall be deemed approval of the submission.

**Section 6. Certification of Approval.** Upon the request of Owner, the Committee shall confirm its approval of the Owner's plans by issuing a written certificate describing the specific Lot and plans which have been approved.

**Section 7. Approval is not a Warranty.** Approval of the plans submitted by any Owner or other party to the Committee shall not be construed as a certification or warranty, by either Declarant or the Committee, that (1) the plans meet with any minimum standards of suitability for use, (2) are acceptable under any Applicable Laws, (3) conform to any other standards of quality or safety or (4) describe Structures or development which would be safe, prudent or feasible. Neither Declarant, the Committee, nor any member thereof shall be liable for any damage, loss or prejudice suffered or claimed by any person on account of the approval or disapproval of any preliminary plans, plans, drawings or specifications, construction or performance of any work or the development of any Property within the Subdivision.



**Section 8. Commencement of Work.** Beginning with the approval of the Committee as described in this Article IX, the Owner or other parties submitting plans shall, as soon as practical, satisfy all conditions of the Committee and proceed with all approved work described in the plans and such other work as may be necessary for improvement of the Lot in accordance with this Declaration. Commencement of Construction must begin within one hundred eighty (180) days from the date of such approval or, the approval of the Committee shall lapse. The Committee may, at its discretion and upon the request of Owner, extend the one hundred eighty (180) day period for Commencement of Construction in the event that good cause is shown for such extension.

**Section 9. Completion of Work.** All Improvements upon the Lot, including alteration, construction and landscaping shall be completed within twelve (12) months after the Commencement of Construction upon the Lot. This time period may be extended in the event that work or completion is rendered impossible due to strikes, fires, national emergencies, force majeure or other supervening forces beyond the control of Owner, lessee, licensee, Occupant or their agents. Installation of large items of shrubbery or trees may be delayed beyond the 12 month completion period in order to plant during the best seasons for such plantings. Installation of sod and seeding of rear yards shall, however, be completed within the 12 month period. See also Article X, Section 18.

**Section 10. Construction Deposit.** Prior to grading or commencement of any construction activity upon a Lot, an Owner shall deposit with the Declarant or the Association (as instructed by Declarant) the sum of Five Hundred Dollars (\$500.00) per Lot. This "Construction Deposit" will be held until the completion of construction activity upon the Lot. During the construction period, the Construction Deposit may be applied toward the repair of any damage caused by construction (e.g. broken curbing, damaged street shoulder or pavement, and the like), street cleaning or storm water culvert clean out necessitated by silt or grading runoff from the Owner's Lot, or other repairs or clean-up necessitated by acts of the Owner or his agents.

**Section 11. Special Watershed Development Restrictions.** The Property shall be subject to the following special development requirements.

- (a) No portion of a Lot greater than two thousand (2000) square feet shall be: (i) denuded of ground cover or topsoil, (ii) graded, (iii) excavated or (iv) covered with earth or other natural or man-made fill material, unless all required building, grading and erosion control permits have been issued by the applicable municipal authorities.

- (b) All denuded, graded, excavated or filled areas upon any Lot shall be stabilized and replanted on or before: (i) the thirtieth (30<sup>th</sup>) day following the initial denuding, grading, excavation, or filling (unless footings and foundations are being installed upon the disturbed area and construction is being diligently and continuously pursued upon such area); or (ii) such time as construction is completed or interrupted for a period of thirty (30) continuous days. In addition to, or in the absence of local or state government regulations on such land disturbance, none of the activities described in (i) through (iv) in **Article IX, Section 11 a.**, above shall be allowed to commence without compliance with the following requirements:
  - (i) The proper installation (in accordance with manufacturer's instructions) of construction silt fencing on the lower perimeters of all areas within the Lot to be disturbed, and any other areas which may be impacted by silt runoff from the Lot;
  - (ii) Compliance with the rules concerning the Buffer Area.

**ARTICLE X  
Improvements, Uses and Restrictions**

**Section 1. Land Use, Building Type and Residential Restrictions.** All Lots in the Subdivision shall be used only for Common Area or private residential and recreational purposes.

No structure shall be erected or permitted to remain on any Lot other than one single family residential dwelling not exceeding 2½ Stories in height and those other structures expressly listed in this Article X.

No mobile home may be erected or permitted to remain on any Lot. No condominium, townhouse, duplex, apartment, bed and breakfast facility or any other multi-family residential uses are permitted on any Lot. No camper, trailer, motor home, boat (including, without limitation, any boat docked adjacent to the Property), recreational vehicle, or similar habitable or transportable unit or structure shall be allowed to remain on or adjacent to any Lot as a place of residence.

A private garage (not exceeding three (3) car capacity), Outbuilding, are expressly permitted upon the condition that they are not rented or used for commercial purposes.

Detached garages and Outbuildings the total square footage contained within all

such buildings combined on any one Lot shall not exceed two thousand (2000) square feet. Outbuildings shall be permanently affixed to the Lot and shall only be covered with the approved exterior materials permitted for a primary residence (see Article X, Section 3 below).

Recreational structures, including decking, gazebos, covered patios, playhouses, barbecue pits and similar structures may be constructed upon Lot. The total square footage contained within such structures when combined shall not exceed one thousand (1000) square feet in area on any one Lot.

The following activities are prohibited in the Subdivision:

- a. Raising, breeding, or keeping of animals, livestock or poultry of any kind, except that dogs, cats, or other usual and common household pets (which are registered, licensed and inoculated as required by law - not to exceed four per household) are permitted;
- b. Any activity which violates Applicable Laws;
- c. Institutional uses, including but not limited to day care centers, churches, temples or shrines, rest homes, schools, medical care facilities, lodges, inns, beds and breakfasts; and
- d. Any business or trade, except that an Owner or Occupant residing on a Lot may conduct business activities upon that Lot so long as:  
(i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (ii) the business activity conforms to all zoning requirements; (iii) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees; (iv) the business activity does not involve any service or delivery business in which more than one vehicle used in such business would be parked overnight on the Lot, or for which any material amount of parts, equipment, supplies, raw materials, components or tools are stored on the Lot and (v) the business activity is consistent with the residential character of Osprey Pointe and does not constitute an unreasonable disturbance to other Owners and Occupants, a nuisance, or a hazardous or offensive use. The foregoing shall not preclude occasional garage sales, moving sales, rummage sales, or similar activities provided that such activities are not held on a Lot more than once in any six-month period. The terms "business" and "trade" as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any

occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. The leasing of any Lot for single-family residential use shall not be considered a business or trade within the meaning of this subsection.

- e. Camping on any unimproved Lot.

Declarant may convert any Lot owned by Declarant to a Common Area designation and use.

**Section 2. Dwelling Size.** Within Osprey Pointe, each single family residential dwelling shall comply with the following size requirements:

- a. A dwelling shall have a minimum of 1,500 square foot of Heated Living Area; and
- b. Any dwelling over one Story shall have a minimum of 1,200 square foot of Heated Living Area on the main floor.

**Section 3. Building Construction and Quality.** All buildings and Outbuildings erected upon any Lot shall be constructed of new material of good grade, quality and appearance and shall be constructed in a high quality, workmanlike manner. No building shall be erected unless it is completely underpinned with a solid brick, or stucco, brick or stone-covered foundation.

The exterior surfaces of all dwellings and accessory structures shall be covered only in brick, stone, hard stucco, wood, or siding consisting of wood, composite or vinyl material; provided, that any horizontal siding must be completely back supported to maintain a straight and even outer surface and must be fully and properly finished. The exterior surface of any garage or outbuilding erected on any Lot shall be architecturally compatible with, and of material and construction comparable in cost and design to, the exterior surface of the dwelling located on said Lot. Garages and outbuildings shall not be built prior to the commencement of construction on the main house.

All dwellings, garages and outbuildings shall have roofs (except for dormers, porches and bay windows) of not less than 8 in 12 pitch and not less than 12 inch overhang, covered with slate, cedar shakes, terra cotta tile, copper sheathing, or architectural fiberglass shingles or painted metal roofing, or a similar composite material having the appearance of the aforementioned.

Each Waterfront Lot in Osprey Pointe may have a Dock. A Dock may be built prior to the commencement of construction on the main house. A Dock may not exceed 5' in width and 32' in length and may not be placed within 15' of the sideline unless special circumstances exist and a variance is granted by the Architectural Review Committee. Construction materials and styles of Docks must be approved by the Architectural Review Committee.

**Section 4. Temporary Structures.** No residence or building of a temporary nature shall be erected or allowed to remain on any Lot, except that nothing herein shall prohibit Declarant from erecting or moving temporary buildings onto the Lots owned by Declarant, to be used for storage or construction or sales offices.

**Section 5. Building Setback Lines.** No building on any Lot (including any stoops, porches or decks) shall be erected or permitted to remain within any Side Setback or Street Setback as defined in the Declaration or as noted on the Map. In the event any zoning or subdivision ordinance, floodway regulation or other ordinance, law or regulation applicable to a Lot shall prescribe greater setbacks, then all buildings erected during the pendency of that zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation shall conform to said requirements.

No masonry mailboxes or other Improvements may be constructed or placed within any Private Road Easement or public road right of way.

**Section 6. Minor Setback Violations.** In the event of the unintentional violation of any of the building setback covenants set forth above in the amount of ten percent (10%) or less, Declarant reserves the right, which right shall be vested in and may be exercised by the Association after Declarant's Founder's Class Membership in the Association has converted to Owner's Class Membership, but is not obligated to waive in writing such violation of the setback covenants upon agreement of the Owner of the Lot upon which the violation occurs and the Owner of any Lot adjoining the violated setback, provided that such change is not in violation of any zoning or subdivision ordinance or other Applicable Law or regulation, or if in violation, provided that a variance or other similar approval has been received from the appropriate governmental authority.

**Section 7. Combination or Subdivision of Lots.** Except as otherwise set forth herein, no Lot shall be subdivided by sale or otherwise so as to reduce the Lot area shown on the Map. However, a Lot Owner may combine with a portion or all of another contiguous Lot so long as the parcel or parcels which result from such combination do not violate any zoning ordinance or other Applicable Law. Furthermore, the Owner of any Lot which combines with all or a portion of a

contiguous Lot shall be solely responsible for any costs which may result from such combination, including the costs of relocating any existing easements. Notwithstanding the foregoing, Declarant reserves the right to change the boundaries or dimensions of any Lots still owned by Declarant as may be needed to meet Septic System requirements or for any other reason.

**Section 8. Utility Easements.** Declarant hereby reserves easements for the installation and maintenance of utilities (electricity, sewer (including private septic lines), water, gas, telephone, catv, street lights, etc.) and drainage facilities over the front and rear ten (10) feet of each Lot, and fifteen (15) feet in width along each side lot line of each Lot. Additional drainage easements and utility easements are reserved as more particularly shown and delineated on the Map and in other recorded easement documents. Within such easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the construction and maintenance of utilities or which may interfere with drainage and the flow of water within the easement areas. The Owner of each Lot shall maintain that portion of the Lot lying within the easement areas as defined herein and shall maintain any Improvements located thereon, except those Improvements installed and maintained by a public authority or utility company.

Declarant reserves the right to create and impose additional easements over any unsold Lot or Lots for driveways, road drainage, utility and entry signage installation purposes by the recording of appropriate instruments and such easements shall not be construed to invalidate any of these covenants.

**Section 9. Entrance Monument Easements.** Declarant hereby grants, establishes and reserves, for the benefit of Declarant and the Association, and their successors and assigns, a non-exclusive perpetual easement (the "Entrance Monument Easements") for the purpose of erecting and maintaining the Entrance Monuments for the Subdivision over any portion of the Subdivision identified as "Entrance Monument Easements" (or similar identifying language) on the Map.

Declarant or the Association shall have the right to enter, landscape and maintain the Entrance Monument Easements as an entryway to the Subdivision. Further, Declarant or the Association may erect and maintain one or more monuments, with an entrance sign thereon and may erect and maintain lighting, planters and other Improvements typically used for an entryway.

**Section 10. Stormwater Drainage Easement.** Declarant hereby establishes and reserves over all Common Areas an easement for drainage of stormwater runoff from the Lots and roadways within the Subdivision.

**Section 11. Fences and Walls.** No fence or freestanding wall, may be erected nearer than twenty five (25') feet from the street side line of a Lot. In the case of a corner Lot,

no side yard fence shall be located nearer than fifteen (15') feet. No fences or walls, greater than four (4) feet in height are permitted. Chain link or metal fencing is not permitted, except that decorative wrought iron or high quality aluminum or vinyl-clad fencing made with the appearance of wrought iron is permitted. Split rail wooden fencing is expressly permitted. Perimeter fencing shall not have more than fifty (50%) percent of any of its surface closed as viewed from a point on a line of sight perpendicular to the line of the fence. A wall constructed of brick or stone and used in lieu of a fence is exempt from the openness test. The restrictions described in this Section 11 shall not apply to any Improvements originally installed by Declarant on any Common Area.

**Section 12. Signs.** No signs may be erected or displayed on any Lot except for the following, which may not exceed six (6) square feet in size: (a) one sign on the Lot only advertising the Lot for sale or rent; (b) one sign on the Lot only used by a builder to advertise the Lot during the construction and sales period (such sign may list subcontractors, suppliers, lenders, architects, engineers and like parties involved in the construction of Improvements on the Lot but all such parties are limited to being listed together on one sign, not separate signs); and (c) political, yard-sale or similar temporary signs. Strictly prohibited during the period of construction on a Lot are the following: (a) separate signage listing subcontractors; (b) signage advertising services or goods for sale, specifically including construction services; and (c) general advertising in the nature of handbills. These restrictions do not apply to the Entrance Monuments, to temporary entry signs or advertising by Declarant or "for sale" signs installed by Declarant or its agents prior to the sellout of the Subdivision. Declarant reserves the right to erect and maintain such signs designating streets, Amenity Areas, and such other signs that will aid in the development of the Subdivision.

Use of unapproved signage shall be violation of this Declaration and the Declarant or the Association may levy a fine of not more than One Hundred Fifty Dollars (\$150.00) per day for such violation. Such fines shall be assessments and shall constitute a lien upon the Owners Lot when a claim of lien is filed of record in the Office of the Clerk of Court of Chester County. Owners are strictly responsible for all signage erected by their agents, contractors, subcontractors, suppliers, and any other parties employed directly or indirectly by Owner, or who provide services or materials to the Owners Lot. Declarant or the Association may enter onto a Lot at any time to remove signage which is in violation of this Article X, Section 12.

**Section 13. Antennas Satellite Dishes or Discs.** Except as hereinafter provided, no transmission or reception towers, antenna, dishes or discs shall be erected or maintained on any Lot. The following are specifically permitted:

1. Any antenna designed to receive direct broadcast satellite service,

including direct-to-home satellite service, of one meter or less in diameter;

2. An antenna designed to receive video programming services via multi-point distribution services, including multi-channel, multi-point distribution services, instructional television fixed services, or local multi-point distribution services, of one meter or less in diameter or diagonal measurement; or
3. An antenna designed to receive television broadcast signals.
4. All of the above not to exceed 36" in diameter.

A roof-mounted antenna may be mounted on the roof of the house; provided, however, no antenna or related structures may be mounted on masts exceeding ten (10') feet in height above the highest roof line ridge of the house. Any dish, disc, or antenna (with associated mast if any) shall be screened from view from SCDNR Property and the street, and shall not be located in the area between the street right-of-way line and the front of any house or within the building setback lines applicable to the Lot. No antenna, discs or like transmission or reception device shall be mounted on a free standing tower without the express consent of the committee.

**Section 14. Lot Maintenance; Trash Disposal.** Each Owner shall keep his Lot in a clean and orderly condition and shall keep the Improvements thereon in a suitable state of painting and repair, promptly repairing any damage thereto by fire or other casualty. No Lot shall be used in whole or in part for storage of trash of any character whatsoever and no trash, rubbish, stored materials or similar unsightly items shall be allowed to remain on any Lot outside of an enclosed structure, except when temporarily placed in closed, sanitary containers pending collection by trash collection authorities or companies. Structures, equipment or other items which are visible from any road or adjacent property which have become rusty, dilapidated, or otherwise fallen into disrepair, shall not be kept on any Lot. Owners shall not allow trash cans to remain at the curb for more than 24 hours for each pick up date.

**Section 15. Off-Road Parking; Off-Water Boat Storage.** The residence on each Lot shall be served by a driveway constructed of gravel, concrete, asphalt, or other hard finished surface approved by the Committee. If any driveway crosses a drainage ditch or swale, the Owner is required to install, at the Owner's expense, any necessary piping or culverts before the commencement of any other construction or grading on the Lot. Specifications for any such piping or culvert must be approved by the Committee and installed in accordance with the approved specifications.



No truck or commercial vehicle in excess of one-ton load capacity, any truck of more than two axles, any vehicle under repair, or wrecked or junked motor vehicle shall be parked upon or permitted to remain on any Lot, the Amenity Area, Parking Area, or any other Common Area. No boat or boat trailer may be parked, left or stored on an Amenity Area or Parking Area unless such Amenity Area is a designated dry storage area for boats and trailers. No trailer, motor home, recreational vehicle or camper shall be used as a residence, either temporarily or permanently, or be parked upon or be permitted to remain on any Lot for a period exceeding 24 hours unless it is parked off the street and not within the front, rear, or side setbacks of the Lot. All trucks, campers, motor homes and recreational vehicles must have a current license plate affixed. All automobiles must have a current license plate affixed and must be parked in a carport, enclosed garage, or driveway.

Other than incidental street parking for not more than twenty four (24) hours at a time, all automobiles and other vehicles must be parked in a carport, enclosed garage, or driveway. From time to time guests, however, may park automobiles in the streets when an Owner conducts social functions and the like. This limited right of street parking may be restricted by reasonable rules adopted by the Committee if such parking creates a bona-fide nuisance or safety hazard.

**Section 16. Sewage Disposal and Individual Wells.** Every dwelling unit erected on any Lot shall be served by an approved Septic System for the disposal of sewage; or connected to a private or public sewage disposal system. All well water and all Septic Systems or other private sewage disposal systems shall be approved by, and constructed and maintained in accordance with, all the regulations and requirements of all governmental authorities and regulatory agencies having jurisdiction.

Declarant hereby reserves and grants unto itself, its successors in interest, and assigns, a right and easement benefiting Declarant and burdening each Lot for the purpose of permitting Declarant to modify and reassign the permissible construction envelope for Septic Systems. Declarant reserves this right and easement in order to address problems caused by Lot Owners encountering non-porous rock or other conditions making a well in the originally designated location (or approved alternate locations) impossible or uneconomic.

Owners are advised that grading or other alteration to the designated Septic Field Area may void existing improvement permits and no such alteration should be performed without the consent of the applicable health department.

**Section 17. Nuisances.** No noxious or offensive trade or activity shall be carried on upon any Lot or in any residential dwelling or Outbuilding, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

No substance, thing or material shall be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will disturb the peace and quiet of the Owners or Occupants of the surrounding Lots .

**Section 18. Diligent Construction, Construction Site Hygiene.** All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed houses or other Improvements shall be permitted to exist on any Lot or Common Area, except during such reasonable time period as is necessary for completion. (See Article IX, Section 9.)

No construction materials of any kind may be stored within five (5) feet of any Private Road or public road curbs on any Lot.

Any damage to any street, curb, shoulder, side ditch, street planting, or any part of any Common Area or any utility system caused by Declarant, an Owner or any builder shall be repaired by such responsible party. If such responsible party fails to repair such damage, Declarant or the Association may make or provide for such repairs, and the responsible party shall immediately reimburse the repairing party for its out of pocket expenses in making such repairs.

In the event that a responsible Owner fails to reimburse the repairing party, the Declarant or Association may take reimbursement from the Construction Deposit posted by the Owner. The Owner shall thereafter immediately deposit an additional sum to the Construction Deposit so that the balance is not less than \$500.00.

The Owner of each Lot and any builders shall at all times keep contiguous public and private areas free from any dirt, mud, garbage, trash or other debris which is occasioned by construction of Improvements on the Lot or Common Area. Declarant or the Association may provide for the cleaning of public and private areas due to the activities of the responsible party and may assess the responsible party a reasonable charge not to exceed the actual cost for such cleaning. All Owners and builders shall, consistent with standard construction practices: (i) keep all portions of the Lots and Common Areas free of unsightly construction debris; (ii) shall at all times during construction provide dumpsters for the containment of garbage, trash or other debris which is occasioned by construction of Improvements on a Lot or Common Areas; (iii) keep the Lot and all Common Areas free of such garbage, trash, or other debris; and (iv) provide a port-a-john on the construction site maintained in a sanitary manner. Each Owner and any Owner's builder shall be responsible for erosion control protection during any earth-disturbing operation.

**Section 19. Removal of Trees and Other Vegetation - Enforcement.** Declarant and/or the Association shall have the authority, but not the obligation, in their sole discretion, to assess a fine against an Owner who cuts, damages, or removes any trees, shrubs or other vegetation on any part of the Common Areas, its Lot or any other Lot or Common Area contrary to the provisions of this Declaration.

**Section 20. Grading Rights.** Until such time as the Owner's plans have been approved by the Committee, Declarant may make cuts and fills upon any Lot or other portion of the Subdivision and do such grading, panning and earth moving, as in its sole reasonable discretion, may be necessary to improve or maintain the streets within the Subdivision or to drain surface waters therefrom.

**Section 21. Violations.** In the event that any Lot is developed other than in strict conformity with this Declaration and the approval of the Committee, such development must be removed or altered so as to be in compliance. Any unauthorized use of the Lot must be ended so as to extinguish any violations of this Declaration or the approval granted by the Committee. At any time a violation of this Declaration or the approval granted by the Committee may be found to exist, regardless of the length of time of such violation, the Declarant or the Committee may deliver written notice of such violation to the Owner of the Lot in violation and any other responsible parties. If reasonable measures have not been taken by the Owner or other responsible parties to terminate the violation within ten (10) business days, the Declarant or Committee may, through agents or employees, enter onto the Lot and take such measures as may reasonably be necessary to abate the violation. Such entry shall not be deemed a trespass and those parties entering on behalf of Declarant or the Committee shall have no liability to the Owner or other parties having an interest in the Lot for any entry taken in connection with the abatement of a violation. All costs and expenses, including legal fees, permits, mobilization costs and insurance plus a fifteen percent (15%) allowance for general overhead and intangible costs, shall be a binding obligation of the Owner of the Lot in violation. In addition, all costs shall be a lien upon the Lot, enforceable in the same manner as an assessment made upon the Lot.

**Section 22. Construction.** Construction of all Improvements and other development upon the Lot shall be the responsibility of the Owner. Neither Declarant nor the Committee shall have any responsibility whatsoever for monitoring or control of construction.

There shall be no occupancy of any residence until such time as the residence and all other completed Improvements and work upon the Lot (including any off site Septic Easement Area) are inspected and approved by the Committee as being in accordance with the plans approved by the Committee. Upon written notice of the completion of a residence, the Committee shall have ten (10) days to make such

reasonable inspections as it deems necessary. In the event that the Committee discovers that Improvements or other work upon the Lot have been done other than in accordance with the plans approved, the Committee shall give Owner written notice of such violations. In the event that the Committee finds that all Improvements and work upon the Lot have been accomplished in accordance with the plans approved, then, the Committee may, upon request of the Owner, issue a certificate of compliance to the Owner.

- Section 23. General Repair and Maintenance.** It shall be the duty of Owner to keep and maintain all of the Lot, except as expressly stated otherwise herein, including those areas within “Setback” and “easements”. The Owner shall keep the entire Lot safe, neat, free of hazards and shall comply with all fire, zoning, health, environmental and other requirements as may legally apply to the Lot. Owner shall keep the Lot clear, clean and free of all unsightly scrap, rubbish or other materials, at all times, including the construction period.
- Section 24. Utility Lines.** Above ground utility service lines shall be allowed within the Subdivision, however, if an Owner desires to have underground service, it shall be at Owner’s sole expense. Only distribution lines supplying service to the entire site of the Subdivision may be located above ground.
- Section 25. Non-Waiver.** No delay or failure on the part of an aggrieved party to invoke an available remedy in respect to a violation of any provision contained herein or referred to herein shall be held to be a waiver by that party of any right available to the party upon the recurrence or continuance of said violation or the occurrence of a different violation.
- Section 26. Private Road Easement.** Declarant specifically establishes, reserves, and grants to the Owners of the Lots, the Association and Declarant their heirs, successors and assigns, non-exclusive, perpetual easements over the Private Roads, in the widths and in the locations shown on the Map, for the purpose of pedestrian and vehicular access, ingress and egress to the Lots and Common Areas, and for the installation and maintenance of paved roadways and of utilities and drainage facilities. Within the Private Roads, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of the roadways located therein or the other utilities or drainage facilities installed therein.
- Section 27. Driveways.** All connections of private driveways to the Osprey Pointe road system, and all connections of private easements and right-of-ways to that road system shall be constructed and maintained in accordance with all Applicable Laws and the rules, regulations and specifications as approved, from time to time by the Committee.

**Section 28. House Numbers.** House numbers are to be displayed in compliance with all Chester County ordinances.

**ARTICLE XI  
Environmental Hygiene**

Underground storage tanks for petroleum products, chemicals, or other substances having the potential to cause damage by accidental discharge into the soil, are prohibited in the Subdivision.

**ARTICLE XII  
Duration, Modification and Termination**

**Section 1. Amendment.** The covenants, conditions and restrictions of this Declaration may be amended at any time and from time to time by an agreement signed by Owners holding a majority of votes appurtenant to the Lots which are then subject to this Declaration; provided, however, that such amendment must be consented to by Declarant so long as Declarant is the Owner of any Lot in the Subdivision including any Additional Property. Any such amendment shall not become effective until the instrument evidencing such change has been Filed. The consent of a majority of the Owners of Lots, plus the written consent of Declarant shall be required to withdraw any portion of the Property from the requirements of this Declaration.

Notwithstanding anything in this Article XII, Section 1. to the contrary, Declarant may, at Declarant's option, amend this Declaration without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause this Declaration to comply with the requirements of FHA, VA, the Federal National Mortgage Association, or other similar agency. Declarant, without obtaining the approval of any other person or entity, may also make amendments or modifications hereto which are correctional in nature only and do not involve a change which materially adversely affects the rights, duties or obligations specified herein.

**Section 2. Term.** The covenants and restrictions of this Declaration are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty-five (25) years from the date this Declaration is originally Filed; after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by Owners holding a majority of the votes appurtenant to the Lots, plus Declarant, if Declarant then owns any Lot, has been recorded, agreeing to terminate or modify said covenants and restrictions in whole or in part. Provided, however, that the residential use restrictions set forth in Article X Section 1. of this Declaration shall run with the land and shall be binding upon all parties and persons claiming

under them in perpetuity.

### **ARTICLE XIII**

#### **Enforcement**

Any violation of this Declaration, whether in whole or in part, is hereby declared to be a nuisance and, without limitation, any party empowered to enforce this Declaration may avail itself of all remedies available under Applicable Laws for the abatement of a nuisance in addition to all other rights and remedies set forth hereunder or otherwise available at law. This Declaration may be enforced by Declarant, its successors and assigns (including without limitation the Association after the termination of Founders Class Membership), by proceedings at law or in equity against the person or entity violating or attempting to violate any covenant or restriction, either to restrain the violation thereof, abate or rectify damage caused by the violation, or to recover damages, all together with reasonable attorney's fees and court costs. Further, after the termination of Declarant's Founder Class membership in the Association, in the event the Association falls to act to enforce any covenant or restriction herein, any Owner of any Lot may enforce these covenants and restrictions as aforesaid against any other Owner. The Association or Owner who brings any such legal action or action in equity to enforce this Declaration shall also be entitled to recover reasonable attorney's fees and court costs in any such proceeding as well.

### **ARTICLE XIV**

#### **Easements and Retained Rights**

- Section 1. Assignability of Rights.** All rights, powers and reservations of Declarant stated herein may be assigned. If at any time Declarant ceases to exist and has not previously made an assignment of its rights, a successor Declarant may be appointed by the written vote of a majority of the Owners. Any assignment made pursuant to the terms of this section shall be Filed in Chester County, South Carolina.
- Section 2. Exoneration of Declarant.** It is agreed by all Owners and by any other party having an interest in any Lot that Declarant has no duty to enforce any of the covenants and, restrictions contained herein. Declarant shall not be subject to liability to any party by reason of its failure to enforce any covenant, condition or restriction herein.
- Section 3. Temporary Construction Easements.** Declarant reserves for itself and its agents the right and easement to, from time to time, go over and upon (including trucks, equipment and the like) any Lot for the purpose of installing wells, septic systems, infrastructure or other work necessary in the Subdivision, whether the work benefits the Lot over which access is made or other Lots. Declarant will repair any material damage to the Lot over which access is made and will exercise care to minimize the time of such work and the damage made by the work or

access.

## ARTICLE XV

### Partial Taking and Abandonment of Adjoining Public Rights of Way

In the event that any portion of the Subdivision is taken or purchased in any manner in the nature of a condemnation or other governmental taking, such taking will not render invalid any provision contained in this Declaration.

## ARTICLE XVI

### General

- Section 1. Mortgagees' Protection.** Violation of this Declaration shall not defeat the lien of any Mortgage made in good faith and for value upon any portion of the Property. Any lien created hereunder shall be subordinate to any such Mortgage unless a lis pendens or notice of the lien shall have been Filed prior to the recordation of such Mortgage; provided, however, that any Mortgagee in actual possession or any purchaser at any trustee's, mortgagee's or foreclosure sale shall be bound by and be subject to this Declaration as fully as any other Owner.
- Section 2. Chain of Title.** Each grantee, lessee or other person in interest or occupancy accepting a conveyance of a fee or lessor interest, the demise of a leasehold interest, or a license, in any Lot, whether or not the instrument of conveyance refers to this Declaration, covenants for himself, his heirs, successors and assigns to observe and perform and be bound by this Declaration and to incorporate this Declaration by reference in any conveyance, demise of a leasehold estate, or the grant of a license, of all or any portion of his interest in any real property subject hereto.
- Section 3. Ambiguities.** If any discrepancy, conflict or ambiguity is found to exist with respect to any matters set forth in this Declaration, such ambiguity, conflict or discrepancy shall be resolved and determined by Declarant in its sole discretion. Declarant shall have the right to interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all parties or property benefitted or bound by the provisions hereof. Any conflict between any construction or interpretation of Declarant and that of any other person or entity entitled to enforce any of the provisions hereof shall be resolved in favor of the construction or interpretation of Declarant.
- Section 4. No Reversionary Interest.** This Declaration shall not be construed as creating conditions subsequent, or as creating a possibility of reverter.
- Section 5. Zoning Requirements.** This Declaration shall not be interpreted as permitting any action or thing prohibited by applicable zoning laws, or any other Applicable Laws, or by specific restrictions imposed by any deed or other conveyance. In the event of any conflicts, the most restrictive provision among the conflicting

terms shall be taken to govern and control.

**Section 6. Effect of Invalidation.** If any provision of this Declaration is held to be invalid by any court or other body of, competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Declaration and all remaining restrictions, covenants, reservations, easements and agreements contained herein shall continue in full force and effect.

**Section 7. Gender.** All pronouns used herein shall be deemed to be singular, plural, masculine, feminine or neuter as application to specific circumstances may require.

**Section 8. Liability Limitations.** Neither Declarant, nor any Owner nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, Improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, Improvements or portions thereof. The Association shall, to the extent permitted by Applicable Law, indemnify and defend all members of the Board, its officers, employees and agents from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for such resulting from the gross negligence or willful misconduct of the person(s) to be indemnified. The Association may maintain liability insurance for member of its Board, its officers, employees and agents.

[SIGNATURE PAGE TO FOLLOW]



