

Tax Parcels # MD-00-189.00-01-17.00-000
MD-00-189.00-01-17.22-000
MD-00-189.00-01-17.23-000 (Partial)

Prepared By/Return To:
Glenn C. Mandalas, Esquire
Baird Mandalas, LLC
103 S Bradford Street
Dover, Delaware 19904

DECLARATION OF RESTRICTIONS
FOR
ABBOTTS POND ACRES SUBDIVISION

THIS DECLARATION OF RESTRICTIONS is made this _____ day of _____, 2009, by HAMMOND FARM, LLC,

WHEREAS, HAMMOND FARM, LLC, is the legal owner in fee simple of all that certain lot, piece, or parcel of land situated in Kent County and the State of Delaware, comprising approximately 101.54 acres of lands and premises described in that certain Deed of record in the Office of the Recorder of Deeds in and for Kent County, in Deed Record Book ____, Volume ____, Page ____ et seq., more particularly identified as Tax Parcel #MD-00-189.00-01-17.00-000, (hereinafter referred to as "Parcel #1"); and

WHEREAS, HAMMOND FARM, LLC, is the legal owner in fee simple of all that certain lot, piece, or parcel of land situated in Kent County and the State of Delaware, comprising approximately 2.009 acres of lands and premises described in that certain Deed of record in the Office of the Recorder of Deeds in and for Kent County, in Deed Record Book ____, Volume ____, Page ____ et seq., more particularly identified as Tax Parcel #MD-00-189.00-01-17.22-000, (hereinafter referred to as "Parcel #2"); and

WHEREAS, HAMMOND FARM, LLC, is the legal owner in fee simple of all that certain lot, piece, or parcel of land situated in Kent County and the State of Delaware, comprising approximately 17.54 +/- acres of lands and premises described in that certain Deed of record in the Office of the Recorder of Deeds in and for Kent County, in Deed Record Book ____, Volume ____, Page ____ et seq., more particularly identified as Tax Parcel #md-00-189.00-01-17.23-000, (hereinafter referred to as "Parcel #3"); and

WHEREAS, Parcel #1, Parcel #2, and Parcel #3 (hereinafter referred to as "the Properties") have recently been the subject of a subdivision application which combines all of said parcels into one composite parcel comprising approximately 121 +/- acres of land, to be subdivided into 121 residential dwelling lots together with certain roadways and open space, designated as the ABBOTTS POND ACRES SUBDIVISION, as shown on a Final Subdivision Plan of ABBOTTS POND ACRES SUBDIVISION prepared by DAVIS, BOWEN & FRIEDEL, of record in the Office of the Recorder of Deeds, in and for Kent County, Delaware, in Plot Book ____, Pages ____, et. seq.; and

WHEREAS, the legal owners of the Properties, namely HAMMOND FARM, LLC, (hereinafter referred to collectively as "the Declarant") desire to declare and set forth certain restrictive covenants which shall forever henceforth be binding upon all the aforesaid lots depicted on said Plot, effective as of the date of the recording of this Declaration of Restrictions.

NOW, THEREFORE, know all men by these presents, that the Declarant hereby agrees and declares that it is seized of all legal interest in the aforesaid lots of said ABBOTTS POND ACRES SUBDIVISION under and subject to the following restrictive covenants, conditions, easements, and agreements which it hereby declares and which shall run with and forever bind said lots:

1. Definitions: The following words when used in this Declaration of Restrictions shall have the following meanings:

(a) "Association" shall mean and refer to the Abbots Pond Acres Subdivision Homeowners Association, incorporated as Abbots Pond Acres Subdivision Homeowners Association, Inc., a Delaware corporation.

(b) "The Properties" shall mean and refer to all those properties which are subject to this Declaration of Restrictions, namely Parcel #1, Parcel #2 and Parcel #3 as defined above.

(c) "Common Properties" shall mean and refer to those areas of land on any recorded subdivision plot of the Properties, designated as "Private Open Space" or the like, to include storm water management facilities, and intended to be devoted to the common use and enjoyment of the owners of the Properties.

(d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of Common Properties as heretofore defined.

(e) "Living Unit" shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family.

(f) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit situated upon the Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee of said Lot or Living Unit unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(g) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Paragraph 24 hereof.

2. Plan Review and Approval

(a) No dwelling, addition, fence, pool or other structure shall be built or placed on any lot until the lot owner (i) has given the detailed plans and specifications to the

Declarant or the Association, (ii) has received written approval from the Declarant or the Association, and (iii) has obtained a building permit from the Kent County Planning and Zoning Office and/or other appropriate authorities.

(b) In order to insure the development of Abbots Pond Acres as a residential area of high standards, the Declarant reserves the power to control and approve all dwellings and other structures which may be built on each lot, and this power shall pass to the Association once the Declarant no longer owns any lots. All dwellings and other structures shall be placed on the lot only in accordance with the approved plans and specifications. The style, size, location, and placement of all dwellings and other structures and improvements on all lots must be approved in writing by the Declarant or the Association.

(c) The lot owner shall submit to the Declarant or the Association two (2) sets of plans showing the floor plan, foundation plan, elevation of all sides of the proposed structure, and a cross-section of the structure. The lot owner shall also submit a survey showing the location of the dwelling and any other structure with all setbacks and with the driveway location. Before construction can begin, the lot owner must provide a trash container for the construction waste.

(d) Refusal to approve any plans and specifications may be based on any grounds, including purely aesthetic grounds, which in the sole discretion of the Declarant or the Association are deemed sufficient to refuse approval. If the Declarant or the Association fails to approve or disapprove plans and specifications within thirty (30) days after the plans and specifications have been delivered to them, then prior written approval shall not be required. However, in no event shall any dwelling or other structure be built or placed which violates any of the other restrictions set forth herein.

(e) If in the event of a casualty (whether by wind, flood, fire, or act of God or man) a dwelling becomes substantially damaged, the owner shall repair or replace the dwelling as soon as practicable, but in any event within one (1) year of the date of the casualty.

3. The setbacks for all lots (front, side and rear) shall be determined by the Kent County Planning and Zoning Office.

4. No house shall be constructed on any Lot of less than 1,050 square feet of livable floor space (excluding basement, porch, and garage) for a one (1) story dwelling house and no less than 1,200 square feet of livable floor space for a one and one-half (1-1/2) story dwelling house, and no less than 1,300 square feet of livable floor space for a two (2) story dwelling house.

5. No house roof may be constructed on any Lot with less than 5/12 pitch.

6. No trailer, mobile home, or modular home, as those terms are defined under the Kent County Code (as amended from time to time), shall be permitted on any Lot. Only stick built homes shall be permitted.

7. No fence, wall, hedge, or mass planting shall be erected or permitted on any Lot, except with the advance written permission of the Declarant or its successor in interest; provided

that, in any event, no fencing shall be erected or permitted on any Lot in violation of any standards established under the Kent County Code (as amended from time to time).

8. No Owner or occupant shall leave any motorcycle, bicycle, all-terrain vehicle, golf cart, snowmobile, any non-operating vehicle, a vehicle not currently registered and licensed or a vehicle not having a valid and unexpired state motor vehicle inspection sticker on or about the Property, except if entirely enclosed in the Living Unit garage. For the avoidance of doubt, only four wheel passenger vehicles used on a regular basis by the Owner, and vehicles of temporary guests may be parked outside the garage of Living Unit.

9. Each Lot shall be maintained in presentable condition free and clear of all debris, high grasses, and weeds (i.e., those standing higher than eight (8) inches off the ground). With the exception of trash collection days, all trash containers on each Lot shall be concealed from public view.

10. No tent, shack, barn, shed, or other out-building shall be erected or placed temporarily or permanently on any Lot, either separately on such Lot or attached to the primary building erected on such Lot; provided, however that sheds, compliant with the Kent County Code, may be permitted with the advance written permission and at the sole and absolute discretion of the Declarant or its successor in interest.

11. No dog pen, no dog run, no doghouse, or other similar animal structure shall be erected or placed temporarily or permanently on any Lot.

12. No farm animals (including but not limited to horses, cows, pigs, goats, geese, and chickens) may be kept on any Lot.

13. No animals except household pets shall be permitted on any Lot, and no wild or dangerous animals, including but not limited to snakes, lizards, alligators, pit bulls, monkeys, ferrets, bees, or similar animals shall be permitted on any Lot. No more than four (4) household pets are allowed pursuant to Kent County Code.

14. No swimming pool, whether in-ground or above-ground, shall be erected, constructed, or installed on any Lot until the written plans and specifications for same are submitted to and approved in writing by the Declarant or its successors in interest. As a general rule, all above-ground pools shall be surrounded by decking and/or fencing so the sides of the pool are not visible.

15. No trade, business, commerce, industry, profession, or occupation shall be conducted on any Lot; provided, however, that single-provider child daycare facilities and other "home occupations" may be conducted if approved and conducted in accordance with the Kent County Code (as amended from time to time) and other applicable law.

16. No radio towers, television antennas or similar structures shall be erected, placed, permitted or maintained on any Lot or Dwelling. An Owner may install a small satellite dish not to exceed eighteen inches (18") in diameter. Should a larger dish be necessary due to requirements of digital service, the Owner shall need written approval from the Declarant or its successors in interest.

17. Driveways and streets and other exterior parking areas on the Property shall be used by Owners and occupants for four wheel passenger vehicles, two wheel motorcycles (temporarily, to be garaged at night) and standard bicycles (temporarily, to be garaged at night) only. Anything to the contrary in Kent County's Code notwithstanding, no recreational vehicles, vans (other than non-commercial passenger vans), mobile homes, trailers, boats, trucks (other than non-commercial light trucks) or commercial (whether or not registered as a commercial vehicle with the State Department of Transportation), vehicles shall be permitted to be parked on the Property, except on a day-to-day temporary basis in connection with repairs, maintenance or construction work. Vans, recreational vehicles, trailers, trucks or commercial vehicles may be permitted to be parked entirely within Dwelling garages by rule or regulation of the Board of Directors. Passenger vehicles may be permitted to be parked on the driveway and in the garage on a lot.

18. No motor vehicles, including but not limited to, mini-bikes, all-terrain vehicles, golf carts, snowmobiles and motorcycles, may be driven anywhere on the Property, other than on streets and driveways, by any Owner, occupant or guest. No maintenance, servicing or repair of any motor vehicle or any type may be done anywhere on the Property (including, without limitation, in the street or in a driveway) except in a fully enclosed garage.

19. No outdoor clothes lines may be erected, installed or permitted to remain on any Lot.

20. A driveway may not be constructed on any Lot unless surfaced with solid blacktop, concrete slab, brick pavers, or concrete pavers.

21. Home construction shall be completed within one year from foundation installation.

22. There shall be a lien on each Lot, in favor of the Declarant and its successors, in the amount of all repair costs for any damage to the rolling curb and sidewalk in front of his Lot, and the lien on such Owner's Lot shall secure his obligation to the Declarant and its successors to pay all such repair costs.

23. All septic systems serving a Living Unit shall be located in the back portion of the Lot where soils and the development will allow such placement. All wells serving a Living Unit shall be located in the front portion of the Lot.

24. The Declarant may assign (in whole or in part) to any other person, firm, or corporation, all of the Declarant's rights, duties, and/or obligations hereunder.

25. Until the Declarant or its assigns has sold seventy-five percent (75%) of the Lots now existing or hereafter to be created on the aforesaid lands of Abbotts Pond Acres Subdivision, these restrictive covenants may only be amended by the Declarant or its assigns. At any time after the Declarant or its assigns has sold seventy-five percent (75%) of said Lots, these restrictive covenants may be amended only by the affirmative vote of fifty-one percent (51%) of the Owners of all Lots and for which there shall be one vote eligible to be cast for each Lot.

26. Formation of Abbotts Pond Acres Subdivision Homeowners Association. On or before the recording of this Declaration, the Declarant shall establish and create an association of homeowners for the Abbotts Pond Acres Subdivision, to be named "Abbotts Pond Acres Subdivision Homeowners Association, Inc." (hereinafter referred to as "the Association"), by filing a Certificate of Incorporation therefore with the Secretary of State of the State of Delaware.

27. Membership in the Association. Every person or entity who is an Owner shall by virtue of his, their, or its acceptance of such ownership automatically become a Member of the Association.

28. Voting Rights. Each Member shall be entitled to one vote for each Lot in which such Member is an Owner. When more than one person or entity shall hold an ownership interest in a Lot, they shall each be Members, but the vote for such Lot shall be exercised as they among themselves may determine, but in no event shall more than one vote be cast with respect to any such Lot.

29. Property Rights in the Common Properties.

(a) Members' Easements of Enjoyment. Subject to the provisions of subparagraph (c) of this paragraph, each Member shall have a right and easement of enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title to every Lot.

(b) Title to Common Properties. The Declarant may retain legal title to the Common Properties until such time as, in the opinion of the Declarant, the Association is able to maintain the same but, notwithstanding any provision herein, the Declarant hereby covenants, for itself, its successors, and assigns, that it shall convey the Common Properties to the Association, free and clear of all liens and encumbrances, at or before the time it no longer holds title to any lot in Abbotts Pond Acres Subdivision.

(c) Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- i) The right of the Association as provided in its Articles and By-laws to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for such period as the Association deems proper for any infraction of its published rules and regulations; and
- ii) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, or determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes for all Lots has been recorded, agreeing to such dedication, transfer, purpose or

condition, and unless written notice of the proposed agreement and action thereunder is sent by certified-return receipt mail to every Member at least ninety (90) days in advance of any action taken.

30. Covenant for Maintenance Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it within the Properties, hereby covenants and agrees, and each Owner of any Lot, by acceptance of a deed therefor whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree, to pay to the Association annual assessments or charges. The annual assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the Owner of such Lot at the time when the assessment falls due.

(b) Purpose of Assessments. The assessments levied by the Association shall be used exclusively by the Board of Directors of the Association for the purposes of promoting the recreation, health, safety, and welfare of the residents in the Properties and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties, including but not limited to the payment of taxes and insurance thereon and maintenance, repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof.

(c) Initial and Subsequent Annual Assessments. Upon or prior to receipt of a deed for any Lot within the Abbotts Pond Acres Subdivision (whether an initial conveyance from the Declarant or otherwise), the Declarant shall collect from each Lot Owner, and each Lot Owner shall pay, an Initial Assessment to the Association in the amount of \$300.00. Thereafter, each Lot Owner shall pay an Annual Assessment to the Association in an amount no less than \$100.00. The Association may, at any time and from time to time, increase the amount of any Assessment, as it deems necessary to carry out the duties and obligations of the Association as set forth herein and as they may change from time to time; provided, however, that any change in any Assessment must be approved by a two-thirds (2/3) majority vote of the Members which may be cast, whether in person or by proxy, at a meeting duly called for said purpose, written notice of which shall have been sent to all Members at least thirty (30) days in advance of the time set for said meeting, which said notice shall set forth the purpose of the meeting. In any and all events, all Assessments shall be the same dollar amount for each Lot.

(d) Due Dates. All Annual Assessments shall fall due and payable, and shall be paid, on the day fixed by the Board of Directors of the Association.

(e) Escrow and Transfer of Initial Assessments. All Initial Assessments paid to the Association by each Lot Owner, as provided by Section 30(c) above, shall be placed in an escrow account to be established by the Declarant (prior to the issuance of building permits for 75% of the Lots). At any time prior to the Declarant's transfer to the Association of title to the Common Properties (as provided by Section 29(b)above), the Declarant may withdraw funds

from the aforesaid escrow account for the purpose of maintaining the Common Properties; provided, however, that concurrent with the Declarant's transfer to the Association of title to the Common Properties (as provided by Section 29(b) above), the Declarant shall transfer all Initial Assessments and all interest accrued thereon to the Association, subject to the oversight and approval of the Kent County Department of Planning Services (or its successor).

31. Duties of the Board of Directors and Obligations of the Association.

(a) The Board of Directors of the Association shall fix the amount of all Assessments.

(b) The Board of Directors of the Association shall prepare and maintain a roster of the Properties subject to assessment and a record of Assessment payments, which roster and record shall be kept by the Secretary of the Association and shall be open to inspection by any Owner.

(c) The Board of Directors of the Association shall cause written notice of each year's Annual Assessment to be sent to every Owner.

(d) The Board of Directors of the Association shall put in place procedures to furnish upon demand by any Owner liable for any Assessment a certificate in writing signed by an officer of the Association, setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

(e) The Board of Directors of the Association shall have the authority to maintain, repair, replace, equip, manage, insure, and supervise all of the Common Properties.

(f) From and after the Declarant's conveyance of title to the Common Properties to the Association, it shall become and remain the obligation of the Association, under the direction of its Board of Directors, to: (1) maintain, repair, and otherwise manage all storm water management ponds and facilities and all other open space areas or facilities within the Abbotts Pond Acres Subdivision; (2) clear all roadways within the Abbotts Pond Acres Subdivision of snow, ice, and other obstructions or debris whenever any governmental authority charged with such responsibility shall fail to do so; and (3) otherwise maintain, repair, and manage all of the Common Properties within the Abbotts Pond Acres Subdivision.

32. Effect of Non-Payment 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, then such Assessment shall be delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot which shall bind such Lot in the hands of the then owner, his heirs, devisee, personal representatives and assigns. The personal obligations of the then Owner to pay such Assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. If the Assessment is not paid within thirty (30) days after the delinquency date, the Assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the Lot, and there shall be added to the

amount of such Assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and reasonable attorneys' fees together with the costs of the action.

33. Subordination of the Lien to Mortgages. The lien of the Assessment provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the Lot subject to Assessment; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

34. Exempt Property. The following property subject to this Declaration of Restrictions shall be exempt from the aforesaid Assessments, charges, and liens:

(a) All Common Properties as defined herein above;

(b) All streets and all other portions of the Properties dedicated to public use;
and

(c) All Lots within any Phase of the Abbotts Pond Acres Subdivision for which the Declarant has yet to convey any Lot (i.e., until the Declarant conveys the first Lot in any Phase of the Subdivision, all Lots within said Phase shall be exempt from the aforesaid Assessments, charges, and liens).

35. Duration. The covenants and restrictions of this Declaration of Restrictions shall run with and bind title to the land, and shall inure to the benefit of and be enforceable by the Declarant, the Association, or the Owner of any Lot subject to this Declaration of Restrictions, their respective legal representatives, heirs, successors, and assigns, in perpetuity.

36. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration of Restrictions shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing, except as may be otherwise provided hereinabove.

37. Enforcement. These covenants and restrictions may be enforced pursuant to a proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, to restrain violation and/or to recover damages, and against the land to enforce any lien created by these covenants. Any failure by the Declarant, the Association, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

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[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, intending to be legally bound hereby, the said Declarant has hereunto set its name(s) and seal(s) the day and year first above written.

Signed, Sealed and Delivered
in the Presence of:

HAMMOND FARM, LLC

Witness

Bruce Geyer, Member

Witness

Jerry Kovach, Member

STATE OF DELAWARE)
 :
COUNTY OF KENT) SS.

BE IT REMEMBERED That on this _____ day of _____, 2009, personally came before me, a Notary Public for the State and County aforesaid, BRUCE GEYER and JERRY KOVACH, members of HAMMOND FARM, LLC, parties to this Indenture, known to me personally to be such, and acknowledged this Declaration of Restrictions to be their act and deed.

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

Notary Public