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Tax Parcels: 1-34 3.00 683 through 774  
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AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS,  
CONDITIONS AND REMEDIAL CLAUSES FOR

FAIRWAY VILLAS SUBDIVISION

BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE

CRIPPLE CREEK PROPERTIES, L.P., a Delaware limited partnership ("Declarant"), the owner of certain real property located on the east side of Sussex County Route 348 and on the south side of Indian River and lying in Baltimore Hundred, Sussex County, Delaware and being a subdivision consisting of ninety (90) lots (the "lots") on approximately fifty-one (51) acres (the "Subdivision"), as set forth in the Subdivision Plan for Fairway Villas Subdivision as recorded in the Office of the Recorder of Deeds in and for Sussex County, Delaware, in Plot Book 44, Page 36, et seq. (the "Subdivision Plan"), for the purpose of ensuring the use of the Subdivision for attractive residential purposes, of preventing nuisances, of preventing impairment of the attractiveness and value of the Subdivision, of maintaining the desired tone and quality of the Subdivision, and thereby securing to lot owners the full benefit and enjoyment of their homes, with no greater restriction on the free and undisturbed use of said lots than is necessary to ensure the same advantages to the other lot owners, hereby covenants, agrees and declares that all of the property and land areas shown on the above-mentioned Subdivision Plan, except as may be specifically herein exempted and excluded, are hereby subjected to the following declaration of restrictive covenants, conditions and remedial clauses for Fairway Villas Subdivision as amended and restated by this document (the "Declaration"), which shall run with the land and be binding against it, in perpetuity, unless the same be modified or amended as hereinafter provided.

Pursuant to the powers reserved to Declarant in Paragraph 35 of the original Declaration Of Restrictive Covenants, Conditions And Remedial Clauses For Fairway Villas Subdivision as recorded in the Office aforesaid in April 12, 1990 in Deed Book 1710, Page 178 more than 75% of the lots having been sold, and the aforesaid privileges, rights, powers, duties and authority of the original Declarant having vested in the Property Owners' Association, on the 3<sup>rd</sup> day of October, 1998 the Property Owners Association hereby amends and restates the Declaration Of Restrictive Covenants, Conditions And Remedial Clauses For Fairway Villas Subdivision, and incorporates herein the following amendments as previously recorded:

1. First Amendment To Declaration Of Restrictive Covenants, Conditions And Remedial Clauses For Fairway Villas Subdivision as recorded in the Office aforesaid on June 8, 1990 in Deed Book 1721, Page 42;
2. Amendment To Declaration Of Restrictive Covenants, Conditions And Remedial Clauses For Fairway Villas Subdivision as recorded in the Office aforesaid on October 21, 1994 in Deed Book 2013, Page 90;
3. Amendment To Declaration Of Restrictive Covenants, Conditions And Remedial Clauses For Fairway Villas Subdivision as recorded in the Office aforesaid on February 15, 1995 in Deed Book 2034, Page 32; and
4. Amendment To Declaration Of Restrictive Covenants, Conditions And Remedial Clauses For Fairway Villas Subdivision as recorded in the Office aforesaid on May 7, 1996 in Deed Book 2122, Page 180.

Any deed, conveyance, testamentary disposition or contract made in violation of this Declaration shall be void *ab initio* and may be set aside on petition of Declarant, any lot owner or any of their respective heirs, executors, administrators, successors or assigns. All such parties shall be deemed parties hereto to the same effect as Declarant. In the event any such conveyance or other instrument is set aside by decree of any court of competent jurisdiction, all damages, costs and expenses of such proceedings and the reasonable attorneys fees of the offended party or parties shall be taxed against the offending party or parties and shall be declared by such court to constitute a lien against the real estate wrongfully deeded, sold or conveyed, until the same shall be paid in full. Such lien may be enforced in such manner as such court may order, or as provided herein.

This Declaration constitutes a mutual covenant running with the land and all successive future owners shall have the same right to invoke and enforce its provisions as Declarant.

This Declaration shall take effect and be in full force when placed of public record in the Office of the Recorder of Deeds, in and for Sussex County, Delaware.

As used herein, references to Declarant shall include Declarant, its successors and assigns.

The land areas, lots or parcels shown on the Subdivision Plan and any amendments thereto as utility lots, unplatted acres, open space areas or recreation areas shall not be subject to this Declaration unless Declarant amends this Declaration to specifically so provide.



The restrictive covenants, conditions and remedial clauses for Fairway Villas Subdivision which shall be applicable to all of the aforesaid lots and land areas in said Subdivision, as set forth in this Declaration, are as follows:

1. Fairway Villas Subdivision is hereby established as a restrictive subdivision for single family detached dwellings. For the purposes of this Declaration, the word "family" shall mean a single person who occupies a dwelling unit and maintains a household: two or more persons both or all of whom are related by blood, marriage or adoption, who occupy a dwelling, live together and maintain a household; or two adults. Domestic servants employed on a full-time basis and residing in the dwelling shall be considered as part of the family.
2. Each lot or given land area located in the Subdivision shall be used solely and exclusively for residential purposes, except as hereinafter provided. No structure or other improvement, except as hereinafter provided, shall be erected, altered, placed, grown, installed, used or permitted to remain in the Subdivision. Nothing herein contained shall limit or restrict the right of Declarant to use all or portions of lots or other lands in the Subdivision which are not sold for residential purposes as Declarant may see fit.
3. One (1) detached single family dwelling (defined as a building containing cooking and housekeeping facilities, designed and used exclusively for residential occupancy) may be placed, erected, altered and occupied upon any numbered lot in the Subdivision. The dwelling shall not be any higher than thirty- five (35) feet from the center of the lot and the center of the street. The square footage of the living area thereof shall be not less than one thousand four hundred (1,400) square feet exclusive of all porches, breezeways, garages, terraces, stoops or other attachments. Each such dwelling shall have not less than one thousand eight hundred (1,800) square feet of covered space, including both living area and areas not part of the living area. A two-story or three-story dwelling on a lot of 10,000 square feet or more shall have a minimum of one thousand (1,000) square feet of living area, as defined above, on the ground floor level. A two-story or three-story dwelling on a lot of less than 10,000 square feet shall have a minimum of one thousand (1,000) square feet of living area (as defined above), and/or enclosed garage space on the ground floor level. One (1) attached garage may be located on each lot, provided no garage shall be constructed for more than three (3) cars, such garage must be enclosed (as opposed to being constructed as a carport), must conform in appearance to the style of the dwelling and must have the same exterior and roof colors as the dwelling.
4. No lot within the Subdivision shall be re-subdivided, sold or otherwise alienated into a lesser or smaller parcel, except by being recorded as a revision of or as a plan of re-subdivision of Fairway Villas Subdivision, which revision or re-subdivision shall bear the signature and approval of Declarant herein, and which shall have been duly approved and recorded by Declarant in the Office of the Recorder of Deeds, in and for Sussex County, Delaware. In the event of a violation of this provision, Declarant shall be entitled to petition any court of competent jurisdiction to grant such injunctive or other relief as such

court might consider appropriate under the circumstances, including the awarding of damages, costs, expenses and reasonable attorneys fees to the party taking action to enforce this Declaration against the offending party or parties, as provided in the preamble to this Declaration.

5. A land area of not less than one (1) full lot as shown on the aforesaid Subdivision Plan shall be provided for each dwelling placed, erected, constructed altered or used in the Subdivision. If more than one (1) lot is to be used for one (1) dwelling, specific written prior approval for such use must be obtained from Declarant.

6. The dwelling erected and maintained upon any numbered lot in the Subdivision shall front or face toward the street providing vehicular access to the lot, unless the owner shall obtain prior written approval from Declarant for any other or different placement, and provided, further, that Declarant shall not be required or obligated to approve any other or different placement of the dwelling.

7. The following building setback lines are hereby established and no dwelling, including a garage, shall be erected in violation of any of these requirements:

- (a) The front yard setback line shall be thirty (30) feet from the nearest street right-of-way line.
- (b) The rear setback line shall be fifteen (15) feet from the rear line of each numbered lot.
- (c) There shall be two (2) side yard setback lines, each of which shall be fifteen (15) feet from the respective sidelines of each lot. The following lots are only required to have a ten (10) foot side yard setback line as further indicated.
  - i. Lot 3-the south side
  - ii. Lot 5-the northeast side
  - iii. Lot 42-the north side not contiguous with lot 41+
  - iv. Lot 43- the south side
  - v. Lot 44 -the north side
  - vi. Lot 67-the northeast side
  - vii. Lot 68-the south side
  - viii. Lot 83-the north side
  - ix. Lot 84 -the south side
  - x. Lot 85-the west side
  - xi. Lot 86-the southeast side

8. Receptacles for storage of trash, refuse or garbage shall be kept inside the dwelling on each lot or in a structure with three sides at minimum and with at least one of those sides being the existing main structure. Any open side of such a structure for such receptacles should not exceed four (4) feet and must not open towards any



street. Plans for such a structure must be submitted to the Board for review and potential approval prior to construction. The receptacle must be kept inside the dwelling or the described structure except on pick-up days.

9. No fence, wall or other man-made structure or object shall be constructed on any lot. A living fence such as a hedge or other natural barrier may be planted on property lines immediately adjacent to the Cripple Creek Golf and Country Club course. The purpose of the living fence is to discourage golfers from trespassing on homeowner's property. Plans for a living fence including overall height of such fence must be submitted to the Board for review and potential approval prior to planting.

10. All dwellings in Fairway Villas Subdivision shall be connected to the Subdivision's central water and sewer systems at the expense of the respective owner or owners of such lot or lots. Declarant shall be responsible, at its expense, for installing such central water and sewer to the front lot line of each lot.

11. The elevation of any given lot or land area shall not be changed by a lot owner so as to affect the surface grade or drainage of his lot, surrounding lots or land areas without first obtaining the written approval of Declarant.

12. No structure of any temporary character and no tent, treehouse, childrens' playhouse, trailer, golf cart, boat, motor home, mobile home, travel trailer, commercial vehicle larger than a two-axle van, shack, doghouse, dog run, tool shed, utility building or other outbuilding shall be placed on any numbered lot at any time except during periods of construction of a dwelling for the storage of construction materials only, such temporary structures for construction material storage not to exceed four hundred (400) square feet. Under no circumstances shall any such temporary construction material storage structure be used for living quarters or sanitary disposal purposes. Structures for construction material storage shall consist of a construction type trailer or construction building, but no tent, other trailer, mobile home, travel trailer or other building shall be used for construction material storage purposes. Structures for construction material storage shall be promptly removed upon the issuance of a certificate of occupancy for the dwelling being constructed. Any hot tub, Jacuzzi, spa, sauna or similar amenity must be integrally attached to the existing structure such as on a deck. Plans for such an amenity must be submitted to the Board for review and potential approval prior to installation.

13. Nothing shall be done or maintained upon any lot, land area, road, drive, lane or other way which is or may become a nuisance to Declarant or other lot owners. No clotheslines, clothes trees or other devices, of a temporary or permanent nature, for the outside drying of laundry, shall be permitted on any lot.

14. No cattle, horses, swine, sheep, poultry, reptiles, birds, fowl or goats shall be kept or maintained on any lot and pets shall be strictly limited to domesticated dogs or cats, with each lot owner being allowed no more than two (2) dogs or two (2) cats or one (1) of each. All such pets shall be kept inside the dwelling or garage at all



times unless accompanied by the owner or custodian and under his control. Dogs must be on leashes at all times when outside a dwelling or garage. Pet waste must be picked up and disposed of properly. Dogs and cats may not be walked on the grounds of Cripple Creek Golf and Country Club at any time. There shall be no commercial keeping, raising or breeding of dogs, cats or any other animal or creature within the Subdivision. Dogs and cats may not be chained or tied outside at any time. No dogs, cats or other pets belonging to visitors or tenants may be maintained on any lot at any time.

15. Lot owners are not permitted to have a vegetable garden upon a lot.

16. No TV, radio, cable TV, ham radio, CB antenna or tower, nor any satellite dish shall be attached to any building or separately erected on any lot; expressly excepting and provided that a satellite dish that is twenty-four (24") or smaller in diameter or an antenna that is eighteen (18) inches or smaller in length is permitted to be attached to the back side of the dwelling house or the back side or the roof of said dwelling house if it is the same or similar color of the area of the house or roof to which it is attached, rendering it as inconspicuous as reasonably possible. Every effort must be made, consistent with adequate signal reception, to insure that the antenna is not readily visible from the street. No lot owner may maintain a radio or short-wave transmitter that would in any way interfere with the reception by other lot owners of telephone, radio or television signals.

17. In order to ensure the development of Fairway Villas Subdivision as a residential subdivision of high standards, Declarant reserves the power to control the design, placement and construction of the dwellings and garages which may be placed upon each lot or given land area therein. Whether or not specific provision is made in any conveyance of lot or given land area by Declarant unto any person or persons, the owner or occupier of each and every lot or given land area in said Fairway Villas Subdivision, by acceptance of title thereto or by taking possession thereof, covenants and agrees that no building shall be placed upon any lot unless and until both the plans and specifications therefore and the placement plan thereof have first been duly approved in writing by Declarant or by the Board provided for in paragraph 24 hereof. Each such building shall be placed upon its given lot or land area only in accordance with both the plans and specifications and the placement plan so approved. Refusal to approve any such plans, specifications or placement plans may be based upon any grounds, including purely aesthetic grounds, which, in the sole and uncontrolled discretion of Declarant or of the Board hereinafter described in paragraph 24, shall be deemed sufficient cause to refuse approval.

Aesthetic grounds might include but not be limited to color, size, height of building as are also delineated elsewhere. Further, no alterations, additions or changes in or to the exterior appearance of any building shall be made without first obtaining written approval therefore. The architectural and design review shall be directed towards attaining the following objectives for the Subdivision and the Association may adopt



reasonable standards, rules and regulations as stated below deemed necessary or convenient in attaining these objectives:

(i) Preventing excessive or unsightly grading, indiscriminate earth moving or clearing of property, or removal of trees and vegetation which could cause disruption of natural water courses or alter natural or designed land forms.

(ii) Ensuring that the location and configuration of structures are visually harmonious with the terrain, with the vegetation of the residential Unit and with surrounding residential lots and structures, and do not unnecessarily block scenic views from existing structures, walks of roads or tend to dominate any general development or natural landscape.

(iii) Ensuring that the architectural design of structures and their materials and colors are visually harmonious with Sub-division's overall natural land forms and native vegetation and with approved development plans, if any, for the areas in which the structures are proposed to be located.

In addition, the following requirements shall be fully complied with:

(a) Declarant or Board shall have absolute discretion, upon the recommendation of the Architectural Review Committee, to regulate the placement in relationship to each other, of dwellings having the same exterior design, appearance or color scheme, including the right to specify a minimum separation distance between dwellings having the same or substantially similar exterior design or appearance or color scheme. In as much as the Board has absolute discretion to regulate the placement of dwellings the Architectural Review Committee will also make recommendations to the Board for its potential approval concerning setback variances. Written records of such granted variances must be maintained.

(b) All exterior roof and wall colors on all structures within the Subdivision shall be of earth-tone colors. All exterior walls shall be constructed of wood, brick, stone or of vinyl or other siding materials which, in the sole and absolute discretion of Declarant or of the Board hereinafter described in paragraph 24, enhance the appearance of the Subdivision and which will retain such enhanced appearance for the projected life of the structure in question.

(c) No lot owner or owners shall be permitted to place on any lot within the Subdivision any sectional dwelling, modular dwelling, mobile home, motor home, dwelling having an A-frame type construction appearance, log house, geodesic house or dome, nor any dwelling or garage having a hexagonal or octagonal shape. Further, no dwelling or garage shall have a flat roof or a roof pitch of less than five (5) inches of roof elevation for each foot of roof span,

otherwise known as a 5/12 pitch, nor shall any dwelling or garage have a side wall elevation of less than eight (8) feet. No dwelling or garage shall be erected on pilings or pylons. Further, no dwelling shall have more than three (3) living levels above ground level.

(d) No lot may be elevated by the placement of fill nor may any lot have its grade level reduced without the prior written consent of Declarant or Board.

(e) The elevation of no dwelling or garage shall exceed thirty-five (35) feet in height.

(f) Each dwelling shall provide for off-street parking for at least two automobiles, either in a garage or a driveway or a combination thereof. Each lot owner shall pave his driveway in accordance with requirements established by Declarant, including but not limited to specifications relating to length, width, thickness, materials and appearance.

(g) Any lot owner desiring to erect a dwelling and/or an attached garage upon his lot shall submit two (2) complete sets of plans and specifications, together with a scale drawing or survey showing the proposed location of the improvements and the distance between the improvements and the Lot boundary lines in compliance with the setback requirements contained in paragraph 7 of this Declaration. The plans and specifications shall be submitted to Declarant together with a non-refundable check payable to "Fairway Villas Property Owners Association" in the amount of Two Hundred Fifty Dollars (\$250.00). The owner shall allow thirty (30) days from the date the complete plans, specifications and scale drawing or survey have been delivered to Declarant for the initial plan review. Upon approval, Declarant shall issue a written notice setting forth the approval, together with any conditions or limitations placed upon the construction plans. The lot owner shall comply in all respects with the approval and in no event shall any dwelling or other improvement be erected in any manner so as to violate this Declaration.

(h) After installation of the foundation for all proposed improvements, and before any further work is done on the lot, the owner shall submit two (2) copies of a building location survey prepared by a Delaware registered land surveyor showing all lot boundaries and the location of the foundation, together with measurements showing the distances between the foundation and all lot boundary lines. Within five (5) days after submitting the drawing to Declarant, it shall note approval or disapproval on one copy of the survey and return the same to the owner. In the event the survey shows any violation of the setback requirements, the lot owner shall be required, at his sole expense, to remove the



foundation or such part thereof which is in violation and to reinstall the foundation in full compliance with all setback requirements.

- (i) Driveway surfaces shall be of solid material such as concrete, asphalt or solid pavers: loose stone, gravel or similar materials are not permitted.

Neither Board nor any member of the Architectural Review Committee shall be responsible or liable in any way for any defects in any plans or specifications approved by the Board or the Committee, nor for any structural defects in any work done according to such plans and specifications approved by the Board or the Committee. Further, neither Board nor any member of the Architectural Review Committee shall be liable for damages to anyone submitting plans or specifications for approval under this Section, or to any owner of property affected by this Declaration by reason of mistake in judgment, negligence or non-feasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every owner of any Unit agree that such owner will not bring any action or suit against Board, or any member of the Architectural Review Committee, to recover any such damage. No approval of plans, location or specification shall be construed as representing or implying that such plans, specifications or standards will, if followed, result in a properly designed residence. Such approvals and standards shall in no event be construed as representing or guaranteeing that any residence or improvement hereto will be built in good workmanlike manner. The property owner shall have sole responsibility for compliance with approved plans and does hereby hold the Architectural Review Committee harmless for any failure thereof caused by the property owner's architect or builder.

18. The following general prohibitions and requirements shall prevail during construction activities conducted on any lot in Fairway Villas Subdivision.

- (a) No outside toilet shall be constructed on any lot. This shall not prohibit temporary placement of a self contained toilet, of the 'Johnny-on-the-Spot' type, provided it shall be maintained in an odor-free condition and provided each builder shall be limited to one (1) such portable toilet per lot and only during periods of active construction.

- (b) Once construction of any dwelling has commenced, such construction shall proceed without delay until the same is completed, unless such delay is attributable to a cause or causes beyond the control of the owner, builder or contractor, as the case may be. Cessation of work before completion of any dwelling once started, for a continuous period of thirty (30) days, shall be prima facie evidence of an attempt to abandon the same in its partially completed state and the same shall be deemed to be a public nuisance. In the event there has been no substantial construction work on any dwelling which has been started within the Subdivision for a continuous period of thirty (30) days, Declarant shall have the right to require the

owner or owners of said lot to obtain and post a completion bond with Declarant in the amount so required by Declarant within fifteen (15) days after the bond has been first requested. In the event a bond is requested but not posted as provided herein, Declarant may take action through any court of competent jurisdiction against the lot owner requiring the demolition and removal of the dwelling and also seeking an award of damages, court costs, expenses and reasonable attorneys fees, as provided in the preamble hereof.

(c) No dwelling shall be occupied until the same has been substantially completed in accordance with the plans and specifications and only after a proper occupancy permit has been issued to the lot owner and the dwelling is properly served by water and sewer facilities.

(d) Declarant, in its sole discretion, may require a lot owner, during construction, to erect and maintain in good repair at his cost a temporary construction fence on all sides but the roadside of his property in order to prevent the spreading or blowing of construction debris. Each lot owner agrees to be responsible for and to collect and properly dispose of on a daily basis all construction debris that spreads or blows beyond the perimeter of his lot.

(e) Construction activity which can be heard inside adjacent closed houses shall be limited to the 7AM-7 PM time period.

19. No stripped down, inoperable, disabled or junk motor vehicles or any sizeable part thereof shall be permitted to be parked or maintained on any lot (whether inside or outside a garage) or on any street.

20. No noxious, offensive or illegal activity shall be carried on upon any lot.

21. A lot owner or his Realtor may place a maximum of two signs on his lot offering the premises for rent, sales or both. The signs must only be posted on the road side of the lot and/or the golf course side of the lot, with no more than one sign on a given side of the lot. No sign may be more than 36 inches tall, including any posts or pillars, and no sign may be attached to a house, tree or other object other than a post used exclusively for such purpose. The sign itself may be no more than 12 inches high by 18 inches wide.

22. On each lot, a right-of-way and easement area of ten (10) feet along all front, side and rear lot lines is reserved by Declarant, which said right-of-way and easement shall be maintained continuously by the lot owner, but no structure, plantings or other materials shall be placed or permitted to remain or other activities undertaken by the lot owner which may damage or interfere with the installation or maintenance of drainage ways or utilities for which such right-of-way and easement area is reserved.



23. Declarant reserves the right and privilege of designating, selecting and using any given lot and land area of its choice for itself and for its agents, successors and assigns as an office and place of business for transacting and carrying on a real estate business in all its phases. Further it is anticipated that the future development of said Subdivision may make it desirable to construct an office, a swimming pool; a pumphouse to supply water to the Subdivision and/or a recreation area to serve the Subdivision and its inhabitants. The reservation of these rights does not obligate Declarant to construct such facilities at its own cost and expense.

24. At any time prior to the sale of seventy-five percent (75%) of the lots subject to this Declaration, Declarant may, in its discretion, appoint a Board of Governors (the "Board") of Fairway Villas Subdivision Property Owners Association (the "Association") consisting of not less than five (5) nor more than seven (7) members, as well as to appoint their respective successors. Board members appointed by Declarant may, but need not be, persons owning lots in Fairway Villas Subdivision. However, after Declarant has sold and disposed of not less than seventy-five percent (75%) of the total number of lots subject hereto, successors to the Board of Governors appointed by Declarant shall be elected by the vote, in person or by proxy (as set forth in paragraph 30 hereof), of the owners of the majority of the lots located in Fairway Villas Subdivision, the owner or owners thereof to have one (1) vote for each lot owned by him, her, them or it, as the case may be. Each elected Board member shall be a lot owner in Fairway Villas Subdivision. Upon the establishment of such Board, as aforesaid, such Board shall thereupon succeed to all the privileges, powers, rights and authority reserved by, vested in and exercised by Declarant or any such appointed Board, as provided herein, except as otherwise reserved by Declarant in this Declaration

25. Declarant reserves unto itself the exclusive right to grade, change the grade of, regrade, change the location of, close or partly close any way, road, street, lane, means of ingress, egress and passage in said Subdivision; PROVIDED, that such grading, regrading, change of location, changing or alteration shall not materially affect or interfere with the right of convenient ingress, egress and passage to or from any lot and shall not take any portion of any lot or land area sold or conveyed by Declarant unto any person before such change is effected.

26. Nothing contained herein shall be construed as an obligation of Declarant to remove underbrush or rubbish, or to cut grass on any lots owned by it. Individual owners of lots, however, do hereby covenant and agree to be responsible for the appearance of such lot or lots sold or otherwise conveyed to them by cutting grass and brush and by removing trash and rubbish therefrom at all reasonable times. Should such owners fail to maintain the appearance of such lots in accordance with Declarant's standards, Declarant reserves the right and privilege to enter upon such property for the purpose of maintaining the appearance of any improved or unimproved lot, the cost of which is to be borne by the lot owner or owners.



27. All streets and roads located within the Subdivision shall be private and shall be privately maintained for the use and benefit of the property owners within the Subdivision. Notwithstanding the foregoing, Declarant is authorized to convey all streets and roads within the Subdivision to a maintenance association or corporation or similar entity comprised of Declarant, Cripple Creek Golf & Country Club Ltd., the Association and Fairway Villas Condominium Association for the purpose of maintaining such streets and roads and each property owner, by the acceptance of the conveyance of the lot or lots within the Subdivision, hereby agrees to assume his proportionate responsibility of maintenance, repair and, where necessary replacement of all streets and roads within the Subdivision. This responsibility shall be met by the payment of an annual assessment, which shall be sufficient in amount for these purposes. Nothing contained herein shall be construed so as to obligate Declarant to maintain, repair or replace any of the ways, roads, streets, lands, drives or means of ingress, egress or passage in said Subdivision

28. All lot owners shall utilize the services of a single trash hauler selected by Declarant. Until such time as a dwelling is erected and occupied, no lot owner shall be liable for a trash collection fee.

29. All unlicensed or unregistered vehicles are prohibited from the roads within the subdivision. Expressly excepted from this restriction are: 1) vehicles owned and operated by the golf course, provided that their use is limited to maintenance for said golf course and: 2) golf carts which have received prior, written, driver specific approval from the Board. No vehicle whatsoever may be operated by an unlicensed driver.

30. Each owner of property subject to this Declaration shall pay an annual assessment to the Fairway Villas Subdivision Property Owners Association, which may be formed either as an unincorporated or as an incorporated property owners association. Assessments levied by the Association shall be used to promote the recreation, health, safety and general welfare of the property owners of this Subdivision and, in particular, for the improvement and maintenance of roads and construction and maintenance of other facilities devoted to the common use and enjoyment of the owners. The initial annual assessment shall be \$200.00 per lot and is subject to adjustment and shall be levied at a stipulated rate per lot, regardless of the size of such lot. The annual assessment shall be paid in advance and the due date of the annual assessment for each lot is March 1 of each year. Notwithstanding the foregoing, Declarant shall only be obligated to pay \$50.00 per unsold lot per year for the ten- year period beginning with the date of recordation of the original recorded version of this Declaration. The annual assessment may be adjusted by Declarant until such time as seventy-five percent (75%) of the lots subject to these restrictions have been sold. Thereafter, the basis and amount of the assessment may be increased or decreased by a majority affirmative vote of the property owners present and voting, either in person or by proxy, thirty (30) days after written notice has been sent to the owners giving notice of the intended adjustment in the assessment and setting forth the purpose of such regular or special meeting of the Association In order to be



counted a proxy must be received on or before the date of the stated meeting and prior to any vote and must be in compliance with Delaware corporation law, whether or not the Association is incorporated. At the time notice of said meeting is mailed to the property owners, information shall be included showing a justification for any increase in the assessment and directly relating the increase to the budgetary needs of the Association. Every person who acquires legal title to any lot in Fairway Villas Subdivision shall automatically become a member of the Association and shall be obligated to pay the assessments, provided for above, PROVIDED, HOWEVER, that such membership is not intended to apply to those persons who hold an interest in any such lot merely as security for the performance of an obligation to pay money, namely mortgages, deeds of trust or executory real estate contract purchasers. However, if such should realize upon his security and become the owner of a lot, such person will then be subject to all the requirements and limitations imposed in the Declaration on owners within the Subdivision and upon all members of the Association, including those provisions with respect to alienation and the payment of an annual assessment charge. The Association shall also be the means for the promulgation and enforcement of all regulations necessary to the governing of Fairway Villas Subdivision. The Association shall have all the powers that belong to it by operation of law.

Assessments not paid when due shall be a continuing lien on an owner's property within the Subdivision and shall extend to each lot owned by multiple owners and shall apply whether or not there is a dwelling erected on said lot or lots and shall bind the property in the hands of the delinquent owner, and any subsequent owner or holder of title. In order to assist in giving public notice of delinquent assessments to subsequent purchasers, grantees or third parties, the Association may record a Statement of Assessments Due in the Court House in Georgetown, Delaware, if the assessment is not paid within sixty(60) days from the due day of March 1 of each year. Further, interest shall accrue on all unpaid assessments at a rate equal to five (5) percentage points above the Federal Reserve Discount Rate in effect on the due date of the assessment. In addition to interest, as provided herein, a delinquent payment penalty equal to ten percent (10%) of the amount of the assessment shall be added and paid by the owner or owners. Interest shall only accrue upon the amount of the assessments and not upon the amount of any additional penalty.

(a) In the event a lot owner conveys property to a subsequent purchaser without paying assessments owed, Declarant or the Association, as the case may be, may proceed against both the seller of the property and the buyer, since the obligation for payment of assessments remains an obligation of the delinquent owner as well as a charge upon the lands in the hands of the subsequent purchaser. In the event legal action is necessary to collect the delinquent assessments, all land owners, present and future, are expressly put on notice that court costs and reasonable attorneys fees shall be added to and become a part of any court award or judgment rendered to Declarant or the Association, as the case may be. Reasonable attorneys fees shall be defined as being fifteen percent (15%) of the amount of the delinquent assessment. In the event a default



judgment is taken against a delinquent owner, attorney's fees in the above amount may be added to the amount of the delinquent assessments, if requested in the Complaint.

(b) Lots which are titled in the name of Declarant and held by it for sale or resale shall be exempt from the assessments or any charge or lien created as a result thereof, as long as so titled.

31. Whenever any owner of any lot or land area receives a bona fide written offer to purchase his lot which offer is acceptable to said owner, said owner shall give written notice of the offer to sell said lot (at the same price and on the same terms contained in the said bona fide offer) to the Board of Governors of the Fairway Villas Subdivision Property Owners Association or, until such Board of Governors is elected, to Declarant. The Association or Declarant, as the case may be, shall have thirty (30) days within which to notify the owner of its intent to match or refuse such offer. Should the Association or Declarant, as the case may be, fail to exercise its rights or give such notice within thirty (30) days from the time within which the notice is received by it or should Declarant or the Association refuse to purchase said lot at the price and on the terms proposed by said owner, said owner shall be free, subject to the other limitations contained in this Declaration, to sell said lot to the party who shall have made the bona fide. If the thirty (30) day period shall otherwise expire on a Saturday, Sunday or holiday, the expiration shall instead occur at the end of the next weekday which is not a holiday, according to Delaware law. In each instance, the owner desiring to sell his lot shall provide Declarant or the association, as the case may be, with a copy of the proposed contract or other written offer and with such other information as declarant or the Association, as the case may be, may reasonably request. The thirty (30) day period shall not begin to run until sufficient information regarding the offer has been provided.

32. Nothing contained herein shall be construed in any manner so as to impose upon Declarant any liability for property damage and/or personal injury occurring to any person or persons whomsoever, for or by reason of the use of the ways, roads, streets, lanes, easements, areas devoted to common use of the owners or lands owned by Declarant in Fairway Villas Subdivision or adjoining such Subdivision. Any and all persons using such ways, roads, streets, lanes, easements, common areas or lands of Declarant shall do so at their own proper risk without any liability whatsoever on the part of Declarant, its successors and assigns.

33. The restrictions and agreements set forth herein are for the mutual and reciprocal benefit of each and every lot and are intended: to create mutual, equitable servitudes upon each of said lots in favor of each and all other lots herein; to create reciprocal rights between the respective owners of all the said lots; to create a privity of contract and estate between the grantees of said lots, their heirs, executors, administrators, successors and assigns and shall, to the owner or owners of each such lot, their lessees, sub-lessees, tenants, co-tenants, heirs, executors, administrators,



successors and assigns, operate as covenants running with the land for the benefit of each and all other lots and their respective owners.

34. Any lot owner to whose benefit this Declaration inures may proceed at law or in equity to prevent the occurrence of or continuation of a violation of this Declaration and the court in any such action may also award the successful party damages and reasonable expenses in prosecuting such action, including reasonable attorneys fees. The remedies specified herein are cumulative and the specification of them shall not be taken to preclude any aggrieved party from resorting to any other remedy at law or in equity. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect to a violation of this Declaration shall be held to be a waiver by that party or an estoppel by that party to assert any right available to him upon the reoccurrence or continuation of such violation or the occurrence of a different violation. In addition, any lot owner deemed to be in violation of any restriction contained in the Declaration of Restrictive Covenants, Conditions and Remedial Clauses for Fairway Villas Subdivision and its amendments by the Board of Governors for the Fairway Villas Property Owners Association shall incur a fine at a rate of up to One Thousand (\$1000.00) per month from the time notice is given to the lot owner by the Board of the existence of said violation, until said violation has been corrected, as determined by the Board. The authority to determine the amount will be solely within the Board's discretion. Said fine, in the event that legal action is taken by the Association and if approved by the Court of competent jurisdiction, shall constitute a lien on the lot, collectible in the same manner as assessments. No such penalties shall become due until 30 days have elapsed from the date of notification that a violation exists.

35. After the sale of seventy-five percent (75%) of the lots in Fairway Villas Subdivision, this Declaration may be amended by and with the written consent or affirmative vote of no less than two-thirds (2/3) of the then owners of all lots. The owners of the various lots shall have the power to waive, abandon, terminate, modify, alter, change, amend or add to this Declaration at any time thereafter, provided, however, that any maintenance agreement(s) entered into with Declarant, Cripple Creek Golf & Country Club Ltd and /or Fairway Villas Condominium Association pertaining to maintenance, repair and/or replacement of roads and streets within the Subdivision and/or owned or controlled by one or more of the aforementioned parties may only be waived, abandoned, terminated, modified, altered, changed, amended or added to pursuant to the terms of such agreement(s). Any such waiver, abandonment, termination, modification, alteration, change, amendment or addition shall take effect only when a copy thereof, executed and acknowledged by each of the lot owners who assent thereto in accordance with the usual form of execution and acknowledgment of deeds to land, shall have been filed for record in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, and the same thereafter shall remain in effect in perpetuity unless the same shall be waived, abandoned, terminated, modified, altered, changed, amended or added to, as the case may be. In the taking of any such vote or the obtaining of any such written consent of the lot owners in Fairway Villas Subdivision, each owner shall have as many votes or consents as he may own lots



situate in Fairway Villas Subdivision, including Declarant. A notarized certificate from the President of the Association may be filed in the Office of the Recorder of Deeds, in and for Sussex County Delaware, certifying that a vote was taken in accordance with the procedure, a result was achieved in excess of the 2/3 needed and the ballots are on file with the Association records. This procedure would take precedence over the procedure noted above and would remove the need for individual filings. Prior to the sale of seventy-five percent (75%) of the lots, Declarant reserves the right to amend this Declaration without the consent of the other lot owners.

36. Declarant reserves the right, but is not obligated, to convey to the Association title to any land area within the Subdivision which contains an area which either is or may later be devoted to the common use and benefit of all owners, such recreation area, streets (after initial construction is completed and approved), open space areas or any other such area. Any land area so conveyed by Declarant shall be subject to such restrictions or conditions as may be provided in the deed or deeds.

37. An original purchaser of a lot, as a condition of purchasing his lot, shall become a shareholder member of Cripple Creek Golf & Country Club, Inc. (the "Club") and shall pay the prevailing initiation fee as set forth in Articles III, IV & V of the Club's Bylaws.

A lot owner who does not wish to utilize his shareholder membership may allow such shareholder membership to lie dormant until he decides to revive the shareholder membership by the payment of prorated current annual dues, which he may do at any time. The shareholder membership is an incident of ownership of the lot and runs with the lot; consequently a subsequent owner of the lot can revive or continue the shareholder membership, as the case may be, by payment of prorated annual dues. During the time a lot owner allows his shareholder membership to lie dormant, if there is a waiting list for shareholder membership, the Club may sell a shareholder membership to bring the total shareholder membership up to the then Club authorized number of members. Upon revival of a shareholder membership by a lot owner or upon resale of the lot to a purchaser who wishes to utilize the shareholder membership, the Club, if necessary, shall allow such purchaser to immediately become a shareholder member upon the payment of ratably prorated dues and will discontinue the sale of shareholder memberships until the number of active shareholder members is less than the authorized number.

The owner of an improved lot may rent his improved lot only as a total unit to a tenant. Lot owners may enter into a lease with a prospective tenant(s) only with the prior written consent of the Board of Governors. Prior to entering into a lease for a lot, the lot owner must provide a completed copy of the approved lease application, kept on file with the Association, and accompanying processing fee. The minimum period for any rental or sublet shall be one (1) year. The tenant(s) number of vehicles is limited to those that can safely occupy the lot's driveway. Enforcement of the rental



property restriction will be the same as with the other covenants, including the financial penalty.

In the event the lot owner wishes to utilize his shareholder membership, the tenant shall have no rights to use the Club facilities but may apply, on a non-priority basis, for shareholder, associate, seasonal or social membership. The tenant may be a guest of the lot owner within the rules pertaining to guests.

If the owner of an improved lot rents his improved lot to a tenant and the lot owner does not wish to utilize his shareholder membership, then the tenant, subject to acceptance by the Admissions Committee of the Club, which acceptance shall not be unreasonably withheld, may use the lot owner's shareholder membership upon the payment of ratably prorated annual dues. In this event, if the Club has begun the sale of social memberships pursuant to Section 3.06 of Article III of the Club's Bylaws, the lot owner may immediately become a social member without payment of any initiation fee for such social membership but upon payment of ratably prorated annual dues.

Upon the resale of an improved lot to a new lot owner where the selling lot owner had allowed the tenant to use the selling lot owner's shareholder membership, if the new lot owner wishes to use the shareholder membership to the exclusion of the tenant, the Club shall ratably refund the tenant's dues for the prorated period of forfeiture and charge the new lot owner ratably prorated dues for his period of shareholder membership. The tenant shall then have the right to apply, on a non-priority basis, for shareholder, associate, seasonal or social membership.

If a lot owner resells his lot and wishes to remain a member, such seller may remain a member, without having his name placed on the waiting list, by paying to the Club the then-prevailing initiation fee. There shall be no credit to the seller for his initiation fee paid upon his purchase of the lot. The purchaser of the resold lot shall become a member without the payment of any fee other than ratably prorated dues. If the seller does not wish to remain a member, there also shall be no credit to him for his initiation fee paid upon the purchase of the lot. Any purchaser of a resold lot may elect to have the membership associated with the lot lie dormant without the payment of dues as previously set forth in this paragraph, but such membership continues to be an incident of ownership of the lot and runs with such lot.

38. The invalidating of any one of the foregoing restrictions by any court of competent jurisdiction shall in no way adversely affect or impair the full force and effect of all other restrictions set forth herein and, in such event, all other restrictions not expressly invalidated thereby shall remain in full force and effect.