

July 2010 Draft

Middlesex Beach Association Restrictive Covenants, Reservations and Remedial Clauses

RED are proposed additions to original language thru May 2010 draft;
(BLUE) are proposed deletions from existing covenants;
(GREEN) are proposed changes made betw 5/2 & 7/10/10; other remaining issues
--1.4, 1.5-yard definitions, which may affect 9.6a-residential fences; 10.7-commercial fences
(PURPLE) are sources in current covenants of draft language

MIDDLESEX BEACH ASSOCIATION, a Delaware corporation, does hereby certify that the following is a true copy of the AMENDMENT TO RESTRICTIVE COVENANTS, RESERVATIONS AND REMEDIAL CLAUSES, presently applicable to the DEVELOPMENT named MIDDLESEX BEACH, in Baltimore Hundred, Sussex County, Delaware, as more particularly described by the PLAT of MIDDLESEX BEACH of November 1958, being filed in Georgetown, which Revised Restrictive Covenants, Reservations and Remedial Clauses thereto applies to the entire development above-named, and shall become effective when a copy of Amendment To Restrictive Covenants, Reservations and Remedial Clauses, executed and acknowledged by Middlesex Beach Association, in accordance with the usual form of execution and acknowledgement of Deeds to land by a Delaware corporation, together with the written consent of sixty (60%) percent or more of the present owners of all the lots in MIDDLESEX BEACH, or a certificate by the Association verifying under oath by the President thereof, or in the case of his absence or inability, by any Vice-President thereof, setting forth the time, manner and result of the taking of the vote of all the Lot owners in Middlesex Beach, have been filed for record in the Office of the Recorder of Deeds, of the State of Delaware, in and for Sussex County, pursuant to the amendment provisions of Paragraph 18 of said Restrictive Covenants, as amended and filed for record in the Office of the Recorder of Deeds, of the State of Delaware, in and for Sussex County, in Deed Book 1477, Page 19 et seq.,

PROVIDED, HOWEVER, and it is hereby expressly stipulated, understood and agreed that all and singular the lands and premises shown and delineated upon said Plat of MIDDLESEX BEACH, aforementioned, saving and excepting that parcel thereof designated thereon as "Delaware Power & Light Parcel", as well as the title to all and singular the lands and premises shown thereon and delineated thereby, as well as all property hereby conveyed to pursuance thereof, are subject to the following amendments to restrictive covenants, reservations and remedial clauses, and such restrictive covenants, reservations and remedial clauses not so amended shall remain in full force and effect as heretofore adopted, viz:

(1) DEFINITIONS:

(1.1) Association:

(1.1)(change numbering) Commercial District: All those Lots located within Blocks H, I, J, K and L, inclusive, unless such Lots have been converted to Residential Lots in accordance with the provisions of Section 10 herein.

(1.2) Residential District: All of the remaining Blocks and Lots of the community which are not included within the Commercial District, and shall include any Commercial Lot converted to Residential Lots in accordance with Section 10 herein.

(1.2.1) Beachside Residential Area: All those Lots located within Blocks A, B, C, D, E, F and G, inclusive of the Residential District.

(1.2.2) Pineside Residential Area: All those Lots located within Blocks M, N, O, P, Q and R, inclusive, and any Commercial Lots converted to Residential Lots of the Residential District.

(1.3) Front Property Line: The property line of any Lot that is located adjacent to a Community Road or public roadway, except as otherwise designated in Section 9.3.

(1.4) Front Yard: The portion of the lot that lies between the front property line and lines extending from the front corners of the primary structure to the side property lines and parallel to the front property line intersecting the two corners of the primary structure closest to the front property line..

(1.5) Back Yard: The portion of the lot that lies between the property line opposite the front property line and lines extending from the rear corners of the primary structure to the side property lines and parallel to the front property line intersecting the two corners of the primary structure closest to the front property line.

(1.6) Side Yard: All the land area of a Lot which is neither the Front Yard nor Back Yard and which does not have a part of the primary structure constructed thereon.

(1.7) Road: Any of the common property designated on the Plat and identified as Roads, whether or not said common property is improved by paving. The definition of Road shall not include Ocean Highway passing thru the community (identified on the Plat as "Delaware State Route No. 14", now identified as State Route 1) or Kent Avenue (identified on the Plat as "Delaware State Route No. 361") located to the west of the community.

(1.8) (language from old 15, 1, A) Sign: A structure, symbol, device, banner, commercial flag, illustration, mural, painting, or written message designed or intended to convey information to the public in written or pictorial form. Such information may include, **but is not limited to**, a commercial advertisement, announcement, identification, description, direction or similar communication.

(1.9) (language from old 15, 1, B) Sign Area: The entire area within a continuous perimeter, enclosing the entire limits of the sign display, including any frame, structure, or border. Curved or spherical signs, or signs which are composed of letters, words, representations, forms, shapes or designs which follow no rectangular pattern, shall be considered to include the entire rectangular area encompassing the entire outer limits of the letters, words, representation, forms shapes or designs.

(1.10) Kitchen: A room where food is kept, prepared and cooked, and where the dishes are washed.

~~(1.11) Self-Help: A remedy that involves an attempt to redress a perceived wrong by one's own action rather than through the normal legal process. This remedy is also sometimes referred to as an "extrajudicial remedy", as it is not a remedy obtained from a court. This remedy of self help not only includes the action of redressing a perceived wrong by one's own action as described above, but shall also include the authority of the Association to expend the funds necessary to engage in or execute the self help action in question.~~

(1.11) Self Help: Any decision to exercise self help as herein provided shall be first approved unanimously among those Board members present and voting; shall provide no less than 90 days for correction following 30 days notice of intent to exercise self help; shall provide an opportunity for a

hearing before the Board at the next scheduled Board meeting following such notice; and may allow such additional time more than 90 days as the Board determines reasonable prior to the exercise of self help."

(2) COMMON OWNERSHIP OF MULTIPLE CONTIGUOUS LOTS:

(language from old 9E)

In cases of single ownership of ~~(more than one)~~ two or more contiguous Lots, the set-back lines shall apply to the parcel ~~(owned)~~ as a whole, provided the owner or occupier thereof makes use of the (same as a whole) parcel (i.e., the contiguous Lots) for one, single purpose. Any and all such contiguous Lots being used for one, single purpose must be titled in the same name (i.e., the same individual; the same individuals where there is more than one; or the same entity, whether the entity is a trust, corporation, LLC, or other) in the land records of Sussex County in order to take advantage of the setback provisions contained in this Section 2. If the contiguous Lots being used for one, single purpose front in opposite directions, then the Front Property Line and Front Yard of the whole shall be determined by the direction in which the owner or occupier of the contiguous Lots shall position or face the main building, by and with the approval of the Association.

(3) SIZE AND HEIGHT OF BUILDINGS ~~(DWELLINGS)~~:

(language from old 6 & 10)

(3.1) A land area of not less than one full Lot, as shown on the aforesaid Plat, shall be provided for each dwelling or residence erected, altered, or used in Middlesex Beach. No residence or dwelling shall be erected on any Lot or land area in Middlesex Beach the square footage of the first floor of which is less than one thousand square feet, exclusive of all porches, breezeways, carports, garages, outbuildings, terraces, stoops, decks, and the like. The building area of any Lot located in the ~~(Residential District)~~ Beachside Residential Area of Middlesex Beach shall not exceed 45% of the area of such Lot, and the building area of any Lot located in the Pineside Residential Area of Middlesex Beach shall not exceed 35% of the area of such Lot.

(3.2) No ~~(dwelling or)~~ building of any form, whether it be in the Residential District or the Commercial District, shall exceed the height of thirty-five feet, said height to be measured ~~(at the maximum height)~~ from the highest point (level) of ~~(the contiguous Roads)~~ any ~~(contiguous)~~ Road immediately adjacent the Lot to the highest point ~~(in)~~ of the ~~(dwelling)~~ building, including but not limited to, any ornamental improvements such as cupolas, widow's walks, crow's nest, elevator housings, chimneys or similar structures. Antennas, lightning rods, flag poles, standpipes, or similar protrusions may be allowed to exceed the height limit only when specifically permitted and approved by the Association.

(4) SET-BACKS & MISCELLANEOUS:

(language from old 9)

(4.1) ~~(The following building set-back lines are hereby established for MIDDLESEX BEACH, and)~~ Front ~~(yards)~~, side ~~(yards)~~ and rear set-back areas ~~(yard)~~ of each Lot shall be maintained free of any buildings or structures, or part thereof, ~~(in accordance therewith)~~, except as hereinafter ~~(provided)~~ permitted. ~~(For construction, after date of the enactment of these restrictions, November 1, 1986, all)~~ All set-back lines shall be measured from the widest building appurtenances. Roof overhangs of greater than two (2) feet shall count towards the size of the structure, and may not project into any set-back area. Roof overhangs of two (2) feet or less may project into any set-back area.

(a) Fences and retaining walls, which when constructed in the Commercial District must meet the requirements of Section 10.6, and which when constructed in the Residential District must meet the requirements of Section 9.6;

(b) Shower stalls, and clotheslines;

(c) Below ground Propane Tanks, which shall be located at least two (2) feet from any property line;

(d) Trash and recycling can enclosures, which must be constructed in accordance with Section 9.5;

(e) Dune crossing walkways, provided they meet criteria established by the Department of Natural Resources and Environmental Control (DNREC);

(f) Other walkways, provided that they are no more than one (1) foot above finished grade;

(g) Detached accessory buildings of not more than 100 square feet, if constructed in accordance with section 9.8., which shall be located at least four (4) feet from any property line;

(h) Driveways that are not of porous materials shall be at least ten (10) feet from side and rear property lines; and

(i) HVAC units.

(4.2) REMOVAL OF LIVE TREES OR BUSHES: Except in the case of an emergency, no live trees or bushes of any kind having a trunk diameter of six inches (6") or more (measured from a point two (2) feet above the ground level) shall be removed from any setback area of any Lot without the express written authorization of the Association. The Association has the authority to require replacement of such trees removed from the setback area at the Lot owner's expense. The Association has the authority to regulate dates and times of non-emergency tree or bush removal work consistent with the dates and times for exterior construction.

(4.3) MAINTENANCE OF LOTS & STRUCTURES: (similar in scope to old 14) All property owners in Middlesex Beach are responsible for maintaining the Lot and any structure located thereon. The Association may maintain and repair a property if the owner fails to do so. The Association may provide such maintenance and repair when such is deemed necessary by the Association if the owner's failure to maintain threatens to adversely affect the safety and value of Middlesex Beach and the other properties therein. The Association shall charge the respective property owner for the cost of any maintenance and repair, including an amount determined by the Association, in its sole and absolute judgment, to reimburse the Association for the time spent in arranging such maintenance or repair by personnel of the Association or of any property manager retained by the Association as well as reasonable attorney's fees and costs incurred. The Association shall have a lien on the Lot of the responsible property owner for all such charges, costs and expense. The notice provisions contained in

Section 15.4 regarding self-help shall apply to any action proposed to be taken by the Association under this Section 4.3.

(5) GRANDFATHERING OF EXISTING INFRINGEMENTS:

Except as otherwise provided in these Restrictive Covenants, any structure in Middlesex Beach that exists as of the effective date of this amendment (unless otherwise provided elsewhere in these Restrictive Covenants) may be continued even though such structure does not conform to the requirements and provisions of this amendment. Such existing, but non-conforming, structures shall be deemed to be "grandfathered structures". In the event the grandfathered structure is a deck or balcony that is located in any setback, no portion of such deck or balcony may be enclosed if it is to remain in the setback. Any grandfathered structure may be repaired, but it may not be modified, altered, enlarged or extended. An MBA Building Permit as specified in Section 7 is required before any such actions (repairs) to a grandfathered structure may be undertaken in order to determine if the work is a permissible repair or if the work is an impermissible modification, alteration, enlargement or extension of the grandfathered structure. This Section 5 does not apply to the garbage/trash receptacle requirements and/or enclosure/screening requirements set forth in Sections 9.5, 9.9, 10.5 and 10.6 hereof.

(6) SIGNS:

(language from old 15)

(6.1) STANDARDS & REGULATIONS: Standards and regulations governing the size, number, location, construction and types of signs permitted in either or both districts of Middlesex Beach shall be adopted by the Association. The Association may amend any such standards and regulations from time to time, as deemed necessary and appropriate by the Association. No new standards and regulations adopted and/or amended by the Association pursuant to this Section 6.1 shall become effective until such standards and regulations have been published with reasonable notice to all Lot owners in Middlesex Beach.

(6.2) SIGNS PROHIBITED ON MIDDLESEX BEACH ASSOCIATION COMMON PROPERTY: No sign of any character shall be erected or posted on Middlesex Beach Association common property (~~property within the boundaries of Middlesex Beach other than privately owned Lots~~), including, but not limited to, Roads, streets and rights of way, unless erected or posted at the direction of the Middlesex Beach Association (Board).

(6.3) WRITTEN APPROVAL REQUIRED: (language from old 15, VII) No sign of any character shall be erected, placed, replaced, reconstructed or posted on any Lot in Middlesex Beach without the prior, written approval of the Association. (~~Notwithstanding the foregoing, no ground sign or attached sign, other than those expressly permitted in the Residential District of Middlesex Beach, shall be erected, reconstructed or replaced on any Lot in the Commercial District of Middlesex Beach without the final written approval of the Middlesex Beach Association Building Committee. All such signs shall be compatible with the adjoining residential neighborhood, as well as other signs in the Commercial District approved in writing by the Middlesex Beach Association.~~) The erection, placement, replacement, reconstruction or posting of any sign (~~whether in the Residential District of the Commercial District of Middlesex Beach~~) may be determined to be in violation of this provision based upon any criteria or requirement, including specifically, but not limited to, the requirement of Association approval of signs set forth herein (in the Commercial District, set forth in this Section or Section 10.7 of these Restrictive Covenants pertaining to the approval of construction plans) and either

disapproved or, if found in violation, ordered removed, whether or not the erection, construction, placement, reconstruction or replacement of such sign is completed. ~~(All signs shall be maintained in good and safe condition and neat and trim appearance. If the property owner fails to comply with any requirements of this Section or any direction or decision of the Building Committee pursuant thereto, Middlesex Beach Association may, after due notice, either correct the condition at the sole expense of the property owner in a manner as determined by the Middlesex Beach Association or pursue the remedies provided for in Section 15 of these Restrictive Covenants.)~~

(6.4) SIGN MAINTENANCE: (language from old 15, VI) All signs shall be maintained in good and safe condition and neat and trim appearance. If the property owner fails to comply with any sign standards or regulations imposed by the Association, any requirements of this Section 6, any requirements set forth elsewhere in these Restrictive Covenants, or any direction or decision of the Association ~~(pursuant thereto)~~, the Middlesex Beach Association may, after reasonable ~~(due)~~ notice to the property owner, either correct the condition at the sole expense of the property owner in a manner as determined by the Middlesex Beach Association or pursue any other ~~(the)~~ remedies provided for in Section 15 of these Restrictive Covenants.

(6.5) NON-CONFORMING SIGNS: (language from old 15, VII) Any permanent sign in existence on the effective date of the first amendment to the Restrictive Covenants concerning signs (i.e. August 5, 2003) shall be allowed to remain despite any non-conformity. However, if an existing, non-conforming sign is destroyed by at least fifty percent or if at least fifty percent thereof falls into disrepair ~~(of at least fifty percent of such sign)~~, then any reconstruction or repair thereof must be made in accordance with this Section 6. The condition of the sign in question shall be determined by the ~~(Building Committee)~~ Association at the time the sign permit application is filed. The condition of such sign shall also be evaluated at the time it is destroyed or falls into disrepair. Portable, temporary or moveable signs, including commercial banners, posters, pennants, or commercial flags, that are in violation of this Section 6 shall be removed not later than thirty days after the effective date of this amendment. Applications for a permit to replace a non-conforming sign shall not be considered as a reconstruction of a non-conforming sign and, therefore, the replacement sign must be in accordance with this Section.

(7) APPROVAL OF PLANS AND POSTING OF CONSTRUCTION DEPOSIT:
(language from old 7)

(7.1) For the purposes of further insuring the development of the lands comprehended within MIDDLESEX BEACH as a residential and commercial development of high standards, the power to control the buildings, structures or improvements placed on each Lot or given land area therein shall be, and the same hereby is, vested in Middlesex Beach Association, and its successors. Whether or not provision therefore is specifically stated in any conveyance of a Lot or given land area in MIDDLESEX BEACH, the owner or occupier of each and every Lot, by acceptance of title thereto, or by taking possession thereof, covenants and agrees that no building, structure or improvement shall be placed upon such Lot unless and until the plans and specifications therefore, and the plot and grading plans thereof, showing the nature, kind, shape, height, materials, floor plans, color scheme, location and approximate cost of such building, structure or improvement and the grading plan of the Lot to be built upon shall have been submitted to and finally approved in writing by Middlesex Beach Association and, a copy thereof, has finally been approved and lodged permanently with the records of the Middlesex Beach Association. Each such building, structure, or other improvement shall be placed on the premises only in accordance with such plans, specifications, plot and grading plans so approved.

(7.2) **Rejection** or approval of such plans, specifications, plot, **landscaping**, and grading plans by such Association may be based on any grounds related to the health, safety and/or general welfare of the members of the community as a whole, including the contiguous landowners, and the effect on the property values thereof, which in the sole and uncontrolled discretion of the Association shall seem sufficient and in so passing upon such plans, specifications, plot and grading plans, it shall further have the right to take into consideration the suitability of the proposed building or other structure and of the materials of which it is to be built, to the site upon which it is proposed to erect the same, the **appearance and** harmony thereof with the surroundings and the effect of the building or other structure, as planned, on the outlook from the adjacent or neighboring property, and conformity with these restrictive covenants and the rules and regulations applicable to Middlesex Beach.

(7.3) (language from old 13) No fence or wall of any height shall be constructed upon any **Lot** until after **an MBA Building Permit has been obtained, describing** the height, type, design, and approximate location thereof (~~shall have been approved in writing by Middlesex Beach Association~~). The height or elevation of any **point of any** fence or wall shall be measured from the existing elevation of the property **adjacent to such point** (~~at or along the applicable points of lines~~). Any questions as to heights **shall** (~~may~~) be conclusively determined by the Association.

(7.4) **RULES AND REGULATIONS FOR CONSTRUCTION:** Each property owner of Middlesex Beach Association shall comply with published rules and regulations pertaining to any construction at Middlesex Beach as enacted by Middlesex Beach Association (~~through its building committee~~) and published in the Middlesex Beach Association Rules and Regulations for Construction document. **These Rules and Regulations, and any revisions thereto (hereinafter "Rules and Regulations"), shall be published to the property owners not later than May 1 each year. The Rules and Regulations so published to the property owners by May 1 shall have an effective date no earlier than the following Labor Day of the same calendar year in which the Rules and Regulations were published. The Rules and Regulations shall establish procedures for obtaining an MBA Building Permit; the permissible dates and times of construction activities; the storage and removal requirements of construction materials and equipment; the security, maintenance and appearance of a Lot during construction; and an amount of a Building Permit Fee that shall be charged on New Construction or Remodeling or both, including specific fines and penalties for violations or non-compliance of the Restrictive Covenants and Rules and Regulations. No alteration in the exterior appearance or interior layout of any building, structure, or improvement shall be made unless the procedures for construction have been followed (without like final written approval).** If the Association shall fail to disapprove the plans, specifications or plot plans within thirty (30) days after written request therefore then such approval shall not be required; PROVIDED, HOWEVER, that no building, structure or improvement shall be erected which violates any of **the Middlesex Beach Association Rules and Regulations for Construction and/or** these covenants, restrictions, or reservations, as hereinbefore or hereinafter set forth.

(compare with 15.3a "memorialized in writing and shall be published with reasonable notice")

(7.5) **COMPLETION AND DAMAGE DEPOSIT:**

(a) A completion and damage deposit in the form of a cash deposit (~~or bond posted by a licensed insurance or bonding company with the State of Delaware~~) in an amount equal to five percent (5%) of the total cost of construction must be submitted to the Middlesex Beach Association at the time that plans as provided herein, and other documentation as may be required by the MBA Rules and Regulations for Construction, are submitted if the estimated cost of the proposed construction exceeds **the minimum cost of construction as determined by the Association. This minimum amount shall be reviewed and published annually.**

(b) Regardless of the estimated cost, a separate completion and damage deposit may be required by the Association where the potential exists for disturbance to community property.

(c) The completion and damage deposit ~~(or bond)~~ shall be held by the Association to ensure completion of the construction, removal of trash and debris relating to construction, repairing of roadways and any common elements damaged by the contractor or subcontractor(s) ~~and/or to cover any legal fees or expenses incurred by the Association for enforcement of any covenants or regulations violated by the property owner, contractor, or subcontractor(s) as stipulated in these covenants and/or the published MBA Rules and Regulations for Construction.~~ The final inspection shall occur with the property owner's cooperation within 30 days after receipt by the Association of a written ~~(notice)~~ request from the property owner that the project is complete and ready for inspection, and receipt by the Association of a copy of the Sussex County Certificate of Occupancy, if applicable. . The deposit ~~(or bond shall)~~ may be held until ~~(30 days after a Certificate of Occupancy has been issued by the Sussex County Building Code Office and)~~ no later than ~~(15)~~ 30 days after a final inspection by the Middlesex Beach Association and a determination by the Association that the construction complies with the Restrictive Covenants, Rules and Regulations for Construction and plans submitted by the property Owner and approved by the Association. The Association shall have the power to deduct any outstanding penalties or fees from any completion and damage deposit funds.

(8) CONSTRUCTION OR DEMOLITION:

(former 12a, 12d removed; exact days/hours to be in Rules and Regs-see 7.4)

~~(a) No new construction may begin in Middlesex Beach between June 1 and the day after Labor Day. Buildings under construction before June 1 must be completely enclosed by the following June 30, at which time all exterior construction shall cease. All interior and exterior construction must be done on Monday, Tuesday, Wednesday, Thursday or Friday, provided however, that no construction may be done on any legal holiday. Exterior work when permitted may be done only between the hours of 8:00 a.m. and 4:30 p.m. Interior work may proceed throughout the summer, but only between the hours of 9:30 a.m. and 4:30 p.m. A building "under construction" is defined as one whose pilings or foundations are in place.~~

~~(d) Notwithstanding the foregoing restrictions on construction, between, but not including, Labor Day Weekend and Memorial Day Weekend, repair to and/or replacement of constituent components of existing structures which does not require a building permit shall be permitted on Saturdays and Sundays between the hours of 9:30 AM and 4:30 PM prevailing time.~~

(8.1) Temporary structures or shelters used in connection with and while construction work is being carried out on any given Lot are permitted, but **occupancy of any such temporary structure or shelter, including boat, guest house, tent, trailer, camper, shack, barn, or other accessory or outbuilding is not permitted.** An MBA Building Permit must have been issued and be active (i.e., the construction work is underway and progressing) in order for a temporary structure or shelter used in connection with and while construction work is being carried out to be permitted as herein provided. After due notice to any offending property owner, the Association has the authority to remove, at the property owner's expense, any improper structures that are prohibited hereunder.

(8.2) (language from old 12c) Once the construction or demolition of any building has been started in MIDDLESEX BEACH, such construction or demolition thereof 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 upon the construction or demolition of any buildings once started and before completion thereof for a continuous period of

thirty (30) days shall be prima facie evidence of an intent to abandon the same in its partially completed or demolished state, and shall be deemed to be a public nuisance, and the permit shall be deemed expired.

(8.3) Emergency repairs may be made with notification to the Association.

(8.4) Upon completion of construction for which a permit was required hereunder, a certificate of final inspection and approval must be obtained from the Middlesex Beach Association. In the event a Certificate of Final Inspection and approval is not issued by the Association within thirty days of the Association's receipt of a copy, from the owner, of a Certificate of Occupancy, issued by Sussex County, such approval may not be denied by the Association and shall be deemed to have been granted.

(9) RESIDENTIAL DISTRICT

The following provisions specifically apply to properties in the Residential District of Middlesex Beach as said District is defined in Section 1:

(9.1) (language from old 4) ~~(No Lot or given land area embraced within such Residential District shall be used for other than single family resident purposes. There shall not exist on any such Lot or given land area at any time more than one single, detached, dwelling house or residence.)~~ No Lot within such Residential District shall have built upon it a dwelling designed and intended for any use other than single family residential purposes and no dwelling shall be built or altered in a manner inconsistent with such purposes and, specifically, no dwelling shall be built or existing dwelling altered on any Lot in Middlesex Beach with the intention or design of providing living facilities of a multi-family, multi-dwelling type. All dwellings in the Residential District shall be built and maintained with a single metering system for each utility and with only one Kitchen. Not more than one single, detached single-family dwelling house or residence may be built or maintained on any Lot at any time.

(9.2) (language from old 9) SET-BACK LINES: The following building set-back lines are hereby established for the Residential District of MIDDLESEX BEACH, and Front Yards, Side Yards and Rear Yards of each Lot shall be maintained free of any buildings or structures, or part thereof, in accordance therewith, except as hereinafter provided:

(a) In Block A the building set-back line shall be twenty-five (25) feet from the property line appurtenant to Dune Road and from the eastern property line appurtenant to the beach area of Middlesex Beach. The building set-back line ~~(from a 10' Walkway)~~ shall be ten (10) feet from ~~(In case of each interior side yard, the building set-back line of each Lot shall be ten (10) feet from)~~ the common side boundary line between said Lot and either adjoining Lot or adjoining Community walkway.

(b) In Blocks B, C, D, E, F and G, the front building set-back line of any Lot bordering upon any Road shall be twenty-five (25) feet from the property line appurtenant to the Road in question and the building set-back line of any Lot the side of which borders upon a Road or upon "Ocean Highway", shall be ten (10) feet from the property line appurtenant to "Ocean Highway" or such other Road in question. In case of each rear-yard, the building set-back line of each Lot shall be twenty-five (25) feet from the common rear boundary line of such Lot and any boundary line of an adjoining Lot. In case of

each side-yard, the building set-back line of each Lot shall be ten (10) feet from the common side boundary line of said Lot and any other boundary line of an adjoining Lot.

(c) In Blocks M, N, O, P, Q, and R, the building set-back line shall be twenty-five (25) feet **from the property line appurtenant to** all Roads and Delaware State Route No. 361. In the case of each interior side-yard, the building set-back line of each Lot shall be fifteen (15) feet from the common side boundary line between said Lot and the adjoining Lot. In the case of each interior rear-yard, the building set-back line of each Lot shall be twenty-five (25) feet from the common rear boundary line between said Lot and the adjoining Lot, and for the purpose of this restriction, each Lot abutting on any boundary line of Middlesex Beach, as shown upon the aforesaid Plat, such boundary line shall be deemed to be an interior common rear boundary line of those Lots which abut upon any of the same.

(d) No single structure shall be constructed across more than one property line which appears on the Plat of the community.

(9.3) (language from old 8) BUILDING FRONT: All main or principal buildings erected upon any Lot located in the Residential District shall front as follows:

- (a) Lots 1 to 31, inclusive, of block A, to the ~~(East)~~ West;
- (b) Lots 3 and 4 of Block B, and Lots 5 to 9, inclusive, of Blocks C, D, E, F, and G, to the East;
- (c) Lots 1 and 2, Block B, and Lots 2 and 4 of Blocks C, D, E, F, and G, to the North;
- (d) Lots 1 and 3, of Blocks C, D, E, F, and G, to the South;
- (e) Lot 29, of Block M, Lot 29, of Block N, Lot 23, of Block O, Lot 27, of block P, Lot 25, of Block Q, and Lot 13, of Block R, to the South or to the East;
- (f) Lot 30, of Block M, Lot 30, of Block N, Lot 24, of Block O, Lot 26, of Block P, and Lot 26, of Block Q, to the North or to the East;
- (g) Lots 1, of Blocks M, N, P, Q, and R, to the South or West;
- (h) Lots 2, of Blocks M, N, P, and Q, to the North or to the West;
- (i) All the remaining Lots of Block R to the South;
- (j) All the remaining even numbered Lots of Blocks M, N, O, P, and Q, to the North; and
- (k) All the remaining odd-numbered Lots of Blocks M, N, O, P, and Q to the South.

(9.4) (language from old 5) RE-SUBDIVISION: No Lot located within the **Residential District** of Middlesex Beach, as shown upon the official Plat thereof, as aforementioned, shall be re-subdivided,

sold, or otherwise aliened in a lesser or smaller parcel, **except in cases of acquisition of property by the Middlesex Beach Association.**

(9.5) (language from old 11) TRASH DISPOSAL: Each property owner shall be responsible for keeping his property free of trash, debris, and garbage. **(Suitable) Receptacle** enclosures must be installed at roadside property lines, ~~(and shall be the exclusive trash collection site on the property)~~ and must be of a size sufficient for all trash and recycling receptacles. The Association shall have the authority to publish specifications for trash receptacle enclosures from time to time. The Association shall also have the right to exercise self-help in order to abate any violation of this Section 9.5. Prior to exercising the right to self-help hereby provided, the Association shall give the violating property owner **ninety (90) (thirty (30))** days written notice of the violation. In the event the violation remains uncorrected, the Association shall then be permitted to exercise its right of self-help without further notice to the violating property owner. The costs of exercising its right to self-help and the costs to correct any violation of this Section 9.5 shall be assessed against the violating property owner and shall be collectible in the same manner as the Annual Assessment. The Association is hereby granted a perpetual easement across each Lot for the purpose of enforcing its right under this Section 9.5, and no such entry and abatement or removal shall be deemed a trespass.

(9.6) FENCES:

(a) (language from old 13) No fence or wall (except a retaining wall or a wall of any building permitted under the terms of these restrictions) over **(five (5)) six** feet in height shall be erected within any of the open spaces prescribed by these restrictions, and that portion of any fence or wall which exceeds **(three (3)) four** feet in height shall contain openings therein equal to at least fifty percent (50%) of the area of said portion of such fence or wall. **Any portion of a fence in any front set-back shall not be more than four feet in height. (REWORD AFTER AGREEING ON LINDY'S CHANGE re front/side/rear yards?)**

(b) Solid fences, walls or other barriers up to a height of eight feet may be constructed on property lines along Beach Plum Road abutting the boundaries of the Lots in the Residential District and along Route 1 abutting the boundaries of the Lots in the Residential District, and that portion of any fence or wall which exceeds six feet in height shall contain openings therein equal to at least fifty percent (50%) of the area of said portion of such fence or wall.

(c) Retaining walls of no more than one foot high may be constructed in any set-back area.

(9.7) SIGNS. No sign in the Residential District shall contain any reflective material or an internal or direct exterior lighting source. All height limitations shall be measured from the level of the road nearest the sign. All ground signs shall **conform to standards published from time to time by the Middlesex Beach Association** ~~(have a minimum front setback of five feet and a minimum setback of ten feet from each side property line and shall contain no more than two sides or facings).~~

(9.8) GARAGES OR ACCESSORY BUILDINGS:

(language from old 9g)

(a) Nothing herein contained shall be construed to prohibit the erection on any such Lot either a detached private garage or other detached small outbuilding **(either or both of which are hereinafter referred to as "accessory building") simultaneous with or** after there has been erected thereon

a principal dwelling house in compliance with these Restrictions, and any such accessory building ~~(garage or other accessory or outbuilding)~~ shall be solely used in connection with the principal dwelling erected upon such Lot. Further, any such accessory building shall have as its primary purpose the parking of automobiles or shall principally serve as a storage facility, workshop, or similar ancillary purpose. No accessory buildings shall contain a Kitchen.

(b) Any accessory building which is attached to the principal building by a 3 dimensional structure shall count as part of the principal building, and shall meet all setback requirements noted in Section (9.2), and comply with the height limit established in Section 3.2.

(c) The owner of any ~~(given)~~ Lot ~~(or land area)~~ is authorized to erect thereon a detached accessory building. No point on such accessory building, including roof overhang, shall be less than 10 feet from the principal building, including roof overhang. The front of such accessory building shall be at least 20 feet behind the front corner of the principal building. Roof overhangs of two (2) feet or less shall not count towards these limits. The height thereof shall be not more than fifteen (15) feet, said height to be measured in the same manner and pursuant to the same criteria as described in Section 3.2 hereof. Further, such accessory building may encroach either upon one side ~~(yard)~~ setback area ~~(and)~~ or the rear ~~yard~~ setback area (except where such side or rear setback area ~~yard~~ adjoins upon any Road, walkway or highway of MIDDLESEX BEACH) of each Lot or land area. Such encroaching accessory building shall be at least four (4) feet from any property line.

(9.9) (language from old 12b) ENCLOSURES & SCREENINGS: All dwellings, exclusive of porches and decks, built upon pilings must be enclosed by pickets or walls from the ground to the level of the first floor, provided that entrances for vehicles or walkways may remain unenclosed. HVAC units, propane tanks and other equipment identified by the Association to be potential nuisances or eyesores shall be screened with an enclosure as required by the rules and regulations passed by the Association and published to the property owners from time to time. The Association shall have the right to exercise self-help in order to abate any violation of this Section 9.9. Prior to exercising the right to self-help hereby provided, the Association shall give the violating property owner ninety (90) ~~(thirty (30))~~ days written notice of the violation. In the event the violation remains uncorrected, the Association shall then be permitted to exercise its right of self-help without further notice to the violating property owner. The costs of exercising its right to self-help and the costs to correct any violation of this Section 9.9 shall be assessed against the violating property owner and shall be collectible in the same manner as the Annual Assessment. The Association is hereby granted a perpetual easement across each Lot for the purpose of enforcing its right under this Section 9.9, and no such entry and abatement or removal shall be deemed a trespass.

(9.10) NON-PERVIOUS LOT COVERAGE: The amount of a Lot covered by structures and other non-pervious coverings shall not exceed 50% of the total land area of such Lot. Except for a small outbuilding as permitted

None of the Lot area within the rear or either side set-back shall be covered by non-pervious material.

(9.11) INCIDENTAL BUSINESS USE: A resident may conduct business activities within the residence so long as the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the residence, the business activity does not, in the Association's reasonable judgement, generate a level of vehicular or pedestrian traffic or a number of vehicles being

parked at the residence which is noticeably greater than that which is typical of residences in which no business activity is being conducted, and the business activity is consistent with the residential character of the community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the community, as may be determined in the sole discretion of the Association.

(9.12) RENTAL: The owner of each Lot in Middlesex Beach that is rented is responsible for advising the occupants of their property of any and all restrictions and/or published Community Rules and Regulations, and shall be responsible for any infractions of these restrictions and/or published Rules and Regulations committed by such renters or their guests. Each such owner is responsible for providing the Association or its agents with the owner's Emergency Contact Information should there be infractions which need to be brought to the owner's attention. Failure to provide such contact information is subject to a penalty as established by the Association.

(see last page for proposed 9.13, to be adopted or not by separate vote)

(10) COMMERCIAL DISTRICT:

(based on old 3)

The following provisions specifically apply to properties in the Commercial District of Middlesex Beach as said District is defined in Section 1:

(10.1) Within the Commercial District any Lot may be used and occupied for either commercial or residential uses and purposes, or both, or any combination thereof: PROVIDED, that if a commercial Lot is converted to a residential Lot, that it shall be bound by and conform to all restrictions, rules and regulations affecting and applying to residential Lots.

(10.2) (language from old 9b) SET-BACK LINES: The following building set-back lines are hereby established for the Commercial District of Middlesex Beach, and Front Yards, Side Yards and Rear Yards of each Lot shall be maintained free of any buildings, structures, or part thereof, in accordance therewith, except as hereinafter provided: The building set-back line shall be fifty (50) feet from the property line appurtenant to Ocean Highway and from Beach Plum Road, and ten (10) feet from the property line appurtenant to all other Roads, and five (5) feet from any interior side lot line.

(10.3) (language from old 8e) All main or principal buildings erected upon any Lot located within the Commercial District shall front to the East, unless the Lot is subdivided in accordance with Section 10.4.

(10.4) RE-SUBDIVISION:

(a) (language from old 5) No Lot located within Middlesex Beach, as shown upon the official Plat thereof, as aforementioned, shall be re-subdivided, sold, or otherwise aliened in a lesser or smaller parcel, except in cases of acquisition of property by the Middlesex Beach Association or, in the case of a Lot owner, except in accordance with a Supplemental Plot Plan thereof bearing the approval of Middlesex Beach Association, and recorded in the Office of the Recorder of Deeds, in and for Sussex County, at Georgetown, Delaware; PROVIDED, HOWEVER, that the owner or owners of any Lot in (Blocks H, I, J, K, and L) the Commercial District of Middlesex Beach may, after first (advising) obtaining permission from the Middlesex Beach Association of his, her, their, or its intention in writing

by registered mail, subdivide one time only and such Lot ~~(excluding, however, that portion of any such lot bounded by the present Ocean Highway and extending fifty (50) feet westerly therefrom)~~ into two single family residential Lots as nearly equal in size as is possible. Each of these Lots shall thereafter be used for residential purposes only and shall be subject to all the restrictions in these Covenants pertaining to ~~(residential lots)~~ the Residential District. After such conversion to residential Lots has been made, ~~(building set-back lines and building front restrictions controlling commercial property in Block H, I, J, K, and L)~~ the restrictions on the Commercial District contained in this Section 10 shall no longer be applicable to the newly created residential Lots and the restrictions on the Residential Properties contained in Section 9 shall become applicable (check setbacks)

(b) (language from old 9b) Building set-back lines for the converted, newly created residential Lots are hereby established as twenty-five (25) feet from all Roads and ~~(fifty feet)~~ from Ocean Highway as shown on the present existing Plat of Middlesex Beach, five (5) feet from the common side boundary line between any two adjoining Lots, and twenty-five (25) feet from the common rear boundary line between any two adjoining Lots. ~~(As to building front, residences placed on said converted lots shall face)~~ Residences placed on said converted Lots shall have their front facing in a direction approved by the Middlesex Beach Association after the owner ~~(or occupier)~~ of the Lot has submitted plans in accordance with Section 7 of the Restrictive Covenants.

(10.5) GARBAGE REMOVAL:

(a) (language from old 11) Each property owner and/or occupant and/or tenant of a commercial establishment which prepares or sells food or perishable products of any nature must provide evidence to Middlesex Beach Association prior to March 1 of each year of trash and garbage removal on an every other day basis for the period of time during which the establishment is open for business. The evidence of trash removal must be in the form of a current written contract for trash removal services by a licensed hauler.

(b) Each property owner shall be responsible for keeping his property free of trash, debris, and garbage. Receptacle enclosures must be installed at roadside property lines or at the rear of the property. Such enclosures must be of a size sufficient for all trash and recycling receptacles, and may be as high as necessary to visually screen the receptacles. The Association shall have the power to publish specifications for trash receptacle enclosures from time to time. The Association shall also have the right to exercise self-help in order to abate any violation of this Section 10.5. Prior to exercising the right to self-help hereby provided, the Association shall give the violating property owner ninety (90) ~~(thirty (30))~~ days written notice of the violation. In the event the violation remains uncorrected, the Association shall then be permitted to exercise its right of self-help without further notice to the violating property owner. The costs of exercising its right to self-help and the costs to correct any violation of this Section 10.5 shall be assessed against the violating property owner and shall be collectible in the same manner as the Annual Assessment. The Association is hereby granted a perpetual easement across each Lot for the purpose of enforcing its right under this Section 10.5, and no such entry and abatement or removal shall be deemed a trespass.

(10.6) ENCLOSURES & SCREENING: HVAC units, propane tanks and other equipment identified by the Association to be potential nuisances or eyesores shall be screened with an enclosure as required by the rules and regulations of the Association and published to the property owners from time to time, provided that such screening does not hinder the ingress or egress of emergency vehicles. Such enclosures or screening may be as high as necessary to visually screen the potential nuisance or

eyesore. The Association shall have the right to exercise self-help in order to abate any violation of this Section 10.6. Prior to exercising the right to self-help hereby provided, the Association shall give the violating property owner ~~ninety (90) (thirty (30))~~ days written notice of the violation. In the event the violation remains uncorrected, the Association shall then be permitted to exercise its right of self-help without further notice to the violating property owner. The costs of exercising its right to self-help and the costs to correct any violation of this Section 10.6 shall be assessed against the violating property owner and shall be collectible in the same manner as assessments. The Association is hereby granted a perpetual easement across each Lot for the purpose of enforcing its right under this Section 10.6, and no such entry and abatement or removal shall be deemed a trespass.

(10.7) FENCES AND RETAINING WALLS: Solid fences, walls or other barriers of not less than 6 (six) feet nor more than eight (8) feet must be constructed on property lines along Beach Plum Road abutting the boundaries of the Lots in the Commercial District and along the rear yards within or abutting the Lots in the Commercial District of Middlesex Beach. Solid fences, walls or other barriers up to a height of six (6) feet may be constructed in the side yard or along either or both side property lines.

(10.8) (language from old 15) SIGNS: Only the following exterior signs are permitted:

~~((a) All signs permitted in the Residential District.))~~

(a) One permanent ground sign per Lot, as such Lots are described on the Sussex County Tax Parcel Map. Said ground sign includes all signs unattached to any building and erected on or supported by one or more uprights, poles, posts or braces placed in or supported by the ground. All such signs shall have a minimum front setback of five feet from the right of way of Route 1, shall have a minimum side setback of twenty feet from each side property line, shall have a minimum setback of twenty-five feet from the right of way line of an intersection with another street and shall contain no more than two sides or facings, back to back. No sign structure shall exceed eighteen feet in height, such height to be measured from the level of the road nearest the sign. The area of such ground sign shall not exceed one hundred square feet on any side or facing.

(b) In addition to the permanent ground signs permitted in this provision, each store, shop, office or similar commercial unit shall be permitted one permanent sign attached to or painted on each wall, other than a wall facing Beach Plum Road, provided that no such sign shall exceed ~~thirty-six~~ square feet, and, provided further, that no such sign facing northward or southward shall be illuminated from within, nor from the rear, nor from lights affixed to the sign or the wall, nor contain reflective material. The sign facing Route 1 may be an illuminated awning, wall sign, or other attached exterior sign, not to exceed thirty-six square feet per sign. No sign shall be situated upon or attached to any roof, except a portion of a roof which is perpendicular to the ground or has a roof slope of greater than ~~eighty-five~~ degrees and which is essentially an extension of the wall over which it is constructed.

(c) In addition to the provisions of Sub-sections (b) and (c) above, each store, shop, office or similar commercial unit may display one non-illuminated sign, not exceeding eight square feet in area, with letters not exceeding one foot in height, painted, stamped, or stitched on the surface of any awning or canopy, provided that only the copy, logo or display area of such sign shall be considered in any square foot limitations.

(d) In addition to the provisions of Sub-section (b), (c) and (d) above, each store,

shop, office or similar commercial unit may display temporary commercial signage in the form of posters, banners, pennants or commercial flags not to exceed a total combined area of thirty-six square feet. Such an area calculation shall include the area of all posters, banners, pennants, or commercial flags so displayed.

(e) All ~~(such)~~ signs in the Commercial District shall be compatible with the adjoining residential neighborhood, as well as other signs in the Commercial District approved in writing by the Middlesex Beach Association.

(10.9) The Maximum hours of operation for any businesses located in the Commercial District are from 6AM to 11 PM. No deliveries may be made, no material may be removed (including trash and garbage), and no business may be transacted except between these hours.

(10.10) The following operations which have the potential for generating undue noise, odors, light or other offensive impacts are prohibited, including but not limited to:

- (a) gas stations, or other automotive service/parts establishments (including tires, batteries, mufflers, etc);
- (b) repair or parts facilities for mechanical/hvac/electrical/plumbing or similar;
- (c) construction operations;
- (d) manufacturing/fabricating/processing facilities;
- (e) Laundromats, including commercial laundries;
- (f) automobile sales or leasing, or other vehicles
- (g) entertainment facilities, including arcades;
- (h) building materials, supplies, hardware stores;
- (i) hotels/motels/bed & breakfast/multifamily dwellings;
- (j) bars or taverns; and/or
- (k) any sexually related establishments;

(10.11) Any restaurant that wishes to sell alcohol with meals may do so, but only after obtaining all necessary approvals from the State of Delaware and after obtaining the approval of 60% of the property owners in Middlesex Beach attending in person or by proxy any regular or special meeting called for the purpose of obtaining approval to sell alcohol with meals. All costs associated with calling and conducting a special meeting for the purpose of obtaining the approval of the property owners as required hereunder shall be the responsibility of the property owner seeking approval to sell alcohol with meals.

(11) UTILITY AND OTHER EASEMENTS

MIDDLESEX BEACH, including the individual Lots therein, are ~~(is)~~ subject to all those prior easements and rights-of-way heretofore granted by Margaret Dunning unto Delaware Power & Light Company and The Diamond State Telephone Company, in and by her certain Deed of Easement dated December 14, 1959, and now of record in the Office of the Recorder of Deeds, aforesaid, in Deed Book 512, page 512 & c.; Deed of Easements granted by Middlesex Beach Association unto All present and future owners of any lot or lots situate in Middlesex Beach dated December 17, 1959, and filed for record in deed Book 512, page 579; Deed of Easement granted by Middlesex Beach Association unto Sussex County dated November 28, 1975, and filed for record in Deed Book 790, page 152; Deed of

Easement granted by Middlesex Beach Association unto Sussex County dated September 4, 1976, and filed for record in deed Book 829, page 283; Deed of Easement granted by Middlesex Beach Association unto Sussex County dated June 10, 1978, and filed for record in deed Book 900, page 232; Easement Agreement granted by Middlesex Beach Association unto the Council of South Bethany dated March 19, 1984, and filed for record in Deed Book 1250, page 1; Easement granted by the Diamond State Telephone Company, unto Middlesex Beach Association dated February 8, 1985, and filed for record in Deed Book 1327, page 25; and **Easement granted by Middlesex Beach Association, unto the Delaware Department of Natural Resources dated April 12, 2007, and filed for record in Deed Book 3435, page 344**, as reference thereto being had will more fully and large appear.

(12) OTHER DUTIES, LIMITATIONS AND PROHIBITIONS

(12.1) BARRIER DUNE: The owners of all Lots lying east of Dune Road in MIDDLESEX BEACH shall neither dig, mine, remove, or carry away, or cause to be dug, mined, removed, or carried away, any sand comprising the barrier dune area of MIDDLESEX BEACH without first obtaining the written consent of Middlesex Beach Association and **DNREC (the Department of Natural Resources and Environmental Control)** as required by 7 Del. C. Section 6801, et seq., and shall further comply with all lawful rules, regulations and policies prescribed by said Department in pursuance of said Statute, with respect to the use of said Lots which comprise a part of the barrier dune area of MIDDLESEX BEACH.

(12.2) (language from old 11) SANITATION:

~~(a) — No toilet, private sewage disposal system, or cesspool shall be maintained or used upon any Lot or land area located in MIDDLESEX BEACH, except for such temporary facilities approved by public health authorities during construction. Each property owner shall connect to the SOUTH BETHANY SANITARY SEWER DISTRICT, the public sewer system, at the sole expense of each Lot owner and shall comply with all the rules and regulations established by public health authorities having jurisdiction over Middlesex Beach.~~

~~(b) — In addition to the other remedies available to the Association hereunder, if any property owner fails to fulfill any of the requirements of this covenant, Middlesex Beach Association may, after issuing a certified letter with a **ninety (90) (thirty (30))** day right to cure, correct the condition at the sole expense of the property owner in a manner as determined by Middlesex Beach Association, the cost of which shall be billed to the property owner and collectible in the same manner as the Annual Assessment hereunder.~~

(12.3) (language from old 14) NUISANCES: No Lot or land area located in any part of MIDDLESEX BEACH may be used for any manufacturing or processing plant, nor shall any livestock or poultry be grown, kept or maintained thereon, nor shall any noxious **or** offensive trade or activity **or any activity that generates excessive noise** be carried out or conducted thereon, nor shall anything be done, kept, or maintained thereon which constitutes a public nuisance, or **eyesore, or** a menace to the public health, safety or welfare, **or which threatens to adversely affect the safety (and) or value of Middlesex Beach and the other properties therein.**

(should this section include specific language related to barking dogs?)

(12.4) TRAILERS: No Lot shall have stored thereon for more than two (2) weeks any camper, trailer, or recreational vehicle of a length greater than 20' unless it is in an approved enclosed building.

(12.5) (language from old 4) No temporary structure or shelter, and no guest house, tent, trailer, camper, shack, barn, or other accessory or outbuilding shall be erected or placed upon any property within ~~(the Residential District of)~~ Middlesex Beach, excepting temporary structures or shelters used in connection with and while construction work is being carried out on any given Lot **as specified in section (8.1). Occupancy of any temporary structure or shelter, including boat, guest house, tent, trailer, camper, shack, barn, or other accessory or outbuilding is not permitted.**

(13) INDEMNIFICATION

(language from old 20) To the extent there is no available and applicable insurance coverage, the Association shall indemnify any and all of its directors, officers, **committee members and employees** for all liability threatened or arising from any pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, by any person individually or in the right of the Association resulting from any authorized action taken on behalf of the Association where such person acted in good faith and in a manner ~~(he)~~ reasonably believed to be in or not opposed to the best interests of the Association, and, with the respect to any criminal action or proceeding had no reasonable cause to believe **the (his)** conduct was unlawful. When applicable, indemnity shall include payment for all expenses, including attorney's fees, judgment, fines and amounts paid in settlement actually and reasonably incurred ~~(by him).~~ ~~Actions subject to indemnification shall include, but not be limited to, all~~ conduct by directors, officers, **committee members and employees** ~~and agents~~ of the Association performed in carrying out their duties and other members and employees designated by officers to conduct any activity on behalf of the Association.

(14) ANNUAL ASSESSMENT (language from old 17)

(14.1) Each Lot owner in Middlesex Beach ~~(covenants)~~ **agrees** to pay to Middlesex Beach Association, or its successors, a sum of money annually to be used by such Association for any purpose that is consistent with the best interests of the **members** ~~(residents)~~ including, but not limited to, professional and other fees and salaries, **Road** and street maintenance, security, maintenance of the beach walkways, **maintenance of the beach, dunes and drainage ditches (whether such beach, dune or drainage ditch is located on Association property or member property)**, and for other purposes as budgeted by the Association from time to time. Such annual assessment may be levied no more than once each calendar year and the amount thereof shall be determined from time to time according to the vote of a majority of the property owners **attending, in person or by proxy**, a regular meeting or a special meeting called for such purpose.

The aforesaid assessment shall first be levied upon every Lot upon which improvements are then located or are upon the voting date in any stage of construction. There shall thereupon be assessed upon all unimproved Lots in Middlesex Beach on the same date an annual maintenance assessment which is 55% of the improved Lot assessment, and unconverted commercial Lots shall be assessed at twice the assessment of a residential Lot.

(14.2) **If any commercial Lot is converted to (a) single residential Lot as specified in Section 10, the total assessment of those double residential Lots shall be the same as the commercial Lot from which they were converted. If any commercial lot is converted to a single residential lot, the assessment of that single residential lot shall be the same as the commercial lot from which it was converted.** ~~If any commercial lot is converted to a single residential lot, the assessment of that single residential lot shall be the same as the commercial lot from which it was converted.~~ In the case of subdivision, each subdivided and converted residential Lot shall be assessed as a residential Lot.

The commercial improved and unimproved **Lots** shall be assessed at twice the rate of the assessments for the residential improved and unimproved **Lots**.

(14.3) Notice of such annual assessment shall thereupon be mailed by any officer of the Association to each **Lot** owner at his last known mailing address within fifteen (15) days after the aforesaid meeting and vote of the membership and every such annual assessment ~~(must)~~ **shall** be paid to the Association within forty-five (45) days next following the aforesaid meeting at which such assessment is determined.

(15) PENALTIES, FINES AND REMEDIES

(15.1) ~~(language from old 19)~~ In the event any party hereto, or his, her or its, heirs, successors, or assigns, as the case may be, shall violate, or attempt to violate, any of the foregoing restrictive covenants or reservations while the same remain in force and effect, then and in such an event, it shall be lawful for any other person or persons owning a legal interest in any Lot located in MIDDLESEX BEACH, or for Middlesex Beach Association, and its successors, to bring any proceeding to take any action, either in law or in equity, against such violator of any of the foregoing restrictive covenants or reservations as may be applicable to prevent or abate the violation thereof or to recover damages resulting from any such violation or attempted violation thereof. In the event that an action is brought by any such person or by Middlesex Beach Association for nonpayment of an assessment and/or for the enforcement of any of the restrictive covenants, **published rules and regulations**, and obligations arising from them in any court of competent jurisdiction, the remedy shall include the payment of reasonable attorney's fees, ~~(which in no event shall be less than \$300.00)~~ litigation expenses and court costs to Middlesex Beach Association and/or to other party(ies) who take action to enforce any of the foregoing restrictive covenants.

(15.2) It shall be no defense in any such action that the property owner is absent or that the property is leased to a third party. Moreover, any party who violates any of the restrictive covenants of Middlesex Beach including, but not limited to, **the sections contained herein about** ~~(Paragraph 17 above for)~~ delinquent maintenance assessments, hereby agrees that such violation irreparably harms Middlesex Beach and hereby authorizes the Court of Chancery of the State of Delaware to enter a temporary, preliminary and/or permanent restraining and injunctive order preventing the offending party from occupying or building on any property in Middlesex Beach until such violation(s) is corrected and further agrees that the Court of Chancery of the State of Delaware in and for Sussex County would have subject matter and personal jurisdiction in any such case.

(15.3) **In addition to any and all other remedies and methods of enforcement available to the Association under these Restrictive Covenants or any other governing document of the Association, the Association shall have the power to:**

(a) **As permitted by the Delaware Uniform Common Interest Ownership Act ("DUCIOA"), to levy fines against a property owner for any violation of these Restrictive Covenants or any of the other governing documents for the Association committed by a property owner or other occupant of a Lot (which includes tenants and guests of both Owners and tenants) in such amounts as shall be determined by the Association from time to time. The "Schedule of Fines" determined by the Association, and any amendments thereto, shall be memorialized in writing and shall be published with reasonable notice to all Lot owners in Middlesex Beach prior to the effective date thereof. Any fines imposed against a property owner according to the Schedule of Fines shall constitute a lien on the**

property and be collectible in the same manner as assessments provided elsewhere in these Restrictive Covenants.

(b) As permitted by DUCIOA, to impose against a property owner administrative fees, late fees or other costs of collection and/or enforcement, including, but not limited to reasonable attorneys' fees, incurred by the Association as a result of a property owner's or occupant's (which includes tenants and guests of both Owners and tenants) violation of these Restrictive Covenants or any of the other governing documents for the Association. The amount of any administrative fees or late fees shall be determined by the Association. Any administrative fees, late fees or other costs of collection and/or enforcement, including, but not limited to reasonable attorneys' fees, shall constitute a lien on the property and be collectible in the same manner as assessments provided elsewhere in these Restrictive Covenants.

(15.4) The Association shall have the right to exercise self-help in order to abate and correct any violation of these Restrictive Covenants. Prior to exercising the right to self-help hereby provided, the Association shall give the violating property owner ~~thirty (30)~~ ninety (90) days written notice of the violation. In the event the violation remains uncorrected, the Association shall then be permitted to exercise its right of self-help and to expend the funds necessary in connection therewith without further notice to the violating property owner. The costs of exercising its right to self-help and the costs to correct any violation of these Restrictive Covenants shall be assessed against the violating property owner and shall be collectible in the same manner as assessments. The Association is hereby granted a perpetual easement across each Lot for the purpose of enforcing its right under this Section 15.4, and no such entry and abatement or removal shall be deemed a trespass.

(15.5) Collection of Assessments and Assessment Lien.

(a) If any assessment is not paid on the date when due, then such assessment shall be deemed delinquent and, together with such interest, late fees, fines, penalties, administrative fees and costs of collection thereof, including reasonable attorneys' fees, shall constitute a lien on the Lot and any structure built thereon which shall bind such Lot in the hands of the then property owner. Each property owner, by acceptance of a Deed or other transfer document, covenants and agrees that the Association shall have the authority to prepare and record in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, a list of property owners delinquent in the payment of any assessments or other charges authorized by these Restrictive Covenants stating the property owner's name, Lot number, and amount owed, which list, when recorded, shall be a lien against the Lot. Prior to filing any lien document, the affected property owner shall be provided notice and an opportunity to cure the delinquency in accordance with the rules and regulations of the Association.

(b) In addition to such lien rights, the personal obligation of the then property owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title (other than as a lien on the land) unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent per annum (18%) or the maximum legal rate, whichever is greater, and be subject to late fees, and the Association may bring a legal action against the property owner personally obligated to pay the same or may enforce or foreclose the lien against the Lot, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with the costs of the action. No owner of a Lot may waive or otherwise escape liability for the assessments provided for herein by non-use of any common area in the community or abandonment of said Lot.

(c) If any assessment or other charge due and owing the Association is not paid on the date when due, the delinquent property owner shall not be entitled to vote at any regular or special meeting of the Association or its Board of Directors until such time as the delinquent has been remedied. The Association shall have the power to revoke all other rights and privileges to use the beach, facilities, or services of the Association until such time as the delinquency has been remedied.

(15.6) In the event any ~~(party owning a freehold interest in any)~~ Lot Owner ~~(located in MIDDLESEX BEACH)~~ desires to make a complaint of an alleged violation of any of these reservations or restrictive covenants unto Middlesex Beach Association, or to propose unto Middlesex Beach Association any waiver, abandonment, termination, modification, alteration, change, or addition of, in or to these reservations and restrictive covenants, or any of them such complaint or proposal, as the case may be, must first be reduced to writing and signed by the complaining party, or proposer, as the case may be, before it may be considered by Middlesex Beach Association.

(16) DURATION, AMENDMENTS & MISC. ADMINISTRATIVE PROVISIONS

(16.1) ~~(language from old 18)~~ The foregoing Restrictive Covenants and Reservations shall run with the land ~~(ED: insert language of how corresponds with the List of Existing Easements currently listed in Section 11)~~, and the title thereto, as herein and hereby conveyed, and the same shall be binding upon all parties hereto, and upon all persons claiming hereunder, as well as their respective heirs, successors, and assigns, as the case may be, in perpetuity: SUBJECT HOWEVER, TO THE PROVISIO that Middlesex Beach Association, by and with the vote or written consent of no less than sixty percent (60%) of the then owners of all the Lots in MIDDLESEX BEACH shall have the power to waive, abandon, terminate, modify, alter, change, amend, or add to these Restrictive Covenants and Reservations, or any of them, at any time hereafter. Any such waiver, abandonment, termination, modification, alteration, change, amendment, or addition shall take effect when a copy thereof, executed and acknowledged by Middlesex Beach Association, in accord with the usual form of execution and acknowledgment of Deeds to land by a Delaware corporation, together with the written consents of the requisite number of Lot owners, or a certificate by the Association verified under oath by the President thereof, or in the case of his absence or inability, by any Vice-President thereof, setting forth the time, manner and result of the taking of the vote of all the Lot owners in MIDDLESEX BEACH, have been tiled for record in the Office of the Recorder of Deeds of the State of Delaware, in and for Sussex County, and the same shall thereafter remain in effect in perpetuity, unless and until the same shall thereafter 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 such written consent, of the Lot owners in MIDDLESEX BEACH, each owner shall have as many votes or consents as he, she, it, or they may own Lots situate in MIDDLESEX BEACH.

(16.2) When any action or the exercise of any right by the Association is authorized to be taken hereunder, unless otherwise specified, such action or exercise of right shall be taken by the Board of Directors for the Middlesex Beach Association.

(16.3) When any action or the exercise of any right by the Association is authorized to be taken hereunder, the Association is hereby granted a perpetual easement across each Lot for the purpose of taking such action or enforcing such right, and no such entry on a Lot shall be deemed a trespass.

(16.4) The Association shall comply with the following procedures prior to the imposition of a monetary fine, penalty or other remedial action authorized by these Restrictive Covenants. The following provisions shall not apply to the imposition of late fees, interest or other action taken by the Association in connection with a delinquent assessment.

(a) Notice. The Association or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed fine, penalty or other remedial action to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Association; and (iv) a statement that the proposed fine, penalty or other remedial action shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice or such other time period as may be stated in the notice. If a timely request for a hearing is not made, the proposed fine, penalty or other remedial action stated in the notice shall be imposed; provided the Association may, but shall not be obligated to, suspend any proposed fine, penalty or other remedial action if the violation is cured within the 10-day period or such other time period as may be stated in the notice. Such suspension shall not constitute a waiver of the right to fine, penalize or impose other remedial action for future violations of the same or other provisions and rules by any person.

(b) Hearing. If a hearing is requested within the allotted 10-day period or such other time period as may be stated in the notice, the hearing shall be held before the Board of Directors in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any fine, penalty or other remedial action hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the fine, penalty or other remedial action, if any, imposed.

(16.5) Notices. All notices, demands, bills, statements or other communications under these Restrictive Covenants or under the corporate governing documents for the Association shall be in writing and shall be deemed to have been duly given if: (a) delivered personally; (b) if to a property owner, if sent by e-mail, facsimile or other method of electronic transmission to the property owner at the e-mail/electronic address or facsimile number which the property owner shall designate in writing and file with the Association and the property owner acknowledges receipt of such electronic communication; (c) if to a property owner, if sent by first-class mail, postage prepaid, to a property owner at the address which the property owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the property owner as provided in his deed of record in the Office of the Recorder of Deeds, in and for Sussex County; (d) if to the Association, if sent by e-mail, facsimile or other method of electronic transmission to the Association at the e-mail/electronic address or facsimile number which the Association shall designate in writing to the property owners as the principal e-mail/electronic address or facsimile number of the Association; or (e) if to the Association, if sent by first-class mail, postage prepaid to the Association or the professional management agent, at the principal office of the Association or at such other address as shall be designated by notice in writing to the property owners pursuant to this section.

(16.6) None of the foregoing restrictions shall be applicable to the activities of the Association in connection with its development, improvement or use of any Lot or other parcel in Middlesex Beach, provided such development, improvement or use is for the benefit of the Middlesex Beach community as a whole.

(16.7) The invalidating of any one of the foregoing restrictive covenants, reservations, or any provisions thereof, by any court of competent jurisdiction **and/or due to a conflict with any existing or future law** shall in nowise affect or impair the full force and effect of all other restrictive covenants,

reservations, and provisions hereinbefore set forth, and in any such event all such other restrictive covenants, reservations, and provisions as are not expressly invalidated thereby shall remain in full force and effect.

NOTE: SATELLITE ANTENNAS OR DISHES (current section 16 being eliminated entirely; FCC regs govern)

II. PROPOSED LANGUAGE TO BE CONSIDERED AND VOTED ON SEPARATELY BY BOARD AND COMMUNITY:

(9.13) RENTAL MAINTENANCE ASSESSMENT: The **Association** has the authority to impose a Rental Maintenance Assessment on each Lot in the Residential District which is rented on a short term basis (**90 days** or less), the amount of which shall be determined each year by the Association, and which shall be published with reasonable notice to the property owners each year.