

*Tax Map & Parcel Nos. 3-35 8.07 268.00  
through 268.04 & 311.00 through 342.00  
Prepared By & Return To: Shipcarpenter  
Square Association Trustees  
PO Box 722, Lewes DE 19958*

*AMENDED AND RESTATED  
DECLARATION AND RESTRICTIONS  
FOR SHIPCARPENTER SQUARE*

**Preamble**

Shipcarpenter Square is a unique historic community founded on the concept of moving houses of the 1800's or earlier vintage to a designated location and rehabbing them in such a fashion that they retain the flavor of the old while allowing for modern conveniences and contemporary styles. The Deed Restrictions ensure the continuing historic character of the community by providing restrictions regarding the use of property and guidelines for making architectural decisions.

**Statement of Purpose**

**WHEREAS**, Shipcarpenter Square Association, Inc. [hereinafter referred to as "SCS"] and the members thereof, being owners of lots in Shipcarpenter Square, a subdivision in Lewes & Rehoboth Hundred, Sussex County, Delaware [hereinafter referred to as "Owners"] are bound by a certain Declaration and Restrictions for Shipcarpenter Square recorded in the Office of the Recorder of Deeds, in and for

Sussex County, in Georgetown, Delaware in Deed Book 1209, page 246, et seq; as amended by amendments recorded in Deed Book 1649, page 16; Deed Book 1700, page 183, et seq; Deed Book 1867, page 215, et seq; Deed Book 2073, page 212, et seq; and Deed Book 2138, *page 072 et seq. ; and Deed Book 2914, page 054 et. seq., and*

**WHEREAS**, the Declaration and Restrictions, as amended, are applicable to Shipcarpenter Square, recorded in Plot Book 28, page 103 and Plot Book 28, page 37 [hereinafter referred to as “Shipcarpenter Square”]; and

**WHEREAS**, the SCS and Owners desire to amend the Declaration and Restrictions, as amended, to specify: 1) SCS property use provisions and (2) architectural design and material specifications.

**WHEREAS**, pursuant to the authority established in the Declaration and Restrictions, as amended, paragraph 2, the Declaration and Restrictions may be amended by and with the vote or written consent of no less than sixty percent (60%) of the then Owners of all Lots in Shipcarpenter Square;

**NOW THEREFORE**, Shipcarpenter Square Association, Inc. and the Owners of lots in Shipcarpenter Square do hereby amend and restate in their entirety the Declaration and Restrictions for Shipcarpenter Square as follows:

### **1. Applicability**

These Restrictions shall apply to all lots and common areas within the Subdivision.

## **2. Duration and Amendments**

The following Restrictions shall run with the land, and the title thereto, as herein and hereby conveyed, and all the same shall be binding upon all persons claiming hereunder, as well as their respective heirs, successors, and assigns, as the case may be, in perpetuity; subject, however to the proviso that Shipcarpenter Square Association, Inc. (SCS), by and with the vote or written consent of no less than sixty percent (60%) of the then owners of all the lots in Shipcarpenter Square, shall have the power to waive, abandon, terminate, modify, alter, change, amend or add to these Restrictions, or any of them, at any time hereafter. Any such waiver, abandonment, termination, modification, alteration, change, amendment, or addition shall take effect when a copy thereof, executed and acknowledged by the SCS, in accord with the usual form of execution and acknowledgment of deeds to land, by a Delaware corporation, together with the written consents of the requisite number of lot owners, or a certificate by the SCS verified under oath by the President thereof, or in the case of their absence or inability, by any Vice-President thereof, setting forth the time, manner and result of the taking of the vote of all the eligible voting lot owners, have been filed for record in the Office of the Recorder of Deeds of the State of Delaware, in and for Sussex County, shall thereafter remain in effect in perpetuity, unless and until it shall thereafter be waived, abandoned, terminated, modified, altered, changed, amended, or added to, as the case may be.

## **3. Mutuality of Benefit and Obligation**

The Restrictions are made for the mutual and reciprocal benefit of each and every lot in the Subdivision and are intended to create mutual, equitable servitudes upon each of the lots in

favor of each and all of the other lots therein; to create reciprocal rights between the respective owners of all of the lots; to create a privity of contract and estate between the grantees of the lots, their heirs, successors and assigns, and shall, as to the owner of each such lot, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other lots and their respective Owners.

#### **4. Shipcarpenter Square Association, Inc. (SCS)**

**4.1.** Every person who acquires legal title to any lot in the Subdivision shall become a member of the Shipcarpenter Square Association Inc. (SCS), a Delaware non-profit corporation, herein referred to as "SCS."

**4.2.** The SCS shall have all the powers that are set out in its Articles of Incorporation, its By-Laws, and all other powers that belong to it by operation of law.

**4.3.** The affairs of the subdivision shall be administered by the Board of Trustees. The members of the Board shall be determined and elected in accordance with the terms of the SCS By-Laws.

#### **5. The Commons**

**5.1.** The SCS shall have responsibility for maintaining the Common Area located in the center of the Subdivision, (hereafter called the Commons) and the unpaved portion of the internal rights-of-way. Responsibility for maintaining the unpaved portion of the Shipcarpenter Square side of the rights-of-way containing Third, Fourth, and Shipcarpenter Streets and Burton Avenue shall reside with the individual lot

owner, as provided by city ordinance.

**5.2.** The Trustees shall determine appropriate general uses of the Commons and shall individually approve any specific use.

**5.3.** All Owners and their lessees shall have pedestrian access to the Commons along two five-foot (5') wide corridors, one (1) being on Lot 32 along its boundary with Lot 33 and the other being on Lot 25 along its boundary with Lot 26.

**5.4.** If a specific use is disapproved by the Trustees, the Owner may appeal this decision to the SCS via a duly noticed special meeting of the SCS. Approval will require the vote of sixty percent (60%) of all SCS members who are then eligible to vote either in person or by proxy.

## **6. Architectural Review Committee (ARC) Responsibilities and Accountability**

### **6.1. Application Review Procedures**

**6.1.1.** Any improvement to a lot (including but not limited to, moving an existing building or constructing a building, adding to or modifying any existing building, or demolishing any existing improvement, whether an original structure or an addition thereto) shall require prior approval by the SCS Architectural Review Committee (ARC). Prior approval requirements include site preparation, on-site delivery of construction materials, and application for required permits. At the present time, SCS is located in the City of Lewes Historic District, as a consequence, submission for approval of plans to the City of Lewes Historic Preservation Commission (HPC) is required.

**6.1.2.** If approval by the ARC is granted, the application is ready for submission to the City of Lewes for approval by the HPC.

## **6.2. Application Review Process**

**6.2.1. Submission of Application:** Six copies of a completed SCS Application Form and required supporting documentation including detailed scaled plans and specifications shall be submitted to a member of the ARC. The ARC shall formally notify adjacent property owners of the filing of the application.

**6.2.2 The Review Process** shall adhere to established ARC procedures and guidelines as approved by the Trustees.

### **6.2.3. Approval Process**

**6.2.3.1.** All decisions made by the ARC shall be communicated to the applicant in writing with copies to the City of Lewes building official.

**6.2.3.2.** Any changes to an approved plan shall require further ARC review and approval.

**6.2.3.3.** All ARC decisions shall be determined by a simple majority vote of the ARC members.

**6.2.4. Denied Application Package:** If the ARC disapproves an application request and has notified the Owner appropriately in writing, the applicant has the right to appeal such action as follows:

**6.2.4.1. Applicant may request a meeting with the ARC:** Such request must be written and sent to the

Chairman of the ARC.

**6.2.4.2. ARC Reconsideration:** The ARC shall review the amended Application Package and notify the applicant of the approval or disapproval of the submitted amended Application Package.

**6.2.4.3. Appeal to the Trustees:** If an original application has been denied, and following reconsideration the ARC has still disapproved an application request, the applicant may appeal the disapproval to the Trustees.

**6.2.4.4. Trustees Consideration of Appeal:** The Trustees shall meet with the applicant and subsequently notify the applicant of the Trustees decision in writing.

**6.2.4.5. Appeal to SCS Membership:** If the proposed plans are disapproved by the Trustees, the Owner may appeal this decision to the SCS via a duly noticed special meeting of the SCS. Approval will require the vote of sixty percent (60%) of all SCS members who are eligible to vote either in person or by proxy.

**6.2.4.6 Decision of SCS Membership:** The decision of the SCS at the special meeting shall be final.

**6.2.5.** All construction approved by the ARC shall be commenced within one year of the date of approval.

### **6.3. Variances**

**6.3.1.** The Trustees shall have the authority to grant variances from the specific architectural requirements described in this

document in order to relieve practical difficulties and prevent unnecessary hardships; provided, however, that the Trustees shall determine that each proposed variance is in conformity with the intent and purposes hereof and provided also that any variance will not be materially detrimental or injurious to other property or improvements in the Subdivision. No such variance shall be authorized by the Trustees unless it finds each of the following:

**6.3.1.1** That there are unique physical circumstances or conditions including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not to circumstances or conditions generally created by the provisions of the Zoning Ordinance or code in the neighborhood or district in which the property is located.

**6.3.1.2.** That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Restrictions and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

**6.3.1.3.** That such hardship has not been created by the Owner.

**6.3.1.4.** That the variance, if authorized, will not alter the essential character of Shipcarpenter Square and not substantially or permanently impair the appropriate use or development of the adjacent property nor be detrimental to the public welfare.

**6.3.1.5.** That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the Restriction in issue.

**6.3.2.** Adjacent property owners shall be notified of each proposed variance. Each proposed variance will be subject to a waiting period of 30 days to allow for a request by any member of the SCS to comment to the Trustees.

**6.3.3.** Should the Trustees deny the variance appeal, the Owner has the right to appeal to the SCS membership. Decision shall be based upon a 60% vote of SCS members who are currently eligible voting members either in person or by proxy. The Trustees shall give notice of the appeal to all Shipcarpenter Square Owners.

## **7. Specific Architectural Requirements for Original Structures Moved to Shipcarpenter Square, Additions, Fencing, and Ancillary Buildings**

**7.1.** All homes in Shipcarpenter Square must be structures that originated as of 1899 or earlier and that have been or will be moved to a lot in Shipcarpenter Square following approval of such structure based upon verification by the owner's architect that the structure, when erected on site, will retain the architecture of the original. All usable and salvageable materials from the original structure should be used. A photo of the original structure should be provided with the application. Alternatively, the home may be a reproduction based on authentic architectural specifications and dimensions of a residential/commercial structure that existed in the Delmarva

Peninsula in the 19<sup>th</sup> century or earlier. Photographs or other evidence showing the appearance of the historic 19th century structure on which the architectural specification is based must accompany the application. The photographs or other evidence shall include the exterior front and side facades of the original structure with rear extensions conforming to the requirements of this document.

**7.2. Restrictions for the original structure or revisions of the original structure include:**

**7.2.1. Exterior Finishes:** Original or materials approved for building exterior siding to include wood shingles, wood clapboard, wood board and batten, and fiber cement siding (e.g. Hardy Board – clapboard style), provided that the smooth surface of the board is shown on the exterior. Brick is allowed if original structure was brick. Masonry, asphalt, aluminum, and other composition materials are not permitted for siding.

**7.2.2 Roofing:** Wood shingles, metal standing seam, and raised seam metal with right angle transition are permitted materials. Slate is permitted for Victorian structures. Asphalt and other composition materials are not permitted.

**7.2.3 Foundations:** Brick and stone are permitted foundation materials and may be used to face cinder block and poured concrete foundations.

**7.2.4. Chimneys:** Chimneys shall be constructed of brick or stone and/or shall have brick or stone facing on all exterior elevations.

**7.2.5 Doors:** All exterior doors shall be made of wood, including screen doors and storm doors. Windows in doors shall be divided light windows, except where original structure is Victorian in style and the other windows are not divided light style.

**7.2.6. Windows:** Windows shall be a divided light style, except when original structure is Victorian architecture. Windows shall be double-hung sash windows. Window style for barns may vary from this requirement subject to review and approval by the ARC.

**7.2.7. Skylights:** Skylights shall be permitted on original structures if they are not visible from the front. As used here, front refers to the Commons and for homes not on Commons the fronts are on 3<sup>rd</sup>, 4<sup>th</sup> or Burton Streets.

**7.2.8. Trim and Shutters:** To the extent possible replicate original version.

**7.2.9. Fencing.** All fencing shall be wood, except where the primary structure is Victorian architecture, in which case it may be wrought iron.

**7.2.9.1.** Ornamental fencing no higher than four (4) feet shall be permitted in front of residences, except those facing the Commons, where no fencing is permitted in front of the building.

**7.2.9.2.** Privacy fencing is permitted in the rear of the residence.

**7.2.9.2.1.** Privacy fencing shall not exceed 6 ft in height.

**7.2.9.2.2.** Fencing surrounding a pool shall be solid and 6 feet in height.

**7.3. Unavoidable Destruction of a Residence.** Any original residence or outbuilding destroyed by fire, wind or other devastation, or which city or state officials deem uninhabitable may be reconstructed, subject to ARC approval. All debris shall be removed and the lot restored to a clean condition promptly. The original structure should be rebuilt or a different structure adhering to the requirements in this document constructed.

## **7.4. Additions**

**7.4.1. Rear Additions:** Rear additions shall meet the specifications herein and are to be designed in an architectural design compatible with but distinguishable from the original structure.

**7.4.2. Side Additions:** Side additions may extend in front of the rear wall of the original structure and shall be compatible with the architectural features, materials, and colors of the original structure. Those side additions that extend in front of the rear wall of original structure must have a setback from the front of the structure and shall not exceed one (1) story in height.

### **7.4.3. Specific Requirements for All Additions:**

**7.4.3.1 Height:** No addition shall exceed the height of the ridgeline of the original structure unless the height of original roofline is 24 feet or less.

**7.4.3.1.1.** If the highest original roofline is 24 feet or less, the highest roofline may be increased by 10% over the highest original roofline.

**7.4.3.1.2.** If the highest original roofline is 23 feet or less, the highest roofline of the addition may be

increased by 15% over the highest original roofline.

**7.4.3.1.3.** If the highest original roofline is 20 feet or less, the highest roofline of the addition may be increased by 20% over the highest original roofline.

**7.4.3.1.4.** If the highest original roofline is 18 feet or less, the highest roofline of the addition may be increased by 25% over the highest original roofline.

**7.4.3.2. Additions Roof Pitch:** No flat roofs are permitted.

**7.4.3.3. Additions Exterior Finish:** Same requirements as for the original structure, Section 7.2.1.

**7.4.3.4. Additions Foundations:** Brick and stone are approved foundation materials and may be used to face cinder block and poured concrete foundations.

**7.4.3.5. Additions Roofing:** Same requirements as for the original structure, Section 7.2.2.

**7.4.3.6. Additions Chimneys:** Same requirements as for the original structure, Section 7.2.4.

**7.4.3.7. Additions Doors:** All exterior doors shall be compatible with the architectural design of original structure. Windows in doors shall be divided light windows, except where original structure is Victorian in style and the other windows are not divided light windows.

**7.4.3.8. Additions Windows:** Casement windows shall be a divided light style, except when original structure is Victorian architecture or a barn. Individual window

openings shall not exceed 36"x60" or a total of 2,160 square inches and shall contain vertical, double hung windows. Window openings less than 864 square inches may be a single sash. Windows shall be appropriate to the structure and consistent with existing and surrounding properties. The replacement sash shall fit window openings and not noticeably change sill depth, muntin configuration, appearance of the frame and other architectural design details. If consistent with the period, decorative shutters may be added but must present the appearance of working shutters; i.e., set out from the siding surface, covering the window casing, and of appropriate size and proportion in relation to the window.

**7.4.3.9 Additions Skylights:** These are allowed on additions; domed skylights are not permitted.

**7.4.3.10. Additions Exterior Balcony and Deck:** A single second story balcony is permitted provided the balcony does not exceed 50 square ft. in area. A balcony on structures facing the Commons shall not extend beyond the sidewall of the original structure.

**7.4.3.11. Additions Trim and Shutters:** Replicate as closely as possible those on original structure.

**7.4.3.12. Additions Screened porches/sunroom additions:** Shall be permitted to the rear of the original structure or addition.

**7.4.3.12.1.** Materials conform as stated elsewhere in this document.

**7.4.3.12.2.** Casement windows are allowed.

**7.4.3.12.3.** Awning style, color, design, and material require ARC review and approval.

## **7.5. Ancillary Buildings (outbuildings)**

**7.5.1.** Ancillary buildings shall conform to the material requirements stated elsewhere in this document with the exception that garage doors may be vinyl or metal as long as they have a wood appearance.

**7.5.2.** Ancillary buildings must comply with rear and side setbacks and have a roofline that is no higher than the roofline of the primary structure.

**7.5.3.** All ancillary buildings must be enclosed.

**7.5.4.** Carports are not permitted.

**7.5.5.** Only one ancillary building shall be allowed.

**7.5.6.** Any ancillary building must be situated in back of the original structure.

**7.6. Colors:** Paint colors shall be compatible with the style and period of the historic structure and subject to ARC approval.

## **8. General Restrictions, Enforcement**

### **8.1. General Restrictions for Shipcarpenter Square**

**8.1.1.** All of the lots shall be used for private residential purposes only, and no building of any kind whatsoever shall

be erected, maintained, or used thereon except private dwelling houses. Residential purposes and use of the lots may include rental of the improvements on a lot for residential purposes only, provided, however, the rentals are restricted to a minimum rental term to the Lessee(s) of three (3) months. Any improvement leased to a Lessee by an owner for an allowed term may not be sublet. Residential use for rental shall be limited to one (1) family which is defined as two (2) or more persons who are related by blood living together and occupying a single housekeeping unit with single culinary facilities or a group of persons living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a non-profit, cost-saving basis. Domestic servants employed and residing on the premises shall be considered part of the family unit (Sussex County, DE, Code definition). Duplexes and other multi-family dwellings are specifically prohibited. No person shall reside on any lot, casually, temporarily, or permanently, except in a dwelling house.

**8.1.2.** For lots interfacing with the Shipcarpenter Square Commons, structures shall be set back twenty-five feet (25') from the Commons. All other setbacks and heights shall comply with the applicable City of Lewes Code.

**8.1.3.** No outside toilet or individual water well shall be constructed on any lot. All plumbing fixtures, dishwashers, toilets, or sewage disposal systems shall be connected to the municipal sewage system.

**8.1.4.** All signs, billboards, or advertising structures of any kind are prohibited except upon application to, and written permission from the Trustees excepting "FOR SALE," "FOR

RENT,” or Security System signs, which may be displayed upon any given lot if the same does not exceed the size permitted by the Zoning Ordinance of the City of Lewes.

**8.1.5.** No stripped down, partially wrecked vehicles, tires, wheels, vehicles with expired license tags or registrations, junk motor vehicle, or sizeable parts thereof shall be permitted to be parked on any street in the Subdivision or on any lot in such a manner as to be visible to the occupants of other lots within the Subdivision.

**8.1.6.** No trash, ashes, garbage, or other refuse shall be dumped or stored or accumulated on any lot. No outside burning of wood, trash, garbage, or household refuse shall be permitted.

**8.1.7.** No oil or natural gas drilling, refining, quarrying, or mining operations of any kind shall be permitted upon or in any lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted on any lot. However, the Trustees may permit drilling for the purpose of a ground water heating and cooling system.

**8.1.8.** No noxious, offensive, or illegal activities shall be carried on any lot nor shall anything be done on any lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood.

**8.1.9.** Every tank for the storage of fuel installed outside any building in the Subdivision shall be buried below the surface of the ground, or screened to the satisfaction of the ARC by fencing or shrubbery. Every outdoor receptacle for ashes,

trash, rubbish, or garbage shall be located inside, buried below the surface of the ground, or screened to the satisfaction of the ARC by fencing or shrubbery. All refuse shall be put out for collection on the access road, and not on any of the streets surrounding the Subdivision.

**8.1.10.** Wall or ground-based antennas for electronic reception or any other purpose, are approved only if screened from visibility from any public way and placed no more than three (3) feet above the ground. Roof antennas are prohibited. The Federal Communications Commission (FCC) adopted a rule effective October 14, 1996 (the FCC Rule), preempting certain restrictions concerning the installation, maintenance, and use of direct broadcast satellite, television broadcast, and multi-point distribution service antennas. Collectively, antennas not covered by the FCC Rule, including satellite dishes in excess of one (1) meter in diameter, shall not be installed on the exterior portions of any lot without prior written approval of the ARC. Antennas situated entirely within a dwelling and not visible from the exterior are permitted. Antennas covered by the FCC Rule, including satellite dishes of one (1) meter or less in diameter, are permitted within a Lot, provided such antennas are not visible from the front elevation of the lot; provided, however, that nothing herein requires installation of such an antenna in a location from which an acceptable quality signal cannot be received, as certified in writing by a licensed installer or which causes an unreasonable delay or cost increase in such installation.

**8.1.11.** No animals or livestock of any description, except the usual household pets, shall be kept on any lot. No dog shall be left on a lot tied to an immovable object by rope, chain or

other means. Exterior animal kennels are prohibited. Dogs owned by Owners or their lessees may be walked in the Commons only if they are on leashes. Dog walkers shall be responsible for removing any droppings left on the Commons by dogs.

**8.1.12.** No clothes or laundry shall be exposed for airing or drying.

**8.1.13.** No driveway shall be built to connect with any of the four (4) streets (3<sup>rd</sup>, 4<sup>th</sup>, Park Avenue and Burton Avenue) surrounding the Subdivision, nor shall any automobile be parked in front of the rear line of the house on any lot. All driveways shall be connected to the internal road (Shipcarpenter Square). Asphalt driveways are prohibited. Pervious materials are encouraged.

**8.1.14.** No outside decorations (including but not limited to, statues, plaques, birdbaths) shall be placed on a lot or attached to a house or secondary building except those decorations that are placed behind the rear line of the original house. This restriction does not apply to trees, shrubs, and other forms of plant life.

**8.1.15.** No lot may be subdivided, nor any portion of a lot leased, except for the purpose of sale or lease to the owner of the lot adjacent to the portion to be subdivided or leased. No additional house or secondary building shall be permitted on land so subdivided or leased.

**8.1.16.** The parking or storage of personal watercraft, recreational vehicles, campers, boat trailers, motor vehicles with advertising or identification of a business, and/or similar

type vehicles, must be within an enclosed garage with doors, and the garage doors shall be closed, except during the moving of such vehicles. Service vehicles used to service the home or during construction of same are exempt from the restrictions of this subsection.

**8.1.17.** All lots, whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in such a manner as to prevent their becoming unsightly by reason of unattractive growth on such lot or the accumulation of rubbish or debris thereon. If a lot or the improvements on it become unsightly, unsanitary, or unsafe, the Association shall remedy the condition at the expense of the offending property owner. In the event an owner of any lot in the Subdivision shall fail to maintain the lot or any primary improvements situated thereon in a manner satisfactory to the Trustees, the Association shall have the right, through its agents and employees, to enter upon said lot and repair, maintain, and restore the lot and the exterior of the buildings and any other improvements erected thereon. Such right shall not be exercised unless the majority of the Trustees shall have voted in favor of its being exercised. The cost of such exterior maintenance shall be payable upon demand. However, prior to the Association undertaking to maintain improvements on any lot which the Owner has failed to maintain, the Association must give the Owner thirty (30) days notice by registered mail, return receipt delivery, or other receipted mail notice and an opportunity to cure. Each finished lot is required to have landscaping which must be approved by the ARC and such approved landscaping must be completed within six (6) months of the completion of any house construction on the lot.

## **9. Easements**

**9.1.** SCS has dedicated to the City of Lewes and the appropriate utility company or companies rights-of-way and easement areas for the installation and maintenance of public utilities.

**9.2.** On each lot, the rights-of-way and easement areas that have been platted and titled of record are dedicated for public utilities purposes and shall be maintained continuously by the lot owner. No structures, plantings, or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with the installation or maintenance of utilities.

## **10. Remedies for Non-Compliance**

**10.1** The Trustees or any Owner shall have 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 and cost in enforcement by the SCS shall be chargeable to the Owner of the Lot, including the cost of reasonable attorney's fees. If any legal action is taken by the SCS, such fees, approved by a court of competent jurisdiction, shall constitute a lien on the Lot, collectable in the same manner as assessments hereunder.

**10.2.** The remedies hereby specified are cumulative, and

this specification of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law, in equity, or under any statute. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any of these restrictions shall be held to be a waiver by that party (or an estoppel) of that party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

**10.3. Remedies for Non-Compliance with Architectural Restrictions:** Commencement of construction on any improvement whatsoever to be erected on any lot, or changes or replacement to any existing structure without approval of either the ARC or the Trustees upon Appeal shall entitle the Trustees to injunctive relief to require removal of any commenced improvement, or in the alternative, shall be presumed to be a nuisance and a trespass on an easement imposed on each lot, if such easement exists. Any effort to utilize the remedies of Section 10.3 must be approved by the Trustees after notice to the affected SCS member(s). The Trustees 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 Restriction 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 and cost in enforcement by the SCS shall be chargeable to the Owner of the Lot, including the costs of reasonable attorney's fees. In the event any legal action is taken by the SCS, such fees, approved by a court of

competent jurisdiction, shall constitute a lien on the Lot, collectable in the same manner as assessments hereunder.

## **11. Assessments**

**11.1 Annual Assessments.** The Trustees shall set and collect an annual assessment for the purpose of capital and operating expenses and of retiring any deficit carried over from the previous year. The Trustees shall compile a proposed line item budget annually that shall also contain the previous years' budget and detailed expenses. This budget shall be circulated to all members of the SCS for their information and comment not more than thirty (30) days, nor less than fourteen (14) days, before a duly noticed meeting of the SCS for the purpose of having the eligible voting members adopt, reject or amend the proposed budget, inclusive of the proposed annual dues for the upcoming fiscal year. The budget meeting shall be held in November or December of each year to approve a budget for the following year. Approval of the proposed budget requires a simple majority vote of approval by the eligible voting owners, either in person or by proxy, At this meeting the Trustees, as represented by its Secretary/Treasurer, will provide a complete and accurate accounting of income and expenses to date and what is anticipated by end of the current fiscal year. A detailed financial statement together with a statement of the annual assessment payable shall be distributed to the SCS members no later than sixty (60) days from the end of the fiscal year which shall be December 31<sup>st</sup>.

The annual assessment shall be payable by owners within 30 days after SCS members have received the annual assessment statement. Annual assessment amounts shall

be apportioned equally among all lots.

**11.2 Special Assessments.** The Trustees shall also have the power and authority to levy and collect special assessments from SCS members. The special assessment shall be payable by owners within 30 days after SCS members have received the special assessment statement. Special assessment amounts shall be apportioned equally among all lots.

Without limiting the foregoing, special assessments shall be used for the payment of: emergency reconstruction, unexpected repair, or replacement of a capital improvement including necessary fixtures, common area repair, pathways and paving repair, extraordinary legal fees, or any other emergency repair or emergency circumstance determined by the Trustees. Except in the case of an unforeseen extreme emergency, such as a natural disaster or immediate health or safety event, special assessments will require a 60% vote of approval by the eligible voting owners of the SCS.

**11.3 Failure to Pay; Lien on Lot.** If any annual assessment or special assessments are not paid by the required date, then they shall be deemed delinquent and shall, together with such penalty thereon and cost of collection thereof, including reasonable attorney's fees, as hereinafter provided, continue as a lien on the lot and any structure built thereon. In addition to such lien rights, the obligation of the annual assessment or special assessment shall be a personal obligation of the Owner to pay such assessment, however the personal obligation shall not pass to their successors in title (other than as a lien on the land) unless expressly assumed by them. If the annual assessment or

special assessments are not paid within thirty (30) days after the delinquency, the owed amounts shall bear a penalty from the date of the required date of payment at the rate of one and one-half percent (1 and ½%) per month. The SCS may bring legal action against the owner personally obligated to pay the same or may enforce or foreclose the lien against the lot. If a judgment is obtained, such judgment shall include penalty as stated above on the assessment from its due date and reasonable attorney's fees to be fixed by the court, together with the costs of collection and penalty fees as aforesaid. No owner of a lot may waive or otherwise escape liability for any assessment provided for herein by nonuse of the common areas or abandonment of his or its lot. The SCS reserves the right to suspend the enjoyment rights of any member in any easement or common area for the period during which any assessment against such member remains unpaid.

## **12. Grantees Acceptance**

**12.1.** The grantee of any lot subject to this declaration shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, from an Owner or other party of such lot, accept such deed or contract upon and subject to each and all of these Restrictions and the agreements herein contained, and also the jurisdiction, rights and powers of the SCS as represented by its Trustees, and by such acceptance shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with the SCS and to and with the grantees and subsequent owners of each of the lots within the Subdivision to keep, observe, comply with and perform the Restrictions and agreements.

**12.2.** Each grantee also agrees, by such acceptance, to assume, as against the SCS, its successors or assigns, all the risks and hazards of ownership or occupancy attendant to a lot.

### **13. Severability**

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability, “running” equality of any other one of the Restrictions.

### **14. Captions**

The underlined captions preceding the various paragraphs and subparagraphs of these Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

THIS DOCUMENT WAS SIGNED BY PRESIDENT ROBERT DILLMAN AND SECRETARY ROBERT ROSENBERG ON NOVEMBER 24<sup>TH</sup>, 2014; SIGNATURES WERE NOTARIZED BY WILLIAM SCHAB, ESQUIRE.

EXHIBIT "A" CERTIFIES THAT THE DOCUMENT WAS APPROVED BY NO LESS THAN 60% OF ALL LOT OWNERS ON AUGUST 16, 2014.