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Tax Map No. 1-34-17-14  
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**MASTER DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
WATERSIDE**

This Declaration of Covenants, Conditions and Restrictions is made this 17th day of January, A. D. 2002, by Bethany Proper Limited Partnership, a Delaware limited partnership, (herein after referred to as "Developer");

**WHEREAS**, the Developer is the fee simple owner of certain real property located on the north side of County Road 361, near the Town of Ocean View, in Baltimore Hundred, Sussex County, State of Delaware, said property being more particularly described as Phase 1 in Exhibit "A", attached hereto and included herein by specific reference thereto.<sup>1</sup> Said real property as well as those lands identified in Exhibit "B" attached hereto and included herein by specific reference thereto, which is to become the Additional Property hereunder, is also shown on a plan entitled "WaterSide Revised Preliminary Site Plan", dated February 18, 2000, and is recorded in the Office of the Recorder of Deeds of Sussex County in Georgetown, Delaware, in Plot Book 67 at page 128, said real property being hereinafter referred to as "WaterSide"; and

**WHEREAS**, the Developer is now developing a portion of WaterSide, Phase 1, described in the attached Exhibit "A" and referred to below as the Property and intends to

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Neither this real property nor the Additional Property or Annexable Property includes lands along the westerly side and right of way of the Assawoman Canal, being lands of the State of Delaware.

develop in the future the remainder of such lands in Exhibit "B" in additional phases (referred to below as the "Additional Property"); and

**WHEREAS**, the Developer proposes to create on the Property a mixed use community by creating three condominiums (as hereinafter defined), one of which for clustered houses to be known as "Homes of WaterSide", one of which for multi-family townhouses, known as "Townhomes of WaterSide", and one of which for multi-family flats to be known as "Apartments of WaterSide", which condominiums, together with certain interests set forth below in easements, leases and licenses, and "Commercial WaterSide", a commercial area, which may or may not be added to the Development, are hereinafter collectively referred to as "the Development"; and

**WHEREAS**, the Developer imposes these covenants and restrictions in order to preserve efficiently the values and amenities in said community, to create an agency to which will be delegated and assigned the powers of maintaining and administering any community facilities, common lands and recreation amenities and administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created; and

**WHEREAS**, the Developer will incorporate under the laws of the State of Delaware, as a nonprofit corporation, WaterSide Property Owners Association, Inc., or a similarly named corporation, for the purpose of exercising the functions aforesaid; and

**WHEREAS**, the Developer plans to set aside certain interests in the property subjected to this Declaration, either initially or through Supplementary Declarations and/or Declarations of Annexation and, except as may otherwise herein be provided, impose upon certain portions of such property the conditions that they be held as common areas, (i.e. entrance areas, common areas, roadways, etc.) in which owners in WaterSide will have common interest and easements of use and enjoyment therein, the ultimate title of which shall be placed in the WaterSide Property Owners Association, Inc.; and

**WHEREAS**, the Developer desires to provide a flexible and reasonable procedure for the overall development of the property and to establish a method for the administration, maintenance, preservation use and enjoyment of such property which is now submitted to this Declaration; and

**WHEREAS**, as hereinafter provided in this Declaration, the Developer retains and reserves the right, privilege and option, but not an obligation, at a later time and from time to time, to add to the Development all or any portion of the Additional and/or Annexable Property.

**NOW THEREFORE**, the Developer hereby declares that all of the Property, together with so much of the Additional Property and/or Annexable Property as is by

Supplementary Declaration and/or Declaration of Annexation subjected to this Declaration hereafter, shall be held, mortgaged, transferred, sold, conveyed, leased, occupied and used subordinate and subject to all easements, rights of way and restrictions previously placed upon the property as recorded in the Office of the Recorder of Deeds, in and for Sussex County, by the Developer or its predecessors in title and to the following easements, restrictions, covenants, conditions, liens and charges set forth herein, which are for the purpose of protecting the value and desirability of and which shall run with the real property submitted to this Declaration and which shall be binding upon all parties having any right, title, lien or other interest in the described property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**

**DEFINITIONS**

Words and terms shall have the meaning set forth below for all purposes of this Declaration unless the context shall require otherwise, and such definitions shall apply to the singular and plural forms of any such word or term.

**ADDITIONAL PROPERTY** - Identified in Exhibit "B" and shown on the Development Plan for WaterSide as shown on a Plat entitled "WaterSide Revised Preliminary Site Plan" and recorded in the Office of the Recorder of Deeds of Sussex County in Georgetown, Delaware, in Plot Book 67, at page 128, which may be acquired in further phases or not at all.

**ANNEXABLE PROPERTY** - Shall mean that property not yet identified on the Record Master Plan but which is contiguous to the property described in Exhibits "A" and/or "B" and which the Developer may acquire or, pursuant to agreement with the owner of such property, may acquire the right to annex to the Development and subject to this Declaration, in accordance with this Declaration, by the recordation of one (1) or more Declarations of Annexation.

**ASSESSMENT** - An Owner's share of the Common Expenses and funding reserves.

**ASSOCIATION** - WaterSide Property Owners Association, Inc., a Delaware mandatory membership, nonprofit, nonstock corporation, its successors and assigns.

**BOARD OF DIRECTORS** - The governing body of the Association, also referred to as "Board".

**BY-LAWS** - The By-Laws of the Association as amended from time to time.

**COMMON AREA** - All real and personal property in the Development owned or leased by the Association for the common use and enjoyment of the Owners except any real property designated as a unit or common element pursuant to the Delaware Unit Property Act. The Developer shall have the right from time to time to designate as Common Area any portion of the Development not submitted to the Delaware Unit Property Act, and to withdraw property from such designation. Common Area is not intended for, or dedicated to, use by the general public, and the general public shall have no right to use or enjoyment thereof. Specifically included in the Common Area are (1) maintenance areas, roads, alleys, parking lots and spaces, medians, green areas, signage, designated marshes, wetlands, tidal ditch, easement areas designated as Common Area, access easements across other real property, (2) parks and the Open Space Amenities (as hereinafter defined), (3) such other lands and/or improvements as the Developer may, in its absolute and sole discretion, make subject to this Declaration and designate as Common Area by subsequent amendment or supplement, including, but not limited to, nature and jogging trails, bike paths, streams, and ponds. Nothing herein contained, nor any recorded plat other than a Declaration Plan under the Delaware Unit Property Act, shall be deemed to create a Common Area, nor shall the Association or any Owner be entitled to any right, title or interest in any of the Developer's property unless and until Developer shall formally include such property in the Common Area by a supplemental or amended Declaration. Notwithstanding anything contained herein to the contrary, the Developer shall not be obligated to convey to the Association or otherwise include in the Development any marsh, open space, trail, path, lagoon, pond, natural buffer zone, or other portion of the Property or Additional Property. The Developer, in its sole and absolute discretion, may elect to convey any or all marsh, open space, trail, path, lagoon, stream, pond or other area to any person, including but not limited to a club, association, land-conservation organization, or to the federal, a state or municipal government, or to any body or agency thereof. Common Area established pursuant to a Condominium Declaration or Declaration Plan may be established for the exclusive benefit of the Owners of Units within such Condominium, and, in such event, Owners of Units located outside of the Condominium shall have no interest therein. All of said Common Area shall be subject to the restrictions created hereunder and shall be subject to all easements or rights of way previously granted by the Developer or its predecessors-in-title.

**COMMON EXPENSES** - Shall mean and include the actual and estimated expenses incurred by or on behalf of the Association in accordance with the provisions and intent of this Declaration and shall include amounts necessary to establish and maintain reserve fund(s) determined to be necessary and appropriate by the Board of Directors.

**COMMUNITY** - Shall mean one of those parts of the Development designated on the Record Master Plan and identified as apartment buildings, townhouse/multifamily condominium units and single family detached condominium units.

**CONDOMINIUM** - Shall mean any condominium regime created pursuant to the requirements of Delaware law within the Development. Such Condominium that may be created will be within WaterSide and subordinate to the covenants, condition and restrictions contained in this Declaration. Each such Condominium may have common property and facilities ("Condominium Common Elements") that are maintained for the exclusive use of its Condominium unit owners and shall have the authority and obligation, pursuant to its Condominium governing documents, to impose and collect assessments ("Condominium Assessments") from the Condominium unit owners to operate, maintain, repair and replace its Condominium Common Elements. Such Condominium Assessments shall be in addition to the Assessments imposed by the WaterSide Property Owners Association, Inc. pursuant to this Declaration.

**CONDOMINIUM ASSESSMENTS** - Shall mean those fees charged by a Condominium in order to operate, maintain, repair and replace the Condominium Common Elements for the exclusive use of the Condominium unit owners.

**CONDOMINIUM COMMON ELEMENTS** - Shall mean the common property and facilities of a Condominium that are maintained for the exclusive use of its Condominium unit owners.

**DECLARATION** - This Declaration and all supplements and amendments to this Declaration recorded in the Office of the Recorder of Deeds of Sussex County.

**DECLARATION OF ANNEXATION** - Shall mean all Declarations recorded by the Developer in which property not described in Exhibits "A" or "B" is made subject to this Declaration.

**DEVELOPER** - Bethany Proper Limited Partnership, a Delaware limited partnership, and the successors and assigns as to all or any portion of the interests of Bethany Proper Limited Partnership, in the Property, the Additional Property and the Development. By specific amendment of this Declaration, the Developer may designate the Association as its successor from such time and for such purposes as shall be stated in such amendment.

**DEVELOPMENT** - With an initial capital letter, the Property, both as it is describes in Schedule "A" and "B" as it may at any time and from time to time be enlarged by additions from the Additional and/or Annexable Property, together with all appurtenant easements, leases and licenses as they are described in this Declaration and as are enlarged, diminished or otherwise modified at any time and from time to time by amendment of this Declaration duly recorded.

**DEVELOPMENT PLAT** - Any plat for any portion of the Property or Additional and/or Annexable Property attached to and made a part of this Declaration, and any such plat or amended plat which the Developer from time to time causes to be recorded in the

Office of the Recorder of Deeds for Sussex County; specifically, the first plat of the Property as recorded in the Office of the Recorder of Deeds of Sussex County, at Georgetown, Delaware, in Plot Book 67 at page 128.

**FAMILY** - Shall mean a single housekeeping unit in a detached structure or the portion of a structure within the Development providing complete independent living facilities for one (1) individual or married couple and the children thereof with not more than two (2) other persons, or a group of not more than four (4) persons living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a non-profit, cost-sharing basis.

**FORECLOSURE** - A conveyance of property pursuant to judicial foreclosure of a Mortgage or by a deed given in lieu of a judicial foreclosure.

**LEASE** - Any agreement for the use of property in the Development, whether oral or written, whether in exchange for payment of rent or for other or no consideration, and whether for a term of hours, days, months or years.

**MEMBER** - Shall mean and refer to all those Owners who are members of the Association as provided in Article II, Section 1 of this Declaration.

**MORTGAGE** - A Mortgage to a person, bank, trust company, insurance company, pension fund, other commercial lender (whether organized as a corporation, partnership, or otherwise), or to an organization such as, but not limited to, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, which participates in any way in a secondary market for mortgages.

**MORTGAGEE** - When spelled with an initial capital letter, a holder of a Mortgage.

**MULTI-FAMILY**- Shall mean more than two (2) Units in one structure.

**OCCUPANT** - Any person, including, without limitation, any Owner, member of an Owner's immediate family, guest, tenant or other lawful user of a Unit in the Development.

**OWNER** - When spelled with an initial capital letter, the Developer and any one or more persons or entities holding title of record in a Unit in the Development. Owner shall also mean any Occupant of a Unit, whether under a lease, sublease, or other instrument, or under an unwritten agreement, provided that the Association has written notice of such occupancy signed by the Occupant and the holder of record title stating the name of the Occupant and the period of the occupancy. Owner shall also mean the duly appointed representative of a deceased or incompetent Owner, but shall not mean any one

or more persons or entities holding a fee-simple or leasehold interest merely as security for the performance of an obligation.

**OPEN SPACE AMENITIES** - Trails, paths, woodland, wetlands, ponds and recreational amenities; including but not limited to swimming pool.

**PROPERTY** - Identified on the Development Plan as recorded in the Office of the Recorder of Deeds, in and for Sussex County, at Georgetown, Delaware, in Plot Book 67 at page 128.

**RECORD MASTER PLAN** - Shall mean that plan entitled "WaterSide Revised Preliminary Site Plan" which is recorded in the Office of the Recorder of Deeds of Sussex County in Georgetown, Delaware, in Plot Book 67 at page 128, or as such plan shall be amended by the approved subdivision plans for particular Communities within the Development.

**RIGHTS AND RESPONSIBILITIES PERIOD** - Shall mean those rights and responsibilities that are reserved exclusively to the Developer, pursuant to this Declaration, for the period from the recordation of this Declaration until the later of the conveyance of all Units within Exhibit "A", the Additional Property and the Annexable Property to Owners other than the Developer or December 31, 2020.

**RULES AND REGULATIONS** - Shall mean those Rules and Regulations that may be adopted and/or amended by the Board of Directors as provided in Article IV, of this Declaration or as may be provided in the By-Laws.

**UNIT** - Shall mean and refer to any structure or portion of a structure within the Development whether for business or retail use or any building or part of a building designated as a Unit with its appurtenant limited common elements in a condominium declaration plan.

## ARTICLE II

### DEVELOPER'S RIGHTS AND RESPONSIBILITIES

As the owner of the property subjected to this Declaration and to be subjected to this Declaration through the recordation of Supplementary Declarations and/or Declarations of Annexation, Developer has an interest in the development and construction of the WaterSide. In order to secure the Developer's interests related to the development of the WaterSide and in furtherance of the development and construction of the WaterSide, Developer shall have the benefit of certain rights and shall be encumbered with certain responsibilities relative to the Development.

**Section 2.1. Duration of Developer's Rights and Responsibilities.** The duration of Developer's Rights and Responsibilities shall extend until the later of the conveyance of all Units within Exhibit "A", the Additional Property and the Annexable Property to Owners other than the Developer or December 31, 2020 (hereinafter the "Rights and Responsibilities Period"). Some specific Rights and Responsibilities of the Developer may expire prior to the end of the Rights and Responsibilities Period by virtue of the fact that they are tied to the occurrence of certain events which arise prior to conveyance of all Units. Notwithstanding this duration, the Developer may voluntarily terminate its Rights and Responsibilities by the recordation of a statement so indicating with the Office of the Recorder of Deeds of Sussex County, Delaware.

**Section 2.2. Additional Property**

**2.2.1.** During the Rights and Responsibilities Period, the Developer shall have the unilateral right, but not the obligation, to expand WaterSide by adding all or any part of the Additional Property through the preparation and recordation of one (1) or more Supplementary Declarations with the Office of the Recorder of Deeds of Sussex County, Delaware.

**2.2.2.** The right of Developer to add all or any portion of the Additional Property to the Development shall not be construed as imposing on Developer any obligation to add all or any portion of the Additional Property to the Development, to construct any improvements thereon, or to restrict or limit its use in any manner.

**2.2.3.** Additional Property added to the Development, together with all improvements thereon, shall be deemed submitted to the terms of this Declaration. For all purposes of the Association, including, but not limited to, voting, the number of Units in the Association shall be increased to include Units to be located on that portion of the Additional Property added to the Development.

**2.2.4.** Improvements to portions of the Annexable Property added to the Development shall be subject to the standards and restrictions set forth herein.

**Section 2.3. Annexable Property**

**2.3.1.** During the Rights and Responsibilities Period, the Developer shall have the unilateral right, but not the obligation, to expand WaterSide by adding all or any part of the Annexable Property through the preparation and recordation of one (1) or more Declarations of Annexation with the Office of the Recorder of Deeds of Sussex County, Delaware.

**2.3.2.** The right of Developer to add all or any portion of Annexable Property to the Development shall not be construed as imposing on Developer any obligation



to add all or any portion of the Annexable Property to the Development, to construct any improvements thereon, or to restrict or limit its use in any manner.

2.3.3. Annexable Property added to the Development, together with all improvements thereon, shall be deemed submitted to the terms of this Declaration. For all purposes of the Association, including, but not limited to, voting, the number of Units in the Association shall be increased to include Units to be located on that portion of the Annexable Property added to the Development.

2.3.4. Improvements to portions of the Annexable Property added to the Development shall be subject to the standards and restrictions set forth herein.

**Section 2.4. Amendments to Declaration and Other Governing Documents.** During the Rights and Responsibilities Period, this Declaration may be amended in the sole discretion of the Developer by the recordation of an Amendment to the Declaration with the Office of the Recorder of Deeds of Sussex County, Delaware.

**Section 2.5. Planning, Design, Development and Construction**

2.5.1. Development and Construction. Except as otherwise expressly stated in this Declaration, during the Rights and Responsibilities Period, Developer reserves the right to plan, design, develop, construct, maintain and manage, as Developer deems appropriate for its purposes, the Communities, Common Area, the Additional Property, the Annexable Property and the Developer-owned Communities, or Units.

2.5.1.1. Changes. This reservation of right includes, without limitation, the right to change the number, shape, size and location of Units, the shape, size and location of Communities, Common Area, Open Space Amenities, Additional Property, Annexable Property or any part thereof.

2.5.1.2. Condominiums. This reservation of right further includes, without limitation, the right of the Developer to create, or assign the right to create, one or more Condominiums within the Development, through the preparation and recordation of appropriate Condominium governing documents, which Condominium shall be subordinate to the covenants, conditions and restrictions contained in this Declaration. It is anticipated that such Condominiums may have Condominium Common Elements that are to be maintained for the exclusive use of the owners of units within the Condominium and that such Condominiums may have the authority and obligation to impose and collect Condominium Assessments from its unit owners in order to operate, manage, maintain, repair and replace the Condominium Common Elements. Notwithstanding any assignment by the Developer of the right to create any such Condominium within the

Development or any conveyance of property within the Development which may then be developed as such Condominium, the creation and governing documents of any such Condominium shall, prior to recordation, be reviewed and approved in writing by the Developer.

**2.5.2. Improvements and Changes.** During the Rights and Responsibilities Period, Developer shall have the right, but not the obligation, to make improvements and changes to the Common Area and to any or all Units or any other property owned by Developer, including but not limited to the following: (1) installation and maintenance of any improvements in and to any Common Area or Open Space Amenity; (2) changes in the location of the boundaries of the Common Area, Open Space Amenity and any Unit owned by Developer; (3) changes in the number, shape, size and location of buildings or Units; (4) installation and maintenance of the whole or parts of any water, sewer or other utility system or facility such as, but not limited to, electric, gas, underground gas storage facilities, television cable and its various attendant services, telephone service to include teletype, computer, telex, news service, or computer or any like instrument used in the transmission, reception or retrieval of messages, facts, or information; and (5) installation of security and/or refuse facilities. The Developer or Association shall have the right to collect reasonable fees and charges for activities or the use of its facilities.

**2.5.3. Conveyance of Common Areas.** During the Rights and Responsibilities Period, Developer shall have the right, in its sole discretion, at any time and from time to time, to convey to the Association any Common Area and any other property owned by the Developer contained within Exhibit "A", Additional Property, Annexable Property or any portion or portions thereof, and such property shall be subject to the lien of taxes not yet due and payable, all easements and restrictions of record, utility easements serving or otherwise encumbering the property and/or Additional Property and/or Annexable Property and any exceptions which would be disclosed by an accurate survey or physical inspection of such parcel(s). Additionally, during the Rights and Responsibilities Period, Developer shall have the right to dedicate, transfer or convey all or any of the Common Area, with or without consideration, to any successor association, governmental body, district, agency or authority, or to any public or private utility, provided that it shall promote the interests of the Owners.

**2.5.4. Deannexation.** During the Rights and Responsibilities Period, the Developer may unilaterally amend this Declaration in order to remove (deannex) any portion of the property subjected to this Declaration from the force and effect of this Declaration provided that the property to be deannexed is not owned by a Titleholder other than the Developer and the deannexation is approved by the appropriate governmental entity of the County. Upon the recordation of an amendment to withdraw any portion of the Development, such deannexed property

shall no longer be subject to the provisions of the Declaration except for (i) any easements, rights, reservations, exemptions, powers or privileges reserved to the Developer pursuant to the Declaration which affect the deannexed property and (ii) any other easements, rights, reservations, exemptions, powers or privileges which are expressly reserved to the Developer in the instrument effectuating such deannexation. Such deannexation shall be made by recording a written instrument among the land records of Sussex County, Delaware, withdrawing the effect of the covenants, conditions, restrictions and easements of the Declaration from the deannexed property. This right of deannexation shall be reserved exclusively to the Developer.

**2.5.5. Utilities and Related Facilities.** During the Rights and Responsibilities Period, the Developer, any affiliate of Developer or contractor of Developer, may own any telephone and/or television, water or other utility systems and facilities, or any part of them, serving the Development and shall have the right to charge fees for such utilities and service. Notwithstanding the foregoing, Developer, or any affiliate, owning such system and facilities, or any part of them, shall have the right but not the obligation, to make any part or all of any such system and facilities a part of the Common Area or, at any time and from time to time, convey any part or all of any such system and facilities to the Association, a club, a municipality, county, public authority, governmental agency, public service district or a public or private utility operator.

**2.5.6. Dedication of Roads and Alleys.** The Developer may cause some or all of the roads and alleys in the Development to be dedicated as public roads and alleys at such time, and on such terms and conditions, as the Developer, in its sole and absolute discretion, deems in the best interests to the Development.

**2.5.7. Easements and Rights-of-Way and Rights of Use.**

**2.5.7.1. Construction and Utilities.** Developer shall have the right to reserve and grant easements and rights-of-way through, under, over and across the Common Area, for the installation, maintenance and inspection of lines and appurtenances for the wastewater collection, treatment and disposal system, public or private water, storm sewer, drainage, electric, fuel oil, gas and other utilities and services, including any telephone, television, irrigation or lawn-sprinkler systems or facility, and the right to grant and reserve easements and rights-of-way through, over and upon and across the Common Area for the completion of the Development, for the operation and maintenance of the Common Area, and for the benefit of the Owners.

**2.5.7.2. Use of Roadways, Alleys and Driveways.** Developer shall have the right to use and to allow its invitees to use any and all of the private

roadways, alleys and driveways, parking lots and other necessary portions of the Common Area for ingress and egress.

**2.5.7.3. Swimming Pool.** Developer shall have the right to allow persons other than Owners to use the swimming pool and related facilities and to charge admission and other fees for the use thereof.

**2.5.7.4. Easements for Developer.** During the period that Developer owns any Common Area, or owns any Unit primarily for the purpose of sale or has the option to add the Additional Property and/or Annexable Property or portion thereof to the Development, Developer shall have an alienable and transferable right and easement on, over, through, under and across the Common Area for the purpose of constructing or improving Units, any improvements to the Common Area, the Additional Property, Annexable Property and for installing, maintaining, repairing and replacing such other improvements to the Development (including the Recreational Facility and other portions of the Common Area) as are contemplated by this Declaration or as Developer, in its absolute and sole discretion, deems in the best interest of the Development, including without limitation any improvements or changes permitted and described in this Declaration, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided that in no event shall Developer have the obligation to do any of the foregoing.

**2.5.7.5. Easements for Additional and/or Annexable Property.** The Developer shall have as an appurtenance to the Additional and/or Annexable Property, as a burden upon the Development, perpetual, and non-exclusive rights and easements for (1) pedestrian and vehicular access, ingress, egress and parking over, across within and on all streets, alleys, walks, trails, parking facilities, ponds and lakes from time to time located on or within the Common Area or within easements serving the Common Area, (2) the installation, maintenance, repair, replacement and use of security systems and utility facilities and distribution lines, including without limitation drainage systems, storm sewers and electrical, gas, underground gas storage facilities, oil, telephone, water, sewer and master television antenna and/or cable system lines, and (3) drainage and discharge of surface water onto and across the Development, provided that such drainage and discharge shall not materially damage or affect the Development or any improvements from time to time located thereon.

**2.5.7.6. Wells and Effluent.** The Developer shall have an alienable, transferable and perpetual right and easement to (1) pump water from lakes and other bodies of water located within the Development for the purpose of irrigating any portions of the Development, for fire control and for other

purposes, (2) drill, install, locate, maintain and use wells, pumping stations, water towers, siltation basins and tanks and related water and sewer treatment facilities and systems within the Common Area. The Developer shall have the right, but not the obligation, to assign this right to the Association.

**Section 2.6. Sales Offices, Rental Offices, Property Management Offices and Construction Offices.** Notwithstanding any provisions or restrictions herein to the contrary, during the Rights and Responsibilities Period, there is hereby reserved for the benefit of Developer the perpetual, alienable and transferable right and easement in and to the Development for the maintenance of signs, sales offices, rental offices, property management offices, construction offices, business offices and model or sample homes, together with such other facilities as in the sole and absolute discretion of Developer may be convenient or necessary to the completion, management, rental, improvement and/or sale of Units, Common Area, or the Additional Property or Annexable Property. No rule or action by the Association, the Board of Directors or the Members shall impede the Developer's rights to develop and market the property described in Exhibit "A", the Additional Property and the Annexable Property or impede the Developer's right to sell, lease, or transfer any portion thereof.

**Section 2.7. Voting Rights.** During the Rights and Responsibilities Period, unless relinquished by written instrument recorded among the Land Records of Sussex County, Delaware, Developer shall retain majority voting power in the Association. Developer shall have at least the total number of votes of Class A members combined plus one (1) vote. Upon the expiration of the Rights and Responsibilities Period or upon the recordation of a written instrument specifically relinquishing these voting rights, if the Developer retains ownership of any Units and/or Community, Developer shall become a Class A member.

**Section 2.8. Other Rights and Responsibilities.** In addition to the Rights and Responsibilities outlined in this Article II, Developer shall have such other rights and responsibilities as outlined in this Declaration.

### ARTICLE III

#### PLAN OF DEVELOPMENT AND GOVERNING DOCUMENTS

**Section 3.1. Plan of Development.** The Development initially shall consist of all the property described in Exhibit "A" attached hereto. The Development shall also include the Additional Property and/or the Annexable Property, to the extent that it is submitted from time to time to the provisions hereof for expansion and for Common Area purposes such as storm water drainage systems, utilities and other facilities serving Units. All property within the Development shall be subject to the covenants, easements and restrictions set forth in this Declaration.

**Section 3.2. Interest Subject to Plan of Development.** Every grantee of a Unit shall purchase such Unit or other property, and every holder of a mortgage or other lien, or a security interest in, a Unit shall take such title, lien or security interest with notice of the Developer's plan of development as set forth herein and other provisions of this Declaration, and no conveyance of, lien on, or security interest in a Unit shall have any effect on the right of the Developer to add all or part of the Additional Property and/or Annexable Property to the Development or to convey any interest therein by deed, lease, declaration, mortgage or other means or instrument to a purchaser, lender, or other party. Any provision of this Declaration to the contrary notwithstanding, the provisions of this Article III may not be abrogated, modified, rescinded, supplemented or amended or otherwise affected, in whole or in part except by Developer or with the written consent of Developer.

**Section 3.3. Governing Documents.** The development, construction, maintenance, operation and use of the Development and the Association shall be governed by this Declaration, Supplementary Declarations and Declarations of Annexation, the Certificate of Incorporation, the By-Laws, duly adopted Rules and Regulations and any duly adopted amendments to any of such governing documents.

## ARTICLE IV

### THE ASSOCIATION; MEMBERSHIP AND VOTING RIGHTS

**Section 4.1 The Association.** The Developer has established the Association for the purpose of maintaining and administering the Common Area; providing common services; administering and enforcing covenants, conditions and restrictions contained herein; adopting and enforcing rules and regulations; and levying, collecting and disbursing the Assessments and other charges provided for herein. The Association shall also have the power to provide, and shall provide the following:

**4.1.1.** Operation, care and maintenance of all Common Area and Open Space Amenities as more fully described in Article V; specifically provided, however, that the swimming pool and related facilities shall be made available to tenants of the apartments owned by Developer, its successors or assigns, fronting on County Road 361 and adjacent to WaterSide (to be known as Apartments of WaterSide, if added to the Development, and described within the Additional Property) with the fee to be set by the Association subject to a maximum of 200% of base fee charged to Owners.

**4.1.2.** Insect and pest control to be the extent that the Board of Directors deems it necessary or desirable, and whether or not it supplements any service provided by any government or other agency;

**4.1.3.** Enforcement of all covenants and restrictions affecting the Development;

4.1.4. Maintain and preserve the tidal ditch in the Development.

4.1.5. Construction of such improvements in open spaces and the Common Area as the Board of Directors deems necessary or desirable to serve the convenience or other interest of the members.

4.1.6. Management, legal, accounting, information about membership and other services as may be required to achieve the highest integrity of the Association and a high level of informed participation by members;

4.1.7. Prudent insurance coverage, either independently or in common with the Developer, of the Association, of the Common Acres, of the actions taken on behalf of the Association by its directors and officers, and of such other persons, properties, and activities as the Board of Directors shall deem appropriate.

4.1.8. Maintain and stock such lakes and lagoons as the Board of Directors deems appropriate;

4.1.9. Maintain and preserve wooded areas in the Common Area.

4.1.10 Establish and maintain an internet and/or intranet service in order to communicate with the members and provide information for the benefit of the members so long as such service shall not include a bulletin board or other vehicle for unauthorized posting of information.

4.1.11. Perform any of the functions or services delegated to the Association in any instrument applicable to the Development;

4.1.12. Any and all other services the Board of Directors deems necessary or desirable to further the interests of the Development, of the Owners, or of both.

**Section 4.2. Rules and Regulations.** The Board of Directors of the Association may from time to time adopt reasonable rules and regulations governing the use of Common Area, of Units, and of Open Space Amenities.

**Section 4.3. Membership.** Every person or entity who is an Owner of a Unit and the Developer, (hereinafter collectively referred to as "Members"), and is authorized to vote as provided in this Article, shall be a Member of the Association and shall enjoy all of the benefits of such membership. Membership shall be appurtenant to, and may not be separated from, ownership of a Unit. Conveyance of a Unit shall, without need to specifically provide therein, terminate membership of the grantor in the Association with respect to the Unit conveyed; and, by accepting the conveyance, the grantee shall be deemed to accept membership in the Association.

Section 4.4. Voting Rights.

4.4.1. Class A members shall be all of the owners except the Developer. Class A members shall have one vote for each Unit owned; the owners of a Unit with more than one owner shall share a single vote.

4.4.2. The sole Class B member shall be the Developer. The Developer shall retain majority voting power in the Association. The Developer shall have at least the total number of votes of Class A members combined plus one (1) vote. Upon the expiration of the Rights and Responsibilities Period or upon the recordation of a written instrument specifically relinquishing these voting rights, if the Developer retains ownership of any Units, the Developer shall become a Class A member as may be applicable to the property still owned.

4.4.3. A vote assigned to a Unit shall be cast by one natural person, as a block, and without splitting. A corporation shall vote by a person named in a certificate signed by the President or a Vice-President, attested by the Secretary or an Assistant Secretary, and with the corporate seal affixed. A partnership shall vote by a person named in a certificate signed by all of the general partners. In the case of a Unit with more than one party holding record title, the vote shall be cast by a person designated in a certificate signed by all of the holders of record title. No vote shall be cast by a person named in a certificate given pursuant to this paragraph until the certificate is filed with the Secretary of the Association. Such a certificate shall remain in effect until a new certificate is filed.

4.4.4. Members may vote by a written proxy which shall be good only for the single meeting being held at the place and time, and on the date, stated in the proxy, and the proxy shall be filed with the Secretary before the meeting is called to order.

**Section 4.5. Initial Assessment.** At the time the Developer conveys a Unit to the first buyer of the Unit after its construction, such first buyer shall pay to the Association an Initial Assessment equal to twice the amount of the monthly Assessment for the Unit. Initial Assessments shall be used by the Association as working capital to insure availability of cash for expected and unexpected expenditures, or to acquire equipment or service deemed necessary by the Association. Initial Assessments shall be paid in addition to regular Assessments.

**Section 4.6. Transfer of Membership.** Every conveyance of a Unit, without need for any provision therein, shall transfer the Association membership of the grantor with respect to that Unit; and, by accepting such conveyance, the grantee shall accept Association membership with respect to that Unit. At the time of transfer, notice shall be given to Developer and to the Association through the Managing Agent and grantee shall pay to the Association a Transfer Fee as established by the Association.



**Section 4.7. Managing Agent.** The Association shall employ a Professional Managing Agent at a compensation to be established by the Board of Directors to perform such duties as the Board of Directors shall authorize, except that making assessments and rules and providing that any action by managing agent with respect to hiring and dismissal of personnel, opening bank accounts and designating signatories there to and enforcing rules by legal action shall require the prior written consent thereto of the Board of Directors. The Association shall not manage itself without a Professional Managing Agent. Each Condominium regime must also employ a Professional Managing Agent to perform similar management duties as that of the Association. As compliance with this Declaration and any other Rules and Regulations of the Association is required, any Condominium created within the Development shall utilize the services of the same Professional Managing Agent as that used by the Association shall obtain the prior written consent of the Board of Directors of the Association for any different Professional Managing Agent to be contracted.

**Section 4.8. Assignment of Obligations.** At the request of the Developer, the Association shall accept assignment and delegation of any or all rights and obligations of the Developer under this Declaration.

**Section 4.9. Board of Directors.** Prior to full completion of the Development, but before eighty percent (80%) of the proposed Units are sold, the Board of Directors shall consist of three (3) directors as shall have been designated by the Developer. When eighty percent (80%) of the proposed Units in the Homes of WaterSide and Townhomes of WaterSide are constructed and settled, or seven (7) years, whichever is sooner, the Board of Directors shall consist of five (5) directors as shall have been designated by the Developer. The Association shall be governed by a Board of Directors comprised, upon full completion of the Development of five (5) Directors, all of which shall be owners. There shall be one (1) director who is an owner from each of the following communities: Homes, Townhomes, Apartments and the Commercial Center of WaterSide; there shall be one (1) Director who is an owner, to be elected at large, all as established in the Bylaws of the Association. The Board of Directors shall have the power to perform all rights and duties of the Association unless otherwise specifically reserved to the Association membership in this Declaration or in the Articles of Incorporation or Bylaws of the Association.

**Section 4.10. Limitations.**

**4.10.1.** The Board of Directors shall have the exclusive right to initiate any form of Legal Proceedings as it deems necessary and appropriate related to the use, operation or maintenance of the Common Area, or on behalf of the Association and the welfare of the Owners, subject to the following requirements.

**4.10.2.** "Legal Proceedings", as used in this Article, shall mean the institution of any form of action or suit, EXCEPT the filing and enforcement of liens, the initiation of legal action for routine common expense assessment collection matters, legal actions required to

enforce provisions of the Declaration, rules and regulations with respect to the Common Area or enforcement of service contracts between the Association and non-Developer contractors.

**4.10.3.** All claims, counterclaims, disputes and other matters in question between the Association or the Owners with the Developer arising out of or relating to the obligations of the Developer under the Declaration or any other statute, regulation, ordinance or the defense of any claims or actions relating the Common area or the breach thereof shall be decided by arbitration in accordance with the Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations and restrictions stated in paragraphs 4.10.5 below. This Agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this paragraph will be specifically enforceable under the laws of the State of Delaware.

**4.10.4.** Notice of demand for arbitration must be filed in writing with the other parties to the Declaration and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

**4.10.5.** All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement identifying the total sum or value in controversy as alleged by the party making such demand or answering statement and the arbitrators will not have jurisdiction, power or authority to render a monetary award in response thereto against any party which totals more than such stated amount (exclusive of interest and costs).

**4.10.6.** The limitations and restrictions contained in paragraph 4.10.5. may be waived in whole or in part upon written consent of the Association and Developer as to any claim, counterclaim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute or consent to arbitrate any other claim, counterclaim, dispute or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute or other matter in question which is not specifically described in such consent or which is with any party not specifically described therein.

**4.10.7.** The award rendered by the arbitrators shall be final; judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modification or appeal except to the extent permitted by Section 10 and 11 of the Federal Arbitration Act (9 U.S. C. Sections 10 and 11).

**4.10.8.** Due to the potential adverse financial impact of pursuing Legal Proceedings, the decision to initiate any Legal Proceedings must be made by a resolution duly adopted at a

properly noticed regular or special meeting of the Association held for such purpose. Such resolution shall require the affirmative vote of the Owners representing not less than sixty-seven (67%) of the Class A Members and their mortgagees. If the Association shall incur or potentially be obligated as a result of such resolution to incur attorney's fees, expert fees or other costs associated with such legal proceedings totaling in excess of \$25,000 or if the amount recoverable by an attorney for the Association pursuant to a contingency fee agreement shall exceed \$50,000, then such resolution shall require the affirmative vote of the Owners representing not less than seventy-five (75%) of the Class A Members and their mortgagees. Neither the Board, the Association nor the Owners shall borrow on behalf of the Association nor use any funds from reserves of the Association to pay such legal costs, but the same shall be paid from and limited to the amounts provided in the annual budget for such expenditures for the fiscal year or shall be raised by special assessment levied against the Owners for such purpose. If such Legal Proceedings are not concluded within 1 year of the date of such resolution, the continued prosecution of such Legal Proceedings beyond such period must be reaffirmed annually at a special meeting held for such purpose by the percentage vote of the Association as was required to adopt the original resolution. If the continued prosecution of such Legal Proceedings is not reaffirmed, the action shall be discontinued and the Board shall have no further authority to act as the attorney-in-fact for the Association in the further prosecution or defense of such Legal Proceedings but may, with the affirmative vote of a majority of the vote in the Association, act as its attorney-in-fact with respect to any settlement or compromise of such Legal Proceedings; provided the same is completed with six (6) months thereafter. If the Association, by resolution approved in accordance with this section, authorizes the Board to initiate legal Proceedings, then the decisions relating to the conduct of the Legal Proceedings shall be made by the Board for such purposes. Any action regarding the conduct of the Legal Proceedings shall be approved by a percentage vote of seventy-five (75%) or more of the Board. Decisions regarding the conduct of any Legal Proceedings are non-delegable. Notwithstanding anything contained herein or in the Declaration to the contrary, the provisions of this Section shall not be modified or amended without Developer's written consent so long as Developer owns any property within the Development; thereafter this Section shall not be modified or amended except by a written instrument, executed by the Owners representing not less than eighty-five (85%) of the Class A Members and their mortgagees, and be recorded among the land records of Sussex County.

**Section 4.10.9. Assignment of Obligations.** At the request of the Developer, the Association shall accept assignment and delegation of any or all rights and obligations of the Developer under this Declaration.

ARTICLE V

PROPERTY RIGHTS IN THE COMMON AREA

**Section 5.1. Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Unit.

**Section 5.2. Title to Common Area.** The Developer hereby covenants that on or before December 31, 2020, it will convey to the Association, in such portions as may be convenient to the Developer, by limited warranty deed or deeds, any title in fee simple or in ground lease to the Common Area then retained by the Developer, subject, however to liens of unpaid taxes not then due and payable, to liens and encumbrances of record, to conditions shown by a survey, to conditions shown by an inspection thereof, and to the terms and provisions of this Declaration.

**Section 5.3. Restrictions Upon Owners' Rights.** All titles, leaseholds, and other interests in, and all liens upon, property in the Development shall be held subject to the following:

**5.3.1.** The right of the Developer, and of the Association, to dedicate, transfer or convey all or any of the Common Area, with or without consideration, to any successor association, governmental body, district, agency or authority, or to any public or private utility, provided that it shall promote the interests of the Owners;

**5.3.2.** Easements and rights-of-way through, under, over and across the Common Area, for the installation, maintenance and inspection of lines and appurtenances for the wastewater collection, treatment and disposal system, public or private water, storm sewer, drainage, electric, fuel oil, gas and other utilities and services, including any telephone, television, irrigation or lawn-sprinkler systems or facility, and the right of the Developer to grant and reserve easements and right-of-way through, over and upon and across the Common Area for the completion of the Development, for the operation and maintenance of the Common Area, and for the benefit of the Owners;

**5.3.3.** The right of invitees of the Developer or an Owner to use the private roadways, driveways, parking lots and other necessary portions of the Common Area for ingress and egress;

**5.3.4.** The right of the Association to provide penalties and suspend the rights of any Owner for any period during which any Assessment remains unpaid and for any infraction of this Declaration or the Associations's published rules and regulations;

**5.3.5.** The right of the Developer or the Association to suspend an Owner's voting rights and right to use any of the WaterSide Common Area for a period in which

the Owner is in default in the payment of any Assessment, fee, penalty, interest or any other charge outstanding to the Association. Additionally, such rights may be suspended by notice from the Board of Directors for a period not to exceed ninety (90) days for any single and nonrecurring infraction of the Association's published Rules and Regulations or breach of or default under any of the covenants or provisions of the Declaration. If any such infraction, breach or default is continuous or recurring, then such rights may be suspended for a period commencing on the date the Owner is given notice of the cause for such suspension and ending not more than ninety (90) days after the date such infraction, breach or default ceases or is remedied;

5.3.6. The right of the Developer and the Association, respectively and from time to time to establish rules and regulations, to fix and collect assessments, and to fix fees, charges and penalties.

5.3.7. Other rights and responsibilities of the Developer set forth in Article II and other parts of this Declaration.

5.3.8 The right of the Developer to designate certain parking areas for the exclusive use of the individual Communities and the right of the Association to provide for the exclusive use by certain Members of designated parking spaces and/or parking areas within the Common Area, to establish Rules and Regulations governing the use of Common Area parking spaces and to establish penalties and sanctions, including the right to tow violating vehicles, for infractions of the Rules and Regulations governing parking. With regard to the various parking areas within the WaterSide, the following restrictions are applicable:

5.3.8.1. Parking on any of the Common Areas shall be subject to Rules and Regulations that may be adopted by the Association, as provided for herein, and the Association shall be authorized, but is not obligated to, designate certain parking spaces for the exclusive use of any Owner.

5.3.8.2. Parking spaces that are part of the Condominium Common Elements of a residential Condominium or the Commercial Center within WaterSide may be limited to the exclusive use of the unit owners in such Condominium or Commercial Center and the regulation and/or assignment of such parking spaces shall be controlled by such Condominium or Commercial Center.

**Section 5.4. Delegation of Owner's Rights.** An Owner may delegate to the Owner's family members, employees, tenants, and invitees, in accordance with the By-Laws and the Rules and Regulations established by the developer or Association and not otherwise, the Owner's respective right to enjoyment of the Common Area.

**Section 5.5. Additional Structures.** Neither the Association nor any Owner or any group of Owners shall, without the prior written approval of Developer, allow or cause any structure or other improvement to be placed in or on the Common Area.

**Section 5.6. Access.** All Owners, by accepting title to Units conveyed subject to this declaration, waive all rights of uncontrolled and unlimited access, ingress and egress to and from such Units and acknowledge and agree that such access, ingress and egress to and from such sidewalks, walkways, and trails located within the Development from time to time, provided that pedestrian and vehicular access to and from all Units shall be permitted at all times, subject to the rules and regulations provided for herein.

**Section 5.7. Easements for Developer.** During the period that Developer owns any Common Area, or owns any Unit primarily for the purpose of sale or has the option to add the Additional Property or any portion thereof to the Development, Developer shall have an alienable and transferable right and easement on, over, through, under and across the Common Area for the purpose of constructing or improving Units, any improvements to the Common Area, Condominiums, the Additional Property and the Annexable Property and for installing, maintaining, repairing and replacing such other improvements to the Development (including the Open Space Amenities and other portions of the Common Area) as are contemplated by this Declaration or as Developer, in its absolute and sole discretion, deems in the best interest of the Development, including without limitation any improvements or changes permitted and described in this Declaration, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided that in no event shall Developer have the obligation to do any of the foregoing.

**Section 5.8. Changes in Boundaries; Additions to Common Area.** Developer shall have the right to change and realign the boundaries of the Common Area, any Unit, Open Space Amenity or other portion of the Development owned by Developer, including the realignment of boundaries between adjacent Units, Common Area, and/or any Condominium owned in whole or part by Developer. In addition, Developer reserves the right, but shall not have the obligation, to convey to the Association at any time, and from time to time, any portion of the Additional Property as Common Area upon the terms and subject to the conditions elsewhere provided in this Declaration.

**Section 5.9. Easement for Utilities.** There is hereby reserved for the benefit of Developer and the Association the power to grant and accept easements to and from any private or public authority, agency, public service district, public or private utility or other person upon, over, under and across (1) all the Common Area, (2) a Condominium, or (3) the Commercial Center, for the purpose of installing, replacing, repairing, maintaining and using telephone, television, security and similar systems and facilities, and all utilities, including but not limited to the sewer system, storm sewers, drainage systems, electricity, gas, and water. For so long as Developer owns any portion of the Common Area, owns any Unit primarily for the purpose of sale or has the option to add the Additional Property or any portion thereof to the Development, the Association may not grant or accept any such

easement without the prior written consent of Developer. To the extent feasible, all systems, utilities and facilities in the Development shall be located underground. All of such easements shall be deemed to include permission (1) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities, (2) to cut and remove any trees, bushes or shrubbery, (3) to grade, excavate or fill, or (4) to take any other similar action reasonably necessary to provide economical and safe installation,, maintenance, repair, replacement and use.

**Section 5.10. Easements for Association.** The Association shall have a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including but not limited to any property manager employed by the Association and any employees of such manager, to enter upon and into any Unit, Condominium or Commercial Center or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the Owner, occupant or Condominium, as the case may be.

**Section 5.11. Sales Offices, Rental Offices, Property Management Offices and Construction Offices.** Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Developer, until the Developer owns no Units or until December 31, 2020, whichever is sooner, the perpetual, alienable and transferable right and easement in and to the Development for the maintenance of signs, sales offices, rental offices, property management offices, construction offices, business offices and model or sample Units, together with such other facilities as in the sole and absolute discretion of Developer may be convenient or necessary to the completion, management, rental, improvement and/or sale of Units, Common Area or the Additional Property.

**Section 5.12. Easements for Additional Property.** The Developer shall have as an appurtenance to the Additional Property, and as a burden upon the Development, perpetual, and non-exclusive rights and easements for (1) pedestrian and vehicular access, ingress, egress and parking over, across, within and on all walks, trails, parking facilities and ponds from time to time located on or within the Common Area or within easements serving the Common Area, (2) the installation, maintenance, repair, replacement and use of security systems and utility facilities and distribution lines, including without limitation drainage systems, storm sewers and electrical, gas, oil, telephone, water, sewer and master television antenna and/or cable system lines, and (3) drainage and discharge of surface water onto and across the Development, provided that such drainage and discharge shall not materially damage or affect the Development or any improvements from time to time located thereon.

**Section 5.13. Maintenance Easement.** Subject to the other terms of this Declaration, the Developer and the Association shall have the right and easement to enter upon any unimproved portions of any Unit, Condominium, Common Area or Commercial Center for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps

or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety and appearance within the Development; provided that such easements shall not impose any duty or obligation upon the Developer or the Association to perform any such actions. Furthermore, there is hereby reserved for the benefit of the Developer and the Association an easement, but not an obligation, to enter upon any unimproved portions of Units, Condominiums and Commercial Center located within twenty (20') feet from the water's edge of any pond, ditch or other body of water within the Development for the purpose of mowing such area and keeping same clear and free from unsightly growth and trash, as well as for the purpose of maintaining such body of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards.

**Section 5.14. Environmental Easement.** The Developer and the Association shall have an alienable, transferable and perpetual right and easement on, over and across all unimproved portions of the Common Area, Units and Condominiums for the purposes of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include without limitation the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

**Section 5.15. Wells and Effluent.** The Developer and the Association shall have an alienable, transferable and perpetual right and easement to (1) pump water from ponds and other bodies of water located within the Development for the purpose of irrigating any portions of the Development, for fire control and for other purposes, (2) drill, install, locate, maintain and use wells, pumping stations, water towers, siltation basins and tanks and related water and sewer treatment facilities and systems within the Common Area including within any portion of the Open Space Amenities.

**Section 5.16. No Partition.** There shall be no judicial partition of the Development or any part thereof, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the Development has been removed from the provisions of this Declaration.

**Section 5.17. Jurisdiction.** Notice is hereby given of the restriction that as to any portion of any Unit within the Development which may contain submerged land or other critical areas, all activities on or over and all uses of such land or other critical areas are subject to the jurisdiction of the United States of America or the State of Delaware. An Owner or Condominium is liable for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning and portion of the Owner's or the Condominium's respective property which is submerged land, wetlands or other critical area.

**Section 5.18. Dedication of Roads.** The Developer may cause some or all of the roads in the Development to be dedicated as public roads at such time, and on such terms and



conditions, as the Developer, in its sole and absolute discretion, deems in the best interests to the Development.

ARTICLE VI

**RIGHT OF ASSOCIATION TO ALTER, IMPROVE, MAINTAIN AND REPAIR COMMON AREA AND PORTIONS OF UNITS**

**Section 6.1.** Subject to the Developer's rights provided in this Declaration, the Association shall have the right to make or cause to be made alterations, modifications, improvements, repairs, maintenance and replacements to the Common Area, and to portions of buildings and Units designated herein. The cost thereof shall be assessed as Common Expenses and collected from the Owners according to their respective interests in the Common Area.

**Section 6.2. Responsibilities of Owners and Condominiums.** All maintenance and repair of interior of structures, and other improvements which are not Common Area shall be the responsibility of the Owner thereof. All maintenance and repair of structures, lawns, landscaping and other improvements which are Common Area of a Condominium shall be the responsibility as established by the respective Condominium which is the owner thereof. The maintenance and repair of all other Common Area (including Open Space Amenities) shall be the responsibility of the Association. Developer shall be responsible for the maintenance and repair of structures, lawns, landscaping and other improvements on Developer-owned portions of the Property and Additional Property which are not Common Area. The Association shall provide maintenance and repair which an Owner or Condominium fails to provide and shall charge the respective Owner or Condominium for the cost thereof, including an amount determined by the Association, in its sole and absolute judgment, to reimburse the Association for the time spent in arranging such maintenance or repair by personnel of the Association or of any property manager retained by the Association. The Association shall have a lien on the Unit of the responsible Owner of the Condominium for all such charges, costs and expense. No Owner or Condominium shall (1) decorate, relocate or otherwise alter the exterior or any portion of the exterior of any structure without the prior written approval of the Developer, or (2) do any work which, in the reasonable opinion of the Developer, will jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement or hereditament thereto, without the prior written approval of the Developer.

**Section 6.3. Association's Responsibility.**

**6.3.1.** Except as may be herein otherwise specifically provided, the Association shall maintain, keep in good repair and replace as needed all portions of the Common Area including but not limited to, (1) all Common Area driveways, walks, trails, ponds bike trails, jogging paths, landscaped areas, natural areas, tidal ditch, all Open Space Amenities and all other improvement situated within the Development, (2) such telephone, television, security, utility and other systems and

facilities which are a part of the Common Area and which are not maintained by the Developer, a public authority, public service district, or another public or private party. The Association shall not be liable for injury or damage to any person or property (1) caused by any cause or act of God, or an Owner or any other person, (2) resulting from any rain or other surface water which may leak or flow from any portion of the Common Area, or (3) resulting from any failure or neglect of repair by the Association. The Association shall not be liable to any Owner or invitee of an Owner for loss or damage, by theft or otherwise, of any property stored or left in or upon any portion of the Common Area or any other portion of the Development. No diminution or abatement of Assessments or any dues or charges payable to the Association shall be claimed or allowed by reason of any alleged failure of the Association to take some required action or to perform some required function, or for inconvenience or discomfort arising from the Association making improvements or repairs or from the Association taking any action to comply with any law, ordinance, order or other directive of any court or other governmental authority, the obligation to pay such Assessments being a separate and independent covenant on the part of each Owner.

6.3.2. In the event that any maintenance, repair or replacement performed by the Developer or the Association arises out of any failure of an Owner or Condominium to perform the obligations imposed by this Declaration or arises out of any willful or negligent act of an Owner, of a member of an Owner's family, of an Owner's invitee, or of a tenant, and is not covered or paid for by insurance in whole or in part, then, in either event, the Developer or the Association, may charge such Owner and all other persons responsible with the expenses incurred together with a reasonable amount to cover the cost of the time spent by the personnel of the Developer, the Association, or a property manager in arranging such maintenance, repair or replacement. No such maintenance, repair or replacement shall be undertaken by the Developer or Association, except in an emergency, without giving the Owner notice of the action required and an opportunity to undertake such action. The Developer need not undertake any such action, but may do so. In the event that the Developer undertakes such action the Association shall promptly reimburse the Developer for the Developer's costs and expenses. The Association shall have a lien on the Unit of the responsible Owner or Condominium for all such charges, costs and expense.

## ARTICLE VII

### COVENANT FOR ASSESSMENTS

**Section 7.1. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents and Owners in the Property, the provision of services and facilities authorized by the Board of Directors, taxes and other expenses of the Association, and

particularly for the improvement and maintenance of the Common Areas located in the Property, and for services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereto, for the cost of labor, equipment, materials, management and supervision thereof, and for operating reserve funds and reserve funds for repair and replacement of the Common Areas and facilities thereon. Assessments may be levied to accomplish the purpose and duties of the Association.

**Section 7.2. Creation of Lien and Personal Obligation of Assessments.** The Developer, for itself and its successors and assigns, and for each Unit within WaterSide, hereby covenants, and, except as specifically provided herein, each Owner of any Unit, by acceptance of a deed or other transfer document therefor, whether or not it shall be expressly established in such Deed or other transfer document, hereby covenants and agrees to pay the Association: (1) the initial Assessment, as provided for herein; (2) annual Assessments or charges; (3) special Assessments for capital improvements, operations, repair, replacement and reserve funds, such Assessments to be fixed, established and collected as hereinafter provided; (4) fees established by the Board of Directors; (5) fines and other charges as may be assessed pursuant to this Declaration; and (6) Transfer Fee, as provided herein. The initial, transfer fee, annual and special Assessments and fees, together with penalties, interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property against which each such Assessment is made. Each such Assessment or fee, together with penalties, interest, costs, and reasonable attorney's fees, for the collection thereof, shall also be the personal obligation of the person who was the Owner of such property at the time when the Assessment fell due. A personal obligation for any delinquent Assessment shall not pass to the Owner's successor in title (other than as a lien on the land), unless expressly assumed by them. No Assessments shall be due from any Units owned by the Developer until such Unit is sold and conveyed by the Developer to a Participating Builder, Commercial Builder or other Titleholder.

**Section 7.3. Computation of Assessment.**

**7.3.1.** It shall be the duty of the Board of Directors, at least 60 days before the beginning of the fiscal year and 30 days prior to the meeting at which the budget shall be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming year. The Board shall cause a copy of the budget and the amount of the annual assessment to be levied against each Unit for the following year to be delivered to each Owner at least 15 days prior to the meeting. The budget and the annual assessments shall become effective unless disapproved at the meeting by a vote of at least a majority of the Class A members or by a majority of the then Class B members.

**7.3.2.** Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board of Directors fails for any reason so do determine the budget for the succeeding year, then and until such time as a

budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

7.3.3. All assessments shall be allocated equally among all Units excepting exempt lands as hereinafter provided.

7.3.4. The initial assessments shall be as provided in Article IV.

7.3.5. In addition to the Annual Assessment authorized by Article VII, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereon, and for operating the Common Areas, for which a reserve fund does not exist or is not adequate, provided that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

7.3.6. The Board of Directors may, without the consent of the members, increase the annual assessment in an amount not to exceed twenty percent (20%) of the annual assessment for the preceding fiscal year plus the amount by which any ad valorem real estate taxes and insurance premiums payable by the Association have increased over the amount payable for the same or similar items for the previous year.

7.3.7. The maximum annual assessment may be increased above twenty percent (20%) upon approval of sixty-seven percent (67%) of the votes of the then Class A members and sixty-seven percent (67%) of the votes of the then Class B members, in person or by proxy at a meeting duly called for this purpose.

7.3.8. Written notice of any meeting called for the purpose of taking any action authorized under Sections 7.3.5. and 7.3.7. shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

7.3.9. The Board of Directors may from time to time fix the annual assessment at an amount not in excess of the maximum.

7.3.10. The Board of Directors shall establish and maintain a reserve fund for replacements of the Common Area by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited in any banking account institution, the accounts of which are insured by any state or an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or

fully guaranteed as principal by the United States of America. The reserve for replacements of the Common Areas may be expended only for the purpose of effecting the replacement of the Common Areas, major repairs to any equipment or replacement thereof, and for start-up expenses and operating contingencies of a nonrecurring nature relating to the Common Areas. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of member in any such reserve shall be considered an appurtenance of his Unit and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Unit to which it ascertains and shall be deemed to be transferred with such Unit.

**Section 7.4. Effect of Nonpayment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of the Association.** If any Assessment is not paid on the date when due as hereinabove provided, then such Assessment shall be deemed delinquent and together with such interest and cost of collection thereof, including reasonable attorneys' fees, as hereinafter provided, continue as a lien on the Unit and any structure built thereon which shall bind such Unit in the hands of the then Owner. In addition to such lien rights, the personal obligation of the then Owner to pay such Assessment, however, shall remain his personal obligation and shall not pass to his successors in title (other than as a lien on the land) unless expressly assumed by them. If the Assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of the legal interest rate authorized by 6 Del. C., Section 2301, as amended, and the Association may bring a legal action against the Owner personally obligated to pay the same or may enforce or foreclose the lien against the Unit, and in the event a judgment is obtained, such judgment shall include interest on the assessment above provided and reasonable attorneys' fees to be fixed by the court, together with the cost of the action. No Owner of a Unit may waive or otherwise escape liability or the Assessment provided for herein by non-use of the Common Areas or abandonment of said Unit.

**Section 7.5. Assessment Lien.** The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage on the Unit. Sale or transfer of any Unit, shall not affect the assessment lien. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 7.6. Exceptions for Assessments.** The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

**7.6.1.** All properties dedicated to and accepted by a governmental body, agency or authority and devoted to public use;

**7.6.2.** All Common Areas;

7.6.3. During the Developer's Rights and Responsibilities Period, all Units owned by the Developer and any successor to the Developer, and not sold or leased by the Developer or its successor to third persons shall be exempt from the Assessments, charges and liens created herein. Upon the expiration of the Developer's Rights and Responsibilities Period, said Units will be subject to the Assessments of the Association applicable to such Units. During the Developer's Rights and Responsibilities Period, the Developer may, but shall not be required to, fund the deficit of the Association on an annual basis.

Section 7.7. Uniform Rate of Assessment. Both annual and special Assessments must be fixed for each Unit at the same amount as for every other Unit, and shall be collected in one installment or more, as the Board of Directors may from time to time decide.

Section 7.8. Assessment Lien and Mortgages. The lien for unpaid Assessments shall be subordinate to any first lien of a Mortgage. Sale or transfer of a Unit shall have no effect on a lien for unpaid Assessments, except that any sale or transfer pursuant to foreclosure of a Mortgage or any deed or other proceeding in lieu thereof shall extinguish a lien for unpaid Assessments as to payments which became due prior thereto, but shall have no effect on a lien for Assessments becoming due thereafter. The personal liability of Owners for payment of Assessments in arrears shall not be extinguished by reason of the provisions of this paragraph.

## ARTICLE VIII

### USE RESTRICTIONS

Section 8.1. Conformity and Approval of Structures. Except for those parts of the Property subjected to the Unit Property Act, no structure, fence, wall, drive or other improvement shall be placed or altered on any Unit except in accordance with the provisions of this Declaration.

Section 8.2. Fences. No fences whatsoever shall be erected or allowed to remain in the Development except strip fencing for decorative and/or screening purposes and which shall not exceed six feet (6') in length and four feet (4') in height and shall be set back from Unit lines at such distance as the Developer in his sole discretion may require. Said fences shall be allowed only after obtaining prior written approval of the Developer.

Section 8.3. Swimming Pools. No swimming pools whatsoever shall be erected or allowed to remain in the development except as the Developer in its sole discretion may approve or except those erected by the Developer in Common Areas.

Section 8.4. Residential Use of Units. Except for Units designated by Developer, all Units shall be used for single-family residential purposes exclusively; provided, however, that nothing contained herein shall be construed to prevent the Developer from

maintaining one or more model homes and/or sales offices in the Development for the purpose of selling, leasing or managing Units or other property in or near the Development.

**Section 8.5. Prohibition Against Business Activity.** Except for Units designated by the Developer for commercial purposes or Open Space Amenities, no business activity, including but not limited to, rooming house, boarding house, gift shop, antique shop, professional office or beauty/barber shop or the like or any trade of any kind whatsoever shall be carried on upon or in any Unit; provided, however, that nothing contained herein shall be construed so as to prohibit home offices so long as there are no employees working from the Unit and no patrons, customers, clients or business visitors who frequent the Unit, no temporary parking needs, no commercial deliveries and no signs. Nothing herein shall be construed to prevent the Developer from constructing Units to be sold or leased, from showing a Unit for the purpose of selling or leasing the Unit shown or another, or from placing and maintaining signs, structures, storage places, facilities and offices it deems necessary.

**Section 8.6. Association Office.** Nothing in this Declaration shall be construed to prohibit the Association from constructing, operating, occupying and maintaining a facility for use as its office and headquarters, for the benefit of the Association and its members, provided that such facility shall first be approved in all respects in writing by the Developer.

**Section 8.7. Temporary Structures, Vehicles, Boats and Trailers.** No structure of a temporary character shall be placed upon any Unit at any time; provided, however, that this prohibition shall not apply to shelters approved by the Developer and used by a contractor during construction of a Unit, it being clearly understood that the latter temporary shelters may not, at any time, be used for residence or remain on the Unit after completion of construction. No trailer, mobile home, double-wide, park model trailer, motor home, tent, barn, camper, bus, tree house or other similar vehicle, out-building or structure shall be placed, kept or parked on any Unit or on any portion of the Common Area at any time either temporarily or permanently, provided, however, the Developer and the Association may designate one or more areas in the development for regulated storage and long-term parking.

**Section 8.8. Mining and Drilling Prohibition.** No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon or in any Unit, and no derrick or other structure designed for use in boring for oil or natural gas shall be stored, erected, maintained or permitted in the Development.

**Section 8.9. Re-Building Requirement.** Any dwelling or out-building on any Unit which may be destroyed in whole or in part by fire, windstorm or any other cause or act of God must be rebuilt, or all debris removed and the Unit restored to a natural condition, within nine months or such shorter period of time as may be reasonable.

**Section 8.10. No Expansion of Units.** No structure shall be expanded, horizontally or vertically. Enclosures of existing porches shall be allowed only after prior written approval of the Developer.

**Section 8.11. Elevation and Drainage Changes.** No changes in the elevation, topography or drainage characteristics of the Development shall be made without the prior written approval of the Developer nor shall any fill be used to extend any property into any state or federal wetlands.

**Section 8.12. Tree Removal.** No trees or bushes of any kind having a diameter of six (6") inches or more (measured from a point two (2') feet above the ground level) shall be removed from any Common Area of the Development or of any Condominium without the express written authorization of the Developer. Developer shall further have the authority to require any Owner removing a tree in violation of this clause to replace same at such Owner's cost.

**Section 8.13. Clotheslines.** No clothesline or drying yards shall be located upon the premises. No towels, blankets or the like shall be hung or placed on the front or rear porch, decks, railing or structure.

**Section 8.14. Sewer System.** No surface toilets or septic tanks are permitted in the Development (other than those utilized by the Developer.)

**Section 8.15. Garbage/Trash Disposal.** Each Owner shall provide garbage and trash receptacles or similar facilities in accordance with reasonable standards established by the Developer or the Association, which receptacles shall be visible from the streets on garbage pickup days only. The Developer or Association may from time to time adopt rules and regulations for the sorting of garbage and trash into separate receptacles or other handling according to the nature of the materials or otherwise to aid in recycling or other processes with beneficial impact on the environment. No garbage or trash incinerator shall be permitted. No burning, burying or other disposal of garbage or trash on any Unit or within the Development shall be permitted. The Developer or Association may from time to time adopt rules and regulations, including designation of the persons and methods, for garbage/trash collections and disposal, and all Unit owners shall be bound thereby.

**Section 8.16. Sign Controls.** No signs of any character shall be erected on any Unit or displayed to the public on any Unit except "For Sale" signs by Developer. This restriction shall not apply to signs used to identify and advertise the subdivision as a whole, nor to signs for selling Units and/or houses during the Developer's Rights and Responsibilities Period. Also, the provisions of this Section shall not apply to anyone who becomes the owner of any Unit as purchaser at a judicial or foreclosure sale conducted with respect to a first mortgage or as transferee pursuant to any proceeding in lieu thereof.



**Section 8.17. Natural Buffer Zone.** No Unit Owner and no Unit Owner's family, guests, tenants, agents or employees shall disturb any natural buffer zone in any manner and/or for any reason. If natural buffer zone is disturbed, the Unit Owner responsible will be required to pay all costs incurred by the Developer and the Association as a result of its attempt to restore the area to its natural state.

**Section 8.18. Exclusion of Above Ground Utilities.** All electrical service, wires, pipes, lines, telephone, cable television (CATV) lines and utility services of any type shall be placed in appropriate conduit underground as possible and no outside electrical lines shall be placed overhead. No exposed or exterior radio or television transmission or receiving antenna shall be erected, placed or maintained on any part of the Development without the prior written consent of Developer or assignees and except those master facilities approved by the Developer, provided, however, that the normal service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the Development. Overhead utilities shall be permitted during the construction period and until utility companies can place them underground.

**Section 8.19. Certain Parking Prohibited.** No travel trailers or mobile homes, campers or other habitable motor vehicles of any kind, whether self-propelled or not, school buses or commercial vehicles, shall be kept, stored or parked in the Development except in a garage or in an area designated by the Developer or Association for such parking. In addition, the Developer or Association may make and enforce rules and regulations prohibiting or governing the parking of vehicles and/or equipment in the Development.

**Section 8.20. Junk or Disabled Vehicles.** No stripped, partially wrecked, unlicensed or invalidly licensed, disabled or junk motor vehicle, or part thereof, shall be permitted to be parked or kept in the Development. The following activities are prohibited: vehicle repair, bodywork, oil change, engine maintenance and the like except cleaning and washing Owners' own vehicles; no vehicles shall be maintained on jacks or blocks except temporary usage for emergency tire change.

**Section 8.21. Pets.** No animals, livestock, birds, or fowl shall be kept or maintained on any part of the Development except dogs, cats, pet fish and birds housed in a Unit in reasonable numbers (not to exceed three) as pets for the pleasure and use of the Owner but not for any commercial use or purpose. All animals must be kept on a leash when they are outside the Owner's Unit and must not become a nuisance to other resident by barking or other acts. Non-owners (e.g. renters or lessees) may not keep any pets, without prior written approval of the Owner, said approval to be filed with the Association.

**Section 8.22. Perimeter Access.** There shall be no access to any Unit on the perimeter of the Development except from designated roads within the development; provided, however, that Developer reserves the right to construct and operate temporary construction roads during the construction and development period.

**Section 8.23. Rental of Units.** The Developer or Association may from time to time adopt rules and regulations pertaining to the rental of Units. Owners of rented Units shall be personally liable for the failure of a tenant or any invitee of a tenant to abide by rules and regulations pertaining to the use or occupancy of the Development.

**Section 8.24. Rentals.** The rental agreement shall give the lessee notice of this Declaration, the Bylaws, and any and all Rules and Regulations that have been duly adopted by the Association and shall provide that the failure of the lessee to comply with the requirements of these governing documents shall be considered a breach of the rental agreement and shall be grounds for eviction. A copy of the rental agreement covering a period longer than five (5) months shall be filed with the Association promptly upon being entered into by the parties. In addition to these requirements, the Developer or Association may from time to time adopt Rules and Regulations pertaining to the rental of Units and the obligations of lessees. Owners of rented Units shall be personally liable for the failure of a tenant or any invitee of a tenant to abide by Rules and Regulations pertaining to the use or occupancy of the Development.

**Section 8.25. Prohibition of Open Outdoor Storage.** No material of any kind shall be stored on a Unit other than in an approved enclosed structure, which shall be attached to the principal dwelling. Firewood and bicycles may be stored outside in side or rear yards only, provided they are not visible from any Common Area, easement, street or Open Space Amenity.

**Section 8.26. Prohibition of Accessory Structures.** No dog house, garage, carport, or any other accessory structure shall be constructed upon any Unit, except an attached storage compartment, porch, swing set or similar play structure which has been approved in writing by the Developer prior to installation or construction.

**Section 8.27. Landscaping.** Owners are encouraged to provide landscaping for their Limited Common Elements; provided, however that Developer reserves the right to reasonably restrict the placement of landscaping, improvements or other impediments to the enjoyment of views. No vegetable garden shall be located in the area between the street or driveway line and the street front of the Unit. Grasses, lawn growth or weeds shall be limited to a maximum of six (6) inches in height. Developer and Association reserve the right to enter onto any parcel after notice and an opportunity to maintain landscaping and grass height, and cut any grass, lawn or weeds which continues to exceed six (6) inches in height after said notice, and to assess the cost to the Owner thereof in the same manner as Assessments. Notwithstanding the above, all new landscaping and modifications to existing landscaping shall require the prior approval of Developer in accordance with the Rules and Regulations.

**Section 8.28. Postal Service.** No individual mail receptacles shall be placed on any Limited Common Element. Cluster mailboxes shall be placed as approved by Developer.

**Section 8.29. Special Hazards.** Each Owner accepts and assumes all the risks and hazards of ownership or occupancy attendant to the ownership of such Owner's Unit, including but not limited to its proximity to any recreational facility or Common Area or the marsh and other bodies of water in or near the Development. Specifically, the Developer does hereby disclaim any and all liability for any property damage or personal injury resulting from erosion along the bank of the marsh, and all ditches, streams, ponds or other bodies of water or watercourses located in the Development.

**Section 8.30. Land Fronting Ponds, Wetlands and Marshes.**

**8.30.1.** No foliage or vegetation within 25 feet of any pond, wetland, marsh or ditch shall be removed or altered without permission of the Developer or the Architectural Review Board.

**8.30.2.** An Owner of a Unit near a pond, wetland, marsh or ditch may maintain and mow the area between the Unit and the pond, lagoon, marsh or ditch even though such area may be owned by the Developer, the Association or others.

**8.30.3.** The Association shall have the authority to build bridges and walkways around ponds, wetlands, marshes, ditches or on Common Area.

**8.30.4.** No waste, garbage, or waste waters are to be discharged, dumped or otherwise placed in ponds, wetlands, or marshes or ditches.

**8.30.5.** The Association shall have the authority to establish rules and regulations governing wetlands, ponds, marshes, ditches and Common Area, and fines and other penalties for their violation.

**Section 8.31. Traffic Regulations.** The Developer and the Association may from time to time adopt rules and regulations pertaining to vehicular and pedestrian traffic in the Development, including but not limited to speed, right of way, and parking, and all vehicular and pedestrian traffic within the Development shall obey the laws of the State of Delaware. Employees and agents of the Developer or the Association shall have the power to issue notices of violation of such rules and regulations, and the Developer or Association shall have the power to set the amounts and procedures for collecting fines for violations, and to adopt such other means of enforcement as either deems appropriate. Specifically prohibited, however, is the placement of any speed bumps in the streets of the Development. There shall be no right to impede the streets or alleys or to create or participate in any activity creating a nuisance in any street.

**Section 8.32. Motor Bikes, All Terrain Vehicles.** No motor bikes, motorcycles or all terrain vehicles shall be driven upon the WaterSide Common Area, Condominium common elements, Condominium limited common elements or roads within WaterSide, with the

exception of licensed vehicles and mopeds which shall be operated solely upon the streets, within WaterSide for direct ingress and egress purposes only.

**Section 8.33. Alteration of Common Area.** No person shall alter in any way any Common Area except with the written permission of the Developer or Association.

**Section 8.34. Easements and Encroachments.** No building or part of a building, including porches or projections of any kind, shall be erected so as to extend over or across any of the building lines as hereinafter established. Provided, however, if any portion of any Common Area unintentionally encroaches upon a Unit or any part thereof, whether by settlement or otherwise, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of improvements to a Unit or Units unintentionally encroaches upon a Unit or any portion thereof, whether by settlement or otherwise, a valid easement for encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event any improvement or part thereof is partially or totally destroyed and then rebuilt, any encroachment or any Common Area upon a Unit or Units or encroachment of a Unit or Units upon any Common Area or upon an adjoining Unit or Units resulting because of such rebuilding, shall be permitted, and a valid easement shall exist for the maintenance of such encroachments so long as the same stand. Such encroachments and easements shall not be considered or determined to be encumbrances either on any Common Area or any Unit or Units, and no Owner shall be entitled to damages or injunctive relief because of the construction, re-construction or maintenance thereof.

**Section 8.35. Division of Units and Land.** No Condominium Unit shall be subdivided into more than one Unit. The Developer may alter building or set-back lines as appropriate. The Developer may change the number of townhouse condominium units single family detached condominium units and apartment units. Any such division or reversion shall be free of any interference from another Owner.

**Section 8.36. Alteration of Building Lines in the Best Interest of Development.** Where because of size, natural terrain, or other reason it is in the best interest of the Development that any building lines be altered, the Developer may make such alteration in its sole and absolute discretion. The Developer specifically reserves the right to assign to the Association this right to alter building lines.

**Section 8.37. Ponds and Wetlands.** The Developer or Association may from time to time make rules and regulations forbidding the use of ponds, wetlands, marshes and ditches for any purpose or for the use of such ponds and wetland and marshes subject to such restrictions as, in the absolute discretion of the Developer or the Association, shall be deemed appropriate. No party other than the Developer or Association may withdraw water from any pond. No Owner shall use any insecticide, pesticide or hazardous material within twenty-five (25') feet of a pond.

**Section 8.38.** The provisions of Article VIII, Sections 8.2 Fences, 8.3 Swimming Pools, 8.4 Residential Use of Units, and 8.5 Prohibition Against Business Activity, not apply to Common Area.

**Section 8.39.** None of the foregoing restrictions shall be applicable to the activities of: (a) the Developer, its officers, employees, agents or assigns, in the development, marketing and sale of Units, units or other parcels within the Project; or (b) the Association, its officers, employees and agents in connection with the proper maintenance, repair, replacement and improvement of the Common Areas.

ARTICLE IX

INSURANCE

**Section 9.1. Required Coverage.**

**9.1.1. Required.** The Board of Directors of the Association, or its duly-authorized agent, shall be required to obtain, maintain and pay the premiums, as a common expense, upon a policy of property insurance covering all the Common Areas including fixtures and building service equipment, to the extent that they are a part of the Common Areas of the Association, as well as common personal property and supplies.

**9.1.2. All-Risk; Replacement Cost.** The insurance policy shall afford, as a minimum, protection against loss or damage by fire and other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "All Risk" endorsement, where such is available. The policy shall be in an amount equal to one hundred percent (100%) of the current replacement cost of the Common Areas (less a deductible deemed reasonable by the Board of Directors) and shall name the Association as the named insured.

**9.1.3. Insurance Carrier.** Each hazard insurance policy must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports of "A/V" or better (or its equivalent). Hazard insurance policies are also acceptable from any insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided it has a general policyholder's rating of at least "A/V." Each insurer must be specifically licensed or authorized by law to transact business within the State of Delaware. The policy contract shall provide that no assessment may be made against the mortgagees, and that any assessment made against others may not become a lien on the mortgaged premises superior to the first mortgage.

**9.1.4. Mortgagee Clause.** If the Common Areas are subject to the lien of a mortgage, all policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutions as mortgage investors in the area in which the mortgaged premises are located. The mortgagee clause must provide that all property insurance policies must provide an Agreed Amount and Inflation Guard Endorsement, if available, and a Construction Code Endorsement if the Common Areas in the Association are subject to a construction code provision which would become operative and require changes to undamaged portions of the buildings(s), thereby imposing significant costs in the event of partial destruction of the project by an insured peril.

**9.1.5. Flood Insurance.** If any portion of the Common Areas are in a special flood hazard area, as defined by the Federal Emergency Management Agency, the Board of Directors of the Association, or its duly-authorized agent, shall be required to obtain, maintain and pay, as a common expense, the premiums upon a "master" or "blanket" policy of flood insurance on Common Area buildings and any other Common Area property. The policy shall be in an amount deemed appropriate, but not less than the maximum coverage available under the NFIP for all buildings and other insurable property within any portion of the Common Areas located within a designated flood hazard area or one hundred percent (100%) of current replacement cost of all such buildings and other insurable property. Unless a higher maximum amount is permitted under the laws of Delaware, the maximum deductible for flood insurance shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the face amount of the policy.

**9.1.6. General Liability Insurance.** The Association shall maintain comprehensive general liability insurance coverage covering all of the Common Areas, public ways of the project, and other areas that are under its supervision (including, but not limited to, commercial spaces, if any, owned by the Association, whether or not they are leased to third parties). Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use. However, such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insured for property maintenance or sue of the Common Areas, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. Such insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer for denying the claim of an Owner because of neglect acts of the Association or other Owners. Such policies must provide that they may not be canceled or substantially modified, by any party, without at least then (10) days' prior written notice to the Association.

**9.1.7. Bonds.** Blanket fidelity bonds shall be required to be maintained by the Association for all officers, directors, managers, trustees, employees and volunteers

of the Association and all other persons handling or responsible for funds held or administered by the Association, whether or not they receive compensation for their services. Where the Association has delegated some or all of the responsibility of the handling of funds to a management agent, such management agent shall be covered by its own fidelity bond. Except for fidelity bonds that a management agent obtains for its personnel, all other bonds should name the Association as an obligee and should have their premiums paid as a common expense by the Association. The total amount of fidelity coverage required shall be sufficient to cover the maximum funds that will be in the custody of the Association or management agent at any time, but must at least equal the sum of three (3) months' assessments on all Units with the Property, plus the Association's reserve funds. The bonds shall provide that they cannot be canceled or substantially modified (including cancellation for nonpayment of premium) without at least then (10) days' prior written notice to the Association and to all Mortgagees.

**9.1.8. Directors and Officers Liability Insurance.** The Board of Directors of the Association shall maintain directors and officers liability insurance coverage covering the Association, all of the officers, directors, managers, including the Professional Management Agent, trustees, employees and volunteers of the Association and the Association itself, whether or not they receive compensation for their services. The insurance policy shall afford, as a minimum, protection against those perils which are customarily covered with respect to not-for-profit associations. The Association shall be the owner of the policy and shall have the premium paid as a Common Expense by the Association.

**Section 9.2. Policy Requirements.**

**9.2.1. Periodic Reviews.** The Board of Directors of the Association shall arrange for periodic reviews of the sufficiency of its insurance coverage.

**9.2.2. Deductibles.** The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of this Article. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage except to the extent that the Board of Directors reasonably determines that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees or tenants in which case the Board may assess the full amount or any proportionate share of the deductible against such Owner(s) and their Unit(s). Such assessed amounts shall be collectible in the same manner as Assessments pursuant to Article VII of this Declaration.

**9.2.3. Policy Provisions.** To the extent reasonably available, the policies of insurance shall:

9.2.3.1. Be written in the name of the Association as trustee for the benefitted parties;

9.2.3.2. Not be brought into contribution with insurance purchased by Owners, Occupants or their Mortgagees, individually;

9.2.3.3. Provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member of the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);

9.2.3.4. Provide a waiver of subrogation under the policy against any Owner or household member of an Owner;

9.2.3.5. Include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable amount of time to cure; and

9.2.3.6. Include an endorsement requiring at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification or non-renewal.

**Section 9.4. Individual Insurance.** By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Developer and the Association that each Individual Owner shall carry blanket all-risk casualty insurance on the Unit in accordance with the standards set forth in this Article. Each individual Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction to the Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structures in a manner consistent with the original construction.

**ARTICLE X**

**CASUALTY DAMAGE RECONSTRUCTION OR REPAIR**

**Section 10.1. Repair and Reconstruction of Common Areas After Fire or Other Casualty.**

**10.1.1. Prompt Repair.** Except as hereinafter provided and inconsistent herewith), in the event of damage to or destruction of any portion of the Common Areas covered by insurance payable to the Association as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration



thereof, and the Board of Directors or the Insurance Trustee (as hereinafter defined), as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration, as provided below.

**10.1.2. Certificate for Trustee.** The Insurance Trustee may rely upon a certificate of the Board of Directors which certifies whether or not the damaged Property is to be reconstructed or repaired. The Board of Directors, upon request of the Insurance Trustee, shall deliver such certificate as soon as practicable.

**10.1.3. Estimate Required.** Immediately after a casualty causing damage to the Common Areas for which the Association has the responsibility of maintenance, repair, and/or replacements, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged portions of the Common Areas in as good a condition as existed before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of directors desire.

**10.1.4. Insurance Trustee.** In the event of reconstruction or repair (as estimated by the Board of Directors) which shall exceed Twenty-five Thousand Dollars (\$25,000), all proceeds of insurance shall be paid over to a trust company or bank having trust powers and authorized to engage in the trust business in the state of Delaware (hereinafter the "Insurance Trustee"), selected by the Board of Directors and shall be paid out from time to time as the reconstruction and repair progresses in accordance with the provisions of an Insurance Trust Agreement and which contains, inter alia, the following provisions:

**10.1.4.1.** The reconstruction or repair shall be in the charge of an architect or engineer, who may be an employee of the Association, and hereinafter called the "Architect;"

**10.1.4.2.** Any restoration or repair of the project shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by at least fifty-one percent (51%) of the Mortgagees (based upon one vote for each first mortgage owned), and the Owners (other than the Developer) of two thirds (2/3) of the Units;

**10.1.4.3.** Each request for an advance of the proceeds of insurance shall be made to the Insurance Trustee and shall be accompanied by a certificate from the architect and Board of Directors to the effect that (i) all work then completed has been performed in accordance with the plans and specifications; and (ii) the amount requested to be advanced is required to reimburse the Board of Directors for payment previously made by the Board of Directors or is due to the contractor responsible for the restoration or repair, or to subcontractors, materialmen, laborers, engineers, architects or

to other persons responsible for services or material in connection with such restoration or repair, or for fees or the like necessarily incurred in Connection with the same; and (iii) when added to amount previously advanced by the Insurance Trustee, the amount requested to be advanced does not unreasonably exceed the value of the work done and materials delivered to the date of such request;

**10.1.4.4.** Each request for an advance of the proceeds of insurance shall be accompanied by satisfactory waivers of liens covering that portion of the repair or reconstruction for which payment or reimbursement is being requested, together with appropriate evidence from a title insurance company or the like to the effect that there has not been filed with respect to the Common Areas, or any part thereof, any mechanics' or other lien, or notice of intention to file the same, which has not been dismissed, bonded, or satisfied of record;

**10.1.4.5.** The fees and expenses of the Insurance Trustee, as agreed upon by the Board of Directors and the Insurance Trustee, shall be paid by the Association as a common expense, and such fees and expenses may be deducted from any insurance proceeds in the hands of the Insurance Trustee, pro rata, as the reconstruction or repair progresses;

**10.1.4.6.** Such other provision not inconsistent with the provisions hereof as the Board of Directors or the Insurance Trustee may reasonably require.

**10.1.5. Proceeds.** Upon completion of the reconstruction or repair and payment in full of all amounts due on account thereof, any proceeds of insurance then in the hands of the Insurance Trustee shall be paid to the Board of Directors if such funds relate to Common Areas, or (ii) to the Owner of any Unit to which any such proceeds may relate.

## ARTICLE XI

### MORTGAGEES RIGHTS

**Section 11.1. Consents By Mortgagees.** Any other provision of this Declaration or the By-Laws or Certificate of Incorporation of the Association to the contrary notwithstanding, neither the members, the Board of Directors nor the Association shall, by act or omission, take any of the following actions:

**11.1.1. Abandon, Transfer or Sale.** Abandon, partition, alienate, release, hypothecate, dedicate, subdivide, encumber, sell or transfer any of the Common Areas or community facilities directly or community facilities directly or indirectly

owned by the Association unless at least fifty-one percent (51%) of the Mortgagees (based on one vote for each first mortgage owned) and Owners representing sixty-seven percent (67%) of the total voting power in the Association have given their prior written approval; provided, however, that the granting of rights-of-way, easements and the like for public utilities or for other purposes consistent with the use of the Common Areas by the members of the Association shall not be considered a transfer within the meaning of this Section; or

**11.1.2. Vote Required.** Abandon or terminate this Declaration unless at least sixty-seven percent (67%) of the Mortgagees (based on one vote for each first mortgage owned) and Owners representing ninety percent (90%) of the total voting power in the Association have given their prior written approval; or

**11.1.3. Material Provisions.** Except as otherwise provided in this Declaration, unless the prior written consent of fifty-one percent (51%) of the Mortgagees (based upon one vote for each first mortgage owned) and the requisite number of Owners as provided in Article XII of this Declaration has been obtained, modify or amend any material provision of this Declaration, which establish, provide for, govern or regulate any of the following:

**11.1.3.1.** Voting rights;

**11.1.3.2.** Assessments, Assessment liens or subordination of such liens;

**11.1.3.3.** Reserves for maintenance, repair and replacement of the Common Areas;

**11.1.3.4.** Insurance or fidelity bonds;

**11.1.3.5.** Rights to use the Common Areas by any Owner, except as otherwise may be provided.

**11.1.3.6.** Responsibility for maintenance and repairs;

**11.1.3.7.** Expansion or contraction of the property subject to this Declaration or the addition, annexation or withdrawal of property to or from this Declaration, except for addition and annexation by the Developer as provided in Article II;

**11.1.3.8.** Boundaries of any parcel, condominium common or limited common elements;

**11.1.3.9.** A decision by the Association to establish self management when professional management had been previously required by a Mortgagee;

11.1.3.10. Leasing of Units, with the exception of the adoption of Rules and Regulations as provided in this Declaration;

11.1.3.11. Imposition of any restriction on the rights of an Owner to sell or transfer his or her Unit;

11.1.3.12. Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than the specified in the documents;

11.1.3.13. Any provisions which expressly benefit mortgage holders, Mortgagees or insurers or guarantors. An addition or amendment to the Declaration shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only;

11.1.4. Assessments. Substantially modify the method of determining and collecting Assessments against an Owner or his Unit as provided in this Declaration, unless at least sixty-seven percent (67%) of the first Mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the Developer) of sixty-seven percent (67%) of each Class of Membership of the Association have given their prior written approval; or

11.1.5. Enforcement. Waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of buildings or structures, the exterior maintenance of buildings or structures, the maintenance of the Common Areas, party walkways or common driveways, or the upkeep of lawns and planting within the Development unless at least sixty-seven percent (67%) of the first Mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the Developer) of sixty-seven percent (67%) of the total voting power in the Association have given their prior written approval; or

11.1.6. Insurance. Fail to maintain insurance in accordance with this Declaration unless at least fifty-one percent (51%) of the eligible Mortgagees (based upon one vote for each first mortgage owned) and the Owners of sixty-seven percent (67%) of the total voting power of the Association have given prior written approval; or

11.1.7. Vary Use of Proceeds. Use hazard insurance proceeds for losses to any Association Common Area for other than the repair, replacement or reconstruction of such Common Area or property, unless at least fifty-one percent (51%) of the Mortgagees (based upon one vote for each first mortgage owned) and the Owners of sixty-seven percent (67%) of the total voting power of the Association have given prior written approval.

**11.1.8. Deemed Approval.** Any Mortgagee who receives a written request to approve any additions or amendments but fails to submit a response within thirty (30) days shall be deemed to have approved such request.

**Section 11.2. Additional Rights of Mortgagees - Notice.**

**11.2.1. Time of Notice.** The Association shall promptly notify all Mortgagees who hold first mortgages on any Unit for which any Assessment levied pursuant to the Declaration, or any installment thereof, becomes delinquent for a period in excess of sixty (60) days and the Association shall promptly notify said Mortgagee with respect to which any default in any other provision of this Declaration remains uncured for a period in excess of sixty (60) days following the date of such default. Any failure to give any such notice shall not affect the validity or priority of any first mortgage on any Unit and the protection extended in this Declaration to the holder of any such mortgage shall not be altered, modified or diminished by reason of such failure.

**11.2.2. Written Notice.** No suit or other proceeding may be brought to foreclose the lien for any Assessment levied pursuant to this Declaration except after ten (10) days written notice to the holder of the first mortgage on the Unit which is the subject matter of such suit or proceeding.

**11.2.3. Payment by Mortgagee.** Any first Mortgagee of any Unit may pay any taxes, utility charges or other charges or other charge levied against the Common Areas which are in default and which may or have become a charge or lien against any of the Common Areas and any such first mortgagee may pay any overdue premiums on any hazard insurance policy or secure new hazard insurance coverage on the lapse of any policy, with respect to the Common Areas. Any first mortgagee who advances any such payment shall be due immediate reimbursement of the amount so advanced from the Association.

**Section 11.3. Changes Required by Lenders.** Notwithstanding any provision to the contrary contained in the Articles of Incorporation or By-Laws of the Association or this Declaration, the Developer shall have and hereby reserves the right to make modifications, additions or deletions to the Declaration, the Certificate of Incorporation and the By-Laws of the Association if such modifications, additions or deletions are required by the Veterans Administration, Federal Housing Administration, Federal Home Loan Mortgage Corporation or Federal National Mortgage Association. The Developer further reserves the right to waive in writing any exemption, right or privilege granted or reserved to the Developer by this Declaration or the Certificate of Incorporation or the By-Laws of the Association.

**Section 11.4. Developer Reserved Rights.** No amendment to this Declaration may remove, revoke or modify any right, reservation or privilege of the Developer without the prior written consent of the Developer.

**Section 11.5. Casualty Losses.** In the event of substantial damage or destruction to any of the Common Areas, the Board of Directors of the Association shall give prompt written notice of such damage or destruction to the Mortgagees who hold first mortgages of record on the Units. No provision of this Declaration or the Certificate of Incorporation or the By-Laws of the Association shall entitle any member to any priority over the holder of any first mortgage of record on his Unit with respect to the distribution to such member of any insurance proceeds paid or payable on account of any damage or destruction of any of the Common Areas.

**Section 11.6. Condemnation or Eminent Domain.** In the event any part of the Common Areas is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, then the Board of Directors of the Association shall give prompt written notice of any such proceeding or proposed acquisition to the Mortgagee who hold first mortgages of record on the Units. No provision of this Declaration or the Certificate of Incorporation or the By-Laws of the Association shall entitle any member to any priority over the holder of any first mortgage of record on his Unit with respect to the distribution to such member of the proceeds of any condemnation or settlement relating to a taking of any of the Common Areas.

## ARTICLE XII

### GENERAL PROVISIONS

**Section 12.1. Enforcement and Remedies.** The Developer, the Association, and any Owner shall have the right to enforce, by any proceedings at law or in equity, all of the restrictions, conditions, covenants, easements, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the By-Laws, and duly adopted Rules and Regulations and any amendments to the same, to compel compliance therewith or to prevent violation or breach thereof or to recover monetary damages, if any. Failure of the Developer, the Association, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed as a waiver of the right to do so thereafter. The Developer and the Association shall have the right to adopt reasonable Rules and Regulations for enforcing the provisions of this Declaration, the By-Laws, duly adopted Rules and Regulations and any amendments to the same. In addition to the right to enforce by proceedings at law or in equity, the Association shall have the following enforcement rights and remedies which may be pursued individually or cumulatively:

**12.1.1. Monetary Fines.** The Association shall have the right to set and collect fines and other monetary penalties as provided in Article V of this Declaration, which may include, but shall not be limited to, late fees on unpaid Assessments, the

cost of repairs, damages sustained and legal fees incurred by the Association as a result of the violation of this Declaration, the By-Laws, and duly adopted Rules and Regulations, as the same may be amended from time to time. All such fines and monetary penalties shall be collectible in the same manner as Assessments provided in Article VII of this Declaration.

**12.1.2. Suspension of Voting Rights and Rights to Use Common Area.** The Association shall have the right to suspend an Owner's right to vote and right to use the Common Area of the Development as provided for in Article V of this Declaration.

**12.1.3. Vehicle Towing Authority.** The Association shall have the right to tow vehicles that are parked or maintained in violation of this Declaration, the By-Laws, the Guidelines and any duly adopted Rules and Regulations as provided for in Article V, of this Declaration. The costs associated with any towing implemented by the Association shall be assessed against the violating Owner or Occupant and may be collected in the same manner as Assessments provided in Article VII of this Declaration.

**12.1.4. Self-Help.** The Association and the Developer shall have the right to exercise self-help in order to abate violations of this Declaration, the By-Laws, and any duly adopted Rules and Regulations as more specifically addressed in Article IV, V and VI. The costs of the implementation of such self-help shall be assessed against the violating Owner and may be collected in the same manner as Assessments provided in Article VII of this Declaration. In addition to the foregoing, the Developer and the Association shall have the right, whenever any improvement is built in violation of this Declaration, to enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the Owner, if after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner. The costs of such correction shall also be assessed against the Owner and shall be collectible in the same manner as the Assessments. The Association is hereby granted a perpetual easement across each Unit for the purpose of enforcing its right under this Section, and no such entry and abatement or removal shall be deemed a trespass. The Developer shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself.

**12.1.5. Legal Fees.** Should any person employ counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions of this Declaration or the By-Laws, and duly adopted Rules and Regulations, as any of the same may be amended from time to time, because of a breach of the same, all costs incurred in such enforcement, including, but not limited to, a reasonable fee for counsel, shall be paid by the Owner of such Unit or Units in breach thereof. Such costs incurred

in enforcement shall be assessed against the Owner and shall be collected in the same manner as Assessments provided in Article VII of this Declaration.

**12.1.6. Assessed Charges.** Any and all charges provided for in this Declaration, if unpaid, shall be collected in the same manner as Assessments provided in Article VII of this Declaration.

**12.1.7. No Waiver.** The failure of the Association, the Developer or any Owner to enforce any rights, reservation, restriction or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement.

**12.2. Safety and Security.** Each Owner and Occupant of a Unit, and their respective guests, invitees and tenants, shall be responsible for their own personal safety and the security of their property. The Association may, but shall not be obligated to, maintain or support certain activities within the Development designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. Neither the Association nor the Developer shall in any way be considered insurers or guarantors of safety or security within the Development, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made by the Association or the Developer regarding safety or security in the Development or regarding the provision or the performance of safety or security measures.

**12.3. Indemnification of Elected and Appointed Officials.** Subject to Delaware law, the Association shall indemnify every officer, director, committee member or other elected or appointed official of the Association, against all damages and expenses, including legal counsel fees, reasonably incurred in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an elected or appointed official of the Association, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Delaware law. The officers, directors, committee members and other elected and appointed officials of the Association shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. Such officers, directors, committee members and other elected and appointed Association officials shall also have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association, except to the extent that they are also Members of the Association. The Association, to the extent reasonably available, shall maintain general liability and directors' and officers' liability insurance to fund this indemnification obligation.



**Section 12.4. Severability.** Invalidation of any covenants or restrictions or any term, phrase or clause of this Declaration by the adjudication of any court or tribunal shall in no way affect the other provision hereof which are hereby declared to be severable and which shall remain in full force and effect.

**Section 12.5. Assignment and Delegation.** The Developer shall have the right to assign to any one or more persons, firms, corporations, partnerships or associations any and all rights, powers, titles, easements and estates reserved or given to the Developer in this Declaration. Further, the Developer reserves the right to convey, assign or delegate to the Association, and the Association shall accept, any or all of the Developer's rights and obligations set forth in this Declaration.

**Section 12.6. Duration and Amendments.**

**12.6.1.** Except as may otherwise be provided in this Declaration, the restrictions of this Declaration run with and bind the Development and shall inure to the benefit of and be enforceable by the Association, or the owner of any Unit subject to this Declaration, their respective legal representatives, heirs, successors or assigns, as the case may be, in perpetuity; subject, however, to the provision that the Association or its successors, with the vote or written consent of sixty-seven percent (67%) of the total voting power of the Association, shall have the power to waive, abandon, terminate, modify, alter, change, amend, eliminate or add to these restrictions and this Declaration at any time hereafter. Any such waiver, abandonment, termination, modification, alteration, change, amendment, elimination, or additions shall take effect when a copy thereof, executed and acknowledged by the Association or its successors in accord with the usual form of execution and acknowledgment of deeds, together with the written consents of the requisite number of owners or by a certificate by the Association verified under oath by the President thereof, or in the case of his/her absence or inability, by any Vice President thereof, setting forth the time, manner and result of the taking of the vote of the members, have been filed for record in the Office of the Recorder of Deeds, in and for Sussex County, and the same shall thereafter remain in effect in perpetuity unless otherwise provided.

**12.6.2.** Any amendment made pursuant to this Section shall be certified by Developer as having been duly approved by Developer and, if any, by the Owners and Mortgagees, and shall be effective only upon recordation or at such alternate date as shall be specified in the amendment. Every Owner or occupant, by accepting a conveyance or occupancy of a Unit shall be deemed to have agreed to be bound by such amendments as are permitted hereby, and to agree further that, if requested to do so by Developer, such will consent to the amendment of this Declaration or any other instruments relating to the Development.

12.6.3. Developer is hereby granted an irrevocable power of attorney coupled with an interest to amend this Declaration as provided in this Section and to take all other action convenient or necessary to give effect to any or all of the rights reserved to Developer in this Declaration. Every party accepting an interest in any part of the Development, Additional Property or Annexable Property, whether it be title, a lien, or any other interest, and whether it be transferred by a deed, a mortgage, a judgment, a last will and testament, or otherwise, shall thereby specifically accept the reservation of Developer's rights as provided in this Declaration, and shall also thereby grant to Developer this irrevocable power of attorney coupled with an interest. The Developer may require that a party accepting any such interest in the Development shall execute a separate and written power of attorney coupled with an interest in the form set forth in the attached Exhibit "C" and record it in the Office of the Recorder of Deeds of Sussex County, Delaware. However, the power of attorney coupled with an interest provided by this paragraph shall be deemed fully granted to Developer when any such interest is acquired, whether or not such separate and written power of attorney coupled with an interest is executed and recorded.

**Section 12.7. Dedication of Common Area.** Except as may otherwise be provided in this Declaration, every road, alley, park, stream, body of water, Common Area, and other amenity within the Development is private, and neither the Developer's recording of any instrument or plan, or any other act of the Developer with respect to the Development is, or is intended to be, or shall be construed to be, a dedication to the public of any part of the Development except as may otherwise be provided herein. The use and enjoyment of every part of the Development is reserved to the Developer, to those who, from time to time, are members of the Association and to the invitees thereof. Such use shall be subject to such Rules and Regulations as may be prescribed by the Developer or the Association, as the case may be.

**Section 12.8. Time is of the Essence.** It is agreed that time is of the essence with regard to the provisions of this Declaration.

**Section 12.9. Rule Against Perpetuities.** In the event that any of the provisions hereof are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event such term shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of Delaware, and such provision shall be fully effective for said reduced period of time.

**Section 12.10. Binding Effect.** This Declaration shall bind, and inure to the benefit of, the respective heirs, devisees, representatives, successors, successors in title and/or assigns of anyone or anything who/which purchases or takes any interest in any property which is subject to this Declaration.

02676 317

IN WITNESS WHEREOF, the Developer has hereunto set its hand and seal the day and year aforesaid.

BETHANY PROPER LIMITED PARTNERSHIP

BY: Gerald W. Wilgus  
General Partner

BY: [Signature]  
General Partner

STATE OF DELAWARE :  
:ss.  
COUNTY OF SUSSEX :

BE IT REMEMBERED, That on this 17<sup>th</sup> day of January A.D. 2002,  
aforesaid, Gerald W. Wilgus, General Partner of **Bethany Proper**  
LIMITED PARTNERSHIP, a limited partnership of the State of Delaware, party to this Indenture, known to me  
personally to be such, and acknowledged this Indenture to be his act and Deed, and the act  
and the Deed of the said partnership; that the signature of the General Partner is in his own  
proper handwriting; and that the act of signing, sealing, acknowledging and delivering the  
said Indenture was first duly authorized by resolution of the partnership of the said  
corporation.

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

Judith A. Spriggles  
NOTARY PUBLIC

COMMISSION EXPIRES:

4-20-02

JUDITH A. SPRIGGLE  
TYPE OR PRINT NAME OF NOTARY

02676 318

STATE OF DELAWARE :  
:SS.  
COUNTY OF SUSSEX :

BE IT REMEMBERED, That on this 17<sup>th</sup> day of January A.D. 2002,  
personally came before me, The Subscriber, a Notary Public for the State and County  
aforesaid, George G. Keen, General Partner of **Bethany Proper**  
**LIMITED PARTNERSHIP**, a limited partnership of the State of Delaware, party to this Indenture, known to me  
personally to be such, and acknowledged this Indenture to be his act and Deed, and the act  
and the Deed of the said partnership; that the signature of the General Partner is in his own  
proper handwriting; and that the act of signing, sealing, acknowledging and delivering the  
said Indenture was first duly authorized by resolution of the partnership of the said  
corporation.

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

Judith A. Spriggie  
NOTARY PUBLIC

COMMISSION EXPIRES:

4-20-02

JUDITH A. SPRIGGLE  
TYPE OR PRINT NAME OF NOTARY

02676 319

PHASE 1 WATERSIDE R.P.C.

Beginning at a point located on the northerly R.O.W. of County Road 361, said point being a corner for Phase 1 and lands N/F George M. Parrot, et ux.;

Thence by and with lands N/F George M. Parrot, et ux., S78°24'42"E, a distance of 177.04' to a concrete marker; thence N17°54'59"E, a distance of 36.81' to a point; thence by and with lands N/F Bethany Proper, L.P., S72°05'01"E, a distance of 15.93' to a point; thence S54°33'47"E, a distance of 76.31' to a point; thence S82°24'59"E, a distance of 22.67' to the point of curve of a non tangent curve to the left, having a radius of 46.00' and having a chord bearing of S60°45'22"E, 85.50'; thence along the arc, through a central angle of 136°40'46", a distance of 109.73' to a point; thence S39°05'45"E, a distance of 29.00' to a point; thence by and with N/F Bethany Proper, L.P., S50°54'15"W, a distance of 486.16' to a point; thence S45°22'55"W, a distance of 127.21' to a point; thence by and with lands N/F Bethany Proper, L.P., N45°28'15"W, a distance of 214.80' to a point; thence by and with the northerly R.O.W. of County Road 361, N44°31'45"E, a distance of 33.48'; thence N43°17'02"E, a distance of 53.69'; thence N40°40'04"E, a distance of 52.56'; thence N37°33'28"E, a distance of 53.11'; thence N33°51'21"E, a distance of 54.71'; thence N30°16'05"E, a distance of 50.20'; thence N26°49'42"E, a distance of 51.77'; thence N24°40'26"E, a distance of 40.93'; thence N24°18'30"E, a distance of 49.54' to the POINT OF BEGINNING.

Containing 3.33 acres, more or less.

LANDS OF BETHANY PROPER, L.P.

Beginning at a point located on the northerly R.O.W. of County Road 361, said point being a corner for this parcel and lands n/f Talivadis & Gaida Berzins;

Thence by and with lands N/F Talivadis & Gaida Berzins, S73°13'15"E, a distance of 388.00' to a point; thence N02°48'57"W, a distance of 59.08' to a point; thence S80°53'22"E, a distance of 256.44' to a point; thence S51°52'15"E, a distance of 221.76' to a point; thence S25°27'02"E, a distance of 569.23' to a point; thence by and with lands N/F The State of Delaware Dept. of Parks & Recreation, S70°25'00"W, thru a concrete marker at 943.81', a distance of 1,887.96' to a point; thence by and with lands N/F Joseph A. & Jane Phillips, N05°19'55"E, a distance of 245.21' to a point; thence N61°51'04"E, a distance of 164.25' to a point; thence S05°19'55"W, a distance of 36.51' to a point; thence N61°00'24"E, a distance of 70.66' to a point; thence N48°12'01"E, a distance of 63.29' to a point; thence N42°31'33"E, a distance of 38.71' to a point; thence by and with lands N/F Rancel C. Evans, et ux., N44°34'30"E, a distance of 189.90' to a point; thence N46°56'51"W, a distance of 218.66' to a point; thence by and with the northerly R.O.W. of County Road 361, N44°55'54"E, a distance of 212.46' to a point; thence N44°31'45"E, a distance of 18.53' to a point; thence by and with Phase 1, Waterside R.P.C., S45°28'15"E, a distance of 214.80' to a point; thence N45°22'55"E, a distance of 127.21' to a point; thence N50°54'15"E, a distance of 486.16' to a point; thence N39°05'45"W, a distance of 29.00' to the point of curve of a non tangent curve to the right, having a radius of 46.00' and having a chord bearing of N60°45'22"W, 85.50'; thence along the arc, through a central angle of 136°40'46", a distance of 109.73' to a point; thence N82°24'59"W, a distance of 22.67' to a point; thence N54°33'47"W, a distance of 76.31' to a point; thence N72°05'01"W, a distance of 15.93' to a point; thence by and with lands N/F George M. Parrot, et ux., N17°54'59"E, a distance of 63.09' to a concrete marker; thence N73°12'05"W, a distance of 174.85' to a point; thence by and with the northerly R.O.E. of County Road 361, N18°01'45"E, a distance of 70.07' to the POINT OF BEGINNING.  
Containing 23.25 acres, more or less.

RECORDER OF DEEDS  
RICHARD W. PELL, II

02 FEB 20 AM 9:40

SUSSEX COUNTY  
DOC. SURCHARGE PAID

EXHIBIT B  
54

Received

FEB 21 2002

ASSESSMENT DIVISION  
OF SUSSEX COUNTY