

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Reissued to all QPHA owners in October, 1999.

Reproduced from Covenants as printed on NOVEMBER 30, 1981, as amended in 1994.¹

This Declaration is made and executed this **30th** day of **November, 1981**, by Lisa Kay Mitchell, a single woman, of R.D.#6, Box 306A. Millsboro, Delaware 19966 (hereinafter referred to as the Developer).

WITNESSETH:

WHEREAS, the Developer is the fee simple owner of certain real property located in Baltimore Hundred, Sussex County, Delaware as plotted on the subdivision plan of Quillen's Point, dated July 30, 1981. and recorded In the Sussex County Recorder of Deeds Office at **Plot Book 24, Page 135** (hereinafter "the recorded subdivision plot") (hereinafter referred to as the "**Property**"), and as further described in **Exhibit "A"** hereto, and desires to develop therein a residential community;

WHEREAS, the Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of common lands and facilities and to this end, desires to subject the Property to the covenants, restrictions, easements, charges and liens (hereinafter referred to collectively as the "**Restrictions**"), as hereinafter set forth, for the benefit of the Property and each owner thereof;

WHEREAS, the Developer has deemed it desirable for the efficient preservation of values and amenities in said community, to create an agency to which will be delegated and assigned the powers of maintaining and administering any community facilities, common lands and recreational amenities, and administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created;

WHEREAS, the Developer will incorporate under the laws of the State of Delaware, as a nonprofit corporation, **the Quillen's Point Homeowners Association, Inc.**, or a similar named corporation, for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, the Developer hereby declares that the following Restrictions shall run with, burden and bind the Property; and the Developer hereby declares the Property, as described in Exhibit "A" and as shown on the recorded subdivision plot, is and shall be held, transferred, sold, conveyed, occupied and used subject to the restrictions hereinafter set forth and during the period of time hereinafter set forth; and subject to all easements, rights of way and restrictions previously placed upon the property as recorded in the Office

¹ These copies of the Covenants were reproduced and reformatted for ease of reference in 1999 by Nancy Stubbs and Ralph Begleiter, members of the Association, from copies of the original documents. **Emphasis** has been added for ease of locating key elements.

of the Recorder of Deeds in and for Sussex County by the Developer or its predecessors in title.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration² (unless the context shall prohibit) shall have the following meanings:

- A. "**Association**" shall mean and refer to **the Quillen's Point Homeowners Association, Inc.**, or such other nonprofit corporation as the Developer shall form, its successors and assigns.
- B. "**Common Areas**" shall mean and refer to those areas of land designated on the recorded subdivision plot of the Property as:
- (1) the **roads** shown upon the recorded subdivision plot and therein designated as:
Bayfront Drive; Apple Court; Bayberry Court and Cove Court;
 - (2) The **recreation areas** shown upon the recorded plot;
 - (3) The **well, pump and pump house** for the central water system to be located in the non-waterfront recreation area and the underground waterlines In the roadway right of ways;
 - (4) All **ramps and boat slips on, contiguous to or adjoining** the waterfront recreation area; and
 - (5) The **tennis court(s)** erected or to be erected on the non-waterfront recreation area as shown on the recorded plot.

All said Common Areas shall be subject to the restrictions, created hereunder, and shall be subject to all restrictions, easements or rights of way previously granted by the Developer or its predecessors in title.

C. "**Developer**" shall mean and refer to Lisa Kay Mitchell, her heirs and assigns.

D. "**Lot**" shall mean and refer to any unimproved or improved plot of land intended and subdivided for a detached single family residence, shown upon the recorded plot as a numbered parcel but shall not include the "Common Areas" an hereinabove defined.

E. "**Member**" shall mean and refer to all those Owners who are members of the Association as provided in Article II, Section 1 of this Declaration.

² Throughout this document, the term "Declaration" and "Declaration of Covenants, Conditions and Restrictions" shall mean the document commonly referred to as the "Covenants."

F. "Mortgage" shall mean and refer to any mortgage, deed of trust, or similar instrument granted as security for the performance of any obligation.

G. "Owner" shall mean and refer to the record owner, whether one or more person or entities, holding a fee simple title to any Lot but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessment or shall be eligible for a later assessment **shall be a Member of the Association**, provided, however, that any such person or entity who holds such interest merely to secure performance for an obligation shall not be a Member, unless and until such person or entity has succeeded to such Owner's interest by enforcement of such security interest. Membership shall be appurtenant to and may not be separated from the ownership of any Lot, which is subject to assessment. Provided, however, that the Developer shall be considered an Owner of each Lot held by the Developer whether such Lot or Lots are or are not subject to assessment.

Section 2. The Association shall have **one class of voting membership**.

(a) Class A members shall be all lot owners who shall be entitled to **one (1) vote for each Lot**. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote of such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

ARTICLE III

PROPERTY SUBJECT TO DECLARATION

Section 1. Existing Property. The real property subject to this Declaration is all that property located in Baltimore Hundred, Sussex County, Delaware shown on the recorded plot, which is incorporated herein by reference and as described in Exhibit "A", attached hereto and incorporated herein by reference; and this Declaration and the lands subject to this Declaration shall also be subject to restrictions, easements, or rights of way previously granted by the Developer or its predecessors in title as recorded in the Office of the Recorder of Deeds in and for Sussex County.

Section 2. Mergers. Upon a merger or consolidation of the Association with another association as provided in its Certificate of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the association as a surviving corporation pursuant to a merger; provided, however, that such merger shall have been approved by a vote of two-thirds (2/3) of the Class A membership, at a meeting duly called for such purpose. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation or change to the covenants established by this Declaration within the Property.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Owner's Easement of Enjoyment. Subject to the provisions of Section 3, of ARTICLE IV, every Owner shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every lot.

Section 2. Title to Common Areas. The Developer shall convey legal title in the Common Areas to the Association. The Developer may retain legal title in the Common Areas: (1) until such time as it has completed improvements thereon; and (2) until such a time as, in the opinion of the Developer, the Association shall be able to maintain the same. Notwithstanding any other provision herein, the Developer hereby covenants for itself, its successors and assigns, that it shall convey all its right, title and interest in the Common Areas **to the Association**, subject to all previous restrictions of record and this Declaration **no later than June 1, 1986**.

Section 3. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association as provided in its Certificate of Incorporation and by-laws, **to suspend** the enjoyment rights of any Member in any easement or in any Common Areas, for any period during which any assessment against such Member remains **unpaid**, and for any period **not to exceed sixty (60) days** for any **infraction** of the Association's published rules and regulations.

(b) The right of the Association and/or the Developer **to dedicate or transfer** all or any part of its interest in the Common areas (subject to easements created hereunder, or previously created of record) to any public agency, authority or utility.

(c) The right of the Developer prior to the conveyance of the Common Areas to the Association, and of the Association, to grant and reserve **easements and rights-of-way** through, under, over and across the Common Areas, for the installation, maintenance and inspection of lines and appurtenances for water, sewer, drainage, gas, electricity, telephone, cable television and other utilities.

(d) The right of the Association to adopt **rules and regulations** governing the use by the Owners of the Common Areas.

Section 4. Delegation of Use. Any Owner may delegate his rights of enjoyment to the Common Areas and facilities to the members of his family, tenants, or contract purchasers (and members of the family of any tenant or contract purchaser) who reside on the property or to such other persons as may be permitted by the Association.

Section 5. Obligations of the Association. The Association shall:

(a) Operate, install and maintain, for the use and benefit of all Members of the Association, **all Common Areas and facilities and improvements** developed thereon.

(b) Maintain and install all facilities on, **mow the grass** on, replace all dead or destroyed original **landscaping** on, all Common Areas.

(c) Maintain, if permitted, **bulkheads, boat ramps, docks and boat slips** forming any part or adjoining the waterfront recreation area shown on the recorded plot.

(d) Operate, install and maintain **a system of allocation for the boat slips**, if any, located on or adjoining the waterfront recreation area as shown on the recorded plot among the members, and establish a user charge for such boat slips to the members who seek to have a boat slip assigned.

Section 6. Water Access Easement. Every Owner of a Lot, located in the area that is the subject matter of this Declaration shall have an easement over and across the waterfront recreation area as shown on the recorded plot in order to gain **access to the Indian River Bay through the common area**. Such easement shall be appurtenant to and shall pass with the title to every lot. Any such owner may delegate his right of access to, and enjoyment of, the water access easement to the members of his family, tenants or contract purchasers (and the members of the family of any tenant or contract purchaser) who reside on such property or to such other persons as may be permitted by the Association.

ARTICLE V

COVENANT FOR MAINTENANCE

Section 1. Creation of Lien and personal obligation of Assessments. The Developer, for itself and its successors and assigns, and for each lot within the Property hereby covenants, and each Owner of any lot, by acceptance of a deed or other transfer document therefor, whether or not it shall be expressly established in such Deed or other transfer document, hereby **covenants and agrees to pay the Association:**

- (1) annual assessments or charges;
- (2) special assessments for capital improvements, operations, repair, replacement and reserve funds, such assessments to be fixed, established and collected as hereinafter provided;
- (3) user assessments to provide for the maintenance and improvements of boat slips located upon or adjoining the waterfront recreation area shown on the recorded plot. The annual, special and user assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, for the collection thereof, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. A personal obligation for delinquent assessment shall not pass to the owner's successor in title (other than as a lien on the land), unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Property, and particularly for the **improvement and maintenance of the Common Areas** located in the Property, and for services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, for the cost of labor, equipment, materials, management and supervision thereof, and for operating reserve funds and reserve funds for repair and replacement of the Common Areas and the facilities thereon.

Section 3. Purpose of the User Assessments. The user assessments shall be made for the purpose of **maintaining and improving boat slips** located upon or adjoining the waterfront recreation area shown on the recorded plot. The user assessments shall only be charged to the members who seek the use of the boat slips and have been assigned the use

of a particular boat slip by the Association. The user assessments established by the Association shall be calculated to defray the cost of maintenance and improvements to the boat slips.

Section 4. Basis and Maximum Annual Assessment. Each respective Lot to be sold by the Developer, or any successor developer, if and as conveyed by the Developer or a successor developer after the final date of transfer from the Developer to any Owner, shall thereafter be subject to an annual maintenance charge or assessment to be paid to the Association. The amount of such assessment shall be **fixed annually** by the Association and shall be charged or assessed in equal proportions against each Lot within the Property, provided however, that such assessment **shall in no event exceed the sum of Four Hundred Dollars (\$400.00)** per lot for any year unless said maximum be adjusted as hereafter provided. The first assessment year shall be January 1, 1982 and thereafter each assessment shall be made for each subsequent calendar year commencing as of January 1 each year. Each yearly assessment shall be due and payable on or before ninety (90) days after it has been fixed and levied. It shall be the duty of the Association to notify all Owners, whose addresses are listed with the said Association within thirty (30) days after said assessment has been fixed or levied, giving the amount of the charge of the assessment for said year, when due and the amount due on each lot or parcel of land owned by each such Owner. Failure of the Association to levy the assessment or charge for any one year shall not affect the right of the Association to do so for any subsequent year.

Section 5. Establishment of Annual Assessment Rate. The Board of Directors of the Association may, after consideration of current operation costs, current maintenance costs, and future needs of the Association, fix the annual Assessment in an amount below the maximum annual assessment set forth in Section 3 hereof and may provide for the payment in monthly installments, provided, however, the amount of the Annual Assessment **shall not exceed Four Hundred Dollars (\$400.00), unless two-thirds (2/3) of Class A membership of the Association agree that the maximum yearly assessment shall be raised.**

Section 6. Establishment of the User Assessment. In addition to the annual assessment and special assessments, the Association shall establish user assessment to be paid for use by any member of a specially assigned boat slip located in or adjoining the waterfront recreation area as shown on the recorded plot. This assessment shall be billed annually and payable on or before thirty (30) days after the assessment is levied.

Section 7. Special Assessment for Capital Improvements and Operating Reserves. In addition to the Annual Assessment authorized by Section 3 hereof the Association may levy in any assessment year a **special assessment** (which may be fixed at one uniform rate for each Lot) applicable to **that year only**, for the purpose of defraying in whole or in

part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, and for operating the Common Areas, for which a reserve fund does not exist or is not adequate, provided that any such assessment shall have **the assent of two-thirds (2/3) of the votes of the Class A membership.**

Section 8. Date of Commencement Assessment; Due Date. The annual assessment as to any Lot shall commence on the conveyance of such lot, prorated for the remaining portion of said year, providing such conveyance is after January 1, 1982. In the event a Lot is conveyed prior to January 1, 1982, the annual assessment will commence on January 1, 1982. The due date of any special Assessment under Section 4 hereof shall be fixed in any resolution authorizing such assessment.

Section 9. Effect of Nonpayment of Assessment. The Personal Obligation of the Owner: the Lien; Remedies of the Association. If any Assessment is not paid on the date when due as hereinabove provided then such Assessment shall be deemed delinquent and shall together with such interest thereon and cost of collection, including reasonable attorney's fees, thereof as hereinafter provided, continue as a lien on the Lot and any structure built thereon which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. In addition to such lien rights, the personal obligation of the then Owner to pay such Assessment, however, shall remain his personal obligation and shall not pass to his successors in title (other than as a lien on the land) unless expressly assumed by them. If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the date of delinquency at the rate of the legal interest rate authorized by 6 Del. C. 2301 as amended and the Association may bring legal action against the Owner personally obligated to pay the same or may enforce or foreclose the lien against the lot; and in the event a judgment is obtained, such judgment shall include interest on the Assessment above provided and any reasonable attorney's fees to be fixed by the court together with the cost of the action. No Owner of a lot may waive or otherwise escape liability for the Assessment provided for herein by nonuse of the Common Areas or abandonment of his or its Lot.

Section 10. Subordination of the Lien to the First Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage on the Lot. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- (a) All properties dedicated to and accepted by a government body, agency or authority and devoted to public use;
- (b) All Common Areas;
- (c) All Lots owned by the Developer and any successor Developer and not sold or leased by the Developer or her successor to third persons until January 1, 1986. Thereafter said lots will be subject to the assessments of the Association.

ARTICLE VI

RESTRICTIVE AND PROTECTIVE COVENANTS

Section 1. Utility Easements. The Developer, for it, its successors and assigns and for the Association hereby **reserves the right to grant easements** over, under, in, on and through the Common Areas and all roads, plotted and shown on the recorded plot for the installation, construction, reconstruction, relocation, removal, maintenance, repair, operation, inspection of water service, sewer, drainage, electric, gas, television, telephone, and cable telephone and television facilities and wires, lines, conduits and other necessary and proper attachments in connection therewith, for the benefit of the adjoining land owners, the Developer, any federal, state or local authority, commission or agency having jurisdiction thereover or any corporation, either public, quasi-public or private, supplying or serving such facilities.

Section 2. Utility Easements; Prior Restrictions. The properties are **subject to all those prior easements, rights of way and restrictions** placed upon the Property by the Developer's predecessors in title as such be recorded among the land records in the Office of the Recorder of Deeds in and for Sussex County.

Section 3. Residential Use. All Lots in the Property as shown on the recorded plot shall be used for residential purposes exclusively. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain upon any such Lot other than **one (1) detached single family dwelling, with attached garage building or carport** (hereinafter sometimes referred to as the main dwelling), **and one (1) detached accessory building** such accessory building not to exceed one story in height. The use of any such main dwelling or accessory building shall not include any activity normally conducted as a business. No such accessory building may be constructed prior to the construction of a main dwelling. All such accessory buildings may be used only in connection with the main dwelling. Any accessory building shall not be used as a sleeping, eating or dwelling unit of any type. All residential structures **shall be custom made and "stick built"** or the equivalent on the lot site. It shall be permissible to erect a structure

using prefabricated component parts provided the structure is not otherwise prohibited by other provisions herein contained.

Section 4. Restrictions as to Types of Construction, Prohibiting Mobile Homes and Modular Homes. No trailer, mobile home, double wide or similar type structure, which moves to a building site on wheels attached to its own under carriage, tent, shack, garage, barn or other type outbuildings shall at any time be used as a residence temporary or permanently, and no trailer, mobile home, double wide, tent, shack, garage, or barn, shall be utilized as a main or single family dwelling unit on any lot as shown on the recorded plot. No modular or sectional home shall be erected in the subdivision as a main dwelling. Modular homes prohibited are defined by way of illustration and no limitation as a dwelling structure constructed with one or more modules and hauled to the site as component parts of a proposed dwelling structure. **Prefabricated parts of housing units and custom building shall be the only type construction that will be approved in the area.**

Section 5. Restriction Against Business Use. No numbered lot within the Property shall be used at any time to conduct business, or for the conduct on said Lot of any trade or business of any description nor shall said premises be used for any purpose whatsoever except for the purpose of private dwelling or residence. No building shall be used as a residence until the exterior is fully completed according to the plans and specifications approved therefor, as such approval is hereinafter provided. No one shall reside on any lot, casually, temporarily or permanently except in a dwelling house, completed according to the plans and specifications approved as hereinafter provided.

Section 6. Approval of Plans and Specifications Required. No building, boat house, garage, structure, fence, wall, bulkhead, pier or other Improvement, shall be commenced, erected, maintained or used, nor shall any addition to or change or alterations therein, or in the use thereof, be made upon any of the Lots which are the subject matter of this Declaration, no matter for what purpose or use, until complete and comprehensive plans and specifications, showing the nature, kind, shape, height, materials, floor plans, exterior architectural scheme, location and frontage on the Lot, approximate cost of such building, structure, or other erection, and the grading and landscaping of the Lot to be built upon or improved, shall be **submitted to and approved in writing by the Association, through its duly designated Architectural Review Committee**, its successors, or assigns, and until a copy of all such plans and specifications, finally approved as aforesaid, shall be lodged permanently with the Association, its successors or assigns, providing that nothing herein shall require the aforesaid approval as to interior decorations, alterations or changes. The Association, its successors and assigns, shall have the **right to refuse approval** of any such plans or specifications, or grading or landscaping **plans or changes, which are not suitable or desirable** in its or its

successors opinion, for aesthetic or other reasons. In passing upon such plans and specifications, or grading and landscaping plans, the Association, its successors or assigns, shall have the right to take into consideration the suitability of the proposed building or improvements or erections and/or the materials of which the building or other improvements or erections are to be built and the site upon which it is proposed to be erected and used, the harmony thereof with the surroundings and the effect of such improvements, additions, alterations or changed use, as planned, on the outlook from the adjacent or neighboring property, and any and all factors which in its opinion would affect the desirability or suitability of such proposed improvements, erections, or alteration or change. In order to insure the development and maintenance of the properties as a residential development of high standard, the Owner of each Lot, as shown on Exhibit "A" attached hereto by accepting title thereto or by occupying the same, hereby covenants and agrees that **no building, structure or improvement shall be erected, altered, placed or permitted to remain upon any such Lot, or other land area, unless and until plans and specifications therefor have first met the requirements of this Section.**

Section 7. Resubdivision. No lot as shown upon the recorded plot shall be resubdivided, sold, or otherwise alienated in a lesser or smaller parcel, except in accordance with a supplemental plot plan thereof being approved by the Association or its successors and recorded in the Office of the Recorder of Deeds, in and for Sussex County at Georgetown, Delaware.

Section 8. Sanitation. Pending availability of public sewers, sewage disposal on each lot shall be effective by means of **septic tanks** (or other equally sanitary structure for the storage and disposal of sewage): the type of tank, its construction, the location on any lot and the location of disposal fields shall be approved by those public agencies having jurisdiction to regulate sanitation on the property. Cesspools or outside toilets shall be absolutely prohibited. No outdoor incinerator shall be permitted unless flames or draft from same are enclosed and a permanent fire screen is approved by the Association, through the Architectural Review Committee, and/or those public agencies having jurisdiction. Whenever **public sewer** is made available to any lot, such lot shall thereupon be **connected** to said public sewage system **at the expense of the then lot owner.**

Section 9. Signs and Advertising Regulated. No signs, notices or advertising matter of any nature or description shall be erected, used or permitted upon any of the Lots, shown on Exhibit "A", unless erected after securing the **written permission of the Association** or its successors or assigns. The Developer, however, retains the right to erect signs on any Lot to advertise said lot for sale.

Section 10. Setback Restrictions - Height Limitation.

(a) The building setback requirement, height limitations, and permitted accessory use, shall be as provided by the **Zoning Ordinance of Sussex County**, as such may be amended from time to time.

(b) **In the event there is no Zoning Ordinance** covering the property, the building setback requirements, height limitations and accessory uses **shall be recommended by the Architectural Review Committee of the Association and formally adopted by the Association, and submitted as an Amendment to these presents.**

Section 11. Garbage Receptacles. Each Lot shown on the recorded plot shall provide receptacles for garbage in a **screened area not generally visible** from any interior road, as shown upon the recorded plot or provide underground garbage receptacles or similar facilities in accordance with reasonable standards established by the Association or its successors or assigns.

Section 12. Storage Receptacles. No fuel tanks or similar storage receptacles may be exposed to view; but same may be installed within the main dwelling, or **within an accessory building or buried underground or properly screened** from view providing the method of screening is approved by the Association.

Section 13. Construction and Demolition. Once construction or demolition of any building has been commenced on any Lot such construction or demolition **shall proceed without delay** until the same is completed except where such completion is impossible or results in great hardship to the owner or builder due to strikes, fires, national emergencies or national calamities. **Cessation of work** upon the construction or demolition of any building once started and before completion thereof **for a continuous period of sixty (60) days shall be prima facie evidence of an attempt to abandon** the same in its partially completed or demolished state and shall be deemed to be a public nuisance. In the event construction plans have been approved pursuant to Section 6, construction must commence pursuant to said approved plans within one (1) year of the date of approval. **Failure to commence Construction within one (1) year of the date of approval of plans will void the approval.**

Section 14. Fences. **No boundary fence or wall shall be constructed to a height of more four (4) feet.** No wall or fence of any height shall be constructed upon any Lot until the height, design and approximate location thereof has been **approved in writing by the Association** or its successors or assigns. No boundary fence or wall shall be constructed within any front setback area.

Section 15. Nuisances. It shall be the responsibility of each **Owner to prevent** the development of any **unclean, unsightly, or unkept conditions of buildings or**

grounds upon a Lot which shall tend to substantially decrease the beauty of the Property as a whole, or the beauty of the specific area. **No noxious or offensive activity** shall be permitted upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the Property. There shall not be maintained upon any Lot any plant, animal, device or thing of any sort, the normal activities of which is in any way noxious, dangerous, unsightly, unpleasant or of such a nature as may diminish or destroy the enjoyment of the Property. Specifically included under this Section is the **prohibition against any livestock** being kept on any Lots. The keeping of any nondomestic animals shall be deemed a nuisance per se under this Section; but the keeping of domestic cats and dogs, or other traditional household pets, unless the activity of such pets is in any way noxious, dangerous, unsightly, or unpleasant, shall not be prohibited under this Section.

Section 16. Landscaping. No landscaping, shrubs or trees to be placed on any lot in conjunction with the erection of any main dwelling shall be planted, until complete and **comprehensive landscaping plans shall be submitted to and approved in writing by the Association through its duly designated Architectural Review Committee.** The land area not occupied by structures, hard-surfacing, vehicular driveways or pedestrian paths shall be kept planted with grass, trees or shrubs or other ground covering or landscaping in conformance with the standards set by the Architectural Review Committee of the Association. Such standards will take into consideration the need for providing effective site development to:

- (a) enhance the site and building,
- (b) screen undesirable areas or views.
- (c) establish acceptable relationships between buildings, parking and adjacent properties, and
- (d) control drainage and erosion.

Section 17. Weeds and Undergrowth. No noxious weeds, undergrowth or accumulated trash of any kind shall be permitted to grow or maintain upon any lot by the owner or occupier thereof. The Association, its successors and assigns reserves the right to notify the owner or occupier to cut and/or remove any such offending growth or trash. Within **thirty (30) days** of the giving of notice in writing by the Association to the owner or occupier of any lot to remove trash or control undergrowth or weeds and, if the owner or occupier shall fail or neglect to comply with any notice, then in such an event, the Association or its successors shall be empowered to enter upon such lot, together with such assistance and equipment as may be required, and thereupon to cut and/or remove the same, all without being deemed a trespasser, and all **at the expense of the owner of said lot.** Any expense incurred by the Association or its successors in conjunction with this Section, shall be billed to the owner, and the owner agrees to remit same **within thirty (30) days** of billing. Failure to remit within thirty (30) days of such bill, on the

receipt thereof by the owner, shall entitle the Association, its successors or assigns to **bring suit**, for such charges; and in any such suit the Association shall be entitled to **treble the amount** of such expenses it has incurred, plus the costs of said suit, and the reasonable attorney's fees, incurred by it, in enforcing this restriction. By the acceptance of any lot in the subdivision, each owner thereof, hereby accepts this Section, and agrees that the treble damages and reasonable attorney's fees to collect same, for nonremittance of the expenses of the Association, its successors and assigns incurred to remove trash or noxious growth is reasonable and will constitute Liquidated damages for the cost and expense of the Association, its successors and assigns in enforcing this restriction through litigation. This Section and any part hereof shall not be construed as an obligation on the part of the Association or its successors and assigns to provide garbage or trash removal services, nor shall it be construed as an obligation on the part of the Association or successors and assigns to provide garbage or trash removal services, nor shall it be construed as an obligation upon the Association to remove the underbrush or rubbish or to cut grass or brush from any of the lots in the subdivision, after same have been outconveyed by the Developer. **However, the Association, its successors and assigns, reserve the right and privilege to enter upon any said lot for the purposes as set forth herein, being to maintain the appearance of any lots so as not to cause detriment to the community at large.**

Section 18. Minimum Cost of Construction. The minimum permissible construction cost of any main building constructed on any lot, shown on the recorded plot shall be **thirty-five dollars (\$35.00) per square foot**. The minimum permissible construction cost per square foot **shall be adjusted** on the date of the start of construction of any Lot by the amount by which the **cost of living** average for the year in question as reflected by the Wholesale Price Index, all commodities (1957-59 equals 100) of the U. S. Department of Labor's Bureau of Labor Statistics shall have changed percentage wise since September 1, 1981.

Section 19. Minimum Size. No main dwelling shall be erected or used on any lot, the square footage of which shall be less than one thousand two hundred square feet (**1,200 sq. ft.**), exclusive of all porches, breezeways, carports, garages and terraces, stoops and the like. And in the event of a multi-level or multi-story dwelling, at least one floor of such dwelling shall contain a minimum square footage of one thousand square feet (**1,000 sq. ft.**), and the overall dimensions shall be a minimum of one thousand two hundred square feet (**1,200 sq. ft.**), exclusive of all porches, breezeways, carports, garages and terraces, stoops and the like.

Section 20. Parking spaces. Each main dwelling unit or each lot shall have provided space for **parking two (2) automobiles off the private roads** of the subdivision prior to occupying any dwelling constructed on any lot.

Section 21. Exterior Lights. Exterior lights **not attached** to a permissible main structure placed or erected, and maintained on any lot set forth on the recorded plot, **shall not be in excess of two (2) feet in height** above ground level. **In no event shall any vapor or security exterior lights be placed on any lot in the subdivision**, whether attached, or not attached, to any building permitted pursuant to these restrictions.

Section 22. Restrictions on Bulkheads-Piers-Docks.

- a) **No piers, docks, wharfs or other facilities shall be constructed so as to extend more than 5 feet off shore** from the shoreline of any canal or lagoon, nor more than 4 feet above mean high water mark. Nothing contained herein, however, shall prevent the construction of a boat house or garage which is detached from the main dwelling, in the same manner and fashion that a garage or car port, is permissible within the subdivision; provided however, that the owner shall construct any canal leading to his boat house entirely upon his property, and not at any point within the side set back restrictions; and provided further that the said dwelling and boat house shall not encroach upon any side set back restrictions hereinabove, provided. In no case shall any private garage or boat house be constructed in advance or used in advance of construction and completion of the main dwelling.
- b) No alteration shall be made in the **contour or bulkheading of the shoreline** boundary of any lot bordering upon any lagoon, canal or the bay until plans and specifications have first been submitted and **approved in writing by the Association** in accordance with the discretion and rights of the Association to approve plans and specifications for any structure as hereinafter provided.
- c) Each lot owner who takes title or any ownership interest in a lot which adjoins any lagoon or has been bulkheaded by the acceptance of any such ownership **agrees to maintain the bulkhead** to prevent fill materials or spoils from entering into the adjoining lagoons.

Section 23. The provisions of Article VI, Sections 3, 5, 9, 10, 13, 14, 18 and 20 **shall not apply to Common Areas.**

ARTICLE VII

GENERAL PROVISIONS

Section 1. Duration and Amendment. The **Restrictions of this Declaration run with and bind the Property** and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, as the case may be **in perpetuity**; subject,

however, to the provision that the Association or its successors, by and with **the vote or written consent of two-thirds (2/3) of the then Owners of the Lots, shall have the power to waive, abandon, terminate, modify, alter, change, amend, eliminate or add to these Restrictions** and this Declaration at any time hereafter. Any such waiver, abandonment, termination, modification, alteration, change, amendment, elimination, or addition shall take effect when a copy thereof executed and acknowledged by the Association or its successors in accord with the usual form of execution and acknowledgement of deeds, together with written consents of the requisite number of Owners, has been filed for record in the Office of the Recorder of Deeds, in and for Sussex County, and the same shall thereafter remain in effect in perpetuity unless otherwise provided.

Section 2. Remedies. The Association, or any Owner, shall have the right to **enforce** this Declaration and the Restrictions contained herein by any proceeding at law or in equity, against any person or persons violating or attempting to violate any provision of this Declaration or any restrictions contained herein, **to restrain violation, to require specific performance and/or to recover damages; and to proceed against any Lot to enforce any lien created by these Restrictions.** The expense of enforcement by the Association shall be chargeable to the Owner of the Lot, including the costs of reasonable attorney's fees, in the event any legal action to taken by the Association, and such fees, approved by a court of competent jurisdiction, shall constitute a lien on the Lot, collectible in the same manner as assessments hereunder.

Section 3. Assignability. The Developer, its successors and assigns, shall at all times have the right to fully transfer and assign any or all of his rights and powers under this Declaration, subject to the Developer's obligations hereunder.

Section 4. Nonwaiver. Failure of the Developer or any Owner, or their respective legal representative, heirs, successors and assigns, to enforce any Restrictions contained in this Declaration shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto.

Section 5. Construction and Interpretation. The Association, to the extent provided herein, may adopt and promulgate **reasonable rules and regulations** regarding the administration, and interpretation and the enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations and in making any finding, determination, ruling, or order or in carrying out any directive contained herein relating to the Issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interest of the Owners to the end that the Property shall be preserved and maintained as a viable community.

Section 6. Severability. All the covenants, conditions, restrictions, and reservations contained in this Declaration are hereby declared to be severable and a finding by any court of competent jurisdiction that any of them or any clause or phrase thereof, is void, unlawful or unenforceable **shall not affect the validity or enforceability of any other covenants, conditions, restrictions, reservations, clause or phrase thereof.**

Section 7. Nonliability. Nothing contained in this Declaration shall be construed in any manner as to impose upon the Association or the Developer, or their successors or assigns, any liability whatsoever for property damage and/or personal injury occurring to any person or persons whomsoever, or by reason of any use of any Common Areas, or Roads, or adjacent waters, depicted on the recorded plot. Any and **all persons using any such Roads, Common Areas, easements, boat slips and water ways, or any of them, shall do so at their own risk and without any liability whatsoever on the part of the Association, the Developer or their respective successors or assigns, as the case may be.**

IN WITNESS WHEREOF, **Lisa Kay Mitchell INC.** has caused this Instrument to be executed the day and year first above written

Witness (signed) _____ (SEAL)
Lisa Kay Mitchell

STATE OF DELAWARE

} **SS.**

COUNTY OF SUSSEX

BE IT REMEMBERED, that on this *30th day of November, A. D. 1981*, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, **LISA KAY MITCHELL**, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be her deed.

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

(Signed)
Marilyn R. Stevens (Sealed)
Notary Public, Delaware APPOINTED
AUG.11, 1930
TERM

4 YEARS

EXHIBIT "A"

ALL that certain lot, piece or parcel of land, lying and being situate in Cedar Neck, Baltimore Hundred, Sussex County and State of Delaware, as shown on the plot of **Quillen's Point, dated July 30, 1981**, prepared by Peter E. Loewenstein & Associates, Inc., Surveyors & Land Planners, and recorded in the Sussex County Recorder of Deeds Office at **Plot Book 24, Page 135**, as follows, to-wit:

BEGINNING for the purpose of this description at a point on the Southeast corner of lands herein described, point of Beginning being the Northeasterly corner of the Subdivision of BAYSIDE HAMLET, recorded in **Plat Book 8, Page 366**; point of Beginning also being at the High Water Mark at Beach Cove; thence leaving said point of Beginning and running and binding with the said Subdivision of BAYSIDE HAMLET: **1)** N 71 degrees 33 minutes 24 seconds W, 1060.00 feet to an iron bar heretofore set on the Easterly Right of Way line of County Route 357; thence running and binding with the said Easterly Right of Way line of County Route 357; **2)** N 25 degrees 45 minutes 08 seconds E, 711.50 feet to an iron bar set, thence; **3)** N 64 degrees 14 minutes 50 seconds W, 28.29 feet to an iron bar now set and to the lands conveyed to E. Morgan, Jr. by deed recorded among the Land records of Sussex County, Delaware in Deed Book 830 Page 34; thence running and binding with aforesaid Morgan Lands and the land now or formerly of J. L. NEWTON, R. BULLEN, UMSTETTER and MARVEL; **4)** N 29 degrees 59 minutes 38 seconds E, 675.87 feet to an iron bar now set at the High Water Mark at Indian River Bay; thence running and binding with the High Water Mark along Quillen's Point and Beach Cove, there situate and with the meanderings therein along the Northerly and Easterly sides of the land herein described to the Point of BEGINNING and including all lagoons, canals, etc. and containing 37.289 Acres, more or less.

PURCHASERS REPORT MADE
THIS 14TH DAY OF DEC 1981
ASSESSMENT DIVISION OF SUSSEX COUNTY

RECEIVED
Dec 3 11:48 AM '81
MARY ANN McCABE
RECORDER OF DEEDS
SUSSEX COUNTY

STATE OF DELAWARE

} SS.

COUNTY OF SUSSEX

I, **Mary Ann Hammond** Recorder of Deeds of the State of Delaware, in and for Sussex County, do hereby certify that the above and foregoing is a true and complete copy of the **Declaration of Covenants, Conditions & Restrictions for Quillen's Point** in Record 1094 Page 4 as appears of record in this office.

WITNESS my hand and seal of office **this 3rd day of May A.D., 1984.**

Mary Ann Hammond Recorder

10937 BK02051 PG001

**AN AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

This amendment is made and executed this 11th day of May, A.D. 1995, by Gary S. Wilkinson, the President of the Quillen's Point Homeowner's Association, Inc., a Delaware not for profit corporation, attested to by Nino D'Orazio, Vice President of Quillen's Point Homeowner's Association, Inc.

WITNESSETH

WHEREAS, the Quillen's Point Homeowners Association, Inc., is the successor to the developer named in the Declaration of Covenants, Conditions and Restrictions dated November 30, 1981, and recorded in the Office of the Recorder of Deeds, in and for Sussex County, in Georgetown, Delaware, in Book 1094, page 4; and

WHEREAS, the Association is the appropriate entity to file any amendment or modification of the Declaration of Covenants, conditions and Restrictions pursuant to Article 7, Section 1, of said Declaration; and

WHEREAS, the Association through it[s] Board of Directors, has met, considered an amendment to the Declaration of Covenants, Conditions and Restrictions; and

WHEREAS, two-thirds (2/3) of the Owners of the lots, have consented to said amendment.

NOW THEREFORE, the Association with the consents of two-thirds (2/3) of the then Owners of the lots hereby declare that the following shall amend the Declaration of Covenants, Conditions and Restrictions.

Article VII, GENERAL PROVISIONS, Section 1, delete the last sentence and insert in lieu thereof the following:

Any such waiver, abandonment, termination, modification, alteration, or addition shall take effect when a copy thereof executed and acknowledged by the Association or its successors in accord with the usual form of execution and acknowledgement of deeds, together with the written consents of the requisite number of Owners, or a certificate by the Association verified under oath by the president thereof, or in the case of his absence or inability, by any vice-president thereof, setting forth the time, manner and result of the taking of the vote of all the Owners in Quillen's Point, have been filed for the record in the Office of the Recorder of Deeds of the State of Delaware in and for Sussex County and the same shall thereafter remain in effect in perpetuity unless otherwise provided.

IN WITNESS WHEREOF, the Association hereby certifies that the above amendment has been duly approved by the Association at its Annual Meeting, May 15, 1993, and by and with the written consents attached hereto of two-thirds (2/3) of the Owners of the Lots pursuant to Article VII, Section 1, of the Declaration of Covenants, Conditions and Restrictions.

QUILLEN'S POINT HOMEOWNERS ASSOCIATION, INC.

BY: _____
(Gary S. Wilkinson) President

CORPORATE SEAL

ATTEST: _____
(Nino L. D'Orazio) Vice President

STATE OF DELAWARE

} **SS.**

COUNTY OF NEW CASTLE

BE IT REMEMBERED, That on this 11th day of May, A.D. 1995, personally came before me, The Subscriber, a Notary Public for the State and County aforesaid, Gary S. Wilkinson, President of Quillen's Point Homeowners Association, Inc., a corporation of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and Deed, and the act and the Deed of the said corporation; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said Indenture was first duly authorized by resolution of the Board of Directors of the said corporation.

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

(signed)

NOTARY PUBLIC

Jean G. McWatters

Type or Print Name of Notary

My Commission Expires: 2/10/99

[stamp] JEAN G. MCWATTERS

NOTARY PUBLIC DELAWARE

MY COMMISSION EXPIRES FEB. 10,

1999