

THE ESTATES AT DOVE RUN
INSTRUMENT NO: 2002 0425 0038601

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New Castle County Recorder MISC

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Suite 301
Wilmington, DE 19806

DECLARATION OF RESTRICTIONS

THIS DECLARATION, made this 25th day of April, A.D. 2002, by BRICK MILL ASSOCIATES, L.L.C., a Delaware limited liability company, (Owner of 72 Lots), 299 ASSOCIATES, L.L.C., a Delaware limited liability company, (Owner of 155 Lots) and FOULK ROAD ASSOCIATES, L.L.C., a Delaware limited liability company, (Owner of 71 Lots), (collectively hereinafter referred to as the "Declarants").

WITNESSETH:

WHEREAS, Declarants are the Owners of all those certain lots, pieces, or parcels of land, situate in the Town of Middletown, New Castle County, State of Delaware, and being Lot Nos. 1 through 298, inclusive in The Estates at Dove Run, as shown on that certain Record Major Subdivision Land Development Plan ("the Plan") prepared by Clifton L. Bakhsh, Jr., Inc., Land Surveyors, Engineers & Planners, dated December 26, 2001, and as the same may be revised, as recorded in the Office of the Recorder of Deeds, in and for New Castle County, State of Delaware, in Instrument No. 2002 0425 0038601 Hereafter, the 298 residential lots shall be referred to collectively as the "Property;" and

WHEREAS, Declarants desire to develop on the Property a residential subdivision for the benefit of said subdivision and which subdivision shall consist of a variety of single family detached dwelling units; and

WHEREAS, Declarants desire to provide for the orderly preservation of property values for the individual Lots in said subdivision and, to that end, desire to subject the Property to the covenants and restrictions hereinafter set forth, each and all of which is and are for the benefit of the said Property and each owner thereof.

NOW, THEREFORE, the Declarants do hereby covenant and declare that they shall hold and stand seized of the Property subject to the following covenants and restrictions, which shall be covenants running with the land and which shall be binding upon the Declarants, their successors and assigns:

ARTICLE I

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

ARTICLE II

CHANGES IN THE DECLARATION

These covenants and restrictions may be changed, altered, modified or extinguished in whole or in part, at any time, by an instrument in writing signed by the record owners of two-thirds (2/3) of the Lots, which shall be recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware, excepting, however, that the Declarants, so long as they are the Owners of at least ten percent (10%) of the residential lots, shall have the absolute right to amend this Declaration from time to time without the joinder of any other owners by executing and recording an amendment in the Office aforesaid.

ARTICLE III

HOMEOWNERS ASSOCIATION

In order that provisions of this Declaration may be enforced in a uniform manner, there shall be organized a non-profit corporation to be known as The Estates at Dove Run Homeowners Association, Inc. (hereinafter referred to as the "Corporation") whose Members shall be the record owners of lots shown on said Plan.

The purchaser of any lot by the acceptance of a deed to said lot, obligates and binds himself or herself, his or her heirs and assigns to become a member of the aforesaid 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 said Corporation.

Each owner of any lot, by acceptance of a deed therefor, is deemed to covenant and agree to pay to the Corporation when necessary annual assessments or charges, such assessments to be fixed, established and collected from time to time as hereinafter provided; provided, that all assessments must be fixed at a uniform rate for all lots. However, such obligation to pay any annual assessment or charge to said Corporation

shall not commence until such time that the Board of Directors of said Corporation is comprised of homeowners of The Estates at Dove Run.

An annual assessment, if necessary, shall be set by a majority vote of the members who are voting in person or by proxy at the annual meeting, and any special assessments shall be set by a majority vote of the members who are voting in person or by proxy at the annual meeting or at a meeting duly called for this purpose.

Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within 30 days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percentum (12%) per annum, and the Corporation may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property, 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 open space or common facilities or abandonment of his or her lot.

It is expressly agreed that the assessments referred to above shall be a lien or encumbrance on the land in respect to which said assessments are made and it is expressly stated that by acceptance of title to any of the lots included in said tract the owner (not including mortgagee) from the time of acquiring title thereto shall be held to have covenanted and agreed to pay said assessments to the maintenance corporation, including prior unpaid assessments.

By his or her acceptance of title, each owner shall be held to vest in the Corporation the right and power in its 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.

Said assessments shall be subordinate in lien to the lien of any mortgage or mortgages on any property which is subject to such charges regardless of when said 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, and the transferees shall not be liable for payment of any assessment accruing prior to said foreclosure, but nothing herein shall be held to affect the rights herein given to enforce the collection of

such charges accruing after sale under foreclosure of such mortgage or mortgages; 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 property subject to such charges, with the intent that no such charges shall at any time be prior in lien of any mortgage or mortgages whatsoever on such property.

The following definitions are applicable hereto:

- a) "Corporation" shall mean and refer to the "homeowners 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 lots as shown on the Record Major Subdivision Plan of The Estates at Dove Run.
- 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 the lots as shown on the said Plan of The Estates at Dove Run.
- e) "Declarant" shall mean and refer to BRICK MILL ASSOCIATES, L.L.C., a Delaware limited liability company, (Owner of 72 Lots), 299 ASSOCIATES, L.L.C., a Delaware limited liability company, (Owner of 155 Lots) and FOULK ROAD ASSOCIATES, L.L.C., a Delaware limited liability company, (Owner of 71 Lots), their successors and/or assigns.

ARTICLE IV

ENFORCEMENT

Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages; and failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter or a waiver to enforce the other restrictions contained herein. In the event Declarants incur any expenses, including attorneys' fees, in connection with its efforts to enforce the terms hereof, the lot owner in violation of these covenants shall also be obligated to reimburse Declarants for all such expenses. Action of enforcement may be brought by the Declarants, their successors and assigns, . Not later than thirty (30)

days after the conveyance of title by one of the Declarants herein, their successors or assigns, of the last residential lot to a homeowner, Declarants shall assign their power to modify or enforce these covenants and restrictions to the Corporation by an appropriate instrument in writing, recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware.

ARTICLE V
SEVERABILITY

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

ARTICLE VI
GENERAL USE RESTRICTIONS

Section 1. Private Residences. Each lot in the Property shall be used for private residential purposes only and no buildings of any kind, except private dwelling units shall be erected or maintained on any lot.

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

Section 3. Animals and Pets. No animals of any kind other than usual household pets shall be kept or maintained on any part or portion of the lots, and no horses, cows, goats, hogs, rabbits, poultry, pigeons, or similar animals shall be kept on any part or portion of the lots. Breeding of domestic animals of any kind on any part or portion of any lot or lots or in any building or structure thereon, is expressly prohibited. No outbuildings, such as dog houses or similar structures shall be constructed, kept or maintained on any Lot.

Section 4. Vegetable Gardens. No vegetable gardens or similar non-flower gardens or beds shall be kept or maintained on any Lot.

Section 5. Television and Radio Antennas, & Exterior Mechanical Devices, Etc. No television antennas, radio antennas, television or radio receiving or transmitting devices, solar energy panels, satellite antenna, "dish" or other device used to receive direct broadcast satellite ("DBS") services to be greater than one meter in diameter shall be erected or placed on any Lot or be attached to the exterior of any structure. Satellite antennae, "dishes" or other devices used to receive DBS services which are smaller than

one meter in diameter, and antenna or other devices used to receive television broadcast services ("TBS") and multi point distribution services ("MMDS") are specifically permitted, but, must be erected, placed or attached so that the satellite antenna, "dish" or device is not visible from the front of the Lot; however, if such placement impairs clear reception, Owner will be granted an exemption upon submitting a statement of such impairment and a plan for placement of the device. No other device, apparatus or decoration shall be permanently or temporarily attached to the exterior of the structure without prior written approval the Declarants. Exterior holiday lights and/or ornaments shall be permitted, provided that such lights are removed no later that January 15th of any year.

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

Section 7. Prohibited Vehicles. No unusual vehicle including trucks (except non-commercial pick-up trucks), buses, travel trailers, boat trailers, boats, utility trailers, commercial vans, tractors, campers, aircraft, mobile homes or vehicles immobilized for any reason, shall be kept or maintained on any Lot, driveway, street or Open Space. All motor vehicles owned and operated by residents of the Subdivision must be parked over night in their respective garage or driveway. No such vehicle may be parked elsewhere on any Lot or street except for temporary parking. For purposes of this paragraph, "temporary parking" shall mean the parking of such motor vehicle on an intermittent and non-recurring basis during the period between dawn and the following midnight.

Section 8. Signs. No signs of any nature whatsoever shall be erected, placed or maintained on any lot within the property, described, except that a single real estate "For Sale" sign may be so placed and maintained, but must be removed within five (5) days after a non-contingency contract for sale and purchase for such lot has been signed by all parties thereto.

Section 9. Fences. No enclosing or non-enclosing fence or barrier (hereinafter the "fence") shall be erected on any lot closer to the front street line than the rear-most wall of the principal building. No fences shall be of a height of more than five (5) feet and all such fences shall be of split rail design and constructed only of wood left in its natural color or white vinyl or other material approved by Declarants. Green wire mesh may be applied

to the inside perimeter of the split rail fence. No such fences shall be constructed or maintained upon the lots until the plans for the same have been approved by Declarants, in accordance with the provisions herein.

Section 10. Swimming Pools. No above-ground swimming pools shall be constructed or maintained on any lot, except that children's wading pools not exceeding one (1) foot in height shall be permitted.

Section 11. Trees, Shrubs and Landscaping. Any and all trees, shrubs and/or landscaping planted or provided by the Declarants, their successors or assigns, as to the Open Spaces or required landscape buffers must remain undisturbed for a period of ten (10) years, except for ordinary maintenance, feeding and disease control.

Section 12. Lawn Mowing. The owner of each lot shall be responsible for the maintenance of grass and weeds thereon and shall mow said lot at least twice during each of the months from March through November of each year. All Lot lawns and shrubs shall be maintained in a neat and presentable condition.

Section 13. Yards & Yard Fixtures. No statues, sculptures, painted trees, bird baths, ornaments, or replicas of animals or other like objects may be affixed to or placed on any lot or building. No mailbox pillars other than the regulation DeIDOT 4" x 8" post is permitted for mailbox installation.

Section 14. Trampolines. No trampolines of any kind whatsoever shall be erected or maintained on any lot.

Section 15. Clothes Lines. No outside clothes lines or clothes line posts shall be erected or maintained on any lot.

Section 16. Right-of-Ways. No structures or equipment, of any nature, except for standard mailboxes, shall be constructed or installed within the right-of-ways of the Subdivision streets.

Section 17. Outbuildings. No outbuildings, sheds, garages, enclosed outdoors storage facilities, or other similar structures shall be erected, placed or maintained on any lot within the property unless such structures are (i) constructed of a material other than metal; (ii) are located only in the rear yard of any lot; (iii) do not exceed the aggregate size of eighty (80) square feet on each lot; (iv) do not exceed a height of eight (8) feet above ground level; and (v) are built in accordance with plans, specifications and illustrations

approved by Declarants or their successors or assigns pursuant to this Declaration.

Section 18. Basketball Goals. No basketball goals shall be erected, placed or maintained on any lot at any time, except for a maximum of one permanently installed goal located in the driveway. Any and all basketball playing shall be permitted from 9:00 a.m. to sundown.

Section 19. Property Rights in Open Spaces. Subject to the provisions of this Section, every Lot Owner shall have the right and easement of enjoyment in and to the Open Spaces owned by the Town of Middletown and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 20. Easements. Easements and right-of-ways are hereby reserved on, over, under and along all of the lots in the Property, for poles, wires, conduits, pipes, for lighting, heating, gas, electricity, telephone, and any other public or quasi-public utility service purposes, for drainage, and for sewers and pipes of various kinds, all of which shall be confined, as practicable, ten (10) feet from the front and rear property lines of each lot and seven (7) feet from the side lines of each lot, together with the right of access thereto for the purpose of further construction and/or repair. A twenty (20) foot wide easement, ten (10) feet on each side of the centerline, of pipe, structure, line or swale, shall be created, wherever possible, where a sanitary sewer or storm sewer exists. No building or other permanent structure shall be erected or maintained on any part of any area herein reserved as an easement and/or right-of-way.

Section 21. Review of Plans. Notwithstanding anything contained herein to the contrary, no outbuildings, buildings, structures of a temporary or permanent nature, swimming pools, fences or other construction or improvements shall be constructed, erected, or placed upon any lot, nor shall any exterior addition to or change or alteration thereof, including but not limited to exterior façade, color change and/or change in grade or drainage be made until the plans and specifications, with illustrations, showing the nature, kind, shape, color, height, materials and proposed location of same, shall have been submitted to and approved in writing by the Declarants. The Declarants, their successors or assigns, including the Corporation upon assignment of the rights herein by Declarants, in connection with the review of said plans, specifications and illustrations, shall have the right to approve or disapprove any such matters which in its opinion are not

suitable or desirable to the community. In passing upon such plans and specifications, Declarants or their successors or assigns, shall consider the following factors:

- a) The quality, aesthetic suitability, nature, kind, shape of the proposed building or other structure;
- b) The color, height and materials of which it is to be constructed;
- c) The specific site upon which it is proposed to construct or erect the same;
- d) The harmony of the proposed change, alteration, addition, building or structure with structures on neighboring properties and the outlook and view from the neighboring properties; and
- e) The effect on the reasonable passage of light and air to the neighboring properties.

Notwithstanding the aforesaid, the following architectural requirements are hereby deemed to be mandatory with respect to any residential lot and its accompanying residential dwelling constructed thereon:

- a) All roofs shall be a minimum of a twenty-five (25) year weathered wood architectural shingle;
- b) United States Postal mailbox shall be white in color with a white post;
- c) Exterior building siding shall be six inch (6") beaded siding in an earthtone color;
- d) The exterior color of the garage doors shall match the exterior trim color on the residential dwelling;
- e) All driveways shall be constructed of asphalt; and
- f) All residential units with a side of the building or rear of the building facing to Dove Run Boulevard shall contain window shutters on all windows and such shutters shall be the same color as the exterior trim on the residential dwelling.

ARTICLE VII
INTERPRETATION

This Declaration shall bind all lots in the Property owned by Declarants of the date

on which this Declaration is recorded and all other lots in the Property as to which the owners thereof have joined in this Declaration by separate writing.


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

IN WITNESS WHEREOF, the said **BRICK MILL ASSOCIATES, L.L.C.**, a Delaware limited liability company, has caused its hand and corporate seal to be hereunto set the day and year first above written.

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

BRICK MILL ASSOCIATES, L.L.C.

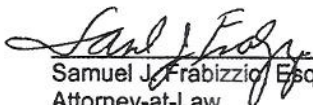


By: 

STATE OF DELAWARE)
) **SS.**
NEW CASTLE COUNTY)

BE IT REMEMBERED, that on this 25th day of April, A.D. 2002, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, MARIO S. CAPANO, an Authorized Member of Brick Mill Associates, L.L.C., a Delaware limited liability company, party to this Declaration, known to me personally to be such, and acknowledged this Declaration to be his act and deed and the act and deed of said company as duly authorized by its Membership.

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


Samuel J. Frabizzio Esquire
Attorney-at-Law

IN WITNESS WHEREOF, the said FOULK ROAD ASSOCIATES, L.L.C., a Delaware limited liability company, has caused its hand and corporate seal to be hereunto set the day and year first above written.

SEALED AND DELIVERED
IN THE PRESENCE OF:

FOULK ROAD ASSOCIATES, L.L.C.

Paul J. Fady

By: [Signature]

STATE OF DELAWARE)
) SS.
NEW CASTLE COUNTY)

BE IT REMEMBERED, that on this 25th day of April, A.D. 2002, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, LOUIS J. CAPANO JR., an Authorized Member of FOULK ROAD ASSOCIATES, L.L.C., a Delaware limited liability company, party to this Declaration, known to me personally to be such, and acknowledged this Declaration to be his act and deed and the act and deed of said corporation/company as duly authorized by its Board of Directors/Membership.

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

Paul J. Fady
Notary Public/Attorney-at-Law

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(02/20/02)