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**DECLARATION OF COVENANTS AND RESTRICTIONS**  
**FOR**  
**THE VILLAGE GRANDE AT ENGLISH MILL**

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DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
THE VILLAGE GRANDE AT ENGLISH MILL

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The Village Grande at English Mill
- EXHIBIT A-1 - Legal (Metes and Bounds) Description of Phase I
- EXHIBIT B - Subdivision Plat for The Village Grande at English Mill
- EXHIBIT B-1 - Phase I Plan
- EXHIBIT C - Certificate of Incorporation of The Village Grande at  
English Mill Homeowners Association, Inc.
- EXHIBIT D - By-Laws of The Village Grande at  
English Mill Homeowners Association, Inc.
- EXHIBIT E - Housing for Older Persons Act of 1995 Compliance  
Affidavit

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DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

THE VILLAGE GRANDE AT ENGLISH MILL

THIS DECLARATION is made this 5<sup>th</sup> day of June, 2006, by D.R. Horton, Inc. - New Jersey, a Delaware corporation, having an office located at 20 Gibson Place, Freehold, New Jersey 07728 (hereinafter referred to as the "Developer").

WHEREAS, the Developer is the owner of the fee simple title to certain real property in the Township of Egg Harbor, County of Atlantic and State of New Jersey consisting of approximately 173.87 acres of land, being more particularly described by a metes and bounds description appended hereto as Exhibit "A" and more particularly shown on a plan entitled "Exhibit Plan for Phase I & Phase II, Village Grande at English Mill, Plate 33, Block 3301, Lots 9-11 & 18, Block 3302, Lots 10, 92-94, 96-101, Block 4001 Lots 2, 3, & 6, Egg Harbor Township, Atlantic County New Jersey" prepared by Consulting Engineer Services, Professional Engineers, Planners & Land Surveyors dated February 5, 2004 (the "Overall Plan"), appended hereto as Exhibit "B" (the "Entire Tract");

WHEREAS, the Developer intends, and reserves the right, but is not obligated to create thereon a planned unit development intended for occupancy by persons 55 years of age or older, which is intended to ultimately consist of up to three hundred ninety-seven (397) detached single family dwellings to be located on

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three hundred ninety-seven (397) residential lots (collectively, the "Homes") and certain Common Property, to be known as The Village Grande at English Mill (hereinafter the "Community") and as hereinafter defined; and

WHEREAS, in order to establish and preserve the character of The Village Grande at English Mill as a high quality adult community, the Developer is desirous of imposing a general scheme of restrictions covering said lands and premises of the Community for the protection and benefit of the Developer, its successors and assigns, the Community, and each and every owner of any and all portions thereof;

WHEREAS, the Developer proposes to develop the Property in two (2) phases (hereinafter "Phases");

WHEREAS, the first Phase ("Phase I") is intended to include or will include a total of two hundred fifty-three (253) Homes situated with Phase I of the Community, together with certain parking areas, driveways, walkways, clubhouse, two (2) swimming pools, two (2) tennis courts, a bocci court, an artificial putting green, circuit training path and other improvements more particularly described on Exhibit "A-1" and shown on the a plan entitled "Exhibit Plan for Phase I, Village Grande at English Mill, Plate 33, Block 3301, Lots 9-11 & 18, Block 3302, Lots 10, 92-94, 96-101, Block 4001 Lots 2, 3, & 6, Egg Harbor Township, Atlantic County New Jersey" prepared by Consulting Engineer Services, Professional Engineers, Planners & Land Surveyors dated February 5, 2004 (the "Phase I Plan"), appended hereto as Exhibit "B-1";



WHEREAS, the Developer can exercise its right to incorporate additional Sections into the Community by the recordation in the office of the Atlantic County Clerk of one or more Amendments and Supplements to this Declaration;

WHEREAS, the Developer has established or is about to establish The Village Grande at English Mill Homeowners Association, Inc., a New Jersey not-for-profit corporation, as the association assigned the power and authority to maintain and administer the Common Property and certain other portions of the Community, to administer and enforce the covenants and restrictions governing the Community, and to collect and disburse all assessments and charges necessary for such maintenance, administration, and enforcement, which are hereinafter more fully described;

WHEREAS, all Owners of Homes in the Community will automatically be members of the Association and be subject to this Declaration; the Certificate of Incorporation; and By-Laws and Rules and Regulations of the Association (the "Governing Documents");

NOW THEREFORE, Developer declares that all such portions of the Property described in Exhibit "A-1" and shown on Exhibit "B-1" aforesaid shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the covenants, restrictions, conditions, easements, charges, assessments, obligations, and liens hereinafter set forth and to the provisions of the Governing Documents.

ARTICLE I

DEFINITIONS

1.01. General. The following words and terms, when used in this Declaration, the Certificate of Incorporation, the By-Laws and/or the Rules and Regulations shall have the following meanings, unless the context in which same are utilized clearly indicates otherwise.

1.02. "Affiliate" of the Developer shall mean and refer to any entity which controls, is controlled by, or is under common control with the Developer. An entity "controls" the Developer if the entity (i) is a general partner, officer, director, or employer of the Developer, (ii) directly or indirectly or acting in concert with one or more other entities, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty (20%) percent of the voting interest in the Developer, (iii) controls in any manner the election of a majority of the directors of the Developer, or (iv) has contributed more than twenty (20%) percent of the capital of the Developer. An entity "is controlled by" the Developer if the Developer (i) is a general partner, officer, director, or employer of the entity, (ii) directly or indirectly or acting in concert with one or more other entities, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty (20%) percent of the voting interest in the entity, (iii) controls in any manner the election of a majority of the directors of the entity, or (iv) has

contributed more than twenty (20%) percent of the capital of the entity. Control does not exist if the powers described in this section are held solely as security for an obligation and are not exercised.

1.03. "Amendment and Supplement" to the Declaration shall mean and refer to the documentary supplementation to this instrument permitted and required by Section 11.06 of this Declaration to be recorded in the Office of the Atlantic County Clerk in order to incorporate into the Community additional Homes and/or other improvements to be located in future Phases of the Community.

1.04. "Annual Common Expense Assessment" shall mean and refer to those assessments imposed upon the Owner(s) as described in Section 6.03 of this Declaration.

1.05. "Association" shall mean and refer to The Village Grande at English Mill Homeowners Association, Inc., a New Jersey not-for-profit corporation, its successors and assigns, which shall have the duties and powers established in the Governing Documents.

1.06. "Board" or "Board of Trustees" shall mean and refer to the Board of Trustees of the Association and any reference in the Governing Documents to any power, duty, right of approval or any other right of the Association shall be deemed to refer to the Board and not the Members of the Association, unless the context expressly indicates the contrary. In any reference herein to any power or duty, right of approval or any other right which may be delegated, "Board" shall mean the entity to which

such power or duty, right of approval or any other right has been delegated.

1.07. "By-Laws" shall mean and refer to the By-Laws of the Association, a copy of which is attached hereto as Exhibit "D", together with all future amendments and/or supplements thereto.

1.08. "Capital Improvement Common Expense Assessment" shall mean and refer to those assessments imposed upon the Owner(s) as described in Section 6.11 of this Declaration.

1.09. "Certificate of Incorporation" shall mean and refer to the Certificate of Incorporation of the Association, a copy of which is attached hereto as Exhibit "C", together with all future amendments and/or supplements thereto.

1.10. "Common Expenses" shall, subject to the provisions of Article VI hereof, mean and refer to all those expenses which are incurred or assessed by the Association in fulfilling its responsibilities.

1.11. "Common Property" shall mean and refer to the common lands and facilities to be provided within the Community for the use and enjoyment of all Owners in the Community, subject to such limitations and restrictions set forth herein and of record with the Atlantic County Clerk, which Common Property may but need not ultimately consist of the land within the Property on which the recreation facilities will be constructed, the landscaped grounds, sprinkler and irrigation system, drainage basin, parking areas, common driveways, common sidewalks and common open spaces interspersed throughout the Entire Tract.

1.12. "Declaration" shall mean and refer to this instrument together with all future amendments and supplements hereto which are recorded in the office of the Atlantic County Clerk.

1.13. "Developer" shall mean and refer to D.R. Horton, Inc. - New Jersey, a Delaware corporation, its successors and assigns, and includes any successor to the Developer contemplated by Article XI of this Declaration.

1.14. "Dwelling" shall mean and refer to the residential dwelling structure erected or to be erected upon a Lot and shall be deemed to include, mean and refer to any and all other improvements erected or to be erected upon a Lot and attendant and/or appurtenant to the residential dwelling structure as well as all other improvements erected within, upon, under, over and/or through a Lot, provided that none of the foregoing improvements, regardless of their location, have been established as Common Property pursuant to the express terms of this Declaration or are owned by a public or private utility entity and located within, upon, over or under a Lot by virtue of an easement declared for the benefit of such entity. When the term "Dwelling" is used, unless the context clearly indicates a contrary intent, it shall be deemed to refer to and mean solely the improvements erected or to be erected within, upon, under, over or through a Lot as aforesaid and shall not be deemed to refer to any other unimproved realty constituting the Lot.

1.15. "Eligible Mortgage Holder" shall mean and refer to any holder, insurer or guarantor of a First Mortgage which has

given written notice to the Association in the manner provided in Section 10.02 of this Declaration of its desire to have notice of those matters which are the subject of Sections 10.01 through 10.04 and 10.07 of this Declaration.

1.16. "Emergency Common Expense Assessment" shall mean and refer to those assessments imposed upon the Owner(s) as described in Section 6.09 of this Declaration.

1.17. "Entire Tract" shall mean and refer to the approximately 173.87 acres of land located in the Township of Egg Harbor, Atlantic County, New Jersey and more particularly described in Exhibit "A" attached hereto and made a part hereof.

1.18. "Fair Housing Act" shall mean and refer to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, the Housing for Older Persons Act of 1995 and any subsequent amendments thereto.

1.19. "55 or Over Housing" shall mean and refer to housing intended and operated for occupancy by at least one person 55 years of age or older per unit meeting the requirements of the Fair Housing Act (Section 807(b)(2)(C)) and the related regulations of the Department of Housing and Urban Development.

1.20. "First Mortgage" shall mean and refer to the first or paramount Mortgage, the lien of which encumbers a Home.

1.21. "Future Phases" shall mean and refer to the portions into which the Entire Tract shall be divided for the purposes of development but inclusive of designated lots; streets and roads; sewer, water, electric, gas and cable television

transmission facilities; landscaping; street signs; drainage facilities; directional signs and monuments.

1.22. "Governing Documents" shall mean and refer to this Declaration and its exhibits, which the Developer has recorded or will record in the Office of the Atlantic County Clerk; the Certificate of Incorporation; and By-Laws and Rules and Regulations of the Association as same may hereafter be amended or supplemented.

1.23. "Home" shall mean and refer to any Lot and the Dwelling constructed or to be constructed thereon together with any and all other improvements constructed or to be constructed on the Lot which are attendant and/or appurtenant to such Dwelling and that are not expressly declared to be part of the Common Property pursuant to the terms of this Declaration.

1.24. "Institutional Lender" shall mean any bank, mortgage banker, trust company, insurance company, savings and loan association, pension fund or other financial institution or governmental agency providing, acquiring, insuring, guaranteeing or proposing to provide, acquire, insure or guarantee Mortgages. It shall also mean and include the Federal National Mortgage Association (FNMA), the Veteran's Administration (VA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Federal Housing Administration (FHA) and any other similar governmental or quasi-governmental entity that provides, acquires, insures or guarantees or proposes to provide, acquire, insure or guarantee Mortgages.

1.25. "Lease" shall mean any agreement for the leasing or rental of any Home located within the Entire Tract.

1.26. "Limited Common Expenses" shall mean Common Expenses, if any, for which some, but less than all, of the Owners are proportionately liable, including but not limited to those expenses which are declared to be Limited Common Expenses by the provisions of this Declaration or the By-Laws.

1.27. "Lot" shall mean and refer to a legally subdivided residential building lot established upon a portion of the Entire Tract by the filing of a subdivision plat in the Atlantic County Clerk's Office. When the term "Lot" is used, unless the context clearly indicates a contrary intent, it shall be deemed to refer to and mean solely the unimproved land and shall not be deemed to refer to or mean the Dwelling erected or to be erected thereon and/or any other attendant and/or appurtenant improvements erected or to be erected thereon.

1.28. "Member" shall mean all those Owners who are members of the Association as provided in Article V of the Certificate of Incorporation.

1.29. "Member in Good Standing" shall mean and refer to any Member who has, at least thirty (30) days prior to the date fixed for any meeting, vote, or other Association action, fully paid all installments due for Common Expense Assessments made or levied against him and his Home by the Board, together with all interest, costs, attorneys' fees, penalties and other expenses, if any, chargeable to him and to his Home.



1.30. "Miscellaneous Assessments" shall mean and refer to those assessments imposed upon the Owner(s) as described in Section 6.15 of this Declaration.

1.31. "Mortgage" shall mean and refer to the duly recorded instrument and underlying obligation giving rise to a mortgage lien upon any Home.

1.32. "Mortgage Holder" shall mean and refer to the holder of record of a Mortgage or one who insures or guarantees any Permitted Mortgage.

1.33. "Owner" shall mean and refer to those persons or entities in whom record fee simple title to any Home is vested as shown in the records of the Office of the Atlantic County Clerk, including the Developer, unless the context expressly indicates otherwise, but, despite any applicable theory of mortgage, shall not mean or refer to any mortgagee or trustee under a deed of trust unless and until such mortgagee or trustee has acquired title to any such Home pursuant to foreclosure proceedings or any proceeding in lieu of foreclosure, nor shall the term "Owner" refer to any lessee or tenant of an "Owner".

1.34. "Permitted Mortgage" shall mean and refer to any Mortgage that is held by an Institutional Lender or which is a purchase money First Mortgage held by the Developer or by the Seller of a Home. It shall also include any other Mortgage, the lien of which, by the express terms of the Mortgage, is subordinate to any and all existing or future Common Expense liens imposed against a Home by the Association. Any construction, permanent or other mortgage placed or assumed by

the Developer and encumbering all or any portion of the Property, including any individual Home, shall also be deemed a Permitted Mortgage, so long as same is expressly made subordinate to the Governing Documents and provides a mechanism for securing partial releases of individual Homes.

1.35. "Permitted Resident" shall mean and refer to any Owner or tenant, together with all family members of such Owner or tenant, and other persons permanently residing with such Owner or tenant but only if (i) all such persons have complied with all of the procedures, restrictions, rules, regulations, by-laws, covenants and conditions, both procedural and substantive, intended to enable the Developer and the Association to maintain the Community's character as "55 or Over Housing" for older persons; and (ii) no child under the age of 19 is residing or is intended to reside with such member or tenant.

1.36. "Property" shall mean and refer to the land and premises described and shown in Exhibits "A" and "B" respectively, together with land and premises shown on any final subdivision plats within the Entire Tract which may hereafter be lawfully subjected to the provisions of this Declaration or by any Amendment and Supplement hereto, pursuant to Section 2.02 hereof.

1.37. "Remedial Common Expense Assessment" shall mean and refer to those assessments imposed upon the Owner(s) as described in Section 6.14 of this Declaration.

1.38. "Rules and Regulations" shall mean and refer to those rules and regulations of the Association to be promulgated,

adopted, and published by the Association, together with all amendments or supplements thereto.

1.39. "Section" shall mean and refer to a portion of the Property within the Entire Tract or Property which the Developer has determined to develop as an independent legal phase and which has been established by the recordation of the Declaration or an Amendment and Supplement to the Declaration.

1.40. "Special Common Expense Assessments" shall mean and refer to those assessments imposed upon the Owner(s) as described in Section 6.10 of this Declaration.

## ARTICLE II

### GENERAL DESCRIPTION OF THE ENTIRE TRACT

2.01. The Entire Tract. The Entire Tract includes the lands described in Exhibit "A" aforesaid consisting of approximately 173.87 acres, as shown on Exhibit "B" of the Declaration, and any Future Section(s) to be subjected to the Declaration at the sole discretion of the Developer. The Entire Tract is located on Mill Road (County Route 662) in the Township of Egg Harbor, Atlantic County, New Jersey, and is planned to ultimately include a total of up to three hundred ninety-seven (397) Homes.

Phase I encompasses approximately 93.18 acres and is located in the southwestern portion of the Entire Tract. Two hundred fifty-three (253) Homes are planned to be constructed in Phase I. Recreational facilities planned for Phase I will include an approximately 10,000 square foot clubhouse with an

indoor lap pool, two tennis courts, one outdoor swimming pool, one (1) artificial putting green, and one (1) bocci ball court.

2.02. Procedure For Making Additional Phases and Homes Subject To The Declaration. The Developer may make additional Sections, Homes and other attendant site improvements within the Entire Tract subject to the Declaration by recording an Amendment and Supplement to the Declaration in the Atlantic County Clerk's office, pursuant to Section 11.06 of this Declaration. Such Amendment and Supplement may contain such complementary or supplemental additions and modifications of the covenants and restrictions contained in this Declaration and such other complementary and supplemental provisions as the Developer deems necessary.

### ARTICLE III

#### PROPERTY SUBJECT TO THIS DECLARATION

3.01. The Community. Upon the recordation of this Declaration, the Community shall consist of all of the unimproved land legally described and graphically depicted, respectively, in Exhibits "A" and "B" hereof, consisting of approximately 173.87 acres, along with all improvements now in existence or hereafter constructed upon that portion of the aforesaid land identified as Phase I, as legally described on Exhibit "A-1" and/or graphically depicted on Exhibit "B-1", which property shall be held, transferred, sold, conveyed, leased and occupied subject to this Declaration and all amendments or supplements thereto.

3.02.Submission of Other Improvements. The Developer hereby reserves the right, without obligating itself, to develop all or less than all of the Entire Tract not within Phase I by constructing thereon additional Homes along with attendant site improvements and to incorporate such additional improvements as part of the Community as one or more Sections of same, such full development, as presently proposed, being graphically depicted on Exhibit "B". The incorporation of the aforesaid additional Homes and other improvements as part of the Community shall be by the recording of one or more Amendments and Supplements to this Declaration in the Atlantic County Clerk's Office pursuant to Sections 2.02 and 11.06 of this Declaration. All Homes and other improvements incorporated as herein provided as part of the Community shall be deemed a part of the Community and all references to the Community in this Declaration, the Certificate of Incorporation and/or the By-Laws shall be understood to include such Homes and other improvements once same are incorporated.

The right, but not the obligation, of the Developer to subject to this Declaration additional improvements within the Community by way of an Amendment and Supplement to the Declaration duly recorded in the Office of the Atlantic County Clerk shall be without need for or obligation to obtain the consent of the Association, any Home Owner, Eligible or Permitted Mortgage Holder, Institutional Lender, or any other party.

3.03.Title to Common Property. Developer may retain the legal title to the whole or portions of the Common Property until

such time as it has completed initial improvements thereon and until such time as, in the sole judgment of the Developer, the Association is able to satisfactorily maintain same. In spite of anything to the contrary in this Section 3.03, the Developer will convey legal title to the Common Property to the Association by preparing and recording the Deed to the Common Property and transmitting same to the Association.

#### ARTICLE IV

##### DESCRIPTION OF HOMES AND RESPONSIBILITIES OF OWNERS

4.01.Description of Homes. The approximate dimensions, areas and locations of all of the Homes within Phase I of the Entire Tract are shown graphically on Exhibit "B-1" hereto as same may be amended and supplemented by Amendments and Supplements to the Declaration.

4.02.Owner's Covenant. Every owner, by the acceptance of a deed for a Home or by acceptance of title to a Home as a devisee or heir, covenants to every other Owner, and the Association that he will not permit his Home (the Lot, the Dwelling and any other Lot improvements) to be maintained other than in a first-class state of repair and in a neat, safe and attractive condition. The foregoing covenant shall not be deemed to transfer any responsibilities relative to the Home that are expressly made the obligation of the Association pursuant to the Governing Documents.

4.03.Owner's Responsibilities. In addition to such other duties, responsibilities and obligations charged to an

Owner by the Governing Documents, each Owner shall be responsible for and shall promptly perform and/or furnish, at his own expense, all of the cleaning, maintenance, repairs and replacements for his Home (i.e. the Lot, the Dwelling and other Lot improvements) other than those which are made the express responsibility of the Association pursuant to Section 6.07 of this Article VI. Owners shall discharge this responsibility promptly, consistently and in such a manner as is consistent with the covenant in Section 4.03 of this Article IV.

An Owner's responsibilities shall include, by way of example but not by way of limitation, the following:

- A. all cleaning, painting and/or staining, maintenance, repair and/or replacement of the Dwelling or portions thereof, interior and exterior, including, but not limited to, the siding, windows, doors, balconies, patios, porches, stoops, steps, roofs, chimneys, flues, etc.;
- B. all cleaning, painting and/or staining, maintenance, repair and/or replacement of any improvements in addition to the Dwelling that are established within the Lot, including, but not limited to, sidewalks, walkways and driveways;
- C. snow clearing from any surface within the Lot other than from the driveway and walkway originally established by the Developer within the Lot and serving the Home which shall be the responsibility of the

Association pursuant to Section 6.07 of Article VI of this Declaration;

- D. cleaning, clearing, maintenance, repair and replacement of any utility lateral (water, sewer, gas or other) located in, upon, over, under or through his Lot or Dwelling and serving his Home, provided any or all of the foregoing responsibilities are not expressly made the responsibility of the private or governmental utility entity providing the service in question; and
- E. landscaping, grounds maintenance and lawn care for all portions of his Lot other than maintenance of the lawn and landscaping installed and provided by the Developer (see also Section 9.01AA), which is made the responsibility of the Association pursuant to Section 6.07 of Article VI. Further, Owners are responsible for any planting beds directly adjacent to their Homes on their Lots.

An Owner's responsibility for cleaning, painting and/or staining, maintenance, repair, replacement and snow clearing for his Home as aforesaid is hereby expressly declared to include an obligation: (i) to effectuate such cleaning, painting and/or staining, maintenance, repair, replacement and snow clearing in such a manner as to maintain architectural, visual and aesthetic harmony amongst the Homes; (ii) to utilize materials of a quality at least equivalent to the quality of those materials being maintained, repaired or replaced; and (iii) to have all such cleaning, painting and/or staining, maintenance, repair,



replacement and snow clearing effectuated in a good and workmanlike manner, in accordance with all applicable laws and in such a manner as to minimize inconvenience to the Association and to other Owners. The Board of Trustees of the Association is empowered to promulgate, adopt, publish, amend and enforce such Rules and Regulations as it, in its sole and absolute discretion, deems appropriate relative to the obligations of an Owner pursuant to this Section 4.03, including, but not limited to, Rules and Regulation specifying: (a) procedures for pre-approval of materials, styles, colors, designs, etc.; and (b) schedules of frequency and standards for cleaning, painting and/or staining, maintaining, repairing, replacing and snow clearing.

#### ARTICLE V

##### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

5.01.Membership. The Membership of the Association shall be comprised of two classes:

- (a) Members: Every Owner of a Home other than Developer, whose Home is located within the Entire Tract, shall be a Member of the Association.
- (b) Developer: For so long as Developer owns Lots within the Entire Tract, Developer shall be a member of the Association.

#### ARTICLE VI

##### ASSESSMENTS

6.01.Covenant to Pay Assessments. Every Member, by acceptance of a deed or other conveyance of a Home, whether or

not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association all Assessments and all fines and other charges contemplated by this Declaration or the By-Laws.

Each such assessment, together with interest thereon, late charges, and cost of collection thereof (including reasonable attorneys' fees) shall be a continuing lien upon the Home against which each such assessment is made and shall also be the personal obligation of the Owner(s) of such Home at the time when the assessment fell due.

6.02. Liability for Assessments. Each Owner shall be obligated to pay Common Expense Assessments, which are understood to be payments for necessities, for the maintenance of the Common Property and such other Special Assessments or Emergency Assessments pertaining to the Common Property as may be imposed by the Board of Trustees. These assessments regardless of type, together with any charges, interest, and costs of collection, including reasonable attorney's fees, shall be a charge and shall constitute a continuing lien upon the Home against which such Assessment is levied, and the personal obligation of the Owner(s) of the Home at the time the Assessment falls due. In the case of joint ownership, all co-owners shall be jointly and severally liable. Further, the municipality shall have a continuing lien against each Home for its pro rata share of all real estate taxes due and payable to the municipality for real estate taxes assessed against the Common Property. Such lien shall be apportioned equally among all Homes and shall be enforceable by

the municipality in the manner provided by law with respect to the real estate taxes assessed directly against each Home. No Owner may waive or otherwise avoid liability for Common Expenses by non-use of the Common Property. Liens for unpaid Common Expense Assessments may be foreclosed by suit brought in the name of the Association in the same manner as would a foreclosure of a mortgage on real property. Suit to recover a money judgment for unpaid assessments, fines or other charges (to the extent fines or other charges are deemed valid under applicable law) may be maintained without waiving the lien securing same.

6.03. Due Dates of Annual Common Expense Assessment.

Annual Common Expense Assessments shall be made for a yearly period to be determined by the Board of Trustees and shall be payable in advance in monthly installments due upon the first day of each month or in such other installments and upon such other due dates as it may establish. Except as otherwise provided by Section 6.02, upon the conveyance of title to a Home, the portion of the then current Annual Common Expense Assessment payable by the new Owner shall be an amount which bears the same relationship to the Annual Common Expense Assessment as the remaining number of months in the then current annual assessment period bears to twelve. Such first annual assessment or portion thereof for which a new Owner is liable shall be immediately due upon the acquisition of title by the purchaser.

6.04. Annual Common Expense Assessment Not Made. After the Developer turns over control of the Board to Owners, if an Annual Common Expense Assessment is not made as required, an

assessment shall be presumed to have been made in the amount of the last prior year's assessment. Installments of such presumed annual assessments shall be due upon the same installment payment dates as the prior year's installments until a new Annual Common Expense Assessment is made.

6.05.Annual Common Expense Assessments. It shall be an affirmative and perpetual obligation of the Board of Trustees to fix Annual Common Expense Assessments in an amount at least sufficient to maintain and operate the Common Property, to maintain improvements which the Association is obligated to so maintain, to pay all taxes on the Common Property, and to place and maintain in full force and effect all of the insurance coverage provided for herein and in the By-Laws. The amount of monies for Common Expenses of the Association deemed necessary by the Board of Trustees and the manner of their expenditure shall be determined in the sole discretion of the Board of Trustees.

6.06.Notice of Annual Common Expense Assessments. At least fifteen (15) days in advance of the due date of the first Annual Common Expense Assessment installment for each fiscal year, the Board of Trustees shall cause to be prepared a list of the Homes and the Annual Common Expense Assessments applicable to each according to the names of the Owners. This list shall be kept in the office of the Association or its managing agent and shall be open to inspection upon the request of any Owner. Written notice of the Annual Common Expense Assessments shall be sent by mail or delivered to every Owner, as more particularly described in Article VII of the By-Laws.

6.07.Use of Annual Common Expense Assessments. The Board of Trustees may do all that it is legally entitled to do and shall be obligated to discharge its duties including, but not limited to, those set forth at Article VI of the By-Laws of the Association, which appear as Exhibit "D" to this Declaration. The responsibilities of the Association shall include arrangements for the maintenance and/or repair of the drainage and detention or retention facilities established within the Common Property.

In furtherance of discharging its obligations, the Annual Common Expense Assessments levied by the Board of Trustees shall be used exclusively for promoting the health, safety, pleasure and welfare of the Members of the Association, including, but without limitation, expenditures, maintenance, replacement and repair for the following: security; Clubhouse; recreation area lighting and refuse collection; snow clearing from parking areas, driveways and walkways, including snow clearing from the sidewalks, walkways to the front door and driveways within the Lots and serving a particular Home exclusively; maintenance of Developer-installed lawn and landscaping within the Lots; landscaping of unimproved Common Property; maintenance, repair and replacement of the Common Property or any other improvements on the Property, including parking areas; payment of applicable common taxes and insurance premiums; all costs and expenses incidental to the operation and administration of the Association; and such other items as may from time to time be deemed appropriate by the Board of Trustees provided that the

Annual Common Expense Assessments shall not be used for new capital improvements subject to Section 6.12 of this Declaration.

6.08. Allocation of Common Expenses; Obligations of the Developer.

A. Allocation: The Common Expense Assessments shall be allocated among all Homes for which an initial Certificate of Occupancy has been issued.

B. Obligations of the Developer: Until the conveyance of title to the first Home, the Developer shall be solely responsible for all Common Expenses. Following the first conveyance, the Owners of Homes to whom title has been conveyed shall be responsible for payment of Common Expenses assessed against their Homes. The Developer shall not be responsible for payment of any Common Expenses assessed against Homes owned by it for which an initial Certificate of Occupancy has been issued. The Developer shall also not be responsible for the payment of any costs associated with the Common Property within any Phase which has been subjected to the Declaration by the recordation of an Amendment and Supplement. The obligation of the Developer under this section is subject to the Developer's responsibility, if any, under N.J.A.C. 5:26-8.6(b).

6.09. Emergency Common Expense Assessment. In the event the Annual Common Expense Assessment proves to be insufficient to cover the cost of an immediate need or emergency, the Board of Trustees of the Association may amend the budget and assessment and impose an Emergency Common Expense Assessment. The determination of an immediate need or emergency shall be in the

sole and absolute discretion of the Board of Trustees of the Association. Within thirty (30) days of any Emergency Common Expense Assessment the Board shall memorialize, by written resolution, the factual basis for the Emergency Common Expense Assessment.

6.10. Special Common Expense Assessment. In addition to the other assessments authorized herein, in any assessment year after title to the last Home in the Community has been conveyed by the Developer, the Board of Trustees may levy a Special Common Expense Assessment to defray in whole or in part the cost of any unexpected reconstruction, repair or replacement of an existing capital improvement to the Common Property not determined by the Board of Trustees to constitute an emergent or immediate need, but for which funds held in reserve are inadequate, or for any other lawful purpose.

6.11. Special Assessments for Damages, Violations and Failures of Owners. If any Owner or his guest, tenant, invitee, occupant or household pet causes damage to the Common Property which necessitates repair thereto or fails to maintain anything for which maintenance is his responsibility, or if the Association is required to expend monies to remedy any violations of the covenants and restrictions herein stated or in the published Rules and Regulations of the Association, then the Board of Trustees may impose a Special Assessment upon the Owner involved for the cost of performing such repairs or maintenance or for remedying such violations, including reasonable attorney's fees, as the case may be. Such Special Assessment shall

constitute a lien against any Home owned by such Owner, but such Special Assessment in question shall not be imposed without at least ten (10) days prior written notice to the affected Owner and an opportunity for the affected Owner to be heard at a meeting of the Board of Trustees.

6.12. Capital Improvement Common Expense Assessment. In addition to the other assessments herein authorized, the Board of Trustees may levy, in any assessment year after title to the last Home in the Community has been conveyed by the Developer, a Capital Improvement Common Expense Assessment for the purpose of acquiring real or personal property or constructing a new capital improvement; provided, however, that such an assessment cannot be made against the Developer without its written consent. If, during any assessment year, a Capital Improvement Common Expense Assessment, together with all other Capital Improvement Common Expense Assessments for the assessment year, exceeds in the aggregate the sum of \$25,000.00 increased by the percentage of increase in the Consumer Price Index for all Urban Consumers since 2004, it shall receive the assent of two thirds (2/3) in interest of the affected Members in Good Standing. This vote shall be taken at a meeting duly called for this purpose. Written notice of such a meeting, stating the purpose of the meeting, shall be sent to all Owners not less than thirty (30) days in advance. The due date(s) of any Capital Improvement Common Expense Assessment, or any installment(s) thereof, shall be fixed in the resolution authorizing the Capital Improvement Common Expense Assessment.



6.13. Exemption from Capital Improvement Common Expense Assessments. Despite anything to the contrary herein, neither the Developer nor any holder of a Permitted Mortgage shall be required to pay any assessments for capital improvements, whether by way of regular, special, capital improvement or any other assessment. This provision may not be amended without the written consent of Developer and every holder of a Permitted Mortgage.

6.14. Remedial Common Expense Assessment. In addition to the other assessments herein authorized, the Board of Trustees of the Association may levy a Remedial Common Expense Assessment against any individual Member whenever required or permitted to do so by any of the provisions of this Declaration, the By-Laws or the Rules and Regulations expressly authorizing such a Remedial Common Expense Assessment. The Board may also provide, by its Rules and Regulations, for ordinary maintenance and minor repairs and replacements to be furnished to Homes by Association personnel or representatives and charged as a Remedial Common Expense Assessment. The Board may impose Remedial Common Expense Assessments only to the extent that same are required to perform repairs and replacements to Homes in order to bring them into conformity with all applicable governmental standards or to protect the value of the Community.

6.15. Additional Common Expense Assessment for Real Estate Taxes Assessed on a Bulk Basis. Despite anything contained in any Mortgage encumbering any Home, until such time as the Township of Egg Harbor assesses and bills Homes

individually for real estate taxes, the Board shall assess against each Home and collect from all Owners such amounts as may be necessary to pay any real estate taxes estimated or assessed against the Property as a whole. These amounts shall be levied by the Board as an additional Common Expense Assessment and shall be apportioned equally among all Homes with such frequency as the Board, in its sole and absolute discretion, deems necessary to pay such real estate tax estimates or assessments in a timely fashion.

6.16. Miscellaneous Assessments. Any and all fines, late charges, costs of collection (including reasonable attorneys' fees), interest on unpaid assessments, capital contributions, membership fees, escrow deposits or other sums required to be paid to the Association by an Owner pursuant to the provisions of the Governing Documents or duly adopted resolution of the Board of Trustees shall be deemed Common Expense Assessments which each Owner has covenanted for and agreed to pay according to the provisions of Section 6.01 and for which each Owner is liable according to the provisions of Section 6.02 and shall be collectible by the Association in the same manner as other Common Expense Assessments pursuant to the provisions hereof.

6.17. Certificate of Payment. The Association shall, within ten (10) days after receipt of the written request of any Owner, Purchaser of any Home or Mortgage Holder for any Home furnish to such Owner, Purchaser or Mortgage Holder, a certificate, in writing and signed by an officer of the

Association, setting forth whether or not such assessment, fine or other charge, which would constitute a continuing lien against the Home pursuant to Section 6.02, has been paid. Except as to an Owner requesting such a certificate for a Home that he owns, such certificate shall constitute conclusive evidence of the payment of any assessment(s) therein stated to have been paid.

6.18.Interest in Common Surplus. Any common surplus of the Association resulting from an excess of income over expenses may be allocated among the Members in the same manner as those expenses were assessed or the Board may, in its sole discretion, carry the surplus into the following fiscal year.

Any common surplus of the Association resulting from the distribution of proceeds of liquidation of assets of the Association shall be allocated among the members of the Association, including the Developer, according to their relative proportionate interests subject to an adjustment to reflect an appropriate credit for any initial contribution to working capital, if applicable, in accordance with general accounting principles.

6.19.Limitations on Developer. While the Developer maintains a majority on the Board of Trustees, it shall make no additions, alterations, improvements or purchases not contemplated in the Public Offering Statement which would necessitate a Special Common Expense Assessment or a substantial increase in the Annual Common Expense Assessment installments unless required by a governmental agency, title insurance company, Institutional Lender or in the event of an emergency.

6.20. Limitations on Association. Until such time as the Developer has conveyed title to the last Home in the Community to an individual Owner, the Association shall not take any action to increase the Annual Common Expense Assessments, or impose any Special, Emergency, Capital Improvement, or Remedial Common Expense Assessment, or any other Assessment under this Article VI without the prior written consent of the Developer.

## ARTICLE VII

### EASEMENTS

7.01. Owner Easements. Every Owner, his successors and assigns, shall have the following perpetual easements with respect to the Property, which shall be for the benefit of all owners, leasees and occupants of Homes in the Entire Tract, their licensees and their invitees:

- A. An exclusive easement for the existence and continuance of any encroachment by his Home upon any portion of the Property of an adjacent Home, now existing or which may come into existence hereafter as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of a Home, or as a result of condemnation or eminent domain proceedings, so that any such encroachment may remain undisturbed so long as the Home stands;
- B. An exclusive easement in, upon, under, over, across and through the adjacent Lot for the

installation, maintenance and repair of any improvements to the Home as a result of the location of the Dwelling on the lot line of the adjacent Lot.

- C. A non-exclusive easement for ingress to and egress from his Home in, upon, under, over, across and through the Common Property;
- D. A perpetual and non-exclusive easement for access to and enjoyment of any facilities which may be constructed on the Common Property subject to such restrictions and/or limitations established herein or by the Board of Trustees, provided, however, that the use of such easement may be denied by the Board during any period when the Owner's membership in the Association is deemed not to be in good standing.

7.02. Developer's Easements. The Developer, its successors and assigns, shall have the following easements with respect to the Property:

- A. A blanket and non-exclusive easement in, upon, over, through, under and across the Property for the construction, installation, maintenance and repair of any improvement to the Property; for ingress and egress for the use of all roadways, drives, driveways, walkways and parking areas; and for the utilization of existing and future model Homes for sales promotion and exhibition, until

the expiration of two (2) years from the date on which the last Home is sold and conveyed in the normal course of business, but in no event more than fifteen (15) years from the date this Declaration is recorded. In addition, the Developer hereby reserves the irrevocable right to enter into, upon, over or under any Home for such purposes as may be reasonable and necessary for the Developer or its agents to service any Home or any part of a Home, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate whether or not the Owner is present at the time;

- B. A perpetual, blanket and non-exclusive easement in, upon, over, under, across and through the Property for surface water runoff and drainage caused by natural forces and elements, grading or other improvements located upon the Property. No individual Owner shall directly or indirectly interfere with or alter the drainage and runoff patterns and systems within the Property; and
- C. A specific easement in favor of the Developer, its successor and assigns, its agents, servants and licensees, for purposes incidental to the development and the construction and marketing of

the Entire Tract including, but not limited to the repair and maintenance of drainage improvements and utility systems serving the Entire Tract. Said easement shall be in favor of the Developer, its successors and assigns; provided, however, that such easement shall expire two (2) years after the Developer, in the ordinary course of business, conveys the last Home in the Community to an individual or entity other than Developer.

7.03. Association Easements. The Common Property shall also be subject to the following perpetual easements for the benefit of the Association:

- A. An exclusive easement for the maintenance of the Common Property, lawn maintenance for individual Homes, and snow clearing from Developer installed walkways, sidewalks and driveways on the Lots; and
- B. The Board of Trustees or any manager or managing agent, or their respective agents or employees, shall have the perpetual and non-exclusive right of access to each Home: (i) to inspect same in connection with the performance of its responsibilities under the Governing Documents but only when necessary to protect other Homes or the Common Property, (ii) to remedy any violations of law and/or the provisions of the Governing Documents, and (iii) to perform any operations required in connection with the maintenance,

repair and/or replacement of or to the Common Property or any equipment, facilities or fixtures affecting or serving other Home(s) or the Common Property provided that a request for entry is made in advance and that any such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate, whether the Owner is notified in advance or present at the time.

7.04.Permitted Mortgage Holder Easements. Any holder of a Permitted Mortgage, its officers, agents and employees, shall have a blanket, perpetual and non-exclusive easement to enter the Entire Tract and to inspect the condition of the Common Property or Homes encumbered by a mortgage owned by it. This right shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance written notice to and with the permission of the Board of Trustees and the Owner(s) in question.

7.05.Municipal Easements. The Property is subject to a blanket, perpetual and nonexclusive easement of unobstructed ingress to and egress from, access to and travel within, upon, over, under, across and through the Community to the Township of Egg Harbor, its respective officers, agents and employees (but not the public in general), and all police, fire and ambulance personnel in the proper performance of their respective duties (including but not limited to emergency or other necessary maintenance, repair and/or replacement to a Home which the Owner



has failed to perform); for emergency or other necessary maintenance, repair and/or replacement of the Common Property which the Association has failed to perform. Except in the event of emergencies, the rights accompanying the easements provided for herein shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to and with permission of the Owner(s) directly affected thereby.

7.06.Utility Easements. The Property is subject to a blanket, perpetual and non-exclusive easement of unobstructed ingress to and egress from, access to and travel within, upon, over, under, across and through the Property for the purpose of reading, servicing or repairing utility lines and to do everything and anything else necessary in order to properly maintain and furnish utility service to the Entire Tract, which easement shall be for the benefit of any duly authorized governmental agency, utility company or other entity furnishing utility service, including those providing master cable, television or electronic security service to the Property.

7.07.Easements of Record. The Property shall be subject to all easements of record and as may be shown on the recorded subdivision plat.

#### ARTICLE VIII

##### ADMINISTRATION AND POWERS OF ATTORNEY

8.01.Administration. The administration of the Entire Tract shall be by the Association in accordance with the provisions of the New Jersey Non-Profit Corporation Act, N.J.S.A.

15:1-1, et seq., the Governing Documents, and any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently required by any Institutional Lender designated by the Developer or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Entire Tract or by any title insurance company selected by Developer to insure title to the Entire Tract.

8.02. Developer's Power of Attorney. The Developer hereby reserves for itself, its successors and assigns, until the Developer conveys title to the last Home within the Entire Tract, the right to execute on behalf of all contract purchasers, Owners, mortgagees, other lienholders or parties claiming a legal or equitable interest in any portion of the Entire Tract, any agreements, documents, amendments or supplements to the Governing Documents which may be required as follows:

- (a) Appointment. By acceptance of a deed to any Home or by the acceptance of any other legal or equitable interest in the Property, each and every contract purchaser, Owner, mortgagee, or other lienholder or party having a legal or equitable interest in the Property does automatically and irrevocably name, constitute, appoint and confirm Developer, its successors and assigns, as attorney-in-fact for the purpose of executing such agreements, instruments, amendments or supplements to this Declaration or any other Governing

Documents, and other instrument(s) necessary to effect the foregoing, together with any Amendment and Supplement to the Declaration contemplated by Section 2.02 hereof, subject to the limitations set forth herein.

Under Article VIII of the Declaration, the Developer and the Association are given the right to amend the Governing Documents, without the consent of the Owners, under certain circumstances. This right is called a power of attorney and is granted to the Developer and the Association by each Owner when he accepts the deed to his Home. This power of attorney may only be exercised if an amendment is required (i) by law or any governmental agency; (ii) by any title insurance company insuring any portion of the Community at the Developer's request; and (iii) by any Eligible Mortgage Holder providing mortgage loans to Owners. However, the written consent of an affected Owner must be obtained first if the amendment increases the financial obligations of an Owner or reserves special or additional privileges for the Developer. The Developer has the right to exercise this power until the last Home is sold; thereafter, this power of attorney can only be exercised by the Association.

Developer may use the rights set forth and granted in this Paragraph 8 to effectuate the following changes, enumerated by way of description and not limitation:

- (i) Change Homes. Before the closing of title on any Home affected, the Developer may amend and supplement the Declaration to

alter or fix the location, configuration, shape and size thereof.

- (ii) Easements. To grant, add to or alter the location, size or purpose of easements and lands for utilities, roads, access, ingress or egress, drainage or financing purposes; or to convey or assign such easements to the appropriate governmental authority, utility agency or company, title insurance company or as otherwise set forth in this Declaration.
- (iii) Use of Easements. To permit the Developer, its agents, Affiliates, employees or subcontractors to utilize easements, roads, drainage facilities, utility lines and the like within or servicing the Community.
- (iv) Surrender of Developer's Rights. To surrender or modify the Developer's rights in favor of the Homeowners or Association, or their respective mortgagees.
- (v) Technical Changes. To correct, supplement or provide technical changes to the Declaration, By-Laws or other documents that create or implement the creation of the Community or Association.

- (vi) Miscellaneous Changes. To amend the Declaration, By-Laws or other documents that create or implement the creation of the Declaration or the Association to qualify the Community for programs and requirements of the secondary mortgage market and lenders in same, such as the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or any other similar secondary mortgage lender; or as required by governmental or quasi-governmental agencies with regulatory jurisdiction over the Community; by any title insurance company insuring title to a Home; or to comply with a court order or decree.
- (vii) Changes Prohibited. The Developer is not permitted to cast votes held by it for unsold lots, parcels, Homes (finished and unfinished) or interests for the purpose of amending the Declaration, By-Laws or any other document to change the permitted use of a lot, parcel, Home or interest, or for the purpose of reducing the Common Property or facilities dedicated to the Community. This provision is not intended to interfere with the Developer's ability

to make such changes to the site plan, materials, etc., as it deems necessary provided said changes are accepted by the appropriate regulating authorities. However, Developer is permitted to cast its votes on all other matters as permitted by law.

(viii) Effective Date of Amendment. Any Amendment or Supplement to the Declaration is effective on its being recorded in the office of the Recording Officer. The party recording same (the Developer or the Association) will thereafter provide copies to the Association, each Owner and Eligible Mortgage Holders, as applicable.

(b) Limitations. No agreement, document, amendment or supplement or other instrument which adversely affects the value of any Home, or increases the financial obligations of the Owner by more than ten (10%) percent of his then current annual Common Expense Assessment, or reserves any additional or special privileges for the Developer not previously reserved, shall be made without the prior written consent of the affected Owner(s) and all owners of any mortgage(s) encumbering the affected Home(s). Any such agreement, document,

amendment or supplement or other document which adversely affects the priority or validity of any mortgage which encumbers any Home shall not be made without the prior written consent of the owners of all such mortgages.

- (c) Duration. The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and shall run with the title to any and all Homes and be binding upon the heirs, personal representatives, successors and assigns of any of the foregoing parties. Further, this power of attorney shall not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to said power. This power of attorney shall be vested in the Developer, its successors and assigns until the Developer's conveyance of all Homes or the expiration of its stated term. Thereafter, said powers of attorney shall automatically vest in the Association to be exercised by its Board of Trustees.

8.03. Association's Power of Attorney. By execution of a contract to purchase a Home within the Entire Tract from the Developer, by execution or acceptance of a deed to any Home within the Entire Tract or by the acceptance of any other legal or equitable interest in the Entire Tract, each and every such

contract purchaser, Owner, mortgagee or other lienholder or party having a legal or equitable interest in the Entire Tract does automatically and irrevocably name, constitute, appoint and confirm the Association as attorney-in-fact for the following purposes: (i) to acquire title to or lease any Home whose owner desires to surrender, sell or lease same, and, in the name of the Association or its designees, corporate or otherwise, and on behalf of all Owners; (ii) to convey, sell, lease, mortgage (but not to vote the votes appurtenant thereto) or otherwise dispose of any such Homes so acquired or to sublease any Homes so leased by the Association; (iii) to prepare, execute and record any amendments to the Declaration required by Article XI hereof; (iv) to commence and maintain any eviction proceedings contemplated under Section 9.01 hereof; and (v) to prepare, execute and record any amendments to the Declaration made pursuant to Article XIV hereof.

The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all Homes and be binding upon the heirs, personal representatives, successors and assigns of any of the foregoing parties. Further, this power of attorney shall not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to said power.

8.04. Eligible Mortgage Holder's Power of Attorney. In the event that the Association fails to institute enforcement proceedings for the collection of delinquent Common Expense



Assessments, as provided in Article VII of the By-Laws, then any Eligible Mortgage Holder for any Home as to which there shall be a delinquent Common Expense Assessment is hereby irrevocably granted standing and a power of attorney to institute an appropriate action and to invoke such other remedies otherwise available to the Association in the name of and on behalf of the Association. This power of attorney is expressly stipulated to be coupled with an interest in the subject matter.

#### ARTICLE IX

#### RESTRICTIONS

9.01. General Covenants and Restrictions. The Entire Tract is subject to all covenants, restrictions and easements of record and to the following restrictions and covenants, all of which shall be perpetual in nature and run with the land:

- A. The Common Property shall be used only for the furnishing of the services and facilities for which they are reasonably intended and suited and which are incident to the use and occupancy of the Homes.
- B. No Owner shall have the right to mortgage or encumber his Home, unless such mortgage or encumbrance is a Permitted Mortgage. No other mortgages or encumbrances shall be permitted without the prior written approval of the Board of Trustees.
- C. No Home, except those Homes utilized by the Developer as sales offices, administrative offices

or models, shall be used for any purpose other than as a private residence. Except as necessary for construction, sales, marketing and repair or replacement of Homes, no business, trade, profession or occupation shall be conducted in any Home, nor elsewhere on the Entire Tract. In spite of anything to the contrary in this subsection, Homes may be utilized for business, trade, professional or occupational purposes provided such use complies with zoning and any other applicable ordinances of the Township of Egg Harbor and is undertaken with the prior written consent of the Board of Trustees. The Board shall have the authority to adopt such rules and regulations governing the conduct of a business, trade, profession or occupation within a Home including, but not limited to, such regulations which may be necessary to govern vehicular and pedestrian traffic, deliveries to the Home, and any other activities which may result in interference with the use and enjoyment of any Home or the Common Property within the Community.

- D. There shall be no obstruction anywhere within the Entire Tract, nor shall anything be stored in or upon the Entire Tract, unless expressly permitted in writing in advance by the Board of Trustees of the Association.

- E. No portion of the Entire Tract shall be used or maintained for the dumping of rubbish or debris. Trash, garbage and other waste shall be disposed of in containers approved by the Board of Trustees. Owners shall comply with any and all recycling regulations that are developed by the Municipality or the Board of Trustees and all recyclable material shall be disposed of in containers designated as deemed appropriate by the Board of Trustees.
- F. No Owner or occupant shall build, plant or maintain any matter or thing upon, in, over or under the Common Property unless approved in advance by the Board of Trustees or its designee.
- G. No Owner shall use or permit to be brought into or stored in any Home or in or upon the Common Property any inflammable oils or fluids such as gasoline, kerosene, naphtha, benzine or other explosives or articles deemed hazardous to life, limb or property without in each case obtaining written consent of the Board of Trustees.
- H. Every Owner shall be liable for any and all damage to the Common Property which shall be caused by said Owners, their respective family members, employees, servants, agents, tenants, visitors, licensees or household pets.

- I. Nothing shall be done or stored in any Home or in or upon the Common Property which will increase the rates of insurance of any Home or for the Entire Tract or the contents thereof or which will result in the cancellation of insurance on any Home or the contents thereof or which will be in violation of any law.
- J. Nothing shall be done in or to any Home or on, in or to the Common Property which will impair the structural integrity of any Home or which will structurally change any Home. In addition, no Owner shall have the right to paint, decorate or otherwise change the appearance of the exterior of his Home, or any portion of the Common Property without the prior written consent of the Board of Trustees.
- K. No Owner shall cause or permit any clotheslines, poles or clothes trees, clothes, sheets, blankets or laundry of any kind or other articles to be hung or displayed on the outside of windows or placed on the outside windowsills, walls, patio, deck or balconies of any Home, or other outside area of the Common Property.
- L. No noxious, immoral, improper, offensive or unlawful activity shall be carried on in or upon the Common Property or in any Home, nor shall anything be done therein either willfully or

negligently which may be or become an annoyance or nuisance to other Owners anywhere within the Entire Tract. All laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Entire Tract shall be observed.

- M. Each Owner shall keep his Home in a good state of preservation and cleanliness.
- N. The construction of any deck, patio or porch shall require the prior approval of the Association and shall be in compliance with all governmental requirements. Said deck, patio or porch shall not be used for storage purposes including, but not limited to, the storage of major appliances, auto parts, storage containers or bicycles. The use of barbecues and/or other types of cooking apparatus are prohibited, except as may be permitted under applicable State and municipal laws, regulations and ordinances.
- O. No Owner shall install any floodlights on the exterior of a Home without the prior written consent of the Board of Trustees.
- P. No bird, animal or reptile of any kind shall be raised, bred or kept in any Home or on any Lot, except that dogs (other than trained attack or guard dogs) and cats not to exceed in the aggregate two per Home may be kept in Homes,

provided, however, they are not kept, bred or maintained for any commercial purposes, are housed within the Home and the Owner having such pet abides by all applicable Rules and Regulations. No outside pens, runs or yards shall be permitted.

Q. No commercial vans or trucks, which shall be deemed to include any vehicle bearing commercial signs, lettering or equipment, may park overnight on the Common Property or any Lot, except within a garage, and no vehicles over 20 feet in length, boats, trailers, campers, recreation vehicles, mobile homes, or recreational vehicles may be parked on any part of the Property except (i) in areas designated or to be designated by the Developer; (ii) for those vehicles temporarily on the Property solely for purposes of loading or unloading or for servicing the Common Property itself or one of the Homes; and (iii) this restriction shall not apply to Developer, its employees, agents, contractors and servants. The Board of Trustees, through the promulgation, adoption and publication of Rules and Regulations, may and is hereby empowered to further define those vehicles that are prohibited from parking on the Property.

R. No servicing or maintenance of any vehicle, boat or other item of personal property shall be

performed anywhere on the Entire Tract, including driveways appurtenant to Homes.

- S. Garage doors shall be kept closed at all times when a vehicle(s) or person(s) is not entering or leaving the garage.
- T. Draperies, blinds or curtains must be installed by each Owner on all windows of his Home and must be maintained in said windows at all times except where the prior written consent of the Board of Trustees is obtained.
- U. No sign or signs shall be placed on any part of the Entire Tract advertising the Property for sale, rent or lease, or for any other purpose whatsoever except as provided in this Declaration. No sign of any type visible from the exterior of a Home shall be placed on the window surface of any Home, except by the Developer for marketing purposes during the ordinary course of business.
- V. In order to provide an orderly procedure in the case of title transfers, and to assist in the maintenance of a current, up to date roster of Owners, each Owner shall give the Secretary of the Association timely notice of his intent to list his Home for sale, and upon closing of title shall forthwith notify such Secretary of the names and home addresses of the purchasers.

- W. No bicycles, baby carriages, wagons or similar non-motorized vehicles or toys, nor mopeds, motorcycles or similar motorized vehicles shall be parked or otherwise left unattended anywhere in the Entire Tract, except that a licensed motorcycle may be parked in any assigned parking space.
- X. No Owner or tenant thereof shall erect or maintain an exterior antenna on any Home within the Entire Tract unless it is permitted in writing by the Board of Trustees. Satellite dishes are allowed, subject to Board approval, if they are no larger than one meter in diameter and located in a location that will not interfere with the enjoyment of adjoining owners.
- Y. No vehicles shall be parked adjacent to or in any location which impedes access to any mailbox.
- Z. No fences or sheds of any kind shall be constructed or placed anywhere on the Entire Tract.
- AA. An Owner may add planting beds, shrubs, and trees with the submission of a landscape plan to and the written approval of the Board; however, the planting of annuals shall not require the approval of the Board. The Owner of the Home shall be responsible for the maintenance of any approved plantings. No Owner shall remove any planting



installed by the Developer within the Common Property. The planting of fruits and vegetables is prohibited. The installation, maintenance and removal of permitted plantings shall be subject to the rules and regulations of the Association.

BB. The Home and the Common Property shall be subject to all applicable federal, state and municipal laws, statutes, regulations and ordinances.

None of the restrictions contained herein shall be construed to prohibit the reasonable adaptation of any Home for use by any eligible person pursuant to any applicable State and/or Federal law establishing such rights for the physically challenged, disabled and/or handicapped.

Nothing shall be done to any Home or on or in the Entire Tract which will impair the structural integrity of any Home or which will structurally change any Home.

9.02. Restrictions on Leasing. No Owner other than the Developer shall lease or enter into an arrangement for use and/or occupancy of a Home for a term or period of less than three (3) months or more than one (1) year (except in the event of a lender in possession of a Home following a default in a First Mortgage, a foreclosure proceeding or a deed or other arrangement in lieu of foreclosure). Furthermore, no Owner shall permit the use and/or occupancy of a Home for transient or hotel purposes, which shall be defined as any rental or other arrangement for use and/or occupancy where the users or occupants of the Home are provided customary hotel services such as room service for food

and/or beverages, maid service, laundry and/or linen service and bellboy service. In spite of the foregoing, an Owner may rent to or enter into an arrangement for the use and/or occupancy of a Home with a contract purchaser for less than three (3) months so long as such rental or arrangement for use and/or occupancy is not for transient or hotel purposes. No Owner may lease or enter into an arrangement for the use and/or occupancy of less than the entire Home. Rentals shall be pursuant to leases which (a) are in writing; (b) are expressly subject to all applicable laws and the provisions of the Governing Documents including, without limitation, the Developer's rights to amend as described herein, provided that any failure of the lessee to fully comply with the terms and conditions of the Governing Documents shall constitute a material default under the lease; and (c) expressly assign to the Association all rents due under the lease in the event of any delinquency in the payment of Common Expenses or other charges due and payable to the Association for more than thirty (30) days, including authorization for the tenant to pay such rents directly to the Association to the extent that such Common Expenses and other charges are due and payable to the Association with respect to the Home. Moreover, no lease or occupancy of a Home shall be permitted unless a true copy of the lease is furnished in advance to the Association, together with the current address and phone numbers of both the Owner and the lessee. In addition, the Owner of the Home shall not have the right to utilize the Common Property during any period that said Home is rented. Every lease must also expressly state that the

Owner of the Home has provided the tenant with the Governing Documents. Every lease must also expressly prohibit assignment of the lease and subletting.

The leasing or other arrangement for use and/or occupancy of a Home shall in no way relieve the Owner from his obligations under the Governing Documents and he shall remain primarily responsible in the event a tenant, user or occupant fails to comply with the provisions of the Governing Documents. In addition to all other remedies which it may have, the Association shall notify the Owner of such violations and demand that same be remedied through the Owner's efforts within thirty (30) days after such notice. If such violation is not remedied within such thirty (30) day period, immediately thereafter, at his own cost and expense, the Owner shall institute and diligently prosecute an eviction, ejection or other appropriate action against the tenant, user or occupant on account of such violation. Such action shall not be compromised or settled without the prior written consent of the Association. In the event the Owner fails to fulfill the foregoing obligations, the Association shall have the right, but not the duty, to institute and prosecute such action as attorney-in-fact for the Owner and at the Owner's sole cost and expense, including all legal fees incurred. Such costs and expenses shall be due and payable upon demand by the Association as a Remedial Common Expense Assessment and shall be deemed to constitute a lien on the particular Home involved. The collection thereof may be enforced by the Board of Trustees in

the same manner as the Board of Trustees is entitled to enforce collection of other Remedial Common Expense Assessments.

By execution of a deed to any Home conveyed by the Developer or by the acceptance of a deed to any Home conveyed by an Owner other than the Developer, each Owner does thereby automatically and irrevocably name, constitute, appoint and confirm the Board of Trustees as his attorney-in-fact for the purposes described in this Section. Each Owner declares and acknowledges that this power of attorney is coupled with an interest in the subject matter and shall be deemed to run with title to the Home.

In spite of anything to the contrary in this Section 9.02, all leasing or other arrangement for the use and/or occupancy for a Home shall satisfy the requirements of Section 9.04. Provided that the lease or other arrangement for use and/or occupancy of a Home otherwise complies with Section 9.04 of this Declaration, the restrictions on the length of the term of the leasing or other arrangement for use and/or occupancy of a Home shall not apply to any arrangement between (a) a parent and child; or (b) siblings.

9.03. Restrictions on Alterations. No Owner (other than the Developer) may make any structural additions, alterations or improvements in or to his Home or upon or to the Common Property, or impair any easement of record or referred to in this Declaration without the prior written consent of the Board of Trustees. No additional changes are permitted to the Home unless permitted by the zoning ordinances of the Township of Egg Harbor

or in order to make the Home handicapped accessible under applicable law.

Despite the foregoing, while the Developer maintains a majority on the Board of Trustees, it shall make no additions, alterations, improvements or purchases which would necessitate a Special Common Expense Assessment unless necessitated by emergency or required by a governmental agency, title insurance company, or Institutional Lender.

The Architectural Control Committee, if established by the Board of Trustees, shall have the obligation to answer any written requests received by it from a Owner for approval of a proposed structural addition, alteration or improvement in or to his Home within seventy-five(75) days (or one hundred and twenty (120) days for so long as the Board is controlled by the Developer) after the receipt of such request, and failure to do so within the stipulated time shall constitute an approval of the proposal. Such requests shall be submitted to the Architectural Control Committee by certified mail, return receipt requested. Any application by an Owner to any municipal authority for a permit to make an addition, alteration or improvement in or to any Home or upon or to the Property must first be reviewed and approved in writing by the Architectural Control Committee and, if approved, shall be executed by the Architectural Committee and may then be submitted by the Owner to the appropriate government authorities. Such approval, however, shall not result in any liability on the part of the Association to any contractor, subcontractor or materialman on account of such addition,

alteration or improvement or to any person having any claim for injury to person or damage to property arising therefrom. By submitting any such plan for approval, any owner expressly agrees to defend, indemnify and hold the Board, the Architectural Committee and the Association and its members harmless from any such liability. Further, the Architectural Control Committee shall have the right to impose a reasonable review fee and to impose any conditions it deems appropriate as part of any approval. The Owner shall furnish the Architectural Control Committee with a copy of any such permit which he has procured prior to the start of any work. The provisions of this subsection shall not apply to Homes owned by the Developer until such Homes have been initially sold and conveyed by the Developer unless such Developer-owned Homes are voluntarily not being offered for sale in the regular course of business. In the absence of an established Architectural Control Committee the foregoing rights and responsibilities shall be that of the Board of Trustees.

9.04. Age Restrictions.

A. Community to Remain 55 or Over Housing. The Community is intended to be "55 or Over Housing" within the meaning of the Fair Housing Act, so as to qualify as "housing for older persons" within the exemption provisions of the Fair Housing Act. The construction, interpretation and enforcement of this Article IX, as well as the remainder of the Declaration and the By-Laws, shall be in a manner consistent with such requirements.

B. General Age Restrictions. Occupancy of the Homes shall be restricted to use by permanent residents fifty-five (55) years of age or older with no children under nineteen (19) years of age in permanent residence, with the following exceptions: (1) A member of a couple under the age of fifty-five (55) years who is residing with his/her partner who is fifty-five (55) years of age or over; or (2) One (1) adult under fifty-five (55) years of age will be admitted as a permanent resident if it is established that the presence of such person is essential to the physical care of one (1) or more of the adult occupants who shall be fifty-five (55) years of age or older. However, in the event the aforesaid restrictions are subsequently amended by court order or otherwise to permit additional classes of residents, the Association reserves the right to permit residency by such persons as shall be required. Despite anything to the contrary in the Declaration or By-Laws, no Home may be occupied by any child under the age of 19 years unless, despite anything to the contrary, such person is a handicapped dependent protected by the Fair Housing Act. Exceptions to the foregoing age restrictions may be granted in particular cases by the Developer or the Association, in accordance with Section 9.04C.

C. Approval Procedures.

(i) It shall be the duty of the Developer, in connection with the initial occupancy of Homes, and of the Association as to all subsequent occupancy of Homes, to enforce the Declaration and this Article IX so that at all times the

Community will qualify for the "55 or Over Housing" for older persons exemption under The Fair Housing Act.

(ii) No occupancy of any Home shall be permitted, begin, or continue if such occupancy would be in violation of the provisions of this Article IX or result in the loss of the Community's "55 or Over Housing" for older persons exemption under the Fair Housing Act. No person may transfer, sell, give, lease, assign, grant, buy, rent or occupy any Home in the Community, unless and until such person shall have received the approval of the Association in accordance with this subparagraph.

(iii) No transfer, sale, gift, lease, assignment, grant, purchase, rental or occupancy of any Home shall be made by any Owner or any subsequent prospective purchaser or lessee until the existing Owner who desires to transfer makes full disclosure to the Board in writing, of the name, address and age of the prospective purchaser or lessee and all prospective residents of the Home, together with evidence that said prospective purchaser or lessee and residents meet all qualifications set forth herein. Said Owner who intends to sell, transfer, give, lease, assign any Home, shall, before entering into any binding agreement (other than an agreement whose enforceability is expressly contingent upon Board approval) for such with any prospective purchaser, grantee, lessee or assignee, submitting the evidence in writing as aforesaid to the Board and such Owner shall not execute said agreement without first obtaining the written approval of the Board. The Board must act within ten (10) business days of the Owner's submission to the Board. In the event the Board does not



act within the time set forth hereinabove, the Board will be deemed to have consented. In the event the Board withholds its consent, then the Board shall set forth the reasons for its denial in writing and present same to the Owner at the time the Owner is informed of the Board's decision. If the Owner is dissatisfied with the Board's decision, then the Owner may request a hearing before the Board, with or without legal counsel present, which hearing will be scheduled by the Board within fifteen (15) days of an Owner's request for a hearing. All decisions of the Board after the hearing shall, as with the initial decision, be set forth in writing. The Board must render said decision in writing within five (5) days of the scheduled hearing.

(iv) Upon receipt of any application for the transfer, sale, gift, grant, occupancy, or rental of any Home, the Board shall:

(a) Obtain verification of age of all proposed residents of the Home, such verification to consist of copies of driver's licenses, birth certificates, or similar recognized substantiation. No approval shall be granted, and no application shall be deemed complete, unless and until all proposed residents shall have submitted age verification as contemplated by this subparagraph.

(b) If the proposed residents of the Home meet the restrictions of Section 9.04 B (i.e., at least one member of a couple is over the age of 55 years, or one adult is under 55 years if the presence of such person is essential to the physical

care of the adult occupants who are 55 or older, and no child under the age of 19 years is proposed to be a resident), then the Board shall approve the application.

(c) If a child under the age of 19 years is proposed to be a resident of the Home, the Board shall disapprove the application.

(d) If all of the proposed residents of the Home are under the age of 55 years, then the Board may, in its discretion, but shall have no obligation to, approve the application provided, however, that the Board shall not have the authority to approve and shall not approve any application if:

1. any proposed resident child is under the age of 19 years; or

2. to approve the application would cause or threaten to cause the Community to have less than 80% of its Homes occupied by at least one person over the age of 55 years, or otherwise to fail to continue to qualify for the "55 or Over Housing" for older persons exemption under the Fair Housing Act.

(v) The Board shall be obligated to conduct an occupancy survey every two years as required by 24 CFR Section 100.37 in order to qualify for the "55 or Over Housing" for older persons exemption under the Housing for Older Persons Act of 1995 (U.S.C.A. Section 3607). A form of Compliance Affidavit appears as Exhibit E to this Declaration.

9.05. Rules and Regulations and Fines. The Board of Trustees is hereby empowered to promulgate, adopt and publish such Rules and Regulations as may be necessary to carry out the intent of the restrictions established in Sections 9.01 to 9.04 of this Declaration and shall have the right to bring law suits suffered by the Developer as a result of such action to enforce the Rules and Regulations so established. Without limiting the foregoing, to the extent that New Jersey law may permit, the Architectural Control Committee or the Board, whichever is applicable, shall further have the right to levy fines for violations of the Governing Documents, provided that the fine for a single violation may not, under any circumstances, exceed the maximum amount permitted by law. Each day that a violation continues after receipt of notice by the Owner may be considered a separate violation. Any fine so levied shall be considered as a Remedial Common Expense Assessment to be levied against the particular Owner involved, and collection may be enforced by the Board of Trustees in the same manner as the Board is entitled to enforce collection of other Common Expense Assessments.

ARTICLE X

PROTECTIVE PROVISIONS FOR THE BENEFIT OF

ELIGIBLE MORTGAGE HOLDERS

10.01. General. Despite anything to the contrary in this Declaration, the By-Laws or the Certificate of Incorporation, the provisions of this Article X shall apply with respect to each Eligible Mortgage Holder.

10.02. Notice to Eligible Mortgage Holders. The Association shall be deemed to have fulfilled its obligations hereunder and an Eligible Mortgage Holder shall be deemed to have been given any required notice hereunder so long as the Association can establish that it served the notice in question in the manner provided herein directed to the Eligible Mortgage Holder at the last address given by it to the Association in the manner provided herein. The manner in which the Association shall give the notices required to notice mortgagees pursuant to this Article X shall be via United States Postal Service by certified mail, with return receipt requested and sufficient prepaid post affixed thereto, addressed to the last address of the Eligible Mortgage Holder identified to the Association as provided herein.

10.03. Notice. Upon written request to the Association, identifying the name and address of the eligible mortgage holder, insurer or guarantor and the Owner or designation of the particular Home, any eligible mortgage holder, insurer or guarantor of a first mortgage lien on a Home shall be entitled to timely written notice of:

- A. any proposed amendment to the Certificate of Incorporation, the By-Laws or this Declaration;
- B. any condemnation loss or casualty loss which affects either a material portion of the Common Property or any Home securing the Eligible Mortgage Holder's Mortgage; and no Owner or other party shall have priority over such Eligible

Mortgage Holder with respect to the distribution to such Home(s) of the proceeds of any condemnation award or settlement in the event of condemnation or with respect to the distribution to such Home(s) of any insurance proceeds in the event of casualty loss;

- C. any sixty (60) day delinquency in the payment of Common Expense Assessment installments or other assessments or charges owed to the Association by an Owner of any Home or which the Eligible Mortgage Holder holds a Mortgage;
- D. any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- E. any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

10.04. Prior Written Approval of 51% of Eligible Mortgage Holders. Despite anything contained in this Declaration to the contrary, the prior written approval of at least fifty-one (51%) percent of the Eligible Mortgage Holders is required for any material amendment to this Declaration or to the By-Laws or Certificate of Incorporation, including, but not limited to, any amendment which would change any provision relating to:

- A. voting rights;
- B. reserves for maintenance, repair and replacement of the Common Property;

- C. responsibility for maintenance and repair of the Common Property;
- D. convertibility of Homes into Common Property or vice versa (except as expressly contemplated by Articles IV and XI of this Declaration);
- E. expansion or contraction of the Common Property, or the addition, annexation or withdrawal of land to or from the Property (except as expressly contemplated by Article XI of this Declaration);
- F. insurance or fidelity bonds;
- G. leasing of Homes;
- H. imposition of any restrictions upon an Owner's right to sell or transfer his Home;
- I. a decision by the Association to establish self-management rather than professional management;
- J. restoration or repair of the Common Property (after damage, destruction or condemnation) in a manner other than that specified in this Declaration;
- K. any action to terminate the legal status of the Community after substantial damage or condemnation occurs;
- L. rights to the use of Common Property;
- M. any provisions that expressly benefit Eligible Mortgage Holders; or

N. assessment allocations, assessment liens or subordination of assessment liens.

10.05. Prior Written Approval of 67% of Eligible Mortgage Holders. The prior written approval of at least sixty-seven (67%) percent of the Eligible Mortgage Holders is required before the effectuation of any decision by the Owners to terminate the Declaration.

10.06. Notice of Non-Material Amendment. Any Eligible Mortgage Holder shall not receive notice from the Association, of any proposed non-material amendment to this Declaration, the By-Laws or the Certificate of Incorporation of the Association.

10.07. Common Expense Lien Subordinate. Except to the extent permitted by any applicable law authorizing the establishment of a limited lien priority for the payment of Common Expense Assessments, any lien the Association may have on any Home in the Entire Tract is subordinate to the lien or equivalent security interest of any First Mortgage on the Home recorded prior to the date any such Common Expense Assessment became due.

10.08. Maintenance and Inspection of Records. The Association shall maintain current copies of the Governing Documents, and any respective amendments and/or supplements thereto, as well as its own books, records and financial statement available for inspection by Owners and Mortgage Holders. Any Mortgage Holder shall upon prior written request: (i) be permitted to inspect the documents, books and records of

the Association during normal business hours subject to such reasonable rules and regulations as may be established by the Board; and (ii) receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.

10.09. Notice of Meetings. Any Eligible Mortgage Holder shall receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

10.10. Liability for Common Expense Assessments. Any Mortgage Holder that obtains title to a Home as a result of foreclosure of the First Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser in a foreclosure sale, or their respective successors and assigns, is not liable for the share of Common Expenses or other assessments by the Association pertaining to such Home or chargeable to the former Owner which became due prior to acquisition of title. Such unpaid share of Common Expenses and other assessments shall be deemed to be Common Expenses collectible from all of the remaining Owners including such acquirer, his successors and assigns.

10.11. Management Agreements. The term of any management agreement for the Common Property shall not exceed two (2) years and shall provide for the Association's ability to terminate same without penalty, and with or without cause, at the end of the month following the month in which a notice of termination is given.



10.12. Common Expense Default. Despite the absence of any express provision to such effect in any Mortgage instrument, in the event that there is any default in the payment of any installment of any assessment with respect to any Home, any Mortgage Holder holding a Mortgage which encumbers such Home shall be entitled to declare such Mortgage in default in the same manner that is permitted by such Mortgage with respect to any default in the payment of real estate taxes.

#### ARTICLE XI

##### DEVELOPER'S RIGHTS AND OBLIGATIONS

11.01. Ratification, Confirmation and Approval of Agreements. The fact that some or all of the Officers, Trustees, Members or employees of the Association and the Developer may be identical and the fact that the Developer or its nominees have heretofore or may hereafter enter into agreements with the Association or with third parties will not invalidate any such agreements and the Association and its Members, from time to time, will be obligated to abide by and comply with the terms and conditions thereof. The purchase of a Home and the acceptance of the Deed therefore by any party shall constitute the ratification, confirmation and approval by such purchaser, its heirs, legal representatives, successors and assigns, of the propriety and legality of said agreements or any other agreements authorized and permitted by this Declaration, the Certificate of Incorporation or the By-Laws.

11.02. Rights Reserved to Developer. Despite anything to the contrary in this Declaration or the Certificate of Incorporation or By-Laws of the Association, the Developer hereby reserves for itself, its successors and assigns without the consent of the Board, the Association, any Owner or any Mortgage Holder:

- (a) The right to sell, lease, mortgage or sublease any unsold Homes within the Entire Tract for so long as it owns one or more Homes in the Entire Tract for sale in the ordinary course of business;
- (b) The right to use one or more Homes as models or a sales office or both and the right to post signs and other advertising material until it has sold the last Home within the Entire Tract, as fully developed. The Developer reserves the right to use the Clubhouse for marketing purposes until it has sold the last Home within the Entire Tract, as fully developed. However, the time to exercise such rights shall in no event exceed ten (10) years from the date of recordation of the Declaration during the ordinary course of business.

11.03. Transfer of Special Developer's Rights. No special rights created or reserved to the Developer under this Declaration ("Special Developer's Rights") may be transferred

except by an instrument evidencing the transfer recorded in the Office of the Atlantic County Clerk, New Jersey. The instrument shall not be effective unless executed by the transferee.

11.04. Liability of Transferor. Upon transfer of any such Special Developer's Right, the liability of the transferor is as follows:

- A. A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon it. Lack of privity does not deprive any Owner of standing to bring an action to enforce any obligation of the transferor.
- B. If a transferor retains any such Special Developer's Right, or if a successor to any such Special Developer's Right is an Affiliate of the Developer, the transferor is subject to liability for all obligations and liabilities imposed on a Developer or by the Declaration, arising after the transfer, and is jointly and severally liable with the successor for the liabilities and obligations of the successor which relate to the Community.
- C. A transferor that retains no such Special Developer's Rights has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of any such Special Developer's Right by a successor

Developer which is not an Affiliate of the transferor.

11.05. Transfer of Rights Requested. Unless otherwise provided in a mortgage instrument or deed of trust in case of foreclosure of a mortgage, sale by a trustee under a deed of trust, or sale under any bankruptcy or receivership proceedings of any Homes owned by Developer in the Entire Tract, a person or entity acquiring title to all the Homes being foreclosed or sold, but only upon its request, succeeds to all such Special Developer's Rights or only to any such Special Developer's Rights to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the Special Developer's Rights requested.

11.06. Right to Incorporate Additional Sections and Homes Into Community. Despite anything contained in this Declaration, and subject to all required governmental approvals, if any, the Developer, on behalf of itself, its successors and assigns, hereby reserves the right, for a period of ten (10) years from the date of the recording of this Declaration, to develop some or all of the undeveloped portions of the Entire Tract, to incorporate additional Homes and/or modify existing Homes, to incorporate additional site improvements and/or to modify existing site improvements into the Entire Tract by recording one or more Amendments and Supplements to this Declaration without the consent of the Board of Trustees, the Association, any Owner, any Institutional Lender, or any other party holding a legal or equitable interest in the Entire Tract

to incorporate within the Entire Tract some or all of the Entire Tract and to incorporate additional Sections, phases, Lots, Homes, and site improvements and, thereby, to subject same to the Planned Real Estate Full Disclosure Act and the terms and provisions of this Declaration. Such incorporation may result in the Entire Tract consisting of up to three hundred and ninety-seven (397) Homes as now or hereafter approved for development upon the Entire Tract by Resolutions of the Planning Board of the Township of Egg Harbor. The actual development of the Entire Tract will be subject to regulation by those governmental authorities having jurisdiction of same; however, the Developer hereby reserves the right to seek modification and/or amendment of the Resolution and the development plan from time to time. Such modification and/or amendment may include changing the aggregate number of Homes contemplated for the Entire Tract or of any Section of development thereof as well as the configuration; design; mix; materials, including the material currently specified as the surface material for the existing proposed 6 foot side natural wood chip trail; model type; floor plans; and/or orientation of the Homes. Any Amendment and Supplement to this Declaration shall not be operative until duly recorded in the Atlantic County Clerk's Office. The Amendment and Supplement shall also be registered with the New Jersey Department of Community Affairs, pursuant to N.J.S.A. 45:22A-21 et seq. and the regulations promulgated thereunder.

Despite the foregoing, the Developer shall be under no obligation to incorporate any specific number of Homes into the

Entire Tract. The Developer's reserved right to incorporate additional Homes as part of the Entire Tract shall be exercised by the Developer by the recordation in the Atlantic County Clerk's Office of an appropriate Amendment and Supplement to this Declaration expressly incorporating the additional Homes into the Entire Tract. Any such Amendment and Supplement shall include such amendatory, supplemental or replacement exhibits as are necessary to legally and graphically identify the additional Homes. When recorded, any such Amendment and Supplement shall be fully binding upon all contract purchasers, Owners, holders of mortgages encumbering Homes and any other lienholder or party having a legal or equitable interest in the Entire Tract.

11.07. Foreclosure, Bankruptcy, Receivership. Upon foreclosure, sale by a trustee under a deed of trust or sale under any bankruptcy or receivership proceedings of all Homes in the Entire Tract owned by Developer:

- A. the Developer ceases to have any such Special Developer's Rights, and
- B. the period of Developer control terminates unless the judgment or instrument conveying title provides for transfer of all such Special Developer's Rights to a successor to Developer.

11.08. Liability of Successors. The liabilities and obligations of persons or entities who succeed to all Special Developer's Rights as follows:

- A. A successor to all such Special Developer's Rights which is an Affiliate of the Developer is subject

to all obligations and liabilities imposed on any Developer by law or by the Declaration.

- B. A successor to all such Special Developer's Rights, other than a successor described in subparagraphs C and D which is not an Affiliate of the Developer, is subject to all obligations and liabilities imposed upon the Developer by law or this Declaration, but it is not subject to liability for misrepresentations or warranty obligations on improvements made by any previous Developer or made before the Property was created or for a breach of fiduciary obligation by any previous Developer.
- C. If it is not an Affiliate of the Developer, a successor to only a Special Developer's Right to maintain models, sales offices and signs may not exercise any other Special Developer's Right, but is not subject to any liability or obligation as a Developer.
- D. A successor to all Special Developer's Rights which is not an Affiliate of Developer and which succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to Homes under subparagraph C aforesaid may declare its intention in a recorded instrument to hold those rights solely for transfer to another party. Thereafter, until

transferring all such Special Developer Rights to any person acquiring title to any Home owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any rights other than the right to control the Board of Trustees for the duration of any period of Developer control and any attempted exercise of those rights is void. So long as a successor Developer may not exercise special rights under this Section, it is not subject to any liability or obligation as a Developer other than liability for the successor's acts and omissions under this Declaration.

11.09. Ineffectiveness. Nothing in this Article XI subjects any successor to a Special Developer's Right to any claims against or other obligations of a transferor other than claims and obligations arising under this Declaration.

## ARTICLE XII

### GENERAL PROVISIONS

12.01. Duration. The provisions of this Declaration shall be perpetual in duration, shall run with and bind all of the land incorporated within the Entire Tract and shall inure to the benefit of and be enforceable by the Association and the Owners, their respective successors, assigns, heirs, executors, administrators, and personal representatives, except that the covenants and restrictions set forth in Section 9.01 shall have an initial term of forty (40) years from the date this



Declaration is recorded in the office of the Atlantic County Clerk, at the end of which period such covenants and restrictions shall automatically be extended for successive periods of ten (10) years each, unless at least two-thirds (2/3) in interest of the Owners at the time of expiration of the initial period, or of any extension period, shall sign an instrument or instruments (which may be in counterparts) in which they shall agree to change said covenants and restrictions in whole or in part; but no such agreement shall become binding unless written notice containing the terms of the proposed agreement is sent to every Owner at least ninety (90) days in advance of the action taken in authorizing said agreement; and any changes concerning any such agreement shall become effective and binding at such time as approved, and communicated in writing to the Owners provided further, that in no event may the Entire Tract be conveyed to any third person, firm or corporation, without the express consent, by ordinance, of the governing body of the Township of Egg Harbor (or such municipal corporation or other governmental entity as may then have zoning and subdivision jurisdiction over the Entire Tract).

12.02. Amendment of Declaration. Except as otherwise expressly provided herein, this Declaration may be amended at any time after the date hereof by a vote of those Owners in good standing representing at least sixty-seven percent (67%) of all Owners, at any meeting of the Association duly held in accordance with the provisions of the By-Laws. However, any amendment of Section 2.03, 6.08A, 6.08C, 7.06 or 12.04 of this

Declaration shall also require the prior written approval of the Township of Egg Harbor. No amendment shall be effective until recorded in the Office of the Atlantic County Clerk. This Section is by way of supplement to and not in derogation of the powers of amendment reserved to Developer pursuant to Articles VIII and XI hereof. In the alternative, an amendment may be made by an agreement, signed and acknowledged by all of the Owners in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the office of the Atlantic County Clerk, New Jersey. Despite the foregoing, any amendment so requiring it under the provisions of Article XI, shall also have the prior written approval of fifty-one (51%) percent of the Eligible Mortgage Holders.

12.03. Enforcement. In addition to the other remedies provided to the Association under the Governing Documents or by law, enforcement of this Declaration shall be by any appropriate proceeding in law or equity in any court or administrative tribunal having jurisdiction against any person or persons, firm or corporation violating or attempting to violate any covenant herein contained either to restrain or enjoin such violation or threatened violation or to recover damages and against any Owner to enforce any lien created by this Declaration or any covenant herein contained. Failure by the Association or any Member thereof to enforce any covenant herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to thereafter enforce the same.

12.04. Maintenance by Municipality. In the event the Property is not maintained in reasonable order and condition, the Township of Egg Harbor shall have the right to enter upon and maintain it. The assumption of such maintenance responsibility shall be in accordance with the procedure set forth in N.J.S.A. 40:55D-43(b). The cost of same shall be assessed, enforced and collected in accordance with the provisions of N.J.S.A. 40:55D-43(c). Despite any limitations as to the applicability of N.J.S.A. 40:55D-43(b) and (c) to the maintenance of "open space", provisions of this Section shall be deemed to apply to all maintenance obligations as set forth in this Declaration. The cost of such maintenance by the municipality shall be assessed pro rata against the Owners of each Home affected thereby, shall become a lien and tax on each such Home and shall be enforceable by the Township of Egg Harbor in the manner provided by law with respect to real estate taxes assessed directly against each such Home. The Township of Egg Harbor shall have no obligation to proceed as set forth herein and the Association will hold the Township of Egg Harbor harmless for any liability arising from the Township of Egg Harbor's actions or failure to act with respect to the maintenance of the Property. All of the above provisions are subject and subordinate to the provisions of N.J.S.A. 40:55D-43 and any amendments and/or supplements thereto. This Section 12.04 is expressly understood to be applicable to but not limited to the drainage basin located within the Common Property and for which the Association is responsible.

12.05. Validity. The invalidity of any provision of this Declaration, the Certificate of Incorporation or By-Laws of the Association shall not be deemed to impair or affect the validity or enforceability of the remainder of the Declaration, Certificate of Incorporation or By-Laws and all other provisions of this Declaration, Certificate of Incorporation and By-Laws shall continue in full force as if such invalid provisions had never been included.

12.06. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

12.07. Gender and Number. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.

12.08. Rule Against Perpetuities. If any provision of this Declaration or the By-Laws shall be interpreted to constitute a violation of the rule against perpetuities, such provision shall be deemed to remain in effect until the death of the last survivor of the now living descendants of George Herbert Walker Bush, former President of the United States of America, plus twenty-one (21) years thereafter.

12.09. Notice - Association. Unless a particular document permits or requires a particular notice to be given or served in a different manner, notice permitted or required to be

given to or served upon the Association under the Association's Governing Documents shall be deemed to have been properly given to or served upon the Association when same is mailed via the United States Postal Service by certified mail, with return receipt requested and sufficient prepaid postage affixed thereto, addressed to the current Secretary or corporate Registered Agent of the Association as reflected in the official records of the New Jersey Secretary of State as of the date such notice is mailed.


12.10. Conflict. In the event of a conflict of interpretation between the provisions set forth in this Declaration and the By-Laws, this Declaration shall govern. In the event any provision of this Declaration is in conflict with any mandatory provision of any applicable federal, State, County or municipal statute, regulation, resolution, ordinance or other judicial, legislative or executive "law", the terms of such statute, regulation, ordinance or other law shall govern. In the event that either the Fair Housing Act is hereafter amended or changed, both the Declaration and the By-Laws shall be interpreted in such a manner as to conform to the provisions of the Fair Housing Act with respect to "55 or Over Housing" for older persons, it being the intention to maintain the "55 or Over Housing" for older persons exemption for the Community under the Fair Housing Act.

12.11. Exhibits. Attached hereto and made a part hereof are the following Exhibits:

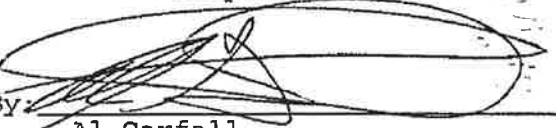
- EXHIBIT A - Legal (Metes and Bounds) Description of The Village Grande at English Mill
- EXHIBIT A-1 - Legal (Metes and Bounds) Description of Phase I
- EXHIBIT B - Subdivision Plat for The Village Grande at English Mill
- EXHIBIT B-1 - Phase I Plan
- EXHIBIT C - Certificate of Incorporation of The Village Grande at English Mill Homeowners Association, Inc.
- EXHIBIT D - By-Laws of The Village Grande at English Mill Homeowners Association, Inc.
- EXHIBIT E - Housing for Older Persons Act of 1995 Compliance Affidavit

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed on the date first mentioned above.

ATTEST:

  
\_\_\_\_\_  
Mitchell Newman,  
Assistant Secretary

D.R. HORTON, INC. - NEW JERSEY  
a Delaware Corporation

By:   
\_\_\_\_\_  
Al Garfall  
President

STATE OF NEW JERSEY )  
                          BURLINGTON )SS.:  
COUNTY OF MONMOUTH )

I am Anisa Carbone, an officer authorized to take acknowledgments and proofs in this State.


On June 5, 2006, MITCHELL NEWMAN (the "Witness") appeared before me in person. The Witness was duly sworn by me according to law under oath and stated and proved to my satisfaction that:

1. The Witness is the Assistant Secretary of D.R. HORTON, INC. - NEW JERSEY (the "Corporation") which is the Grantor in this Declaration of Covenants and Restrictions.


2. The officer who signed this Declaration is the President of the Corporation.

3. The making, signing, sealing and delivery of this Declaration have been duly authorized by a proper resolution of the Board of Directors of the Corporation.

4. The Witness knows the corporate seal of the Corporation. The seal was affixed to this Deed by the Corporate Officer. The Corporate Officer signed and delivered this Deed as and for the voluntary act and deed of the Corporation. All this was done in the presence of the Witness who signed this Declaration as attesting witness. The Witness signs this proof to attest to the truth of these facts.

  
\_\_\_\_\_  
Mitchell Newman  
Assistant Secretary

Sworn to and Subscribed  
before me on this 5  
day of June, 2006

  
\_\_\_\_\_  
Notary Public ANISA CARBONE  
A NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES  
OCTOBER 6, 2010

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