

**AMENDED AND RESTATED MASTER DEED**  
**FOR**  
**THE FAIRWAYS AT LAGUNA OAKS, A CONDOMINIUM**

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**FOR**  
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**AMENDED AND RESTATED MASTER DEED**  
**FOR**  
**THE FAIRWAYS AT LAGUNA OAKS, A CONDOMINIUM**

**THIS AMENDED AND RESTATED MASTER DEED**, is made this \_\_\_ day of \_\_\_\_\_, 2016, by Laguna Oaks Development, LLC, a New Jersey limited liability company, with a principal office at 212 Crest Road, Cape May, New Jersey 08210, its respective successors and assigns (referred to as “Developer”) and serves to supercede, in its entirety, the Master Deed for The Fairways at Laguna Oaks, a Condominium, made by Developer and recorded in the Office of the Cape May County Clerk, on June 21, 2016, in Deed Book 3682, beginning at Page 320.

**WHEREAS**, certain lands and premises located in the Township of Middle, County of Cape May, State of New Jersey, which are more particularly described in Exhibit “A-1” attached hereto and made a part hereof (the “Property”), are owned by Mr. Fred Langford, individually (referred to as “Landowner”); and

**WHEREAS**, the Developer established the Condominium upon the recordation in the Office of the Clerk of Cape May County, New Jersey, of that certain Master Deed for The Fairways at Laguna Oaks, a Condominium, on June 21, 2016, in Deed Book 3682, beginning at Page 114 (the “Original Master Deed”); and

**WHEREAS**, the Original Master Deed is hereby amended, restated, substituted, and replaced in its entirety with this Amended and Restated Master Deed; and

**WHEREAS**, Landowner is joining in this Amended and Restated Master Deed for the sole purpose of submitting, declaring and establishing, in accordance with N.J.S. 46:8B-1 et seq., the condominium form of ownership for the Property described in Exhibit “A-1” aforesaid, together with all improvements thereon, which shall be known as “The Fairways at Laguna Oaks, a Condominium” (the “Condominium”); and

**WHEREAS**, the Property is depicted on a certain site plan entitled, “The Fairways Major Site Plan”, dated August 26, 2014, as revised, prepared by Mott Associates, LLC and signed by James A. Mott, a New Jersey-licensed engineer (the “Plan”), a copy of which is attached hereto and made a part hereof as Exhibit “B-1”; and

**WHEREAS**, Developer has obtained certain land development approvals for the Property which permit the development of (i) up to forty-five (45) townhouse-style, condominium dwellings (the “Units”) situated among seven (7) buildings (the “Buildings”), as depicted on certain architectural drawings, copies of which are attached hereto and made a part hereof as Exhibit “C”; and (ii) certain common area improvements serving the Property and the Units (collectively referred to herein as the “Common Elements”), as shown on a certain plan of the Condominium, dated March 23, 2016, as revised, prepared by Mott Associates, LLC and signed by James A. Mott, a New Jersey-licensed engineer (the “Condominium Plan”), a copy of which is attached hereto and made a part hereof as Exhibit “B-2”; and

**WHEREAS**, Developer and Landowner have each reserved the right to, but are not obligated to, expand the Condominium with an additional fifty-five (55) townhouse-style, condominium dwellings (the “Additional Units”) on a parcel of land located adjacent to the Condominium (the “Additional Land”), which is more particularly described in Exhibit “A-2” attached hereto and made a part hereof, and which such right must be exercised within fifteen (15) years from the date of recordation of this Master Deed, as more fully described in Article III, Section 3.02 and in Article X, Section 10.02 of this Master Deed; and

**WHEREAS**, Developer intends to install certain of the Common Elements planned the Condominium, including the road(s), curbing, certain portions of the sidewalks, the storm water management facilities, the irrigation system for the common lawn areas, certain landscaped buffers, and open space areas for which Developer shall provide the applicable warranties; and

**WHEREAS**, the Units and the Additional Units (together, sometimes, referred to as the “Units”), when and if developed, are intended to be developed by a Builder (as defined below), which Builder shall (i) construct the Units and the Buildings and certain of the Common Elements; (ii) sell the Units to third party purchasers; and, (iii) provide the applicable warranties for any of the Units, the Buildings and the Common Elements that it constructs; and

**WHEREAS**, Developer intends to cause the annexation of the Units and the Additional Units, when and if developed, to the Condominium, in phases, on a building by building basis, as described in the Interim and Full Buildout Phasing Schedules (together, the “Phasing Schedule”) attached hereto and made a part hereof as Exhibit “A-3”, and as depicted on the Condominium Plan attached hereto and made a part hereof as Exhibit “B-2”, which Phasing Schedule and Condominium Plan are subject to change at Developer’s, Landowner’s and Builder’s sole discretion, at any time; and

**WHEREAS**, the five (5) Units situated in Building “1” (“the Phase 1 Units”), which are described in the Phasing Schedule attached hereto as Exhibit “A-3” and shown on the Condominium Plan attached hereto as Exhibit “B-2”, shall be annexed to the Condominium upon recordation of this Master Deed; and

**WHEREAS**, The Fairways at Laguna Oaks Condominium Association, Inc., a New Jersey, non-profit corporation (hereinafter referred to as the “Condominium Association” or “Association”), shall be established by Developer for the purpose of administering, operating and managing the Condominium, the Common Elements and certain of the Limited Common Elements, as more fully described in Articles V and VIII of this Master Deed; and

**WHEREAS**, each Owner of a Unit and Additional Unit in the Condominium will automatically become a member of the Association, and subject to the terms, conditions, easements and restrictions set forth in this Master Deed and in the Certificate of Incorporation and By-Laws of the Association and any Rules and Regulations adopted/promulgated by Association (collectively, the “Condominium Documents”).

THEREFORE, WITNESSETH:

**ESTABLISHMENT OF CONDOMINIUM.** Developer and Landowner hereby submit, declare and establish, in accordance with N.J.S. 46:8B-1 *et seq.*, the condominium form of

ownership for the Phase 1 Units and the Property described in Exhibit “A-1” aforesaid, together with all improvements thereon, and as more particularly shown on Exhibits “B-1” and “B-2” and Exhibit “C”, respectively, which shall be known as “The Fairways at Laguna Oaks, a Condominium”. Developer and Landowner each reserved the right to expand the Condominium with the balance of the Units and the Additional Units, as more fully described in Article III, Section 3.02 below, pursuant to the power of attorney reserved by each in Article X, Section 10.02 of this Master Deed.

## ARTICLE I

**1.01 Recordation of Master Deed.** Upon the recording of this Master Deed, the Condominium shall be established and Landowner shall be the Owner of every Unit, whether built or unbuilt, and its appurtenant percentage interest in the Common Elements, and shall have the right to sell and convey, lease, or otherwise dispose of each such Unit as it may deem appropriate.

## ARTICLE II DEFINITIONS

**2.01 General.** The following words and terms, when used in this Master Deed, the Certificate of Incorporation, or the By-Laws, shall have the following meanings unless the context in which same are utilized clearly indicates otherwise. All definitions set forth in N.J.S. 46:8B-3 are incorporated herein by reference and the definitions set forth herein shall be used in conjunction therewith, unless context clearly indicates otherwise.

**2.02 “Affiliate”** of Developer shall mean any entity which controls, is controlled by, or is under common control with Developer. An entity controls a Developer if the entity (i) is a general partner, officer, member, director, or employer of 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 Developer, or (iii) has contributed more than twenty (20%) percent of the capital of Developer. An entity “is controlled by” Developer if Developer (i) is a general partner, officer, member, 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%) 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%) of the capital of the entity. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

**2.03 “Annual Common Expense Assessment(s) or Common Expense Assessment(s)”** shall mean those assessments imposed upon the Unit Owner(s) as described in Section 7.03 of this Master Deed.

**2.04 “Assessment(s)”** shall mean those assessments imposed upon Unit Owners as described in Article VII of this Master Deed.

**2.05 “Association”** shall mean The Fairways at Laguna Oaks Condominium Association, Inc., a New Jersey non-profit corporation, formed to administer, manage and operate the common affairs of the Unit Owners of the Condominium and to maintain, repair and replace the General and certain of Limited Common Elements of the Condominium as provided in this Master Deed and the By-Laws.

**2.06 “Board”** shall mean the Board of Directors of the Association and any reference in the Condominium Documents to any power, duty, and right of approval or any other right of the Association shall be deemed to refer to the Board and not the Membership of the Association, unless the context expressly indicates to 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 or approval or any other right has been delegated.

**2.07 “Builder”** shall mean any person or entity to whom Developer and/or Landowner has transferred any number (but less than all) of the Units and/or the Additional Units held by Developer and/or Landowner in the ordinary course of business, and such person or entity holds such Units and/or Additional Units for resale or to construct or to complete such Units and/or Additional Units in process and offer such as completed Units for sale in the ordinary course of business.

**2.08 “Building(s)”** shall mean the enclosed structures containing the Units and the Additional Units, when, and if, annexed to the Condominium, and the structural improvements appurtenant thereto, which are depicted on the Plan attached hereto as Exhibit "B-1" and the Condominium Plan attached hereto as “Exhibit B-2”.

**2.09 “By-Laws”** shall mean the By-Laws of the Association, a copy of which document is attached hereto and made a part hereof as Exhibit "E", together with all future amendments or supplements thereto.

**2.10 “Capital Improvement Assessment”** shall mean those assessments imposed upon the Unit Owner(s) as described in as described in Section 7.11 of this Master Deed.

**2.11 “Certificate of Incorporation”** shall mean the form of Certificate of Incorporation of the Association, a copy of which is attached hereto and made a part hereof as Exhibit "D", together with all future amendments or supplements thereto.

**2.12 “Common Elements”** shall mean “General Common Elements” and “Limited Common Elements” unless otherwise indicated.

**2.13 “Common Expenses”** shall mean, subject to the provisions of Article VII hereof, all those expenses anticipated by N.J.S. 46:8B-3e, in addition to all expenses, including reserves, incurred or assessed by the Association, or its respective directors, officers, agents or employees, in the lawful performance of their respective duties or powers.

**2.14 “Condominium”** shall mean (i) all the land and premises described in Exhibit "A-1"; (ii) all improvements now or hereinafter constructed in, upon, over or through such lands and premises; (iii) all privileges or appurtenances pertaining or belonging to the land described in

Exhibit “A-1”; and (iv) the entire entity created by the execution and recording of this Master Deed.

**2.15 “Condominium Act”** shall mean the provisions of N.J.S. 46:8B-1 *et seq.*, and all applicable amendments and supplements thereto.

**2.16 “Condominium Documents”** shall mean this Master Deed and its exhibits, which Developer and Landowner have recorded in the Office of the Clerk of Cape May County, along with the Association’s Certificate of Incorporation and By-Laws and any Rules and Regulations which may be adopted by the Board from time to time, and any duly adopted resolution of the Board, as all of the same may be amended from time to time.

**2.17 “Developer”** shall mean Laguna Oaks Development LLC, a New Jersey limited liability company, its respective successors and assigns, including any successor to Developer contemplated by Section 15.07(a) or (b) of this Master Deed.

**2.18 “Eligible Mortgage Holder”** shall mean the holder, insurer or guarantor of a First Mortgage encumbering any portion of the Property or any Unit which has given written notice to the Association in the manner provided in Section 16.10 of this Master Deed, stating its desire to have notice of those matters which are the subject of Sections 14.02 through 14.06 and 14.09 of this Master Deed. The notice to the Association must (i) state the name of the Mortgage Holder and the address to which notices should be sent to it and (ii) sufficiently identify the Unit for which the Mortgage Holder holds a First Mortgage. It shall be the obligation of the Eligible Mortgage Holder to keep the Association informed of any change of address to which required notices should be sent.

**2.19 “Emergency Assessment”** shall mean those assessments imposed upon the Unit Owner(s) as described in Section 7.09 of this Master Deed.

**2.20 “First Mortgage”** shall mean the first or paramount Mortgage, the lien of which encumbers a Unit.

**2.21 “General Common Elements”** shall have the same meaning as “Common Elements” pursuant to N.J.S. 46:8B-3d, except as same may be modified by the provisions of Article V hereof.

**2.22 “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 other similar governmental or quasi-governmental entity that provides, acquires, insures or guarantees or proposes to provide, acquire, insure or guarantee Mortgages.

**2.23 “Lease”** shall mean any agreement for the leasing or rental of any Unit in the Condominium.

**2.24** “**Limited Common Elements**” shall have the same meaning as “limited common elements” pursuant to N.J.S. 46:8B-3k, except as same may be modified by the provisions of Article V hereof.

**2.25** “**Master Deed**” shall mean this Master Deed for The Fairways at Laguna Oaks, a Condominium, together with all future amendments and supplements thereto which are to be recorded in the Office of the Clerk of Cape May County, New Jersey.

**2.26** “**Member**” shall mean the Unit Owners who are members of the Association as provided in Article II of the By-Laws.

**2.27** “**Member in Good Standing**” shall mean any Member who has, at least thirty (30) days prior to the date fixed for any meeting or other Association action, fully paid all installments due for assessments made or levied against him or her and his or her Unit by the Board together with all interest, costs, attorneys’ fees, penalties, and other expenses, if any, properly chargeable to him or her and his or her Unit.

**2.28** “**Miscellaneous Assessments**” shall mean those assessments imposed upon the Unit Owner(s) as described in Section 7.14 of this Master Deed.

**2.29** “**Mortgage**” shall mean the duly recorded instrument and underlying obligation giving rise to a mortgage lien upon any Unit.

**2.30** “**Mortgage Holder**” shall mean the holder of a record of a Mortgage or one who insures or guarantees any Mortgage.

**2.31** “**Owner**” or “**Unit Owner**” shall mean those persons or entities in whom record fee simple title to any Unit is vested as shown in the records of the Cape May County Clerk, including Developer, Landowner or any Builder, unless the context expressly indicates otherwise, but despite any applicable theory of mortgage, shall not mean or refer to any mortgagee or Director under a deed of trust unless and until such mortgagee or Director has acquired title to any such Unit pursuant to foreclosure proceedings or any proceeding in lieu of foreclosure, nor shall the term “Unit Owner” refer to any lessee or tenant of a “Unit Owner”.

**2.32** “**Permitted Mortgage**” shall mean any Mortgage that is held by an Institutional Lender or which is a purchase money First Mortgage held by Developer or any other seller of a Unit. It shall also mean and include any other Mortgage, the lien of which by the expressed terms of the Mortgage is subordinate to any and all existing or future Common Expense liens imposed by the Association. Any acquisition, construction, permanent or other Mortgage placed by Developer upon all or a portion of the Property including any Unit, shall also be a Permitted Mortgage so long as same is expressly made subordinate to the Condominium Documents and provides a mechanism for securing partial releases for Units and their respective percentage interest in the Common Elements encumbered by same.

**2.33** “**Property**” shall mean the land and premises described in Exhibit "A-1" and depicted on Exhibits "B-1" and "B-2" and all improvements now or hereafter constructed in, upon, over or through such land and premises.

**2.34 “Remedial Assessment”** shall mean those assessments imposed upon the Unit Owner(s) as described in Section 7.13 of this Master Deed.

**2.35 “Rules and Regulations”** shall mean those Rules and Regulations of the Association that may be promulgated by same, together with all future amendments or supplements thereto.

**2.36 “Special Common Expense Assessments”** shall mean those assessments imposed upon the Unit Owner(s) as described in Section 7.10 of this Master Deed.

**2.37 “Unit”** shall mean a part of the Condominium designated and intended for independent ownership and use, regardless of type, all as more specifically described in Article IV hereof, including the proportionate undivided interest in the Common Elements and in any Limited Common Elements assigned thereto in this Master Deed or in any amendment thereof.

### **ARTICLE III GENERAL DESCRIPTION OF THE CONDOMINIUM**

**3.01 The Condominium.** The Condominium is intended to initially include the lands described in Exhibit “A-1” aforesaid, consisting of approximately ten (10) acres in the aggregate, and five (5) of the forty-five (45) Units planned for the Condominium (the “Phase 1 Units”), together with all appurtenant site improvements, all as shown on Exhibits “B-1”, “B-2” and “C” aforesaid, and including all rights, privileges, roads, waters and appurtenances thereto, as applicable. Each Unit is designated by a number as described in Exhibit “A-3”. Upon the recordation of this Master Deed, the Phase 1 Units, which are more fully described in Exhibit “A-2” and depicted on Exhibits “B-1” and “B-2”, shall be annexed to the Condominium. The balance of the Units (being 40) and the Additional Units, if, and when, developed, shall be annexed to the Condominium on a phased, building-by-building basis, as more fully described in Section 3.02 below.

**3.02 Changes to the Condominium.** Developer and Landowner each reserve the right, in their sole discretion, for a period of fifteen (15) years from the date of recordation of this Master Deed, to annex (i) the remaining forty (40) Units planned for the Condominium, by executing and recording a series of amendments to this Master Deed. Developer and Landowner each further reserve the right, in their sole discretion, to annex the Additional Land and up to a maximum of fifty-five (55) Additional Units thereon, which Additional Land is more particularly described in Exhibit “A-2” attached hereto, by executing and recording a series of amendments to this Master Deed. Upon the annexation of the balance of the Units (being 40) and the Additional Units (being 55), there will be a maximum of one hundred (100) Units situated in the Condominium, when and if, fully developed. No approval of the Association, any Unit Owner(s) or any Eligible Mortgage Holder(s) shall be required in order to expand the Condominium as described in this section. Developer and/or Landowner, in such Amendment(s), shall re-designate the percentage interest appurtenant to all Units in the Condominium in accordance with the Percentage Interest Schedules attached as Exhibit “F”. Such re-designation of the percentage interests in the Condominium shall automatically change the stated percentage

interest in any document, instrument, Deed or Mortgage recorded prior to the effective date of the amendment. Such amendment shall be effective upon its recording in the Office of the Clerk of Cape May County.

#### **ARTICLE IV DESCRIPTION OF THE UNITS**

**4.01 Boundary of Units.** The dimensions, area and location of each Unit are shown graphically on Exhibits "B-1", "B-2" and "C" attached hereto and are described as follows:.

**BOTTOM:** The bottom is an imaginary horizontal plane through the lowest point of the interior surface of each portion of the lowermost subfloor, if any, within the Unit, and extending in every direction to the point where it closes with a side of such Unit.

**TOP:** The top of each Unit is coincident with the unfinished outer surface of the sheetrock or other material which forms the uppermost ceiling of the Unit and extending in every direction to the point where it closes with every side of such Unit.

**SIDES:** The sides of each Unit are imaginary vertical planes along and coincident with the innermost surface of the studding of the perimeter walls. Where no wall exists, the side is an imaginary vertical plane along and coincident with the exterior surface of the windows or doors located on the perimeter of such Unit. The sides of each such Unit are bounded by the bottom and top of the Unit.

**4.02 Items Included in Each Unit.** Each Unit, regardless of type, also includes appliances, fixtures, doors (both interior and exterior), window frames, window panes, hardware and systems; interior walls and partitions, gypsum board and/or other facing material on the walls and ceilings thereof; the inner decorated and/or finished surface of the floors (including all flooring tile, ceramic tile, finished flooring, carpeting and padding); all plumbing, electrical, heating, ventilating, and air conditioning system as extends from the interior surface of the walls, floors and ceilings into the Unit; and all other improvements which are located within the boundaries of the Unit as set forth in Section 4.01, or which are exclusively appurtenant to a Unit, although all or part of the improvement may not be located within the boundaries of the Unit as set forth in Section 4.01. Such appurtenant improvements include the following, to the extent that they serve an individual Unit only and not any other Unit or any portion of the Common Elements:

- (a) All the electrical wires which extend from the interior surface of walls, floors or ceilings into the Unit and fixtures, switches, outlets and circuit breakers; and
- (b) All master antennae, cable wiring, internet or other technology or conduit and telephone wiring which extends from the perimeter boundaries of the Unit into the Unit; and



- (c) All utility meters not owned by the public agency supplying the service; and
- (d) All equipment, appliances, machinery, mechanical or other systems whether or not same are located within or without the Unit including, but not limited to, the heat pumps or HVAC condenser units located within the Unit and on concrete pads upon the Common Elements.

**ARTICLE V**  
**DESCRIPTION OF GENERAL AND LIMITED COMMON ELEMENTS**

**5.01 General Common Elements.** All appurtenances and facilities and other items which are not part of the Units hereinbefore described in Article IV or part of the Limited Common Elements hereinafter described in Section 5.02 of this Article shall comprise the General Common Elements, which are also graphically shown on Exhibits "B-1" and "B-2" attached hereto. The General Common Elements shall also include, by way of description, but not by way of limitation:

- (a) All land described in Exhibit "A-1", whether improved or unimproved;
- (b) All private streets, access road(s), paths, walkways, curbs, benches and sidewalks, subject to the easements and provisions set forth in Article IX hereof;
- (c) Any landscaped areas and buffers, street trees, shrubbery, plantings located in any of the common areas throughout the Condominium, excluding any plantings installed by Unit Owners;
- (d) Any conduits, common water or sewer laterals located under each Building's slab, and other utility tanks and lines, any irrigation system(s), if any, street and path lighting, waterways, pump station, if any, storm water management basin(s) (including any and all related infrastructure improvements, landscaping and fencing), and drainage systems, subject to the easements and provisions set forth in Article IX;
- (e) Public connections and meters for gas, electricity, telephone or water not owned by the public utility or other agencies providing such services;
- (f) The exterior components of each Building, including the roof, the gutters and leaders, the foundations, footings, columns, girders, beams, supports, exterior or interior bearing or main walls between the Units and any privacy fencing between the Units;
- (g) Any common parking areas;
- (h) Certain open space areas;
- (i) Any entrance sign/monument feature(s);

- (j) Any grill pads located behind the Buildings (if any);
- (k) The lawn areas throughout the Property, including the front, rear and side lawn areas appurtenant to each Unit;
- (l) All tangible personal property required exclusively for the operation, maintenance and administration of the Condominium which may be owned by the Association; and
- (m) All other facilities or elements of any improvement within the Building or within the Condominium necessary or convenient to the existence, management, operation, maintenance or safety of the Condominium or normally in common use.

**5.02 Limited Common Elements Appurtenant to the Units.** The Limited Common Elements appurtenant to each of the Units shall be those graphically shown on Exhibit "B-2" and shall include, by way of description and not by way of limitation, all of the following:

- (a) Any exterior landing, walkway, or stairway to which there is direct access from the interior of a Unit shall be a Limited Common Element and shall be for the exclusive use of Owner(s) of such Unit. All maintenance, repair and replacement of such exterior landings, walkways or stairways shall be the responsibility of the Unit Owner(s), including, but not limited to, snow clearing therefrom, subject to any Rules and Regulations which may be promulgated by the Board of Directors; and
- (b) Any balcony, terrace or patio or deck to which there is direct access from the interior of a Unit shall be a Limited Common Element and shall be for the exclusive use of Owner(s) of such Unit. All maintenance, repair and replacement of any such balcony, terrace, patio or deck shall be the responsibility of the Unit Owner(s), including, but not limited to, snow clearing therefrom, subject to any Rules and Regulations which may be promulgated by the Board of Directors; and
- (c) Any driveway appurtenant to a Unit shall be a Limited Common Element and shall be for the exclusive use of the Owner(s) of such Unit. All maintenance, repair and replacement of such driveway shall be the responsibility of the Unit Owner(s), including, but not limited to, snow clearing therefrom, subject to any Rules and Regulations which may be promulgated by the Board of Directors; and
- (d) Any mailbox appurtenant to a Unit which is for the exclusive use of the Owner(s) of such Unit shall be a Limited Common Element. All maintenance, repair and replacement of such mailbox shall be the responsibility of the Unit Owner(s), subject to Article XI, Section 11.01(p) of this Master Deed; and

- (e) The grass median located between the driveways of abutting Units is for the exclusive use of the Owners of those abutting Units and shall be a Limited Common Element. All maintenance, repair and replacement of such grass median shall be the responsibility of the Association.

**5.03 Maintenance, Repair and Replacement of Limited Common Elements.** The Owner(s) of a Unit(s) having use of any Limited Common Element shall be responsible to pay the cost and expenses of any maintenance, repairs or replacement for that Limited Common Element as set forth in Section 5.02, including the cost to insure such Limited Common Element, except where otherwise indicated is the responsibility of the Association. However, each Owner is required to provide adequate insurance to cover those Limited Common Elements appurtenant to his or her Unit, regardless of whether or not the Association is obligated to maintain.

**5.04 Right to Use Limited Common Elements.** Each Unit Owner's right to use the Limited Common Elements appurtenant to his or her Unit may not be transferred apart from the conveyance of title to his or her Unit.

## **ARTICLE VI DETERMINATION OF PERCENTAGE INTEREST, COMMON EXPENSES AND VOTING RIGHTS**

**6.01 Estate Acquired.** The Owner of each Unit shall have such an estate therein as may be acquired by deed, by purchase or by operation of law, including an estate in fee simple; and shall acquire as an appurtenance thereto an undivided percentage interest in the Common Elements of the Condominium, which shall not be divisible from the Unit to which it appertains, as set forth in Exhibit "F" attached hereto and made a part thereof.

**6.02 Percentage Interest.** The percentage interest shall be used to allocate the division of proceeds, if any, resulting from casualty loss or any eminent domain proceedings which affect any portion of the Common Elements within the Condominium. Except as otherwise provided in Article XIII hereof pertaining to reallocations following the exercise of eminent domain proceedings, the percentage interest shall remain fixed.

**6.03 No Partition.** Subject to the provisions of this Master Deed, the Certificate of Incorporation and the By-Laws of the Association, and the Condominium Act, the Common Elements shall remain undivided and no Unit Owner(s) shall bring any action for partition or division thereof. In addition, the undivided percentage interest in the Common Elements shall not be separated from the Unit to which it appertains and shall be deemed conveyed or encumbered with the Unit even if such interest is not expressly mentioned or described in the conveyance or other instrument.

**6.04 Common Expenses.** All assessments for the Common Expenses of each Unit in the Condominium shall be allocated in accordance with the percentage interest of each Unit as set forth in Exhibit "F". The Association shall be prohibited from changing the allocation of the Common Expense Assessments, except that it shall have the right to change the allocation of certain types of expenses which may benefit one or more Units, but less than all of the Units (the "Benefitting Units"), to the Benefitting Units only, as described in Article VII, Section 7.06. Any

common surplus of the Association resulting from the operations of the Association shall also be allocated among all the Unit Owners, based upon the percentage interest of each Unit.

**6.05 Voting.** Each Member in Good Standing shall be entitled to cast one (1) unweighted vote for each Unit to which he or she holds title in all elections of Board Members. Developer and/or Landowner shall be entitled to cast all votes for Units owned by it, but Developer and/or Landowner shall not be permitted to cast any votes held by it for unsold Units for the purpose of electing Unit Owner Board Members, amending the Master Deed, By-Laws or any other document or for the purpose of changing the permitted use of a Unit or for the purpose of reducing the Common Elements.

**6.06 Membership in the Association.** Upon acceptance of a Deed to a Unit, each Unit Owner shall automatically become a member of the Association, and shall be a member for so long as he or she shall hold legal title to his or her Unit subject to all provisions of the Condominium Act and the Condominium Documents which may now or hereafter be established by the Association and any other documents, amendments or supplements thereto. Developer and Landowner shall be a Member of the Association with respect to all Units owned by the Landowner and covered by the Master Deed and not yet conveyed to others.

**6.07 Compliance by Owners.** Each Owner or occupant of a Unit shall comply with, and shall assume ownership or occupancy subject to the laws, rules and regulations of governmental authorities having jurisdiction over the Condominium, the provisions of the Condominium Documents and any other documents, amendments or supplements to the foregoing as described in Section 6.06 above. Failure to comply with any of the foregoing shall be grounds for commencement of an action for the recovery of damages, or for injunctive relief, or both, by Developer, the Association, or any Unit Owner, in any court or administrative tribunal having jurisdiction, against any person or persons, firm or corporation violating or attempting to violate or circumvent any of the aforesaid, and against any Unit Owner, to enforce any lien created by this Master Deed or any covenant contained herein. Failure by Developer, the Association, any Unit Owner, 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.

## **ARTICLE VII ASSESSMENTS**

**7.01 Covenant to Pay Assessments.** Every Unit Owner by acceptance of a deed or other conveyance for a Unit, 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 herein or in the By-Laws.

**7.02 Liability for Assessments.** No Unit Owner may waive or otherwise avoid liability for Common Expense Assessments by non-use of the Common Elements. Each Common Expense Assessment shall be a continuing lien upon the Unit against which it was made and shall also be the joint and several personal obligation of the Owner of such Unit at the time when the Common Expense Assessment fell due, and of each subsequent record Owner of such Unit, except as otherwise contemplated by Article XIV of this Master Deed or N.J.S. 46:8B-21 together with such interest thereon as may be permitted by law and cost of collection thereof

including reasonable attorney's fees. Liens for unpaid Common Expense Assessments may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property. Suit to recover a money judgment for unpaid Common Expense Assessments may be maintained without waiving the lien securing the same.

**7.03 Annual Common Expense Assessments.** It shall be an affirmative and perpetual obligation of the Board to fix Annual Common Expense Assessments in an amount estimated by the Board to be sufficient to maintain and operate the Common Elements and Limited Common Elements, as applicable, as contemplated by the Master Deed or By-Laws and as required by the Condominium Act. The amount of monies for Annual Common Expense Assessments of the Association deemed necessary by the Board and the manner of expenditure thereof shall be a matter for the sole discretion of the Board. The Board shall prepare an annual budget of the Common Expenses of the Association which is sufficient to insure the Association's financial solvency, which budget shall include capital reserve funds for the replacement and/or repair of the existing Common Elements.

The Annual Common Expense Assessments do not include the following charges and expenses, which are the responsibility of each Unit Owner, in addition to the Annual Common Expense Assessment attributable to his or her Unit:

- (a) All property taxes, special assessments and other charges imposed by any taxing authority are to be separately assessed against and collected on each Unit as a single parcel, as provided in the Condominium Act. In the event that for any year such taxes are not separately taxed to each Unit, but are taxed on the Property as a whole, then such Unit Owner shall pay his or her proportionate share thereof in accordance with his or her proportionate undivided percentage interest in the General Common Elements; and
- (b) Charges for telephone service, cable and internet service and other utilities which are separately metered or billed to an individual Unit shall be paid by each Unit Owner.

**7.04 Notice of Annual Common Expense Assessments.** The Board shall cause to be prepared annually, at least thirty (30) days in advance of the due date of the first Annual Common Expense Assessment installment, a list of the Units and the Annual Common Expense Assessment applicable to each, according to the names of the Unit Owners. This list shall be kept in the Office of the Association and shall be open to inspection, upon request, by any Unit Owner. Written notice of the Annual Common Expense Assessments shall be sent by mail or delivered to every Unit Owner, as more particularly described in Article XIV of the By-Laws.

**7.05 Use of Annual Common Expense Assessments.** The Annual Common Expense Assessments shall be used exclusively for promoting the health, safety, pleasure and welfare of the members of the Association and for (i) the maintenance, repair and replacement of the Common Elements; (ii) the payment of applicable taxes and insurance premium; (iii) the payment of all costs and expenses incidental to the operation and administration of the Association and its Property; and (iv) the payment such other items as may from time to time be

deemed appropriate by the Board, provided that Annual Common Expense Assessments shall not be used for new capital improvements subject to Section 7.11 hereof.

**7.06 Allocation.** The Annual Common Expense Assessment, including, but not limited to, all other Assessments set forth in this Article, levied against each Unit in the Condominium shall be allocated in accordance with the percentage interest of each Unit as set forth in Exhibit "F". However, should any expense incurred by the Association for services which benefit a group of Units which is LESS THAN all of the Units (the "Benefitting Units"), the Association shall allocate those expenses among the Benefitting Units ONLY on an equal basis.

Until the conveyance of title to the first Unit, Developer shall be responsible for all Common Expense Assessments in accordance with Section 7.15 hereof. Following the first conveyance, the Owners of Units to whom title shall have been conveyed shall be responsible for their share of all Common Expense Assessments based on their percentage interest.

**Furthermore, as described in Exhibit "F", during the development of the initial forty-five (45) Units planned for Condominium (the "Initial Units") by the Developer and the Builder and prior to the annexation of the Additional Units, the Condominium Association shall allocate the Common Expenses and all other expenses contemplated in the Master Deed among the Initial Units based on an Interim Percentage Interest Schedule based on full occupancy of the Initial Units only (being 45), with each Initial Unit having a 2.223% percentage interest.**

**7.07 Due Dates of Annual Common Expense Assessment.** Annual Common Expense Assessments shall be made for a yearly period to be determined by the Board, and shall be payable in advance in monthly installments or in such other installments as may be established by the Board. Upon the conveyance of title to a Unit, the portion of the then current annual Common Expense Assessment payable by the new Unit 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 Common Expense Assessment or portion thereof for which a new Unit Owner is liable shall be immediately due upon such Owner's acquisition of title.

**7.08 Membership Fee and Contribution to Reserves.** At the time an Owner acquires title to a Unit from Developer, Landowner, Builder or any other Owner (i.e., on a resale of a Unit), he or she shall be obligated to pay to the Association (i) a nonrefundable, one-time membership fee to the Association in an amount of Seven Hundred Fifty Dollars (\$750.00); and (ii) a nonrefundable, one-time contribution to the reserves of the Association in an amount equal to one (1) month of the then estimated Annual Common Expense Assessment for such Unit. The Unit Owner-controlled Board shall not have the right to alter the amount of membership fee or contribution to the reserves so long as Developer, Landowner or Builder owns a Unit for sale in the ordinary course of business. The membership fee paid by each Owner shall not be transferable and may be utilized by the Association for the payment of any of the Association's start-up expenses for each of the Buildings as well as any unanticipated expenses of the Association. The contribution to the reserves made by each Owner shall not be transferable and shall be utilized for deferred repairs and replacements of the Common Elements. This Section 7.08 shall not apply to Eligible Mortgage Holders who acquire title by foreclosure or deed in lieu

thereof, or to Developer, Landowner or to any successor to all or a portion of Developer's and/or Landowner's interest hereunder including any Builder.

**7.09 Emergency Assessment.** In the event the Annual Common Expense Assessment proves to be insufficient for an immediate need or emergency, the budget and Common Expense Assessment may be amended at any time by the Board and the Board may impose an Emergency Assessment. The determination of an immediate need or emergency shall be in the sole discretion of the Board.

**7.10 Special Common Expense Assessment.** In addition to the other Assessments herein authorized, the Board may levy, in any assessment year, a Special Common Expense Assessment, for the purpose of defraying in whole or in part, the cost of any reconstruction, repair or replacement of an existing Common Element not determined by the Board to constitute an emergency or immediate need but for which funds held in reserve are inadequate, or for any other lawful purpose, other than the construction or acquisition of new capital improvements, which shall be subject to Section 7.11 hereof. If, during any assessment year, there are Special Common Expense Assessments which exceed in the aggregate more than ten percent (10%) of the Annual Common Expense Assessment provided for in the last annual budget, the Board shall receive the assent of sixty-seven percent (67%) 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 Unit Owners no less than thirty (30) days in advance. The due date of any Special Common Expense Assessment, or any installment(s) thereof, shall be fixed in the resolution authorizing the Special Common Expense Assessment.

While Developer maintains a majority on the Board of Directors, it shall make no additions, alterations, improvements or purchases which 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 or Institutional Lender or in the event of an emergency.

**7.11 Capital Improvement Assessment.** In addition to the other Assessments herein authorized, the Board may levy, in any assessment year, a Capital Improvement Assessment for the purpose of acquiring real or personal property or constructing a new capital improvement, provided that the acquisition of real or personal property or construction of any new capital improvement, the cost of which exceeds, in the aggregate more than ten percent (10%) of the Annual Common Expense Assessment provide for in the last annual budget, shall receive the assent of sixty seven percent (67%) 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 Unit Owners no less than thirty (30) days in advance. The due date(s) of any Capital Improvement Assessment, or any installment(s) thereof, shall be fixed in the resolution authorizing the Capital Improvement Assessment.

**7.12 Exemption for Capital Improvement Assessment.** Despite anything to the contrary herein, neither Developer, Landowner, Builder nor any Eligible Mortgage Holder shall be required to pay any Capital Improvement Assessments for any capital improvement authorized by the Association, which is not contemplated on the Plan attached as "Exhibit B-1", unless they have consented to such capital improvement in writing. Further, this provision may

not be amended without the written consent of Developer, Landowner and every Eligible Mortgage Holder.

**7.13 Remedial Assessment.** In addition to the other Assessments herein authorized, the Board may levy a Remedial Assessment against any individual Unit(s) in accordance with the provisions of this Article VII regarding any maintenance performed by the Association to any Unit. The Board may also provide, by its Rules and Regulations, for ordinary maintenance and minor repairs and replacements to be furnished to Units by Association personnel or representatives and charged as a Remedial Assessment.

**7.14 Miscellaneous Assessment.** Any and all fines, late charges, costs of collection (including reasonable attorneys' fees), interest on unpaid Assessments, capital contributions, membership fees, or any other sums required to be paid to the Association by a Unit Owner(s) by the provisions of this Master Deed, the By-Laws, the Certificate of Incorporation, the Rules and Regulations of the Association or any duly adopted Resolution of the Board, shall be deemed Assessments for which each Unit Owner has covenanted and agreed to pay according to the provisions of Section 7.01 herein and for which each Unit Owner is liable according to the provisions of Section 7.02 herein, and shall be collectible by the Association in the same manner as other Assessments pursuant to the provisions hereof and N.J.S. 46:8B-21.

**7.15 Developer's Assessment Obligations.** Until the conveyance of title to the first unit, Developer shall be solely responsible for all common expenses including insurance and fidelity bond premiums, if applicable. Following the first conveyance, the owners of the Units to whom title has been conveyed shall be responsible for their proportionate share of all common expenses and Developer shall be responsible for payment of any operating deficit for each fiscal year after taking into account any other revenues of the Association except the reserve contributions made by the Unit Owners at the time of acquisition of title from Developer. This means that Developer shall pay the difference between the total amount assessed and due from the individual Unit Owners and the actual amount of operating expenses incurred during the Association's fiscal year. Any expenses incurred beyond budgeted amounts due to unforeseen events shall be borne equally by all Units either existing or under development. Developer shall not be responsible for operating deficits caused by delinquencies of the Unit Owners. Developer will also pay a proportionate share of common expense assessments, including reserves for replacement, for each Unit which has been issued a Certificate of Occupancy, if not yet conveyed to individual Unit Owners. If multiple dwellings are located in one (1) building and at least one (1) Certificate of Occupancy has been issued, Developer shall be responsible for payment of replacement reserves for all unsold Units in the building whether completed or under development. After Developer relinquishes control of the Board, Developer shall only be responsible for payment of its proportionate share of all budgeted common expenses for all Units which have been declared of record but not yet conveyed to individual Unit Owners in proportionate to the benefit derived from the items included in the budget. At the time of relinquishing the control of the Board to the Unit Owners, Developer shall account for and turn over all of the un-used membership fees and replacement reserve contributions collected from the Unit Owners to the Association as per the accounting by an independent accountant.

Further, neither Developer, Landowner, any Builder nor any Eligible Mortgage Holder shall be required to pay any membership fee or contribution to reserves for any Unit which it



owns. This Section may not be amended without the prior written consent of Developer, Landowner and Builder, as applicable.

**7.16 Certificate of Payment.** The Association shall, upon receipt of the written request of any Unit Owner, Purchaser of any Unit, or of the Eligible Mortgage Holder for any Unit, furnish to that Unit Owner, Purchaser, or Eligible Mortgage Holder, a certificate in writing, signed by an officer or agent of the Association, setting forth whether or not such Assessment, fine or other charge as would constitute a continuing lien against the Unit pursuant to Section 7.02, has been paid. Such certificate shall constitute conclusive evidence of the payment of any Assessments therein stated to have been paid.

**7.17 Interest in Common Surplus.** Any common surplus of the Association resulting from the excess of income over expenses shall be allocated among the Members in the same manner as those expenses were assessed. 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 Developer and/or Landowner and Builder, according to their percentage interests and in accordance with general accounting principles.

## **ARTICLE VIII MAINTENANCE RESPONSIBILITIES**

**8.01 Responsibilities of Unit Owners.** Each Unit Owner is responsible to perform all of the maintenance, repairs and replacements that may be required within the boundaries of and to his or her own Unit, as described in Article IV, Sections 4.01 and 4.02 of this Master Deed, and any Limited Common Element assigned to and/or appurtenant to his or her Unit for which the Unit Owner bears the responsibility to maintain, as described in Article V, Section 5.02 of this Master Deed, including obtaining the requisite insurance for his or her Unit, as described in Article XII, Section 12.05 of this Master Deed, at his or her sole expense, and in accordance with the requirements of this Master Deed, the By-Laws and any and all Rules and Regulations of the Association.

**8.02 Responsibilities of the Association.** The Association shall be responsible for the maintenance, repairs and replacements and insurance associated with the Common Elements defined in Article V, Section 5.01 of this Master Deed as well as certain of the Limited Common Elements defined in Article V, Section 5.02 of this Master Deed. The Association shall, among other things, provide the following services: snow clearing of the common sidewalks, irrigation of certain portions of the lawn areas throughout the Property, and street lighting along the private roadway serving the Property, in accordance with the requirements of the land development approvals for the Property, this Master Deed, the By-Laws and any Rules and Regulations of the Association. The Association shall maintain the storm water management facilities located upon the Property in accordance with the Basin Maintenance Schedule attached hereto and made a part hereof as Exhibit "G". The Township of Middle is anticipated to provide snow clearing services to the private roadway located in the Condominium and trash collection for the Units. In the event that the Township does not provide these services, the Association shall arrange to provide same and adjust its budget accordingly.

**8.03 Rights of the Association.** The Association may affect emergency repairs to any Unit which the Owner of that Unit has failed to perform, but the expenses incurred by the Association in doing so shall be levied against the Owner of that Unit as a Remedial Assessment. The Association may also effect non-emergency repairs within the boundaries of a Unit which the Unit Owner has failed to perform and charge the reasonable expenses of the repair to the Unit Owner as a Remedial Assessment, but only if (i) any such failure to maintain by the Unit Owner will have a material and adverse impact upon any other portion of the Condominium, and (ii) the Unit Owner(s) responsible for maintenance, repair or replacement have failed to remedy the situation within thirty (30) days after written notice is given by the Association to do so.

**8.04 Rights of the Township of Middle.** In the event the Association fails to affect any repairs as required under this Master Deed for the Common Elements or Limited Common Elements, the Township of Middle shall have the right to require the Association to affect such repair or maintenance by notifying the Association in writing. In the event the Association shall fail to effect any such repairs or maintenance within thirty (30) days of receipt of the aforesaid notice from the Township of Middle, then the Township of Middle shall have the right to effect such repairs or maintenance and charge the Association therefor; provided, however, that the Township of Middle shall not be obligated to wait for the expiration of such thirty (30) day period if an emergency shall be determined by the Township of Middle to exist. No action taken by the Township of Middle pursuant to the authority conveyed under this Section 8.04 shall be deemed in any way (i) to relieve the Association from the performance of its obligations under the Condominium Documents of the Association, (ii) to obligate the Township of Middle to perform such service(s) on a regular basis, or (iii) to be deemed an acceptance by the Township of Middle of the Common Elements or Limited Common Elements.

Payment for such services or repairs made by the Township of Middle as provided in this Section shall be made to the Township of Middle from any funds under the control of the Association for any purpose. In the event the Association fails to reimburse the Township of Middle within thirty (30) days of receipt of a written bill for such assessment or if funds received from the Association are insufficient to fully reimburse the Township of Middle, the Township of Middle shall have the right, after first providing written notice to the Association and the Owners, to assess the Owners directly, in accordance with the Percentage Interest Schedule, for their proportionate share of such cost or deficiency. Each such assessment shall be an assessment hereunder which each Member has covenanted and agreed to pay in accordance with the provisions of Section 7.01 hereof, and shall entitle the Township of Middle to the same enforcement rights and remedies afforded to the Association for delinquent and unpaid assessments, including, without limitation, the right to record a lien upon the Association. Each such assessment, together with interest and the cost of collection thereof (including but not limited to reasonable fees for legal counsel and court costs), shall be a continuing obligation against all Units of the Association, even if title to the Unit shall change. This section may not be amended without the written consent of the Township of Middle.

**8.05 Damage Due to Negligence, Omission or Misuse.** If, due to the negligent act or omission of or misuse (whether authorized or unauthorized by the Unit Owner) by a Unit Owner, or a member of his or her family or household pet, or a guest, tenant, occupant or visitor, damage shall be caused to the Common Elements, or to Unit(s) owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, the Unit

Owner so responsible shall pay for such damage as a Remedial Assessment and in addition be liable for any damages, liability, costs and expense, including attorney's fees, caused by or arising out of such circumstances; and such maintenance, repairs and replacements to the Common Elements or the Unit(s) shall be subject to the By-Laws and the Rules and Regulations.

## **ARTICLE IX EASEMENTS**

**9.01 Unit Owner Easements.** Every Unit Owner, his or her successors and assigns, shall have the following perpetual easements with respect to the Property, which shall be for the benefit of all Owners and occupants of Units in the Condominium and their invitees:

- (a) A non-exclusive easement in, upon, over, under, across and through the Common Elements to keep, maintain, use operate, repair and replace his or her Unit in its original position and in every subsequent position to which it changes by reason of the gradual forces of nature and the elements; and
- (b) An exclusive easement for the existence and continuance of any encroachment by his or her Unit upon any adjoining Unit or upon any Common Element, 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 Building or Unit, including the encroachment of each Unit's gas utility box upon the exterior surface of each of the end Units within a Building as well as the encroachment upon each Unit of the gas utility line which runs through an existing bulkhead in each Unit, or as a result of condemnation or eminent domain proceedings, so that any such encroachment may remain undisturbed so long as the Building stands; and
- (c) A non-exclusive easement for ingress and egress to his or her Unit in, upon, under, over, across and through the General Common Elements; and
- (d) An easement in common with the Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines, television cable systems or other General Common Elements located within any of the other Units or Common Elements and serving his or her Unit; and
- (e) A perpetual and non-exclusive easement in, over and through the Common Elements to use the common facilities, tot lot and any other recreational amenities within the Condominium, subject to the right of the Board to:
  - (1) promulgate Rules and Regulations for the use and enjoyment thereof; and
  - (2) suspend the enjoyment thereof, and voting rights and other membership privileges of any Unit Owner for any period during

which any Assessment, fine or other charge remains unpaid, or for any period during which any infraction of its published Rules and Regulations continues, it being understood that any suspension for either non-payment of any Assessment or a breach of the Rules and Regulations of the Association shall not constitute a waiver or discharge of the Unit Owner's obligation to pay the Assessment;

- (f) A non-exclusive easement for pedestrian ingress and egress to and from the other Unit(s) over and through all common walkways and roadways located within the General Common Elements, which easement shall be for the benefit of all Unit Owners and occupants in the Condominium or their invitees;
- (g) A non-exclusive easement for access to or use of the General Common Elements within the Condominium for any other purposes not prohibited by the Condominium Documents, which easement is for the benefit of all Owners and occupants of Units in the Condominium and their invitees; and
- (h) A non-exclusive easement for vehicular ingress and egress reasonably required to and from the Units over and through roadways in the Condominium, which easement shall be for the benefit of all Owners and occupants of Units in the Condominium and their invitees.

**9.02 Developer, Landowner and Builder Easements.** Developer, its respective successors and assigns, Landowner and any Builder of a Unit in the Condominium, shall have the following easements with respect to the Property:

- (a) A blanket and non-exclusive easement in, upon, through, under and across the Property and the Additional Land, when and if annexed to the Condominium, for the purpose of (i) construction, installation, maintenance and repair of any improvements to the Units, and Common and Limited Common Elements, (ii) ingress and egress over, through and upon all driveways and parking areas at the Property, and (iii) installation, maintenance and repair of all sales, promotional, directional and identification signs deemed appropriate by Developer and any Builder, all of which may be illuminated and located anywhere on the Common Elements at the sole cost and discretion of Developer and/or Builder, until the expiration of two (2) years from the date the last Unit is sold and conveyed in the normal course of business and (iv) the utilization of existing and future model Units and Additional Units, if and when annexed to the Condominium, for sales promotion and exhibition until the last Additional Unit held by Developer or Builder in the normal course of business is sold;
- (b) The irrevocable right to enter into, upon, over or under any Unit for such purposes as may reasonably be necessary for Developer or Builder or its

respective agents to service such Unit or any part of the Building, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate whether the Unit Owner is present at the time or not;

- (c) A blanket and non-exclusive easement in, upon, over, through, under and across the Property, Common Elements and Limited Common Elements to use all driveways and parking areas located upon the Property to perform any service or repair required pursuant to Developer's or Builder's warranty obligations, as applicable, until the expiration of Developer's or Builder's warranty obligations pursuant to law, as applicable;
- (d) 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 and/or the improvements located upon the Property. No individual Unit Owner shall directly or indirectly interfere with or alter the drainage runoff patterns and systems within the Property; and
- (e) A blanket and non-exclusive easement in, upon, over, through, under and across the Property and the Additional Land, when and if annexed to the Condominium, for the purpose of (i) utilizing model units for sales promotion and exhibition, including the posting of signs and other forms of advertisements throughout the Property, and (ii) utilizing the Property for marketing purposes, until the last Unit and/or Additional Unit in the Condominium is sold and conveyed in the normal course of business.

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

- (a) The Association shall have a perpetual and exclusive easement in, over, through and across all portions of the Property, including the Units, for the purpose maintaining, repairing and replacement of any Common Elements and Limited Common Elements as required by this Master Deed and any utility lines, as may be applicable, including those which presently or may hereafter encroach upon a Unit; and
- (b) The Association, through the Board or any manager, or managing agent, or their respective agents or employees shall have the perpetual and non-exclusive right of access to each Unit (i) to remedy any violations of the provisions of Condominium Documents of the Association if adversely impacting any other Unit or any of the Common Elements; and, (ii) to perform any operations required in connection with its maintenance, repairs and replacements as set forth in Article VII hereof; provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such

right of entry shall be immediate, whether the Unit Owner is present at the time or not.

**9.04 Eligible Mortgage Holder Easements.** Any Eligible Mortgage Holder, its officers, agents and employees, shall have a blanket, perpetual and non-exclusive easement to enter the Condominium or any part thereof to inspect the condition and repair of the Common Elements, or any Units so encumbered by a first mortgage owned by it. This right shall be exercised only during reasonable daylight hours, and then whenever practicable, only after advance notice to and with the permission of the Board and the Unit Owner.

**9.05 Utility Easement.** A blanket, perpetual and non-exclusive easement in, upon, over, across and through the Common Elements for the purpose of the installation, maintenance, repair, service and replacement of all sewer, water, power and telephone pipes, lines, mains, conduits, waters, poles, transformers, master television antennas, cable television facilities and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility systems serving the Property, which easement shall be for the benefit of any governmental agency, or utility company or other entity which requires same for the purpose of furnishing one or more of the foregoing services.

**9.06 Governmental Easement.** The Property shall also be subject to the following easements:

- (a) A blanket, perpetual and non-exclusive easement of unobstructed ingress and egress in, upon, over, across and through the Common Elements to the Township of Middle, its respective officers, agents and employees (but not the general public) and all police, fire, and ambulance personnel in the proper performance of their respective duties (including, but not limited to, emergency repairs to a Unit), and for repair and maintenance of the Common Elements. Except in the event of emergencies, the rights accompanying the easements provided for in this subparagraph shall be exercised only during reasonable daylight hours and then, whenever practicable, and with permission of the Unit Owner(s) directly affected thereby; and
- (b) A perpetual, blanket and non-exclusive easement in, upon, over, under, across and through the Common Elements to the Township of Middle, its respective officers, agents and employees (but not the general public) for surface water runoff and drainage caused by natural forces and elements, grading, and/or the improvements located upon the Property. No individual Unit Owner shall directly or indirectly interfere with or alter the drainage and run off patterns and systems within the Property.

**9.07 Additional Land Easement.** Developer and/or Landowner have each reserved the right to grant certain blanket, perpetual and non-exclusive easements of unobstructed ingress and egress in, upon, over, across and through the Property to the owner(s) of the Additional Land for the purposes of permitting the owner(s) of said Additional Land to (i) extend the roadway

serving the Property into the Additional Land pursuant to the required land development approvals for the Additional Land; (ii) utilize the roadway(s) of the Condominium for ingress and egress to the Additional Land; (iii) utilize the storm water management facilities of the Condominium; (iv) install any utilities required by the Additional Land and Additional Units; (v) install a golf cart crossing path upon the Property, the terms of which easements shall be further described in a certain Easement and Cost-Sharing Agreement between the Developer and/or Landowner, the owner(s) of the Additional Land and the Association to be recorded in the Office of the Cape May County Clerk.

**9.08 Golf Course Easements.** The Property shall be subject to a blanket, perpetual and non-exclusive easement of unobstructed ingress and egress in, upon, over, across and through the Common Elements to Fred Langford, individually, as the owner of the Laguna Oaks Golf Course, located at 600 Bayberry Drive, Cape May Courthouse, New Jersey (“LGC”), and his successors and assigns, as well as LGC’s employees, members, business invitees, and vendors (collectively, the “LGC Parties”), for the purposes of permitting the LGC Parties to (i) install, maintain, repair, replace and utilize a golf hole located on a portion of the Property, as shown on the Plan attached hereto as Exhibit “B-1”; and, (ii) install, maintain, repair, replace and utilize a tee box and golf cart path on a portion of the Property, as shown on the Plan attached hereto as Exhibit “B-1”. These easements shall be further described in a certain Easement and Cost-Sharing Agreement between LGC and the Association, which shall be recorded in the Office of the Cape May County Clerk.

**9.09 Responsibility for Damages.** In the event that any easement right set forth in this Article IX is exercised, the person or entity exercising such right shall be responsible for the repair of any damage and liable for any personal injury or property damage arising directly or indirectly from its use or maintenance of the easement area.

**ARTICLE X**  
**BY-LAWS AND ADMINISTRATION, CHANGES IN DOCUMENTS;**  
**POWER OF ATTORNEY**

**10.01 Administration of Common Elements.** The administration, operation and maintenance of the Common Elements of the Condominium and all other common facilities shall be by the Association in accordance with the provisions of the Condominium Act, the Condominium Documents and any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently be required by any Institutional Lender designated by Developer or Builder or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Condominium or by any title insurance company selected by Developer or Builder to insure title to any Unit(s).

While Developer maintains control of the Board, it shall take no action that adversely affects a Unit Owner’s rights under N.J.A.C. 5:25-5.5. Claims relative to defects in the Common Elements shall be processed in accordance with N.J.A.C. 5:25-5.5.

**10.02 Developer’s and Landowner’s Power of Attorney.** Developer and Landowner hereby each reserve for themselves, their respective successors and assigns, including any Builder, for the earlier to occur of: (i) a period of ten (10) years from the date of recordation of

this Master Deed; or, (ii) until Developer, Landowner or Builder conveys title to the last Unit held by it for sale in the ordinary course of its business, the right to execute on behalf of all contract purchasers, Unit Owners, mortgagees, other lien holders or parties claiming a legal or equitable interest in the Condominium, any such agreements, documents, amendments or supplements to the documents described in Section 10.01 which may be so required by any such governmental or quasi-governmental agency, or Institutional Lender or title insurance company.

- (a) **Appointment.** By acceptance of a deed to any Unit within the Condominium or by the acceptance of any other legal or equitable interest in the Condominium, each and every such contract purchaser, Unit Owner, mortgagee, or other lienholder or party having a legal or equitable interest in the Condominium does automatically and irrevocably name, constitute, appoint and confirm Developer and/or Landowner, their respective successors and assigns, as attorney-in-fact for the purpose of executing such agreements, documents, amendments or supplements to the Master Deed and other instrument(s) necessary to effect the foregoing subject to the limitations set forth herein.
- (b) **Limitations.** No such agreement, document, amendment or supplement or other instrument which adversely affects the value or substantially alters the floor plan of a Unit, or changes the percentage of the undivided interest in the Common Elements, or substantially increases the financial obligations of the Unit Owner, or reserves any additional or special privileges for Developer, Landowner or Builder not previously reserved, shall be made without the prior written consent of the affected Unit Owner(s) and all owners of any mortgage(s) encumbering the affected Unit Owner(s). Any such agreement, document, amendment or supplement which adversely affects the priority or validity of the lien of any mortgage which encumbers any Unit 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 the same shall run with the title to any and all Units and be binding upon the heirs, personal representatives, successors and assigns of any of the foregoing parties. Further, said 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 powers. Said power of attorney shall be vested in Developer and Landowner, their respective successors and assigns, until the initial conveyance of all Units or the expiration of ten (10) years from the date of recordation of this Master Deed, whichever occurs first. Thereafter, said powers of attorney shall automatically vest in the Association to be exercised by its Board of Directors.

**10.03 Developer's and Landowner's Prohibited Voting.** Despite the foregoing, Developer and Landowner shall not be permitted to cast any votes held by it for unsold Units for



the purpose of amending this Master Deed, the By-Laws or any other document for the purpose of changing the permitted use of a Unit or the purpose of reducing the Common Elements or common facilities.

**10.04 Association's Power of Attorney.** By acceptance of a deed to any Unit or by the acceptance of any other legal or equitable interest in the Condominium, each and every such contract purchaser, Unit Owner, mortgagee, or other lienholder or party having a legal or equitable interest in the Condominium 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 Unit whose Owner desires to surrender, sell or lease same, in the name of the Association or its designees, corporate or otherwise, on behalf of all Unit Owners to convey, sell, lease, mortgage (but not to vote the votes appurtenant thereto) or otherwise, dispose of any such Units so acquired or to sublease any Units so leased by the Association; (ii) to prepare, execute and record any amendments to the Master Deed required under Article XIII (Eminent Domain) hereof; (iii) to prepare, execute and record any amendments to the Master Deed required under Section 10.02 herein; (iv) to prepare, execute and record any amendments to the Master Deed made pursuant to Article XVI (General Provisions) hereof; and (v) to prepare, execute, record and grant perpetual, non-exclusive utility easements under, through or over the Common Elements, which are reasonably necessary to the ongoing development and operation of the Condominium.

## **ARTICLE XI RESTRICTIONS**

**11.01 General Covenants and Restrictions for the Units.** The Condominium is subject to all covenants, restrictions and easements of record. The Units are further subject to the following restrictions and to any and all additional Rules and Regulations that may be promulgated by the Board of Directors or the Unit Owners:

- (a) No Unit, except those Units owned by Developer, Landowner or Builder, shall be permitted to be used as sales offices, administrative offices or models or for any purpose other than that which is contemplated by this Master Deed with respect to the same. All Units owned by any individual or entity other than Developer, Landowner and/or Builder shall be used primarily as private single-family residences and such other uses as may be permitted under the zoning ordinances of the Township of Middle provided that no business, trade, or similar activity, may be conducted in any such Unit, except that an Owner or occupant residing in a such Units may conduct "discrete business activities" within the Unit so long as the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; the business activity does not involve regular visitation of the Unit or door-to-door solicitation of residents; and the business activity is consistent with the residential character of the Property and does not violate the restrictions set forth in this Master Deed. Examples of "discrete business activities" include, but are not limited to, computer-based telecommunications, telecommuting, and literary, artistic, or craft activities. The Board may restrict any

business activities that it determines interfere with the enjoyment or residential purpose of the Property in its sole and absolute discretion.

- (b) No clothes poles or lines shall be installed or maintained. No clothes, sheets, blankets, or laundry of any kind or other articles may be hung or displayed on the outside of windows or placed on the outside window sills, walls or balconies of any Unit or in any part of the Common Elements.
- (c) No animal may be kept, bred, harbored or maintained in any Unit except not more than two (2) customary household pets, as defined by the Board, in its sole discretion, by adoption of a resolution. No Unit Owner shall permit any dog to cause any injury to any persons or other animals, or to cause damage to any Common Elements or any property of any other Unit Owner. Dogs must be leashed at all times and kept under control so as not to disturb the peace of residents. Owners are not permitted to tie pets or leave pets unattended outside on any Common or Limited Common Elements for any prolonged period of time. The Board may, by resolution, further limit the type of pets that may be kept or maintained in a Unit, provided, however, that in no event may the Board require the removal of pets validly kept or maintained within a Unit pursuant to a prior resolution of the Board, except that if the Board determines, in its sole discretion, that any particular type or breed of pet constitutes a safety or health risk to other owners ("malicious breed"). The Board may prohibit the keeping of specific malicious breeds, in which event the owners of any malicious breed may be required to remove it from the Condominium within 30 days of the effective date of the resolution. Unit Owners shall be required to immediately remove any waste committed by his or her pet on any Common Element or Limited Common Element and dispose of it in his or her sanitary containers and any failure to do so shall result in the imposition of monetary fines by the Association.
- (d) Until the last Unit held by Developer, Landowner or Builder in the normal course of business is sold, no sign of any kind shall be permitted upon a Unit or placed within a Unit that is visible on the exterior or upon the Common Elements, excluding those signs installed by Developer or Builder, except pursuant to the Rules and Regulations now or hereafter adopted by the Board. After the last Unit held by Developer, Landowner or Builder in the normal course of business is sold, the Board may determine the permitted use(s) of signage within the Condominium.
- (e) Driveways, roadways and other exterior parking areas on the Property shall be used by Unit Owners and residents for four wheel passenger vehicles only. For so long as Developer, Landowner or Builder owns a Unit for sale in the Condominium, no recreational vehicles, boats or other over-sized vehicles may be parked on any part of the Property, including the driveways; following the sale of the last Unit (including any

Additional Unit) in the Condominium by Developer, Landowner or Builder, the Board of Directors shall have the authority to adopt a Regulation for the purpose of modifying the aforementioned restriction to permit temporary parking of boats and recreational vehicles on the Property. Vans (other than the non-commercial passenger vans), mobile homes, trailers, boats, trucks or commercial (whether or not registered as a commercial vehicle with the State Department of Transportation) vehicles shall be permitted to be parked outside on the Property only on a day-to-day temporary basis in connection with the servicing of the Condominium itself. This restriction shall not apply to Developer or any Builder in the course of their construction and development of the Property and shall not impair Developer's, Landowner's or Builder's rights, as set forth in the Master Deed. This restriction shall not be amended without the prior, written consent of the Township of Middle.

- (f) No on-street parking of vehicles of any kind is permitted, excluding any vehicle being used in connection with the development of the Condominium by Developer, Builder and their respective subcontractors, as set forth above in subsection (e).
- (g) Driveways and garages are to be utilized by Unit Owners for the primary parking of their vehicles and not for storage. The common parking spaces located throughout the Condominium are intended for guests and visitors to the Units and for use on a temporary basis only.
- (h) No Unit Owner shall be permitted to convert any garage area within his or her Unit to living space. This restriction cannot be amended without the written consent of the Township of Middle.
- (i) All non-electric grills or cooking appliances may only be used in areas on the Property, including any General or Limited Common Element, which have been designated for such use by the Association, subject to any and all municipal requirements and any requirements imposed by the Association's insurer. For example, non-electric grills may be used on the patios appurtenant to the Units only if permitted by the Township of Middle.
- (j) No outdoor storage facilities and/or sheds are permitted on any portion of the Property. This restriction cannot be amended without the written consent of the Township of Middle.
- (k) No portion of the Common and Limited Common Elements shall be used or maintained for (i) storing either the Association's or Unit Owners' personal property or (ii) the dumping of rubbish or debris. For the Units, trash, garbage or other waste and recyclables shall be kept in robo-cans or other sanitary containers as may be designated by resolution of the Board and/or required by the Township of Middle and must be stored in the

garage of the Unit, with the exception of placement outside for weekly or more frequent collection, in accordance with the Township of Middle's regulations and with the Rules and Regulations which may be promulgated by the Association.

- (l) Any morning room/solarium situated within any Unit must be maintained as same and no Unit Owner shall be permitted to convert these areas within his or her Unit to additional bedroom spaces. This restriction cannot be amended without the written consent of the Township of Middle.
- (m) No Unit Owner or occupant shall build, plant, or maintain any matter or thing upon, in, over or under the Common Elements without the prior written consent of the Board.
- (n) Except as hereafter provided or as otherwise required by law, no radio, television or tower, pole, mast antenna or similar structure shall be erected on any part of the Building or Common Elements nor shall any drilling into any of the Common Elements (which includes any part of the exterior of a Building) be permitted without the prior, written consent of the Board of Directors. These devices may be located wholly within areas of which the Unit Owner has the exclusive use, such as a patio or deck, if applicable. The total number of these devices may not exceed the number necessary to receive the desired service. Any such installation shall further be conducted in accordance with applicable state and/or federal law and in such a manner so as to permit the safe use thereof.
- (o) Retractable, fabric awnings, which conform to the specifications to be determined by the Board of Directors, as same may be amended from time to time, may be installed above the rear patio or deck of any Unit, upon the prior, written consent of the Board of Directors.
- (p) Unit Owners or occupants shall not paint or otherwise decorate or change the appearance of any portion of the exterior of any Unit, without the prior, written consent of the Board of Directors. Any required painting to be performed by the Unit Owner to any part of the exterior of his or her Unit shall conform to the original colors of the Building or to any such colors which may be specified by the Association.
- (q) All mailboxes shall conform to the specifications promulgated by the Board of Directors. An example of a conforming mailbox is attached hereto as Exhibit "H", the details of which shall be provided by the Association to any Unit Owner upon request. No mailbox may be installed without the prior, written consent of the Board of Directors.
- (r) Draperies, blinds, curtains or other window coverings must be installed by each Unit Owner on all windows of his or her Unit, excluding any

sunroom or solarium, and in accordance with the Rules and Regulations of the Association. No draperies may be hung from any patio or deck.

- (s) No fences shall be permitted within any of the yard areas throughout the Property, except for any privacy fences installed by Developer or Builder.
- (t) Patios must be maintained free of clutter and any furniture used on any patio must be designed for outdoor use and must be maintained in good repair and condition at all times. All patio furniture must further be in colors that complement the exterior colors of the Buildings. During any storm event, all patio furniture must be removed from the patio by the Unit Owner and stored in his or her Unit.
- (u) Any planters displayed on any part of the Limited Common Elements must be maintained in good condition by the Unit Owner. No vegetables may be planted in any planter or in any lawn area of the Condominium.
- (v) To the extent that equipment, facilities and fixtures within any Unit(s) shall be connected to similar equipment, facilities or fixtures affecting or serving other Units or the Common Elements, then the use thereof by the individual Unit Owners shall be subject to the Condominium Documents.
- (w) Nothing shall be done or kept in any Unit or in or upon the Common Elements which will increase the rates of insurance of the Unit(s) or the contents of the Unit(s) beyond the rates applicable for Units, without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his or her Unit or in or upon the Common Elements that will result in the cancellation of insurance on any Units or the contents thereof, or that will be in violation of any law.
- (x) No noxious or offensive activities shall be carried on, in or upon the Common Elements or in any such Unit nor shall anything be done therein which may be or become an annoyance or nuisance to the others in the Condominium. (Whether a particular activity constitutes a "nuisance" will be determined by the Board, whose determination will be final and binding.)
- (y) No immoral, improper, offensive or unlawful use shall be made of any Unit; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over a Unit shall be observed.
- (z) Nothing shall be done to any Unit or on or in the Common and Limited Common Elements which will impair the structural integrity of any Unit or which will structurally change a Unit. No Unit Owner, other than Developer, may make any additions, alterations or improvements to the exterior surfaces of his or her Unit and the Common and Limited Common Elements, without the prior written approval of the Board and in accordance with procedures set forth in the By-Laws and Rules and

Regulations. Board approval, however, shall not incur any liability on the part of the Condominium Association to any contractor, subcontractor or materialman on account of the addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom. The Unit Owner shall furnish the Condominium Association with a copy of any permit procured for non-structural changes to the Unit or for Board-approved changes to the Common and Limited Common Elements, if such permit is required by a municipal authority. All costs incidental to the approval, including any consultant's fees, shall be paid by the Unit Owner. The provisions of this subparagraph shall not apply to Units owned by Developer, Landowner or Builder.

- (aa) The Common Elements shall be used only for the furnishing of the services and facilities for which they are reasonably intended and suited and that are incident to the use and occupancy of the Units.
- (bb) 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 Unit Owners, the Owner of a Unit shall give the Association timely notice of his or her intent to list his or her Unit for sale and, upon closing of title, shall immediately notify the Association's manager of the names and home addresses of the purchasers. This provision shall not apply to sales by Developer, Landowner and Builder, as applicable.
- (cc) A Unit may be rented by the Owner(s) of such Unit for a term of twelve (12) months or more. Units may not be rented by the Owner(s) more than once in any 12-month period for less than one (1) year or otherwise utilized for transient or hotel purposes, which shall be defined as "(i) rental for any additional rental period of less than one year in one 12-month period; or (ii) any rental if the occupants of the Unit are provided customary hotel services, such as room service for food and beverages, maid service, furnishing laundry or linen, and concierge service. No Unit Owner may lease less than an entire Unit. Any person not an Owner, spouse or child of an Owner who resides in a Unit for more than 30 days (whether or not the Owner is present) will be deemed a tenant and the Owner must comply with all Use Restrictions and Rules and Regulations, if any, applying to tenancies, unless the Owner provides proof to the reasonable satisfaction of the Board that the person residing in the Unit is not a tenant. Other than the foregoing obligations, the Unit Owners shall have the right to lease provided that: (i) the lease is in writing and made subject to all the provisions of the Condominium Documents and other documents referred to herein; (ii) the lease provide the Condominium Association with the right to charge and collect from Unit Owner's tenant any and all delinquent Common Expense Assessments due and owing for the Unit; (iii) a copy of the written lease, containing the foregoing provision has been delivered to the property manager for the Condominium Association; and (iv) that any failure of a tenant to comply

fully with the terms and conditions of this Master Deed, or the other Condominium Documents shall constitute a default under the lease.

- (dd) In the event a tenant of a Unit defaults under his or her lease by failure to comply with the provisions of this Master Deed, the other Governing Documents, or any other document referred to in this Master Deed, then, in addition to all other remedies which it may have, the Condominium Association or its representative shall notify the Unit Owner of the default(s) and demand that they be cured through the Unit Owner's efforts within 30 days after such notice. If the default(s) is not cured within the 30-day period, then the Unit Owner shall immediately thereafter, at his or her own cost and expense, institute and diligently prosecute an eviction action against the tenant on account of the default(s). The eviction action shall not be compromised or settled without the prior consent of the Condominium Association or its representative. In the event the Unit Owner fails to fulfill the foregoing obligation, then the Board shall have the right, but not the duty, to institute and prosecute an action as attorney-in-fact for the Unit Owner, at the Unit Owner's sole cost and expense, including all legal fees incurred. The costs and expenses shall be deemed to constitute a lien on the particular Unit involved, and collection thereof may be enforced by the Condominium Association in the same manner as the collection of Common Charges. By acceptance of a deed to any home, each and every Unit Owner automatically and irrevocably names, constitutes, appoints and confirms the Board as his or her attorney-in-fact for the purposes described in this paragraph.
- (ee) No hazardous substance or hazardous waste (as those terms are defined pursuant to regulations issued by the New Jersey Department of Environmental Protection) may be stored in any Unit, except hazardous substances that are used in connection with commonly available household products intended for interior use and storage.
- (ff) No Unit Owner shall have the right to mortgage or encumber his or her Unit, unless such mortgage or encumbrance is a Permitted Mortgage.
- (gg) No Unit Owner shall be permitted to maintain or store any equipment or other personal property on any Common or Limited Common Element without the express written consent of the Board.
- (hh) All Units must be heated to the extent necessary to prevent damage from freezing temperatures during the months of October through April, inclusive, regardless of whether or not occupied. Any Owner failing to heat his or her Unit adequately shall be assessed for the costs of any damage caused to any portion of the Condominium due to his neglect, or if such damage is insured by the Condominium Association, for any deductible or other amount not received by the Condominium Association from the proceeds of the insurance.

**11.02 Restrictions on Alterations.** Nothing shall be done to any Unit or on or in the Common and Limited Common Elements which will impair or change the structural integrity of the Unit, any other Units, the Building in which the Unit is located. No Unit Owner (other than Developer, Landowner or Builder) may make any structural additions, alterations or improvements in or to his or her Unit or in or to the Common and Limited Common Elements, without the prior written approval of the Board. The Board shall have the obligation to answer any written request received by it from a Unit Owner for approval of a proposed structural addition, alteration or improvement to his or her Unit within sixty (60) days after the receipt of such request, and failure to do so within the stipulated time shall constitute a denial without prejudice of the proposal. Any application to any municipal authority for a permit to make an addition, alteration or improvement in or to any Unit must first be reviewed and approved by the Board and may then be submitted by the Unit Owner. Such approval, however, shall not incur 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. The Unit Owner(s) shall furnish the Board with a copy of any such permit which he has procured. The provisions of this subparagraph shall not apply to Units owned by Developer, Landowner and/or any Builder until such Units have been initially sold and conveyed by Developer, Landowner and/or any Builder in the ordinary course of Developer's, Landowner's and Builder's business.

**11.03 Handicap Use.** Nothing herein shall be construed to prohibit the reasonable adaptation of any Unit for use by a handicapped resident in accordance with the provisions of the Fair Housing Amendment Act of 1988, as amended from time to time, nor impose any restrictions or architectural controls which would prohibit or impede the installation of proper window guards.

**11.04 Rules and Regulations; Fines.** The Board shall have the power to promulgate and adopt such Rules and Regulations as may be necessary to carry out the intent of these use restrictions, and shall have the right to bring lawsuits to enforce the Rules and Regulations so promulgated. Without limiting the foregoing, to the extent that New Jersey law may in the future permit, the Board shall also have the right to levy fines for violations of the Condominium Documents. Each day that a violation continues after receipt of notice by the Unit Owner may be considered as a separate violation. Any fine so levied shall be considered as a Common Expense to be levied against the particular Unit Owner involved, and collection may be enforced by the Board in the same manner as the Board is entitled to enforce collection of Common Expenses. Furthermore, the Association and any aggrieved Unit Owner shall have the right of action against Unit Owners for failure to comply with decisions of the Association which are made pursuant to authority granted the Association in this Master Deed; Unit Owners shall have similar rights of action against the Association.

## **ARTICLE XII INSURANCE; DAMAGE OR DESTRUCTION TO PROPERTY**

**12.01 Insurance.** The Board shall obtain and continue in effect blanket property insurance on the Common Elements in an amount equaling replacement value (exclusive of land,



foundations or slabs, excavations and other such items as are usually excluded from insurance coverage), and without prejudice to the right of the Owner of any Unit to obtain individual Unit insurance at his or her own cost. The property insurance policy must be in an amount equal to 100% of current replacement cost of the Condominium, exclusive of land, foundation, excavation and other items normally excluded from coverage. The Association shall maintain comprehensive general liability insurance coverage covering all of the Common Elements and public ways of the Condominium. In addition, the Board shall obtain and continue such other amounts of insurance as may be required by the provisions of the By-Laws and in accordance with the provisions of N.J.S. 46:8B-14(d). Such insurance shall include coverage against loss by fire or other casualties normally covered under broad-form fire and extended coverage insurance policies as written in this State, covering all Common Elements and all structural portions of the Condominium property. Premiums for all such insurance coverage obtained by the Board shall be a Common Expense to be included in the Annual Common Expense Assessment. If and when the Condominium becomes located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (“NFIP”), the Association shall obtain and pay the premiums upon, as a Common Expense, a “master” or “blanket” policy of flood insurance on the Buildings and any other property covered by the required form of policy in an amount deemed appropriate by the Association, but not less than the following: the lesser of: (a) the maximum coverage available under the NFIP for all buildings and other insurable property within the Condominium, to the extent that such buildings and other insurable property are within an area having special flood hazards; or (b) 100% of current “replacement cost” of all such Buildings and other insurable property within such area. Such policy shall be in a form which meets the criteria set forth in the most current Guidelines on the subject issued by the Federal Insurance Administrator.

Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, the Association’s authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the “Insurance Trustee”), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose.

**12.02 Disposition of Insurance Proceeds.** If any insured improvements or any part thereof is damaged or destroyed by fire or casualty, the repair, restoration or ultimate disposition of any insurance proceeds shall be in accordance with the provisions in this Article XII.

**12.03 Insurance Proceeds Less than or Equal to \$50,000.** If the insurance proceeds derived from such loss amount to \$50,000 or less, then the Board shall contract with any licensed contractor or contractors to rebuild or repair such damage or destroyed portions of the insured improvements in conformance with the original plans and specifications, or if adherence to such original plans and specifications is impracticable in the discretion of the Board, then in conformance with revised plans and specifications provided such repairs or rebuilding shall be of a quality and kind substantially equivalent to the original construction. The Board shall accept bids only in specific amounts and shall not enter into any cost-plus or other sliding scale arrangement for compensation to the contractor.

**12.04 Insurance Proceeds Greater than \$50,000.** If the insurance proceeds derived from such loss exceed \$50,000, all such insurance proceeds shall be paid directly to an Insurance Director as may be designated by the Board, as Director for all Eligible Mortgage Holders holding first mortgages on any portion of the Property, and all Unit Owners as their interests may then appear. Disbursement of such funds shall be made only upon the signatures of a majority of the members of the Board in accordance with the following:

- (a) Upon notification of the receipt of insurance proceeds by the Insurance Director or at such earlier date as may be determined by the Board, the Board shall enter into a contract for a specific dollar amount, which does not contain a cost-plus provision, with a licensed contractor or contractors for the repair or rebuilding of all of the damaged or destroyed portions of the insured improvements, as nearly as practicable to the original plans and specifications thereof and in accordance with all applicable building codes.
- (b) The Board shall enter into said contract with a licensed contractor or contractors which shall have provisions for periodic disbursements of funds by the Director. Disbursements to the contractor shall be made subject to the prior presentation of an architect's certificate and contractor's requisition containing such provisions as may be appropriate under the circumstances and deemed suitable by the Board.
- (c) The Board shall employ a properly qualified party to supervise the repair and rebuilding to insure that such work, services and supplies are of proper quality and that construction is completed in a workmanlike manner and according to plans and specifications.

**12.05 Responsibility of Unit Owner.** Unit Owners are obligated to maintain adequate insurance on his or her Unit in the form of an HO-6 policy or its equivalent at all times and provide evidence of insurance to the Association on an annual basis. If the damage is to those parts of a Unit for which the Unit Owner bears the responsibility for payment for and performance of maintenance and repair then that Owner shall be responsible to bear the costs of and perform the reconstruction and repair, but the proceeds of any insurance on the affected part(s) of the Unit that may have been obtained by the Association shall be made available for such purpose. Subject to the Master Deed, in all other instances the responsibility of reconstruction and repair after casualty shall be that of the Association.

**12.06 Insurance Proceeds Insufficient.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, or if at any time during or upon reconstruction and repair, the funds for payment of the costs thereof are insufficient, Assessments shall be made against all Owners whose Units were damaged or destroyed, in sufficient amounts to provide funds for the payment of such costs. Despite anything to the contrary in this Master Deed or By-Laws, such Assessments shall be in proportion to the Unit Owner's percentage interest in the Common Elements. The foregoing provisions of this Section are applicable to the repairs and reconstruction to be undertaken by the Association and do not cover damages to those portions of the Unit for which the responsibility of maintenance and

repair is that of the Unit Owner for which the costs and expenses must be borne by each Owner; provided, however, any portion of the insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with an individual Unit Owner shall be paid to said Unit Owner, or if there is a mortgage endorsement as to such Unit, then to the Unit Owner and mortgagee, jointly.

**12.07 Excess Insurance Proceeds.** If the amount of available insurance proceeds should exceed the cost of any such reconstruction or repair, the excess shall be retained by the Association and applied by it to reduce the Common Expenses of the Unit Owners.

**12.08 Assignment to Eligible Mortgage Holder.** In the event the Association determines not to repair or restore the damaged Property in accordance with N.J.S. 46:8B-24, any insurance proceeds payable to a Unit Owner as a result of damage or destruction to his or her Unit and/or interest in the Common Elements are hereby assigned and shall be paid to any appropriate mortgage holder(s) as their interests may appear, for application to the appropriate mortgage indebtedness and the excess, if any, shall be paid to the appropriate Unit Owners, all in accordance with N.J.S. 46:8B-24.

### **ARTICLE XIII EMINENT DOMAIN**

**13.01 General.** This Section shall be deemed to be supplemental to and not in derogation of the provisions of N.J.S. 46:8B-25.

**13.02 Notice and Participation of Unit Owners.** If any Building, improvement or Common Element or any part thereof shall be taken, injured or destroyed by eminent domain, each Unit Owner affected shall be entitled to notice of such taking and to participate through the Association in the proceedings incident thereto.

**13.03 Allocation of Awards.** Any awards made in connection with such proceedings shall be collected by the Association and applied or distributed by it in accordance with Article VI, Section 6.02, unless the award or decree provides to the contrary.

If a part of the Common Elements is acquired by eminent domain, the award must be paid to the Association unless the decree provides that the Association shall divide any portion of the award not used for any restoration or repair of the remaining Common Elements among the Unit Owners affected in proportion to their respective damage suffered and their respective percentage interest in the Common Elements before the taking.

**13.04 Reallocation Following Condemnation.**

- (a) Units Rendered Uninhabitable. Upon acquisition by the condemning authority, each affected Unit's entire percentage interest and its corresponding liability for payment of Common Expenses shall be automatically reallocated to the remaining Units on the same basis as their respective percentage interests and Common Expense liability were initially established, and the Association shall promptly prepare, execute and record an amendment to the Master Deed reflecting the reallocations.

Any remnant of a Unit which has been rendered uninhabitable remaining after a part of a Unit is taken under this subsection shall thereafter be a Common Element.

- (b) Units Remaining Habitable. Upon acquisition by the condemning authority, the percentage interest and corresponding liability for Common Expenses of each affected Unit shall be that fraction, the numerator of which is the square footage of the Unit remaining after the taking, and the denominator of which is the aggregate square footage of all Units within the Condominium after the taking. The amount by which the percentage of interest and corresponding liability of each affected Unit is reduced shall thereafter be proportionately reallocated to all Units within the Condominium.

#### **ARTICLE XIV PROTECTIVE PROVISIONS FOR THE BENEFIT OF ELIGIBLE MORTGAGE HOLDERS**

**14.01 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 mortgages pursuant to this Article XIV 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.

**14.02 Notice.** Any Eligible Mortgage Holder shall be entitled to timely written notice of:

- (a) any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing the Eligible Mortgage Holder's mortgage; and no Unit Owner or other party shall have priority over such Eligible Mortgage Holder with respect to the distribution to such Unit(s) of the proceeds of any condemnation award or settlement in the event of condemnation or with respect to the distribution to such Unit(s) of any insurance proceeds in the event of casualty loss; and
- (b) any sixty (60) day delinquency in the payment of Common Expense Assessment installments or other Assessments or charges owed to the Association by a Unit Owner of any Unit upon which the Eligible Mortgage Holder holds a mortgage; and
- (c) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

- (d) any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders; and
- (e) any proposed action effecting a change in the exclusive easement rights appertaining to any Unit or the purposes to which any Unit or the Common Elements are restricted.

The Eligible Mortgage Holder for any Unit must send a written request to the Association stating both its name and address and the address of the Unit on which it holds the mortgage to be entitled to receive the information discussed in subparagraphs (a) through (d) of this Section 14.02.

**14.03 Amendments Requiring Approval of 51% of Eligible Mortgage Holders.** The prior written approval of at least fifty-one percent (51%) of the Eligible Mortgage Holders is required for any material amendment to this Master Deed or 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) the requirement to collect reserves for maintenance, repair and replacement of Common Elements;
- (c) responsibility for maintenance and repairs;
- (d) reallocation of interests in the General or Limited Common Elements or rights to their use;
- (e) boundaries of any Unit;
- (f) convertibility of Units into Common Elements or vice versa;
- (g) insurance or fidelity bonds;
- (h) imposition of any restrictions upon a Unit Owner's right to sell or transfer his or her or her Unit;
- (i) restoration or repair of the Condominium (after damage, destruction or condemnation) in a manner other than that specified in this Master Deed;
- (j) any action to terminate the legal status of the Condominium as a Condominium after substantial damage or condemnation occurs;
- (k) any provisions that expressly benefit Eligible Mortgage Holders;
- (l) reallocation of interests in the Common Elements resulting from a partial condemnation or partial destruction of the Condominium; or

- (m) the establishment, government or regulation of: assessments, assessment liens or subordination of such liens; expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium; the interests in the Common Elements; leasing of Units; and/or establishment of self-management by the Association where professional management has been required by any of VA, FHA, FNMA or FHLMC.

**14.04 Amendments Requiring Approval of 67% of Eligible Mortgage Holders.** The prior written approval of at least sixty-seven percent (67%) of the Eligible Mortgage Holders is required before the effectuation of any decision by the Unit Owners to terminate the legal status of the Condominium as a Condominium for reasons other than substantial destruction or condemnation of the Property.

**14.05 Implied Approval of Eligible Mortgage Holders Assumed.** Despite the requirements of prior written approval of Eligible Mortgage Holders provided in Sections 14.02 and 14.03 of this Master Deed, provided that the Association serves notice on Eligible Mortgage Holders of those matters which are the subject of Sections 14.02 and 14.03 of this Master Deed in the manner provided in Section 14.01 of this Master Deed, the Association may assume implied approval of any Eligible Mortgage Holder who fails to submit a written response to any notice given within sixty (60) days after it receives such notice as provided herein and so long as the notice was delivered by certified mail as indicated by a signed return receipt.

**14.06 Notice of Non-Material Amendment.** Any Eligible Mortgage Holder who requests same shall be entitled to receive thirty (30) days' advance notice from the Association of any proposed non-material amendment to the Master Deed, the By-Laws or the Certificate of Incorporation permitted by same, which notice shall include a copy of the proposed change; and any Eligible Mortgage Holder shall be deemed to have implicitly approved such change as proposed unless it states in a written response to the Association its objections or comments relative to such proposed change.

**14.07 No Partition.** No Unit in the Condominium may be partitioned or subdivided without the prior written approval of any Eligible Mortgage Holder for such Unit.

**14.08 Common Expense Lien Subordinate.** Except to the extent permitted by N.J.S. 46:8B-21 or any other applicable law authorizing the establishment of a limited lien priority for the payment of Common Expense Assessments, any lien that the Association may have on any Unit for the payment of Common Expense Assessments attributable to such Unit is subordinate to the lien or equivalent security interest of any first mortgage on the Unit recorded prior to the date any such Common Expense Assessment became due.

**14.09 Inspection of Records.** Any Eligible Mortgage Holder shall, upon written request, (a) be permitted to inspect the books and records of the Association during normal business hours, and (b) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association. The Association shall maintain current copies of the Condominium Documents and any respective amendments thereto, as well as its

own books, records and financial statements. These documents shall be available for inspection by Unit Owners and Eligible Mortgage Holders.

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

**14.11 Liability for Common Expense Assessments.** Any Eligible Mortgage Holder holding a first mortgage lien on a Unit that obtains title to a Unit 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 Unit or chargeable to the former Unit 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 Unit Owners including such acquirer, his or her successors and assigns.

**14.12 Common Expense Default.** Despite the absence of any express provision to such effect in the mortgage instrument, in the event that there is any default in the payment of any installment of a Common Expense Assessment with respect to any Unit, either regular or special, the Eligible Mortgage Holder holding a mortgage which encumbers such Unit 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 XV DEVELOPER'S RIGHTS AND OBLIGATIONS**

**15.01 Ratification, Confirmation and Approval of Agreements.** The fact that some or all of the Officers, Directors, Members or employees of the Association and Developer may be identical, and the fact that 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 Unit, and the acceptance of the Deed therefore by any party, shall constitute the ratification, confirmation and approval by such purchaser, his or her heirs, legal representatives, successors and assigns, of the propriety and legality of said agreements or said agreement, or any other agreements authorized and permitted by the Condominium Act, this Master Deed, the Certificate of Incorporation or the By-Laws.

**15.02 Rights Reserved to Developer and Landowner.** Despite anything to the contrary herein or in the Certificate of Incorporation or By-Laws of the Association, Developer and Landowner hereby reserves for themselves, their successors and assigns, including any Builder, for so long as either owns one or more Units in the Condominium, the right to sell, lease, mortgage, sublease or otherwise dispose of any unsold Units within the Condominium.

**15.03 Transfer of Special Developer's Rights.** No special rights created or reserved to Developer under this Master Deed ("Special Developer Rights") may be transferred except by an instrument evidencing the transfer recorded in the Office of the Clerk of Cape May County, New Jersey. The instrument shall not be effective unless executed by the transferee.

**15.04 Liability of Transferor.** Upon transfer of any such Special Developer 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 him or her. Lack of privity does not deprive any Unit Owner of standing to bring an action to enforce any obligation of the transferor.
- (b) If a transferor retains any such Special Developer Right, or if a successor to any such Special Developer Right is an affiliate of Developer, the transferor is subject to liability for all obligations and liabilities imposed on a Developer by law or by the Master Deed, 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 Condominium.
- (c) A transferor who retains no such Special Developer 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 Right by a successor Developer who is not an affiliate of the transferor.

**15.05 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 Director under a deed of trust, or a sale under any bankruptcy or receivership proceedings, a person acquiring title to all the Units being foreclosed or sold, but only upon his or her request, succeeds to all such Special Developer Rights, or only to any such Special Developer Rights to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the Special Developer Rights requested.

**15.06 Foreclosure, Bankruptcy, Receivership.** Upon foreclosure, sale by a Director under a deed of trust, or sale under any bankruptcy proceeding, of all Units in the Condominium owned by Developer and/or Landowner:

- (a) Developer ceases to have any such Special Developer Rights; and
- (b) The period of Developer control terminates unless the judgment or instrument conveying title provides for transfer of all such Special Developer Rights to a successor to Developer.

**15.07 Liability of Successors.** The liabilities and obligations of persons who succeed to all Special Developer Rights are as follows:

- (a) A successor to all such Special Developer Rights who is an affiliate of Developer is subject to all obligations and liabilities imposed on any Developer by law or by the Master Deed.
- (b) A successor to all such Special Developer Rights, other than a successor described in paragraphs (c) or (d) hereof who is not an affiliate of Developer is subject to all obligations and liabilities imposed upon



Developer by law or the Master Deed, but he is not subject to liability for misrepresentations or improvements made by any previous Developer or made before the Condominium was created, or for a breach of fiduciary obligation by any previous Developer.

- (c) A successor to only a Special Developer Right to maintain models, sales offices and signs, if he is not an affiliate of Developer, may not exercise any other Special Developer Right, but is not subject to any liability or obligation as a Developer.
- (d) A successor to all Special Developer Rights who is not an affiliate of Developer and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to Units under Section 15.06 aforesaid, may declare his or her 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 Unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than the right to control the Board 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 subparagraph he is not subject to any liability or obligation as a Developer other than liability for the successor's acts and omissions under the Master Deed.

**15.08 Ineffectiveness.** Nothing in this Article XV subjects any successor to a Special Developer Right to any claims against or other obligations of a transferor other than claims and obligations arising under the Master Deed.

## **ARTICLE XVI GENERAL PROVISIONS**

**16.01 Duration.** Except as provided in Article XV, the provisions of this Master Deed shall be perpetual in duration, shall run with and bind all of the land included in the Condominium and shall inure to the benefit of and be enforceable by the Association and the Unit Owners, their respective successors, assigns, heirs, executors, administrators, and personal representatives.

**16.02 Amendment of the Master Deed.** This Master Deed may be amended at any time after the date hereof by a vote of at least sixty-seven percent (67%) of all Unit Owners, at any meeting of the Association duly held in accordance with the provision of the By-Laws provided, however, that any amendment so requiring it under the provisions of Article XIV, shall also have the prior written approval of fifty-one percent (51%) of Eligible Mortgage Holders, and further, provided that any amendment, deed of revocation or other document regarding termination of the condominium form of ownership shall be governed by Section 16.03 hereof. No amendment

shall be effective until recorded in the Office of the Clerk of Cape May County, New Jersey. This paragraph is by way of supplement to and not in derogation of the powers of amendment reserved to Developer and Landowner pursuant to Article X hereof. In the alternative, an amendment may be made by an agreement, signed and acknowledged by all of the Unit Owners in the manner required for the execution of a Deed, and such amendment shall be effective when recorded in the Office of the Clerk of Cape May County. Despite any provision hereof to the contrary, if any amendment is necessary in the judgment of the Board to cure any ambiguity or to correct or supplement any provision of this Master Deed that is unenforceable by law, defective, missing or inconsistent with any other provision hereof or with any of the other Condominium Documents, or if such amendment is necessary to conform this Master Deed with the requirements of the FNMA, VA or FHLMC at a time when such entity holds, or intends to hold, one or more Permitted Mortgages, then at any time and from time to time the Board may effect an appropriate corrective amendment without the approval of the Unit Owners or the holders of any Permitted Mortgage, upon receipt by the Board of an opinion from independent legal counsel that the proposed amendment is permitted by the terms of this sentence.

No amendment shall impair or adversely affect the rights of Developer, Landowner or any Builder or cause Developer, Landowner or Builder to suffer any financial, legal or other detriment.

**Furthermore, this Master Deed may be amended by Developer, Landowner and Builder, without the prior written approval of the Association, any Member or Eligible Mortgage Holder, prior to the sale of any Units in the Condominium to third party purchasers, other than Developer, Landowner or a Builder, in order to conform this Master Deed to the requirements promulgated by the New Jersey Department of Community Affairs (“DCA”), if any, as a condition to the registration of the Condominium by DCA, pursuant to N.J.S. 45:22A-21 *et seq.***

**16.03 Termination.** Despite anything to the contrary herein, an amendment, deed of revocation, or other document shall be effective to terminate the Condominium form of ownership upon written approval of eighty (80%) percent in interest of all Unit Owners, and the written approval of Developer, Landowner and/or Builder for so long as each holds one (1) Unit for sale in the ordinary course of business.

**16.04 Enforcement.** Enforcement of the Condominium Documents, whether by the Association or any Member thereof, shall be by an 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 Master Deed in any covenant herein contained, or by levying fines, suspending membership privileges or other action. 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.

**16.05 Maintenance by Municipality.** In the event the Condominium is not maintained in reasonable order and condition, the Township of Middle shall have the right to enter upon and maintain the Property. The assumption of such maintenance responsibility shall be in

accordance with the procedures set forth in N.J.S. 40:55D-43(b). The cost of same shall be assessed, enforced and collected in accordance with the provisions of N.J.S. 40:55D-43(c). The cost of such maintenance by the municipality shall be assessed pro rata against the Owner(s) of each Unit affected thereby and shall become a lien and tax on each such Unit, and shall be enforceable by the Township of Middle in the manner provided by law with respect to real estate taxes assessed directly against each such Unit.

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

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

**16.08 Gender.** The use of the masculine gender in this Master Deed 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.

**16.09 Notice-Condominium 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 Condominium'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 Condominium Association as reflected in the official records of the New Jersey Treasurer as of the date such notice is mailed.

## **ARTICLE XVII EXHIBITS**

**17.01 Exhibits.** The following exhibits are attached hereto and made part hereof:

**17.02 EXHIBIT "A-1"** - Legal Description of Property

**17.03 EXHIBIT "A-2"** – Legal Description of the Additional Land

**17.04 EXHIBIT "A-3"** – Interim and Full Buildout Phasing Schedules of the Units

**17.05 EXHIBIT "B-1"** – Plan

**17.06 EXHIBIT "B-2"** – Condominium Plan

**17.07 EXHIBIT "C"** - Unit Plans

**17.08 EXHIBIT “D”** - Certificate of Incorporation of The Fairways at Laguna Oaks Condominium Association, Inc.

**17.09 EXHIBIT “E”** - By-Laws of The Fairways at Laguna Oaks Condominium Association, Inc.

**17.10 EXHIBIT “F”**- Percentage Interest Schedule – Interim and Full Buildout

**17.11 EXHIBIT “G”** – Basin Maintenance Schedule

**17.12 EXHIBIT “H”** – Conforming Mailbox Depiction





**EXHIBIT "A-1"**  
**Legal Description of the Property**

**EXHIBIT "A-2"**  
**Legal Description of the Additional Land**

A certain parcel of land located in the Township of Middle, County of Cape May, more particularly known as part of Lots 5.01 and 5.02, Block 335.01.



**EXHIBIT "A-3"**  
**Interim and Full Build out Phasing Schedules**

**EXHIBIT "B-1"**  
**Plan**

**EXHIBIT "B-2"**  
**Condominium Plan**

**EXHIBIT "C"**  
**Unit Plans**

**EXHIBIT "D"**  
**Certificate of Incorporation of**  
**The Fairways at Laguna Oaks Condominium Association, Inc.**

**EXHIBIT "E"**  
**By-Laws of The Fairways at Laguna Oaks Condominium Association, Inc.**

**EXHIBIT "F"**  
**Percentage Interest Schedules**

**EXHIBIT "G"**  
**Basin Maintenance Schedule**



**EXHIBIT "H"**  
**Conforming Mailbox Depiction**

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