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 Michael E. Kozikowski  
 New Castle Recorder MISC

Tax Parcel Nos.: See Attached Exhibit A  
 Prepared by/Return to:  
 John E. Tracey, Esquire  
 Young Conaway Stargatt & Taylor, LLP  
 P.O. Box 391  
 Wilmington, DE 19899

**DECLARATION OF RESTRICTIONS FOR AVIEMORE AT ODESSA NATIONAL**

**THIS DECLARATION OF RESTRICTIONS FOR AVIEMORE AT ODESSA NATIONAL** (the "Aviemore Declaration") is made this *27th* day of May, 2008, by RAVENGLASS, LLC, a Delaware limited liability company (hereinafter referred to as "Declarant").

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of all those certain lots, pieces or parcels of land, situate in Appoquinimink Hundred, New Castle County, State of Delaware, being known as Lots 1 through 51 inclusive (the "Lots") in the Aviemore Section of Odessa National as shown on that certain Record Resubdivision Plan Submission for Odessa National Golf Club and Residential Community (the "Property"), as prepared by Nave, Newell Stampfl, Ltd. And dated June 14, 2001, said Plan of record in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware (the "Recorder's Office") in Instrument No. 20010614-0046994 (the "Plan"); and

**WHEREAS**, Declarant desires to develop on the Property a residential community for the benefit of said community; and

**WHEREAS**, Declarant desires to provide for the orderly preservation of property values for the Community to be known as "Aviemore at Odessa National" and, specifically, the Lots and, to that end, desires to impose certain restrictive covenants and deed restrictions hereinafter set forth, each and all of which is and are for the benefit of the said Property and each owner of any lot thereof (individually, an "Owner," and collectively, the "Owners").

**WHEREAS**, Declarant desires to impose upon the Property, and to bind itself, its successors, and assigns, as owner of the Lots, to certain covenants and deed restrictions respecting the use of the Lots and certain maintenance aspects of the Lots as more fully set forth herein below.

**NOW, THEREFORE**, that for and in consideration of the premises and other good and valuable consideration, Declarant, intending hereby to establish a legally binding plan of restrictions and covenants on which prospective purchasers, Owners, mortgagees and other interested parties may rely, does hereby covenant and declare that henceforth it stands seized of the hereinbefore mentioned and described Property under and subject to the following covenants,

restrictions, easements, obligations, conditions and agreements, which shall be covenants running with the land, and which shall be binding upon Declarant, their respective successors and assigns, in title, occupants, visitors or users of Lots or streets and for the benefit of each Lot or parcel of land as shown on the Plan and for the benefit of the Owners of such Lots.

### DEFINITIONS

The following definitions shall be applicable to the words defined as used herein:

A. "Lot" shall mean and refer to any plot of land intended for private individual residential use as shown on any Plan of the Property, as said Plan may be amended from time to time.

B. "Owner" shall mean and refer to the record title owner, whether one or more persons or entities, of fee simple title to any Lot but shall not include a mortgagee who has not obtained fee simple title.

### ARTICLE I GENERAL USE RESTRICTIONS

#### Section 1. Private Residences.

Each Lot in the Property shall be used for private residential purposes only and for Home Occupations only as permitted by the zoning code of New Castle County as amended for time to time.

#### Section 2. Trailers, Mobile Homes, Etc.

No temporary living quarters, including trailers and mobile homes, shall be permitted or maintained upon any Lot unless stored within a garage on the Lot.

#### Section 3. Animals and Pets.

No pet house, pen, cage, run or other structure or improvement made or intended for any pet shall be constructed, placed, maintained or used on any Lot or street within the Community except that underground or "invisible" fencing may be permitted. In no event shall livestock, poultry, fowl or horses be kept on any Lot or portion thereof, nor shall any animals be bred or buried upon any Lot or within any dwelling in the Community or the Common Facilities. Dogs, cats and other ambulatory pets shall be leashed at all times while not on the Lots of their Owners. No dog, cat or other animal shall be permitted to relieve itself on any shrub, patio, building, fence, car or other items of personal property belonging to neighboring Owners or their Lots. Any solid waste left on any Lot shall be promptly placed in a bag or other suitable receptacle and properly disposed of by the responsible Owner of such pet. Every pet owner shall take all reasonable steps to prevent the noise, waste or odors of his or her pet from annoying other Owners. Owners shall be strictly liable for the actions of their pets. The Declarant shall have the right to require that any habitually diseased, infested, unclean or noisy animal, bird, reptile, fish

or insect be removed from the Community. The Declarant may delegate its authority to act under this Section 3 to any person or committee it deems appropriate.

**Section 4. Vegetable Gardens**

No vegetable gardens shall be kept or maintained on the front or side yards of any Lot.

**Section 5. Television Antennas, Radio Antennas, Solar Panels and Satellite Dishes.**

No radio, television or communications tower, aerial, dish or other reception or signal sending device shall be erected or placed on any Lot or Common Facilities, as defined on the Plan or the Maintenance Declaration for Odessa National, dated September 6, 2000 and of record in the Recorder's Office in Deed Book 2890, Page 70 or be attached to the exterior or any structure, except in accordance with the following provisions:

(a) the location of video antennas, including direct home satellite dishes that are less than one meter in diameter (39.37"), TV antennas, and wireless cable antennas shall comply with this provision and with Section 207 of the Telecommunications Act of 1996 and the Over-the-Air Reception Devices rule (47 C.F.R. § 1.4000) adopted by the Federal Communications Commission ("FCC").

(b) all satellite dishes are required to be installed in the rear of a property, preferably out of site from the road. Examples of such permissible locations include the back portion of the roof, on the ground, on a pole or attached to the dwelling. These are the only permitted locations unless acceptable signal reception can not be obtained in these areas. The burden of demonstrating that acceptable signal reception can not be obtained shall be on the homeowner.

(c) written approval is not required from the Homeowners Association if a satellite dish is placed on the rear of the dwelling, as stipulated above. If acceptable reception can not be obtained in the permitted locations outlined above, then the resident or installer must contact the Declarant in accordance with Article 22 herein to discuss and agree upon a permissible location.

(d) No solar panel or similar device shall be constructed, placed or maintained on the roof or other outside portion of any building or dwelling home nor maintained on any other portion of any Lot.

**Section 6. Solar Panels.**

No solar energy panels or collector shall be installed, constructed, placed or maintained on the front or side yard of any Lot or on the front or side, roof, or front or side of a building on the Lot, except that the same may be done if the applicant can provide proof that to

place such panel or collector elsewhere would add significantly to installation costs and/or inhibit the ability to receive sufficient solar energy.

**Section 7. Exterior Holiday Lights and/or Ornaments**

Exterior holiday lights and/or ornaments shall be permitted, provided that such lights and/or ornaments are removed no later than January 15 of the year immediately following.

**Section 8. Trash Receptacles.**

Trash receptacles shall be kept in clean, sanitary and enclosed areas, hidden from view, excepting that they may be placed temporarily at street/curb side on the regular day of collection or after 5:00 p.m. on the day immediately prior to the day of collection if required by the collection agency. Each Owner shall take all reasonable steps to prevent his or her garbage and refuse from emitting odors which would reasonably annoy any other Owner.

**Section 9. Temporary Use and/or Storage of Dumpsters/Storage Pods and other Containers or Receptacles.**

Except in the event of a casualty loss or permitted remodeling or alterations of the improvements, dwelling and/or structures on a Lot as authorized and approved in accordance with this Declaration and by the Declarant or any Architectural Review Committee established by the Declarant as the case may be, no dumpsters or other debris containers or receptacles, other than customary residential garbage containers permitted in accordance in this Declaration shall be permitted to be placed, stored or maintained on any Lot, Common Facilities or any street, right of way or sidewalk on either a temporary or permanent basis. Any request for the temporary storage of dumpsters or other debris containers or receptacles by a Lot Owner shall be submitted in writing to the Declarant for approval by the Architectural Review Committee, which approval may contain reasonable restrictions, limitations and conditions as to the size, location and duration of any such temporary storage of dumpsters or other debris containers or receptacles. Storage pods, boxes or similar containers (the "Storage Containers") may be placed, stored and used on an individual Lot within a driveway on a temporary basis (not to exceed fifteen [15] days) solely in connection with any moving relating activities or other short term event or circumstance by an Owner of a Lot upon the written request of the Owner to the Association. Any request for the temporary use of the Storage Containers by a Lot Owner shall be submitted in writing to the Declarant or the Architectural Review Committee for approval, which approval may contain reasonable restrictions, limitations and conditions as to the size, location and duration of any such temporary Storage Containers, which may include an extension of time by the Association upon a showing by the Lot Owner of extenuating circumstances beyond the reasonable control or responsibility of the Lot Owner. Nothing contained in this Paragraph shall apply to the construction and development activities of the Declarant and its applicable contractors, subcontractors, suppliers, materialmen or agents with respect to the Community, including but not limited to the Lots and the Common Facilities. Any Lot Owner seeking to employ or install such a Storage Container shall be required to obtain all necessary governmental approvals before placing such Storage Container on his or her Lot."

**Section 10. Prohibited Vehicles.**

No recreational vehicles, including, but not limited to, all terrain vehicles (i.e. "ATV"), snowmobiles, mini-bikes, wave runners, jet skis, and go-karts, vans (other than commercial or passenger two-axle vans), mobile homes, trailers, boats, trucks (unless licensed as a passenger vehicle and less than one ton capacity) or, except as provided above, commercial vehicles (whether or not registered as a commercial vehicle with the Delaware Department of Transportation) shall be permitted to be parked on the Property, except on a day-to-day temporary basis in connection with deliveries, repairs, maintenance or construction work on the Lot or if entirely enclosed in a Lot Owner's garage.

**Section 11. Signs.**

No signs of any kind whatsoever shall be erected, placed or maintained on any Lot within the Property, except that a single real estate "For Sale" sign may be placed and maintained on a Lot, as long as the Declarant or any subsequent builder or developer of the Community is not currently marketing homes in the Community. Such sign must be removed within five (5) days of settlement on such Lot. This paragraph shall not apply to any Lot owned by the Declarant or any subsequent builder.

**Section 12. Fences.**

No fences shall be constructed or maintained upon the Lots until the plans for the same shall have been approved by the Declarant or the Architectural Review Committee in accordance with the provisions of Section 22 herein. No enclosing or nonenclosing fence or barrier (hereinafter the "fence") shall be erected on any Lot closer to the front street line than the rear-most wall of the principal building on said Lot, except for fences on corner Lots that may extend from the rear yard toward the side street, but under no circumstances may the fence be closer to the street than the building setback line. Except as may be required by any governmental authority in order to comply with applicable building and/or zoning codes, no fence shall be of a height of more than four (4) feet and all such fences may be post and rail, or split rail, hardwood constructed or other material approved by the Architectural Review Committee in accordance with Section 22 herein, including white PVC, with three (3) horizontal rails or otherwise as approved. The height and width of the entire perimeter of such fences may be fully covered with green wire mesh.

**Section 13. Swimming Pools.**

No above-ground swimming pool shall be constructed or maintained on any Lot, except that children's temporary wading pools, not exceeding one (1) foot in height, shall be permitted in any rear yard.

**Section 14. Trees, Shrubs and Landscaping.**

Every Lot shall have planted in the front yard a minimum of one (1) street tree as approved by the Architectural Review Committee prior to the first occupancy of the residence being constructed on the Lot. Said street tree shall be maintained on the Lot in perpetuity by the Owner. If it is necessary to replace said street tree due to damage, disease or other similar circumstance, said street tree shall be promptly replaced by the Owner with a similar genus and species of tree. Any and all trees, shrubs and/or landscaping planted or provided by the Declarant, its successors and assigns, on any Lot must remain undisturbed for a period of ten (10) years, except for ordinary maintenance, feeding and disease control. No hedge or similar barrier or mass planting shall be erected or permitted except to the rear and side of the principal structure on such Lot. All shrubbery and hedges on said Lots must be kept in a neat and presentable appearance.

**Section 15. Lawn Mowing.**

The Owner of each Lot shall be responsible for the maintenance of grass and weeds thereon and shall mow said Lot at least twice during each of the months from May through November of each year. Event, the grass shall not exceed a height of more than six (6) inches.

**Section 16. Yards.**

No statues, sculptures, painted trees, bird baths, lawn ornaments, replicas of animals or other like objects larger than 12" by 12" may be affixed to or placed on any Lot or building. No mailbox pillars other than regulation DelDOT 4" by 8" posts are permitted for mailbox installation. Any mailbox modifications must conform with United States Postal Service Guidelines.

**Section 17. Trampolines, Basketball Goals.**

No trampolines of any kind whatsoever shall be erected or maintained on any Lot. No basketball goals shall be erected, placed or maintained on any Lot at any time, except for a maximum of one permanently installed goal located in a driveway on a Lot near the rear yard of such Lot. Any and all basketball playing shall be permitted only from 9:00 a.m. to sundown.

**Section 18. Clothes Lines.**

No clotheslines and no outdoor clothes drying or hanging shall be permitted in the Community.

**Section 19. Rights of Way and Easements.**

No structures, improvements, boulders, trees, or equipment of any nature, except for standard mailboxes, shall be constructed or installed within the rights-of-way and easements of the subdivision streets. The Owner of each Lot shall be responsible for maintaining the area between the boundary of the Lot and the actual paved area of the rights-of-way and easements

except for those items maintained pursuant to the Master Declaration for Odessa National dated May 19, 2005 and of record in the Recorder's Office in Instrument No. 200508050078358 (the "Master Declaration").

**Section 20. Window Treatments, Garage Doors, Storm Doors and Storm Windows.**

All windows from the exterior shall show white or off-white color or a color compatible with the color of the exterior finish of the dwelling. The garage door shall be the same color as the trim color of the dwelling. All storm doors and storm windows placed on the dwelling shall be the same color as the windows first installed on the dwelling.

**Section 21. Outbuildings.**

No outbuildings, sheds, garages, enclosed outdoor storage facilities or other similar structures shall be erected, placed or maintained on any Lot unless such structures (i) are constructed with the same materials as the home and are not constructed of metal; (ii) are not erected or maintained closer to the front street line than the rear most wall of the principal structure on the Lot; (iii) do not exceed the aggregate size of 10' by 8' on each Lot; (iv) do not exceed a height of fourteen (14) feet above ground level; (v) are built in accordance with plans, specifications and illustrations approved by the Declarant or Architectural review Committee pursuant to Section 22 herein. No sheds or similar outbuildings are permitted on any Lot adjoining the Golf Course

**Section 22. Architectural Review.**

Notwithstanding anything contained herein to the contrary, no outbuilding, structure of a temporary or permanent nature, in ground swimming pool, fence, solar panel, pr collector, or other construction or improvement shall be constructed, erected, pr placed upon any Lot, nor shall any exterior addition to or change or alteration thereof, including, but not limited to, exterior façade, color change and/or change in grade or drainage be made until the plans and specifications with illustrations, showing the nature, kind, shape, color, height, materials and proposed location of the same shall have been submitted to and approved in writing by the Declarant or a committee appointed by the Declarant (hereinafter the "Architectural Review Committee" or "ARC"). In the event that the Declarant or the ARC fails to approve or disapprove such architectural change request within forty-five (45) days after receipt of said plans and specifications, approval thereof will be deemed to have been given. Denials submitted to the applicant shall be deemed to have met the forty-five (45) day period so long as the denial is sent by certified mail and the date of stamp by the postal service is within the thirty (30) day period. The Declarant or the ARC, in connection with the review of said plans, specifications and illustrations, shall have the right to approve or disapprove any such matters which, in its opinion, are not suitable or desirable to the Community. No application can be considered until such time as applicant's maintenance corporation assessments are paid in full. In passing upon such plans, specifications and illustrations, Declarant or the ARC shall consider the following factors:

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

For purposes of this Declaration, the Declarant shall have the sole and exclusive right to determine when Lot lines and/or street lines shall be "front" or "side" lines. Declarant shall turn over the function of architectural review pursuant to the Master Declaration.

#### **Section 23. Daycare Centers, Kindergartens and Preschools.**

No daycare, kindergarten or preschool shall be permitted on any Lot except that a Family Day Care Home shall be permitted provided it meets all applicable county and state standards and licensing requirements. A Family Day Care Home means a facility in a private home that is operated by one or more persons duly licensed, or qualified to be licensed by the State of Delaware for the purposes of providing child day care for one (1) to not more than six (6) children at any one time who are not relatives of the day care provider. Notwithstanding the foregoing, a Family Day Care Home shall not be permitted on any Lot which adjoins the Golf Course.

#### **Section 24. Casualty Damage or Destruction.**

If any portion of a dwelling on any Lot is damaged or destroyed by fire or other casualty, the Owner shall, with due diligence, rebuild, repair or reconstruct the dwelling to its original appearance and condition immediately prior to the casualty. Repair or reconstruction shall be commenced within four (4) months after such casualty and shall thereafter be pursued with due diligence to completion unless prohibited by causes not attributable to the Owner.

#### **Section 25. Easements.**

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



## ARTICLE II

### ADDITIONAL FEES AND AUTHORITY OF THE MAINTENANCE CORPORATION

**Section 1.** The restrictions, covenants and limitations contained herein are in addition to those contained in the Maintenance Declaration dated September 6, 2000 and recorded in the Recorder's Office in Deed Book 2890, Page 70 and the Master Declaration. In the event of an inherent inconsistency between the Master Declaration and the restrictions, covenants and limitations contained herein, the more restrictive provisions shall control.

**Section 2.** At such time as the Declarant deems it appropriate, Declarant shall turn over control of the responsibilities of architectural review provided for in Article I, Section 22 herein to the responsible entity provided for in the Maintenance Declaration or the Master Declaration.

## ARTICLE III

### CHANGES IN THE DECLARATION AND THE RECORD PLAN

**Section 1.** These covenants and restrictions may be changed, altered, modified or extinguished in whole or in part, at any time, by an instrument in writing signed by the record owners of two-thirds (2/3) of the Lots, which shall be recorded in the Recorder's Office, excepting, however, that the Declarant, so long as it is the Owner of any of the said Lots, shall have the absolute right to amend this Declaration from time to time without the joinder of any other Owner by executing and recording an amendment in the Office aforesaid, if such amendment is:

- a) required by Federal, State, County or local law, ordinance, rule or regulation; or
- b) required by any mortgagee of improved Lots and/or dwelling houses in the Property, or
- c) required by any title insurance company issuing title insurance to owners and/or mortgagees of same, or
- d) Required by the Federal Housing Administration, Department of Housing and Urban Development, Veterans Administration, Farmers Home Administration, Delaware State Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association or by any like public or private institution acquiring, guaranteeing or insuring mortgages or providing any type of financial assistance, with respect to dwelling units in the Property.

**Section 2.** As long as it owns at least one building Lot in the Subdivision, Declarant reserves to itself and its successor who may become Declarant, the right to amend the Record Plan of Odessa National. By acceptance and recording of a Deed for a property in Avimore at Odessa national, the Owner, for himself and his successors in title, shall be deemed to have given to Declarant his irrevocable power of attorney, coupled with an interest, for the purpose of executing any such re-subdivision plan as Declarant deems desirable provided such re-subdivision plan does not change the boundaries of any Lot already conveyed from the Declarant to Owner.

#### **ARTICLE IV ENFORCEMENT**

**Section 1.** Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and failure to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter or a waiver to enforce the other restrictions contained herein. In the event the declarant, its successors and assigns, incurs any expenses, including attorneys fees, in connection with its efforts to enforce the terms hereof, the Lot Owner(s) in violation of these covenants shall also be obligated to reimburse Declarant, its successors and assigns, for all such expenses. Action of enforcement may be brought by Declarant, its successors and assigns, or any Owner of any land which is subject to this Declaration.

**Section 2.** There is hereby granted an easement in favor of the Declarant, its successor Declarant and assigns, or its agents, for ingress and egress from any Lot during reasonable hours to inspect the Lot for alleged violations of the Declaration and/or compliance with architectural standards and/or approved plans for alterations and improvements, provided the owner of such Lot is given written notice of the purpose and time of inspection at least three (3) days in advance thereof.

**Section 3.** Invalidation of any one of these covenants or restrictions or any portion hereof by judgment or court order shall in no way affect any other provisions herein, which shall remain in full force and effect.

#### **ARTICLE V INTERPRETATION**

**Section 1.** This Declaration shall bind all Lots in the Property owned by Declarant as of the date on which this Declaration is recorded and all other Lots in the Property as to which the owners thereof have joined in this Declaration by separate writing. Any Lots eliminated by a re-subdivision of the property shall no longer be bound by this Declaration.

**Section 2.** Notwithstanding anything contained in this Declaration, its provisions shall not be applied or construed as to prohibit or impede the construction by Declarant or its successors in title to vacant Lots from building or selling dwelling houses, maintaining an office or offices (including trailers) for construction and/or sales, storing construction materials and equipment, posting for sale signs, posting marketing and information signs, or generally carrying on its business as to the development of the Property.

#### **ARTICLE VI DECLARANT EXEMPTION**

While the provisions of this Declaration are intended to restrict certain uses that may be harmful or affect the ambience or aesthetic appeal of the Community to be constructed by the Declarant, these restrictions are not intended to prohibit Declarant from performing such work as may be necessary in the completion of the Community. The covenants and restrictions set forth in this Declaration shall therefore not be binding upon Declarant or any successor builder or developer of the Community in the performance of any of its work required to complete the construction of the Community.

IN WITNESS WHEREOF, Declarant has executed and sealed this Declaration as of the day and year first above written.

Signed and Delivered

DECLARANT  
RAVENGLASS, LLC

In the Presence of:

By: [Signature] (SEAL)  
Joseph M. Capano,  
Manager

*RavenGlass LLC*

Witness

STATE OF DELAWARE )  
                                  ) SS.  
NEW CASTLE COUNTY )

BE IT REMEMBERED, that on this 22 day of May, 2008, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Joseph M. Capano, Manager of RAVENGLASS, LLC, a Delaware limited liability company, party to this Declaration, known to me personally to be such, and acknowledged this Declaration to be his act and deed and the act and deed of said company as duly authorized by 100% of the Members of said limited liability company.

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

[Signature]  
Notary Public  
Print Name: Sandra A. Duchemin  
Date Commission Expires: 6/22/10



## EXHIBIT A

ALL those certain lots located in Appoquinimink Hundred, New Castle County, State of Delaware, being Lot Nos. 1 through 51, inclusive, in "Aviemoore", as shown and described on Record Major Subdivision Plan for Odessa National recorded as Instrument No. 20010125-0005362, New Castle County Records, as revised by Record Resubdivision Plan recorded as Instrument No. 2001061400-46994, New Castle County Records.