

**MASTER DECLARATION  
FOR  
MANTUA FARM**

2/25/03

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# MASTER DECLARATION FOR

## MANTUA FARM

THIS DECLARATION is made this \_\_\_\_\_ day of \_\_\_\_\_, by Triad III, L. L.C. a New Jersey limited liability company, having an address of PO Box 330, 551 Cooper Road, West Berlin, NJ 08091, hereinafter referred to as the "Declarant".

WHEREAS, the Declarant is the owner of certain lands located in the Township of Mantua, County of Gloucester and State of New Jersey, consisting of Block 53, Lot 1 and 2, as depicted on the Site Plan attached hereto as Exhibit A and which are hereinafter referred to as Mantua Farm, and

WHEREAS, the Declarant has caused to be obtained or intends to obtain certain subdivision and site plan approvals for Mantua Woods, so as to permit the construction thereon of various types of dwellings on fee simple lots, together with open space, roadways and other appurtenant site improvements, such that, if all dwellings in Mantua Woods are constructed, a total of 32 Units (as hereafter defined) will comprise a residential community to be known as Mantua Woods, and

WHEREAS, the Declarant desires to provide for the maintenance and operation of, among other things, certain Common Property within Mantua Farm, and further desires to subject the lands included in Mantua Farm to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are hereby declared to be for the benefit of each and every Unit owner in Mantua Farm, and

WHEREAS, the Declarant has deemed it advisable to establish a scheme of management whereby Mantua Farm Association, Inc., a New Jersey nonprofit corporation (hereafter, the "Association" or the "Community Association") shall own, maintain, manage, preserve, administer and operate any Common Property as set forth in this Declaration; and

WHEREAS, the Declarant intends to eventually convey to the Association title to the Common Property which is within the development, and

NOW, THEREFORE, the Declarant declares that the Common Property and any portion of the Entire Property which may hereafter be submitted to this Declaration by subsequent amendment, shall be held, transferred sold, conveyed, leased, occupied, and used subject to the covenants, restrictions, conditions, easements, charges, assessments, obligations, and liens hereinafter set forth and to the provisions of the Certificate of Incorporation, Bylaws, and Rules and Regulations of the Association.

### ARTICLE I

#### DEFINITIONS

The following words and terms, when used in this Declaration, the Certificate of Incorporation, or the Bylaws, shall have the following meanings unless the context in which same is utilized clearly indicates otherwise.

**1.01 "Annual Common Expense Assessment"** shall mean those assessments imposed upon Owners as described in Section 5.03 of this Declaration.

**1.02 "Association or Community Association"** shall mean Mantua Farm Association, Inc., a New Jersey nonprofit corporation, established for the purpose, among other lawful purposes as set forth in its Certificate of Incorporation and Bylaws, of administering and maintaining the Common Property within Mantua Farm.

**1.03 "Board"** shall mean the Board of Trustees of the Association, and any reference herein or in the Certificate of Incorporation, Bylaws or Rules and Regulations to any power, duty, right of approval or any other right of the Association shall be deemed to refer to the Board and not to the Members of the Association, unless the context expressly indicates to the contrary.

1.04 "Bylaws" shall mean the Bylaws of Mantua Woods Association, Inc., a copy of which document is attached hereto as Exhibit F, together with all future amendments or supplements thereto.

1.05 "Certificate of Incorporation" shall mean the Certificate of Incorporation of Mantua Woods Association, Inc., a copy of which document is attached hereto as Exhibit F, together with all future amendments or supplements thereto.

1.06 "Cluster" shall mean all of the real property located in The Township of Mantua, Gloucester County, New Jersey, and described in Exhibit A aforesaid.

1.07 "Common Expenses" shall mean those expenses which are incurred or assessed by the Association in fulfilling its lawful responsibilities under this Declaration, together with all fines or other charges which may lawfully be imposed against any Owner.

1.08 "Common Property" shall mean the portion of Block 53, Lot 1 and 2 designated as open space on the Site plan, the storm water sewer system and storm water drainage basins serving said lands, certain landscaped areas and roadways as described more particularly on the Site plan which are to be owned by, and/or subject to a maintenance or construction easement in favor of the Association. Common Property shall also mean and refer to all personal property owned by the Association. The description of the Common Property subjected to this Declaration is set forth in Exhibit B hereto.

1.09 "Declaration" shall mean this Master Declaration and any future amendments and supplements thereto.

1.10 "Declarant" shall mean Triad III, L.L.C., a New Jersey limited liability company, and any successors and/or assigns of the interest of said Triad III, L.L.C. hereunder, including any successor to Declarant contemplated in Article XII below.

1.11 "Eligible Unit Mortgage Holder" shall mean any holder of a recorded Unit Mortgage which is a first mortgage encumbering the Unit that has requested notice of any matters described in Article XI hereunder by sending written notice to the Association of such request.

1.12 "Emergency Assessment" shall mean all those assessments imposed upon Owners as described in Section 5.10 of this Declaration.

1.13 "Fee Percentage Schedule" shall mean the schedule which sets forth each Owner's proportionate share of the responsibility for payment of Common Expenses and share in common surplus including insurance proceeds and other awards or settlements. Each Owner's proportionate share shall be an identical number which is determined by dividing the number "one" by the number of Units then included in Mantua Woods. If all phases of Mantua Woods are declared and constructed in full, each Unit's proportionate share will be 4.17%. The Fee Percentage Schedule for all Units which are declared to be a part of Mantua Woods is set forth as Exhibit D hereto.

1.14 "Governing Documents" shall mean those documents which establish or create the Association, and otherwise establish rules, regulations, obligations, restrictions, covenants and/or other conditions applicable to Members, including without limitation this Declaration, the Association Certificate of Incorporation, its Bylaws, any Rules and Regulations which may be adopted by the Board from time to time, and any duly adopted resolution of the Board, as all of the same may be amended from time to time.

1.15 "Government Agency" shall mean any government or quasi-government agency or authority having jurisdiction over the matter in question.

1.16 "Lot" shall mean any lot depicted on the Site plan which is intended for the construction of a dwelling unit.

1.17 "Lot Builder" shall mean any person or entity to whom the Declarant has transferred any number (but less than all) of the Lots or Units held by the Declarant in the ordinary course of business, and such person or entity holds such Units for resale or to construct dwelling units on such Lots or complete dwelling units in

1.18 "Majority Vote of the Members" shall mean an affirmative vote by a majority of the Members in Good Standing (as such term shall be defined in the Bylaws), present in person or by proxy, at any duly called annual or special meeting of the Association at which the required quorum of Members is present.

1.19 "Member" shall have the same meaning as "Owner".

1.20 "Miscellaneous Assessment" shall mean all those assessments imposed upon Owners as described in Section 5.13 of this Declaration.

1.21 "Owner or Unit Owner" shall mean those persons or entities in whom record title to any Unit is vested as shown in the records of the Gloucester County Clerk, including the Declarant and any Lot Developer unless the context expressly indicates otherwise, but notwithstanding any applicable theory of mortgage, shall not mean or refer to any mortgagee or trustee under a deed of trust unless and until such mortgagee or trustee under a deed of trust has acquired title to such Unit pursuant to foreclosure proceedings or any proceeding in lieu of foreclosure, nor shall the term Unit Owner refer to any tenant or other occupant or family member of a Unit Owner.

1.22 "Permitted Mortgage Holder" shall mean any holder of a recorded construction mortgage or permanent mortgage loan made to either of the entities which comprise the Declarant and which encumbers all or any portion of the Property, or to the Association which encumbers all or any portion of the Common Property.

1.23 "Property" shall mean all of the real property consisting of both Lots and the Common Property located in Mantua Farm, described in Exhibit B aforesaid, which is currently subjected to this Declaration.

1.24 "Remedial Assessment" shall mean all those assessments imposed upon Owners as described in Section 5.14 of this Declaration.

1.25 "Rules and Regulations" shall mean those rules and regulations of the Association that may be promulgated by the Board, together with all future amendments or supplements thereto.

1.26 "Site Plan" shall mean the Site plan of Mantua Farm, a copy of which is attached hereto as Exhibit A.

1.27 "Special Assessment" shall mean those assessments imposed upon Owners as described in Section 5.11 of this Declaration.

1.28 "Special Declarant Rights" shall mean those rights created or reserved to the Declarant under this Declaration, including without limitation those described more particularly in Article XII hereof.

1.29 "Title Insurer" shall mean any title insurance company authorized to do business in the State of New Jersey which is selected by the Declarant to insure title to the Property, or to insure the lien of any Permitted Mortgage Holder, or to insure title to the Common Property upon the transfer of same from the Declarant to the Association, or by the Association to insure the lien of any Permitted Mortgage Holder. Title Insurer shall not include any title insurance company which is selected by a party other than the Declarant to insure the title to a Unit or to a Unit Mortgage.

1.30 "Trustee" shall mean any member of the Board of Trustees of the Association.

1.31 "Unit" shall mean any Lot on which a dwelling unit is or may be constructed and does not include any part of the Common Property. Where a dwelling unit has been constructed on the Lot, Unit refers to both the Lot and the improvements thereon.

1.32 "Unit Mortgage" shall mean any mortgage lien encumbering a Unit which is granted by an Owner other than the Declarant.

1.33 "Mantua Farm" shall mean the residential community contemplated in this Declaration.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

**2.01 Property Subject to This Declaration.** The Property, consisting of those lots and a portion of the total Common Property described in Exhibit B hereto, is hereby expressly made subject to this Declaration and shall be held, transferred, sold, conveyed, leased and occupied subject to this Declaration and all future amendments or supplements hereto.

**2.02 Additional Property.** Intentionally left blank.

**2.03 Title to Common Property.** The Declarant initially shall hold legal title to the Common Property. The Declarant may continue to hold legal title to the whole or portions of the Common Property until such time as it has completed all initial improvements within the Common Property and the Association is able, in the sole judgment of the Declarant, to maintain the Common Property satisfactorily. For purposes of determining whether the initial improvements of the Common Property or any portion thereof have been completed, release of the performance bond required by the Township of Mantua to assure construction of such improvements or notice from the appropriate township engineer certifying completion of such improvements shall be conclusive. If the Township of Mantua releases the performance bond for only a portion of the Property, the Declarant will be deemed to have completed the Improvements identified by such release and may transfer title to such portions of the Property to the Association.

Upon the occurrence of the events described in Section 2.03 above, title to the Common Property (or any portion thereof) shall be transferred to the Association, which shall be obligated to accept the Common Property at the time of said transfer. The Common Property shall be transferred and accepted in "as is" condition, subject only to the Declarant's obligation to complete any requirements imposed by the Township of Mantua at the time of the grant of final subdivision approval of the Property and the release of the performance bond required by the Township of Mantua. Transfer of title shall be evidenced by the recording of a deed in Gloucester County, the recording of which shall be the cost of the Association. The Declarant and the Association shall pay any and all real estate taxes on their respective portions of the Common Property.

**2.04 Mortgage of Common Property; Dedication.** The Declarant shall have the right to mortgage all or any portion of the Common Property prior to conveyance of same to the Association and to take such other actions as may be necessary to prevent foreclosure provided that the interest of any mortgagee or purchaser from such mortgagee who acquires any interest in the Common Property shall be subject to the Governing Documents to the same extent as that of the Declarant and/or the Association as the case may be. The Declarant shall have the further right to dedicate or transfer all or any portion of the Common Property, including, without limitation, any roadways, easements and detention basins located thereon to the Township of Mantua or to any other Government Agency or public utility prior to conveying title of same to the Association and also whenever required by the Township of Mantua or any other Government Agency or public utility having jurisdiction to do so excluding maintenance of the entrance island. No authorization or consent of the Association, the Owners, any holder of a Unit Mortgage or any Permitted Mortgage Holder shall be required for the Declarant to exercise such rights.

The Board shall have the right to mortgage all or any part of the Common Property titled in the name of the Association. The Board shall have the further right to dedicate or transfer all or any portion of the Common Property titled in the name of the Association to the Township of Mantua or any other Government Agency or public utility, for such purposes and subject to such conditions as may be determined by the Board. However, no mortgage, dedication or transfer shall become effective unless and until authorized by a Majority Vote of the Members. Notwithstanding the foregoing, the Board shall have the right, without the necessary approval or joinder of the Association, the Owners, any holder of a Unit Mortgage or any Permitted Mortgage Holder to dedicate or transfer all or any portion of the Common Property titled in the name of the Association to the Township of Mantua or any other Government Agency or public utility having jurisdiction thereof, when required by such entity to do so.

**2.05 Reservations.** The Declarant reserves the unconditional right and authority to grant perpetual easements in, upon, through, over and above the Property for purposes of providing services to the Owners, installing, maintaining, repairing, replacing, using, operating and improving utility systems or components thereof,

to serve the Property, and complying with the requirements or conditions imposed by any Government Agency or public utility serving the Property. Subject to any applicable approval which may be required by the Township of Mantua, the Declarant further reserves the right from time to time to relocate, change, (by increasing or decreasing Lot size or the aggregate number of Lots) or otherwise modify the lines of any Lot (other than those Lots which have been conveyed to an Owner), or of the subdivision plan, street, avenue, roadway, highway, utility easement or area.

The Declarant further reserves the unconditional right to convey and dedicate all of the Declarant's title and interest in and to all or any portion of the roadways and drainage facilities within the control of the Declarant to the Township of Mantua or any other Government Agency or public utility. In addition, the Declarant expressly reserves the right at or after the time of grading of any streets or roadways or any part thereof for the installation of any utilities, to enter upon any abutting Lot and to grade a portion of such Lot adjacent to such street or roadway, but shall not be under any obligation or duty to maintain any slope or to do any grading beyond the slope found prior to such grading. The Declarant, and its successors and assigns, including the Association, shall have the right to require each Owner to execute such further grant or other documentation as may be reasonably required by such Government Agency or public utility or other company providing such services in accordance with this Declaration.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

**3.01 Organization.** The Association shall be a nonprofit corporation formed under the laws of the State of New Jersey created for the purposes, charged with the duties, and vested with the powers described by law or set forth in the Governing Documents. Neither the Certificate of Incorporation nor Bylaws shall be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

**3.02 Membership.** Every Unit Owner shall be a Member of the Association. The Declarant and each Lot Developer shall be a Member of the Association with respect to each Unit held by it, including Units held in the ordinary course of business. Persons who hold mortgages or other security interests on a Unit shall not be Members unless such persons hold title to a Unit by reason of a sale or transfer pursuant to a judgment of foreclosure or in lieu of foreclosure.

Membership and the obligation to pay assessments required hereunder (except to the extent otherwise provided to the Declarant and any Lot Developer by Section 5.08 hereof) shall begin automatically at the time such person becomes a Unit owner. Membership shall cease at the time any person ceases to be a Unit Owner. Membership in the Association shall be appurtenant to each Unit, may not be severed from the title to each Unit, and may not be sold, conveyed, assigned, transferred, pledged or mortgaged, except as part of a simultaneous sale, conveyance, assignment, transfer, pledge or mortgage of title to the Unit. Any attempted transaction contrary to the terms of this Section shall be void.

**3.03 Voting and exercise of Membership Rights.** Only Members in Good Standing shall be entitled to vote in mailers of the Association and to hold office as a Trustee. Officers and committee members of the Association. The determination of the good standing of a Member and voting procedures shall be set forth in the Bylaws.

**3.04 Board of Trustees.** Unless otherwise specifically provided, all rights, powers, authority, responsibilities and duties of the Association shall be exercised, discharged or delegated, as the case may be, by the Board.

The initial Board shall consist of three (3) Trustees who shall be appointed, removed and replaced from time to time by the Declarant, with or without cause, until their respective successors are elected by the Owners as hereafter set forth.

1. Not later than sixty (60) days after the sale and conveyance of fifty percent (50%) of the Units to Owners other than the Declarant and any lot Developer, all Owners shall be notified and instructed to attend the first annual meeting of the Association, and the Owners other than the Declarant shall elect one (1) Trustee, and the Declarant shall have the right to appoint two (2) Trustees.

2. Within sixty (60) days after the earlier to occur of the initial sale and conveyance of seventy-five percent (75%) of the Units to Owners other than the Declarant and any Lot Developer, or five (5) years after the initial conveyance of the first Unit to an Owner other than the Declarant and any Lot Developer (and provided the Owners, by Majority Vote of the Members, agree to accept control at such five (5) year mark, all Owners shall be notified and instructed to attend a special meeting of the Association at which time the Owners other than the Declarant shall be entitled to elect all Trustees. When all Trustees are to be appointed by the Owners, the Board shall consist of three (3) Trustees.

3. Notwithstanding the Owners' right to elect the full membership of the Board as provided above in Section 3.04, the Declarant shall have the right to appoint one (1) Trustee for so long as the Declarant holds title to a Unit for sale in the ordinary course of business. To accommodate the Declarant's right to appoint a Trustee as described in this Section the Trustee position to be held by the Trustee-elect receiving the least number of votes (the "Third Trustee") shall be reserved for the Trustee to be appointed by the Declarant under the terms of this Section 3.04, which position shall be determined in the following manner. Once the Owners have elected the full Board, the Third Trustee shall temporarily vacate his or her position in favor of the Trustee to be appointed by the Declarant. However, the Third Trustee shall remain as the Trustee elected by the Owners and shall be entitled to attend and participate in Board meetings, but until the Declarant's right to appoint a Trustee has terminated, he or she shall not be entitled to bind the Board or the Association in any contract or other matter or to vote in any Board matters, and his or her vote shall not be counted. As of the date immediately following the date title to the final Unit owned by the Declarant is transferred to an initial purchaser other than a Lot Developer, the Declarant's Trustee immediately shall be removed, and Third Trustee shall resume the role of Trustee with full power and authority granted to the Trustees hereunder.

4. In the event there shall be a vacancy during the tenure of any of the Trustees elected by the Unit Owners other than the Declarant and any Lot Developer, the Third Trustee (if any then exists) shall be automatically appointed to fill such vacancy for the balance of the term of the departing Trustee (and not the balance of the term or the original Trustee whose position he or she filled. If, however, the Third Trustee is already serving at the time such vacancy occurs, then a trustee to fill the vacant position shall be elected by the Owners at a special meeting for such purpose held not later than thirty (30) days after such vacancy occurs.

For purposes herein, the calculation of percentages is to be based on the aggregate number of units constructed or to be constructed and included in Mantua Farm. The aggregate number of Units to be constructed shall be deemed to be 32. This number automatically shall be reduced to any lesser number of Units which are actually permitted by government approvals to be constructed on the lands subjected to this Declaration.

In the event the number of Trustees is changed by amendment to this Declaration, the number of Trustees elected by Owners other than Declarant shall be adjusted to reflect the same percentage representation on the Board as existed prior to such adjustment. This requirement shall not be amended without the written consent of the Declarant.

The voting procedures for election of trustees by Owners other than the Declarant shall be as set forth in the Bylaws.

Notwithstanding any provision of the Bylaws to the contrary, whenever notice to Unit Owners is required hereunder, such notice shall be given by the Board as provided in the Bylaws, and, if the Board shall fail to send such notice when required hereunder, the meeting may be called and the notice given by any Owner.

**3.05 Duties and Responsibilities.** The Association, through the Board, shall discharge all duties which are expressly described or which may be fairly implied from this Declaration or any other Governing Documents, or applicable law. The Board shall discharge such duties in a manner that protects and furthers the health, safety and general welfare of the residents of the Property. The Association shall have the affirmative and perpetual duty and obligation to provide for the maintenance, management, preservation, administration and operation of all Common Property in accordance with the terms of this Declaration and the other Governing Documents.

**3.06 Declarant's Control.** Notwithstanding anything to the contrary contained herein, the Declarant shall have the right, but not the duty, to appoint Officers and Trustees of the Association, and to control the business of the Association subject to the procedures and time periods for transition of control from the Declarant to Owners

other than the Declarant as provided in this Article. During the period that Declarant appoints a majority of the Board, the Association shall not make any alterations, additions, deletions or improvements affecting the Common Property if the effect of such action would be to necessitate a Special Assessment (but the Declarant may do so if such action is approved by Majority Vote of the Members); provided, however, that the prohibition of this Section shall not apply to any addition, deletion, alteration or other improvement required by any Governmental Agency, Title Insurer, Permitted Mortgage Holder or any unexpected emergency condition affecting the Property.

Upon the occurrence of the events described in Section 3.04, the Declarant shall relinquish control of the Association and the Owners shall accept control. Simultaneously, the Declarant shall deliver to the Association all real and personal property not previously transferred to the Association and any of the Governing Documents of the Association then held or controlled by the Declarant. Notwithstanding any provision hereof to the contrary, the Declarant shall have the right, but not the obligation, to surrender control of the Board at an earlier time by permitting the Unit Owners to appoint Trustees to any of the positions reserved for Trustees appointed by the Declarant prior to the time the Declarant is required to do so hereunder; provided, however, that the Owners, other than the Declarant, agree by Majority Vote of the Members to assume control at such earlier time.

After the Owners assume control of the Board, the Owners shall continue the same level of maintenance, operation and services as were in existence immediately prior to their assumption of control and shall not take any action that would be detrimental to or would adversely affect the sale of Units by the Declarant or any Lot Developer. Without in any way limiting the scope of the preceding sentence, action which would be detrimental to, or would adversely affect the sale of Units by the Declarant or any Lot Developer shall include (i) any amendment of this Declaration or any of the other Governing Documents having the effect of terminating, restricting or reducing any right, protection, power or authority held or enjoyed by the Declarant or any Lot Developer (ii); any action restricting the right of the Declarant or any Lot Developer to develop the Property in a manner not consistent with the Site plan or this Declaration, or to maintain signs, or a sales and/or construction, leasing and administrative offices on the Property (iii); and any action restricting or reducing the level of maintenance, operation and services provided by the Association at the time the Declarant's control of the Board terminates.

Notwithstanding any provision hereof to the contrary, until the last Unit held by the Declarant and any Lot Developer in the ordinary course of business is sold, the Declarant shall hold an absolute power to veto any action taken by the Association which would be detrimental to the rights or interests of the Declarant or any Lot Developer hereunder, as determined in the sole reasonable discretion of the Declarant during such period Declarant shall be given thirty (30) days notice of any meeting called for the purpose of amending this Declaration or any of the other Governing Documents. Failure to give such notice shall invalidate any amendment adopted at such meeting. If an amendment is adopted at a meeting of which the Declarant has received notice, and if the Declarant fails to exercise its veto power within ten (10) days after such meeting, the amendment shall be effective, and the Declarant shall be deemed to have waived its veto powers under this Section as to the particular amendment at issue. Nothing contained herein shall limit the Declarant's other legal remedies, including an action for injunctive relief for any violation of its rights under this Declaration.

**3.07 Indemnification.** The Association shall indemnify any person made a party to any action, suite, or proceeding, whether civil, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact of or arising directly or indirectly from, such person's capacity as Trustee, Officer, committee member, employee, servant or agent of the Association, against expenses (including but not limited to reasonable fees for legal counsel and expenses), judgments, and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, except as to matters for which such person ultimately shall be found in such action, suit or proceeding to be liable for gross negligence or willful misconduct. In the event of settlement of any case, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified, more likely than not, was not guilty of gross negligence or willful misconduct. The Association shall not be held liable for any such reliance made in good faith. The indemnification provided by this Section shall not be deemed exclusive of any other rights which anyone seeking indemnification may otherwise have.

#### ARTICLE IV

#### MAINTENANCE RESPONSIBILITIES

**4.01 Obligations of the Association.** The Association shall provide for all maintenance, repairs and replacements, management, preservation, administration, and operation that is required with respect to title Common Property in accordance with the terms of this Declaration and the other Governing Documents. The Association shall be obligated to provide among other services, grass cutting services to the common areas, shall maintain the entrance island and signage, shall maintain the shrubs, beds and trees thereon, and shall maintain the detention basin.

**4.02 Additional Services.**

(a) Adding Additional Services. The Association, by a minimum vote of two-thirds of the then ownership interests, may obligate the Association to furnish any additional services to Mantua Woods. Such additional services may include, but are not limited to, cutting and otherwise maintaining the grass, shrubs, trees and other vegetation.

(b) Acceptance Irrevocable. Any vote by the minimum two-thirds of the then ownership interests done in accordance with Subsection 4.02 shall be deemed to be a request by all Owners to irrevocably delegate the provision of such services to the Association. Any such vote shall impose upon the Association the affirmative obligation to provide the service for as long or as short a period of time as the Association may indicate in such vote, whether for a minimum or maximum period of time or delegating to the Board the discretion to determine an appropriate period of time.

(c) Cost. The expenses for all services which are mandated by such a vote of the Association shall be charged to the Unit Owners in accordance with their respective percentage interests as set forth in the Fee Percentage Schedule.

**4.03 Rights and duties of Township of Mantua.**

(a) Rights. In the event the Association fails to perform any obligation as required in Section 4.01 or 4.02, or by Section 13.04 or by those portions of Section 9.01 which are enforceable by the Township of Mantua, the Township of Mantua shall have the right, but not the obligation, to require the Association to perform such obligation by notifying the Association in writing. In the event the Association shall fail to undertake such performance within thirty (30) days of receipt of the aforesaid notice from the Township of Mantua, then the Township of Mantua shall have the right, but not the obligation, to undertake such performance and charge the Association therefore; provided, however, that the Township of Mantua shall not be obligated to wait for the expiration of such thirty (30) day period if an emergency is determined by the Township of Mantua to exist. No action taken by the Township of Mantua pursuant to the authority conveyed under this Section 4.03 shall be deemed in any way to relieve the Association from the performance of its obligations under the Governing Documents of the Association, to obligate the Township of Mantua to perform such service on a regular basis, or to be deemed an acceptance by the Township of Mantua of the Common Property.

Payment for such services or repairs shall be made to the Township of Mantua from any funds under the control of the Association for any purpose. In the event the Association fails to reimburse the Township of Mantua within thirty (30) days of receipt of a written bill for such assessment or if funds received from the Association are insufficient to fully reimburse the Township of Mantua, the Township of Mantua shall have the right, after first providing written notice too the Association and the Owners, to assess the Owners directly, in accordance with the Fee Percentage Schedule, for their proportionate share of such cost or deficiency. Each such assessment shall be an assessment hereunder which each Member has covenanted and agreed to pay in accordance with the provisions of Section 5.01 hereof, and shall entitle the Township of Mantua to the same enforcement rights and remedies afforded to the Association for delinquent and unpaid assessments, including, without limitation, the right to record a lien upon the Unit against which such assessment is made. Each such assessment, together with interest and the cost of collection thereof (including but not limited to reasonable fees for legal counsel and court costs), shall also be the joint and several personal obligations of the Owners of the Unit at the time the assessment fell due and a continuing lien against such Unit even if title to the Unit shall change.

**4.04 Obligations for Each Unit Owner.** Each unit Owner shall maintain the grass, shrubs, trees and all other vegetation on all portions of the part of his or her unit in good condition, including, without limitation, cutting and otherwise maintaining the grass, shrubs, trees and other vegetation, including, without limitation, cutting, trimming, and promptly removing and replacing (as soon as reasonably possible), any such vegetation that is not in

have the right to perform such obligation on behalf of the Unit Owner and to charge the actual costs thereof to the Unit Owner, and such charge shall be treated for all purposes as if it were part of the Annual Common Expense Assessment applicable to that Owner's Unit, but payable immediately and not in installments; provided that the Association shall first notify the Unit Owner of the intent of the Association to perform such Unit Owners obligations and no less than ten (10) days elapse without performance of the specified maintenance by the Unit Owner unless the failure to perform such obligation creates, in the absolute discretion of the Association, an emergency in which latter case the Association shall have the right to perform such Unit Owners obligation without notice and charge the actual cost thereof to the Unit Owner as a Common Expense Assessment.

## ARTICLE V

### COVENANT FOR ASSESSMENTS

**5.01 Covenant to Pay Assessments.** Every Member of the Association, by acceptance of a deed or other conveyance for a Unit, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association all assessments and all fines and other charges contemplated herein or in any of the other Governing Documents.

**5.02 Liability for Assessments.** No Member may waive or otherwise avoid liability for Common Expenses or other assessments by non-use of the Common Property. Each assessment authorized under this Declaration, together with the costs of collection thereof, including but not limited to fees for legal counsel and court costs, and interest on any assessments or other amounts to be collected hereunder, shall be a continuing lien upon the Units against which they are made and shall also be the joint and several personal obligation of the Unit Owner at the time when such assessment, fine or other charge fell due. If any assessment authorized hereunder is to be paid in installments, and any installment of such assessment is not paid by the due date, the Board shall have the further right (but not the obligation) to accelerate all remaining installments of such assessment and to file a lien for the accelerated amount. The Board shall promptly give notice of such acceleration to the Unit Owner and any Eligible Unit Mortgage Holder of such Unit, but the failure to give such notice shall not invalidate the lien for the accelerated amount.

Notwithstanding the right of delegation of collection by the Association as set forth in this Declaration, the Association shall have the right (but not the obligation) at any time to foreclose by suit in its own name liens for unpaid assessments, fines or other charges in the same manner as a foreclosure of a mortgage on real property. Suits to recover a money judgment for unpaid assessments of any type or for any installment thereof, fines, or other charges may be maintained without waiving the lien securing the same. The Board shall have the further right to charge Unit Owners who are delinquent in any payment required hereunder a late fee and interest on the overdue payment in the manner set forth more particularly in the Bylaws.

**5.03 Annual Common Expense Assessments.** It shall be an affirmative and perpetual obligation of the Board to levy an Annual Common Expense Assessment in an amount at least sufficient to maintain and operate the Common Property of the Association as contemplated by this declaration and the other Governing Documents. The amount of money for Common Expenses of the Association deemed necessary by the Board on an annual basis and the manner of the expenditure thereof shall be a matter for the sole discretion of the Board. The Board shall prepare an annual budget of the Common Expenses of the Association which is sufficient to insure the Association's financial solvency, which budget shall include capital reserve funds for the replacement and/or repair of the existing Common Property.

**5.04 Notice of Annual Common Expense Assessment.** The Board shall cause to be prepared annually, at least thirty (30) days in advance of the due date of the first installment of the Annual Common Expense Assessment, a list of the Units and the Annual Common Expense Assessment applicable to each. This list shall be kept in the office of the Association and shall be open to inspection, upon at least ten (10) days prior written request, by any Member. Written notice of the Annual Common Expense Assessment shall be sent by mail or delivered to every Member in the manner more particularly described in the Bylaws.

**5.05 Use of Annual Common Expense Assessment.** The money collected as Annual Common Expense Assessments shall be used for the performance of obligations and additional services as set forth in 4.01 and 4.02 hereof, and shall also be used for payment of insurance premiums on the Common Property, all costs and expenses incidental to the operation and administration of the Common Property, and for such other items as may

from time to time be deemed appropriate by the Board.

**5.06 Annual Common Expense Assessment Not Made.** If the Board fails to prepare and publish the Annual Common Expense Assessment as required, an assessment shall be presumed to have been made in the amount of the last prior year's Annual Common Expense Assessment increased by ten percent (10%), and all installments of such Annual Common Expense Assessment shall be due upon each installment payment date of the prior year until a new Annual Common Expense Assessment is prepared and published. Notwithstanding the foregoing, while the Declarant is in control of the Board, it will cause a budget to be prepared on which the Annual Common Expense Assessment for each fiscal year of the Association shall be based.

**5.07 Due Dates of Annual Common Expenses Assessment** (a) Annual Common Expense Assessments shall be made on a calendar year basis unless the Board establishes a different assessment year. The Annual Common Expense Assessment shall be payable in advance in monthly installments due on the first day of each month unless the Board establishes a different due date. The Board shall have the right to alter the method of calculation or due dates of the Annual Common Expense Assessment. The Board shall also have the right to collect dues on a quarterly, semi-annual or on an annual basis.

(b) The Annual Common Expense Assessment provided for herein shall commence with respect to each Unit upon the conveyance of that Unit from the Declarant to the Owner. The precise amount of the Annual Common Expense Assessment charged to a Unit for the year of conveyance shall be prorated based on the number of months remaining in the calendar year of conveyance divided by twelve (12). The first two (2) monthly installments of the Annual Common Expense Assessment (which shall include the month title is transferred) shall be collected at the time title to such Unit is conveyed to the Owner, but the amount of the first monthly installment of the Annual Common Expense Assessment shall be prorated based on the number of days such Owner is the titleholder of such Unit divided by the number of days in the month in which title is conveyed.

For each new Owner who acquires title to a Unit from a transferring Owner other than the Declarant, the obligation of such new Owner to pay the Annual Common Expense Assessment shall commence as of the date such new Owner acquires title. The new Owner, at the time he acquires title to such Unit, shall be obligated to pay the installment of the Annual Common Expense Assessment due for the month he acquires title in an amount which shall be prorated based on the number of days such Owner is the titleholder of such Unit divided by the number of days in the month in which title is conveyed, and the installment of the Annual Common Expense Assessment due for the month following the month in which he acquired title. Any payments of the Annual Common Expense Assessment by the transferring Owner shall not be refunded by the Association but shall be credited against amounts due from the new Owner. The foregoing is without qualification to the transferring Owner's right to require reimbursement of such amounts from the new Owner in accordance with the agreement between them.

**5.08 Declarant/Lot Developer Obligation.** The Declarant and each Lot Developer shall be exempt from the payment of the Annual Common Expense Assessment with respect to any Units owned by it for sale in the ordinary course of business; provided, however, that, as required by N.J.A.C.5:26-8.6(b), for any Unit owned by the Declarant or a Lot Developer which has been issued a Certificate of Occupancy by the Township of Mantua, such Owner shall be responsible for the payment of the Annual Common Expense Assessment attributable to such Unit if any benefit is derived by that unit from items included in the annual budget of the Association. In lieu of making such Annual Common Expense Assessments as contemplated hereunder, the Declarant along with each Lot Developer who does not make the Annual Common Expense Assessment as contemplated hereunder, shall be obligated to subsidize the Association for any operational deficits actually incurred during such fiscal year; provided, however, that any subsidy shall not be used to artificially reduce the amount of Annual Common Expense Assessments. In such case, the Declarant and each Lot Developer obligated hereunder to pay such subsidy shall be responsible for the payment of such subsidy in proportion to the number of Units which each owned during such assessment period, but the amount each shall be required to pay hereunder shall not exceed the total of the Annual Common Expense Assessments it would have been required to pay during such assessment period if this exemption did not exist. Neither the Declarant nor any Lot Developer shall be responsible for payment of any deficit resulting from nonpayment of the Annual Common Expense Assessment by any Owner. This Section may not be amended without the prior written consent of the Declarant and each Lot Developer.

**5.09 Contribution to Working Capital.** At the time an Owner acquires title to a Unit from title Declarant, a Lot Developer, or any other Owner, he or she shall be obligated to pay to the Association a

Declarant, a Lot Developer, or any other Owner, he or she shall be obligated to pay to the Association a nonrefundable, one-time contribution to the working capital and operating expense of the Association in an amount of \$500.00. The Board, from time to time, shall have the right to alter the amount of such contribution to working capital provided such action is approved by a Majority Vote of the Members, but in no event shall the required contribution be less than (i) one-sixth (1/6) of the estimated Annual Common Expense Assessment for such Unit for the fiscal year of the Association in which the acquisition occurs, nor more than (ii) \$ 1,000.00. The contribution to working capital made by each Owner shall not be transferable, and may be utilized for any lawful purpose the Board may deem appropriate. This Section 5.09 shall not apply to holders of Unit Mortgages who acquire title by foreclosure or deed in lieu thereof or to any successor to all of the Declarant's interest hereunder or to ally Lot Developer.

**5.10 Emergency Assessments.** In the event the Annual Common Expense Assessment levied against the Members proves to be insufficient for an immediate need or emergency not otherwise provided for herein, the budget and assessment may be amended at any time by the Board, and the Board may impose an Emergency assessment upon the Members. The determination of an immediate need or emergency shall be in the sole discretion of the Board.

**5.11 Special Assessments.** In addition to the other assessments herein authorized, the Board may levy, in any assessment year, a Special Assessment for the purpose of (i) defraying, in whole or part, the cost of any construction or reconstruction, repair or replacement of Common Property not determined by the Board to constitute an immediate need or emergency, (ii) providing funds when the Board determines that funds held in reserve are inadequate or (iii) providing funds for any other lawful purpose, including construction or acquisition of new capital improvements. If a Special Assessment exceeds the aggregate sum of \$15,000.00 increased by the Inflation Adjustment (hereafter described), the Special Assessment shall not be made unless approved by sixtyseven percent (67%) of all Members in good standing. Such vote, whether made in person or by proxy or as otherwise permitted in the Bylaws, shall be held at a meeting duly called for this purpose and at which the required quorum is present. Written notice of such meeting, stating the purpose of the meeting, shall be sent to all Members not less than fifteen (15) days and not more than sixty (60) days in advance of the meeting. The due date of any Special Assessment, or any installments thereof shall be fixed in the resolution authorizing the Special Assessment.

The "Inflation Adjustment" referred to in this Section 5.11 is a fraction, the numerator of which is the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) - Philadelphia - New Jersey, all items (1982-1984 =100)", published by the Bureau of Labor Statistics of the United States Department of Labor (the "Index"), for the last full calendar month that is available prior to the vote on the proposed assessment, and the denominator of which is the Index for last full calendar month immediately prior to the date of recodation of this Declaration. If the Index is discontinued, the Consumer Price Index -U.S. City Average (1982-1984 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor (the "Index-2") shall be used as and replace the Index for making the computation of the Inflation Adjustment. If the Index2 is discontinued, comparable statistics on the purchasing power of the consumer dollar published by the Bureau of Labor Statistics of the United States Department of Labor shall be selected by the Board to be used for making the computation of the Inflation Adjustment. If the Bureau of Labor Statistics shall no longer maintain statistics on the purchasing power of the consumer dollar, comparable statistics published by a responsible financial periodical or recognized authority selected by a Majority Vote of the Members shall be used for making the computation of the Inflation Adjustment. If the base year (1982 -1984 = 100) used in computing the index (or the Index-2) is changed, the figures used in making the Inflation Adjustment shall be changed accordingly, so that all increases in the Index (or the Index2) are taken into account notwithstanding any such change in the base year.

**5.12 Exemption from Emergency and Special Assessments.** Anything to the contrary herein notwithstanding, neither the Declarant nor any Lot Developer nor any successor to all of the Declarant's interest hereunder shall be required to pay any Emergency assessment permitted by Section 5.10 or any Special Assessment permitted by Section 5.11 hereof to which it does not expressly consent. Further, this provision may not be amended without the written consent of the Declarant and each Lot Developer.

**5.13 Miscellaneous Assessments.** Any and all fines, late charges, costs of collection (including fees for legal counsel), interest on unpaid assessments, capital contributions, membership fees or any other sums required to be paid by the Association by its Members by the provisions of this Declaration or any of the other Governing Documents, together with interest thereon, if any, shall be deemed a Miscellaneous Assessment which each Member

**5.14 Remedial Assessments.** In addition to the other assessments authorized herein, the Board from time to time may levy a Remedial Assessment against any Owner or Unit for any services or maintenance performed or ordered by the Board for the benefit of such Unit which the Owner of such Unit shall fail to perform in accordance with the provisions of this Declaration or any of the other Governing Documents.

**5.15 Allocation of Assessments.** Except in the case of Miscellaneous Assessments, Remedial Assessments, all assessments authorized under this Article shall be allocated among the Owners as provided in accordance with the Fee Percentage Schedule attached hereto as Exhibit "C". Remedial Assessments and Miscellaneous Assessments shall be charged only to the Owners accountable for such assessments as provided in this Article.

**5.16 Certificate of Payment.** The Association, upon the written request of any Owner, contract purchaser of a Unit, or the holder of a Unit Mortgage, shall furnish to such person a certificate in writing signed by an Officer of the Association setting forth whether or not assessments authorized hereunder have been paid. Such certificate shall constitute conclusive evidence of the amount of paid or unpaid assessments pertaining to that Unit.

**5.17 Interest in Common Surplus.** Any common surplus of the Association resulting from the excess of income over expenses or resulting from the proceeds of any distribution of assets of the Association shall be either retained by the Association to defray the reserve or operating costs of the Association, or, in the sole discretion of the board, shall be allocated among the Members in the same manner as those expenses were assessed.

## ARTICLE VI

### EASEMENTS

**6.01 Grant of Easements.** The Property and any Unit therein shall be owned, held, transferred, conveyed, assigned, sold, leased, occupied, used and enjoyed subject to the easements set forth in this Article. By accepting title to any Unit subject to the terms of this Declaration, a Unit Owner acknowledges that storm water does flow from offsite into the drainage system which is owned by the Community Association.

**6.02 Owner Easements.** Every Unit Owner, his successors and assigns, shall have the following easements with respect to the Property:

A perpetual, nonexclusive easement for ingress to and egress from the Owner's Unit in, upon, under, over, across and through the Common Property; and

A perpetual, nonexclusive easement to use the Common Property, subject to the right of the Board to:

(1) promulgate Rules and Regulations for the use and enjoyment thereof; and

(2) suspend the voting rights of any Unit Owner for any period during which any assessment authorized hereunder remains unpaid, or for any period during which any infraction of its published Rules and Regulations continues; it being understood that any suspension for either nonpayment or any assessment or a breach of the Rules and Regulations of the Association shall not constitute a waiver or discharge of the Unit Owner's obligation to pay such assessments.

**6.03 Declarant's Easements.** The Declarant shall have the following easements with respect to the Property:

A perpetual, blanket and nonexclusive easement in, upon, through, under and across the Property for the purpose of construction, installation, maintenance, and repair of any improvements to the Units or the Common Property, for ingress or egress therefore, for the use of all roadways and parking areas, and for the utilization of existing and future model units for sales and promotion and exhibition; and the performance of any requirements under any applicable performance and/or maintenance bonds; until the expiration of two (2) years after the date the last Unit held by the Declarant in the normal course of business is sold. In addition the Declarant hereby reserves the irrevocable right to enter into, upon, over or under any Unit for such purposes as may be reasonably

necessary for it or its agents to service such Unit or, to inspect such Unit, to remedy any violation of law and to perform any operations required in connection with the maintenance, repair or replacement of the Common Property or any facilities or equipment affecting or serving the Common Property, provided that requests for entry into the dwelling unit of an Owner are made in advance and that such entry is at a time reasonably convenient to the Unit Owner. In the case of an emergency, such right of entry shall be immediate whether the Unit Owner is present at the time or not; and

A perpetual, blanket and nonexclusive easement in, upon, over, under, across and through the Property for surface water runoff and drainage caused by natural forces and elements, grading, underdrains, and/or the improvements located upon the Property. No individual Unit Owner shall directly or indirectly interfere with or alter the drainage and runoff patterns and systems within the Property.

The easement rights granted to the Declarant under this Section 6.03 shall also inure to the benefit of each Lot Developer, but only to the extent necessary for the interest conveyed by the Declarant to each such Lot Developer.

**6.04 Association Easements.** The Association, its successors and assigns, shall have the following easements with respect to the Property.

A perpetual, exclusive easement for the maintenance of any Common Property, including any portion of the Common Property which presently or may hereafter encroach upon a Unit; and

A perpetual, nonexclusive easement so that the Association, through its Board or any managing agent, or their respective representatives, shall have a right of access to each Lot to (A) to inspect same, (B) to remedy any violations of the provisions of this Declaration or any of the other Governing Documents, and (C) to perform any operations required in connection with the maintenance, repairs, or replacements of or to the Common Property, or any equipment, facilities or fixtures affecting or serving other Units or the Common Property; provided that requests for entry into the Unit of an Owner are made in advance and that any such entry is at a time reasonably convenient to the Unit Owner, and in the case of an emergency, such right of entry shall be immediate, whether the Unit Owner is present at the time or not; (2) cut and otherwise maintain the grass, shrubs, trees and other vegetation anywhere in the Lot; and (3) maintain any slope within five (5) feet of any street right of way.

A perpetual nonexclusive easement so that the Association, through its Board or any managing agent, or their respective representatives, shall have rights of access and passage, over, under, upon and through the Property for purposes of performing the duties and responsibilities of the Association as set forth in this Declaration and the other Governing Documents; and

A perpetual, nonexclusive easement in, upon, over, across and through the Property for the purpose of the installation, maintenance, repair, service and replacement of all sewer water, power and telephone lines, mains, conduits, waters, poles, transformers master television antennas, and any and all other equipment or machinery whether now existing or hereafter necessary or incidental to the proper functioning of any utility systems serving the Property, which easement shall be also for the benefit of any Government Agency or utility company or other entity which requires same for the purpose of maintaining the function of one or more of the foregoing services; and

A perpetual, nonexclusive easement so that the Community Association through its Board or any managing agent, or their respective representatives, shall have rights of access and passage, over, under, upon and through the Property for purposes of maintaining or replacing the mature street trees along roadways. In the event of the removal (by any means) of one or more trees, the Community Association shall have the right, but not the obligation, to replace same with one or more trees for the purpose of preserving the tree lined roadway. The replacement of tree(s) shall be planted within the first ten (10) Feet outside of the right of way. Once the replacement tree is planted, it shall become the responsibility of the individual Unit Owner on whose Lot the replacement tree is planted to maintain and to replace the same when as necessary. In addition, the Community Association shall have the right, but not the obligation, to establish a fund for maintaining and/or replacing the trees; and

A perpetual, nonexclusive easement so that the Community Association, through its Board or any managing agent, or their respective representatives, shall have rights of access and passage, over, under, upon and through the Property for the purpose of maintaining any Site Triangle that is shown on any recorded plan for the Property, consistent with the terms of Section 9.01 herein; and

A perpetual, nonexclusive easement so that the Community Association, through its Board or any managing agent, or their respective representatives, shall have rights of access and passage, over, under, upon and through the Property for the purpose of maintaining any Landscape Buffer Easement that is shown on any recorded plat for the Property, consistent with the terms of Section 9.01 herein.

A perpetual, nonexclusive easement so that the Community Association, through its Board or any managing agent, or their respective representatives, shall have rights of access and passage, over, under, upon and through the Property for the purpose of cutting the lawn area of any Unit.

**6.05 Permitted Mortgage Holder Easements.** Any Permitted Mortgage Holder, its officers, agents and employees, shall have a blanket, perpetual and nonexclusive easement to enter the Property for the purpose of inspecting the condition and repair of any Common Property encumbered by its mortgage. This right shall be exercised only during reasonable daylight hours and only after advance notice to, and with the permission of the Board.

**6.06 Governmental Easements.** The Township of Mantua, its officers, agents and employees (but not the public in general) and all police, fire and ambulance personnel in the proper performance of their respective duties (including but not limited to emergency situations or in the performance of other necessary services or lawfully undertaken and authorized maintenance of the Common Property) shall have a blanket perpetual and nonexclusive easement of unobstructed ingress and egress in, upon, over, across and through the Property. Except in the event of emergencies, the rights accompanying the easements provided for in this Section shall be exercised only during reasonable daylight hours and then, whenever practicable, only after at least 48 hours notice to and with permission of the Unit Owner (for such Unit directly affected thereby) or the Board (for Common Property excluding open space and roadway areas).

The Township of Mantua, its officers, agents and employees (but not the public in general) shall also have a perpetual, nonexclusive easement to enter the Common Property for the purpose of inspecting, cleaning and maintaining the condition of the property.

**6.07 Utility Easements.** The Property shall be subject to the following easements:

Any utility company or entity furnishing utility service, including without limitation, master or cable television, electronic security service and sanitary sewer service to the Property, together with the agents and employees of such utility company or entity, shall have a blanket, perpetual and nonexclusive easement to enter the Property, or any part thereof, to read meters, service, install or repair utility lines and equipment, and do everything and anything else necessary to properly maintain and furnish utility service to the Property.

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on any recorded plat pertaining to the Property or any portion thereof as filed with the Clerk of Burlington County. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities.

As noted in Section 6.07 herein, sanitary sewerage easements that are dedicated to the Township of Mantua are reserved as shown on any recorded plat pertaining to the Property or any portion thereof as filed with the Clerk of Gloucester County. Within these sanitary sewer easements (the "Sewer Easement"), no structure (including fences), plantings or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. The Sewer Easement, shall be maintained exclusively as lawn area. All maintenance, including maintenance or repair of the lawn area as a result of Mantua Township operations, shall remain the responsibility of the Community Association. The Community Association shall also maintain a stabilized access way to all sanitary sewer manholes. Nothing in the paragraph shall preclude the Mantua Township from maintaining, repairing or replacing the sewer mains, or equipment related thereto. Any repair or maintenance of the sewer mains or related equipment shall comply with these Rules and Regulations.

## ARTICLE VII

### USE OF COMMON PROPERTY; TENANTS

**7.01 Use of Common Property.** All Owners and persons who also reside in the Unit shall be entitled

to full privileges of use of the Common Property without payment of any further fee or cost except as may be otherwise imposed pursuant to this Declaration. Use of the Common Property shall be subject to the Rules and Regulations as, from time to time, may be promulgated by the Association. Each Owner shall be liable to the Association for any violations of the Governing Documents or for any damage to the Common Property caused by the negligence or use or misuse of the Common Property by the Owner or the Owner's occupants, guests, employees, agents, tenants, licensees or invitees; provided, however that this provision is by way of supplement to and not in derogation of the assessment and enforcement powers of the Association under this Declaration.

7.02 **Tenants.** By becoming a tenant, each tenant agrees to be bound by the Governing Documents.

## ARTICLE VIII

### POWERS OF ATTORNEY

8.01 **Administration.** The administration of the Common Property by the Association shall be in accordance with the provisions of New Jersey law, this Declaration and the other Governing Documents, and any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently required by any Permitted Mortgage Holder, Government Agency or Title Insurer.

8.02 **Declarant's Power of Attorney.** Scope: The Declarant hereby reserves for itself a Power of Attorney on behalf of the Association for a period of the shorter of five (5) years from the date the Declarant conveys title to the first Unit to a purchaser other than a lot Developer, or until the Declarant conveys title to the last Unit held by it for sale in the ordinary course of business to a purchaser other than a Lot Developer Association, mortgagees, other lienholders or other parties claiming a legal or equitable interest in the Property allowing it to sign on behalf of the Association any agreements, documents, amendments or supplements to this Declaration legally required by any Government Agency or Title Insurer, or which maybe made pursuant to Section 17.02 of this Declaration or to act to dedicate any part of the Property as a public street consistent with the Site Plan as the same may be amended.

**Appointment:** By acceptance of a deed to any Unit or by the acceptance of any other legal or equitable interest in the Property, each and every such contract purchaser, Member, mortgagee or other lienholder, or any party having a legal or equitable interest in the Property does automatically and irrevocably name, constitute, appoint and confirm the Declarant as attorney-in-fact for the purpose of executing such agreements, documents, amendments and supplements to this Declaration, any of the other Governing Documents, and other instruments necessary to effect the foregoing, subject to the limitations set forth herein.

**Limitations:** Subject to any required approval from the New Jersey Department of Community Affairs, no agreement, document, amendment or supplement or other instrument which substantially increases the financial obligations of the Members or reserves any additional or special privileges not previously reserved for the Declarant shall be effective without the prior written consent of a Majority of the Members unless required by any Permitted Mortgage Holder, Government Agency or title Insurer, in which case consent of the Members shall not be required.

**Duration:** The Power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all Units and be binding upon the heirs, personal representatives, successors and assigns of any of the foregoing parties. Further, said power of attorney shall be irrevocable and shall not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to said powers. Said power of attorney shall be vested in the Declarant for the period of time set forth in Section 8.02, and shall thereafter vest in the Association.

8.03 **Association's Power of Attorney.** By acceptance of a deed to any Unit or by the acceptance of any other legal or equitable interest in the Property, each and every such contract purchaser, Member, mortgagee or other lienholder, or any party having a legal or equitable interest in the Property does automatically and irrevocably name, constitute, appoint and confirm the Association, as attorney-in-fact for the purpose of:

Selling, leasing or mortgaging any portion of the Common Property if such action is affirmatively voted by the Members in accordance with this Declaration; and

Preparing, executing and recording any amendments to this Declaration made pursuant to Section

17.02 of this Declaration or which may be required by a Permitted Mortgage Holder, Government Agency or Title Insurer.

However, the rights granted hereunder shall be effective only upon the expiration of the power of attorney reserved to the Declarant under Section 8.02 hereof. The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all Units and be binding upon the heirs, personal representatives, successors and assigns of any of the foregoing parties. Further, said power of attorney shall be irrevocable and shall not be affected by the death or disability of any principal and is intended to deliver all rights title and interest of the principal in and to said powers.

## ARTICLE IX

### GENERAL RESTRICTIONS AND COVENANTS

**9.01 Restrictions and Covenants.** The Declarant declares that the Property shall be subject to the following restrictions and covenants, all of which shall be perpetual in nature and run with the land. The restrictions and covenants contained in this Declaration shall be enforceable by the Declarant, any Owner on behalf of the Association, the Association or any record owner of the Common Property, and, under certain circumstances as set forth herein or provided by law, the Township of Mantua. In the event the Association fails to perform any obligation as required by the paragraphs headed "Lands Not Privately Owned," "Nuisance," "Wetlands, Wetlands Transition Areas, Flood Plains and/or Flood Hazard Areas," "Sight triangles and "Landscape Buffer Easements" in this section, the Township of Mantua shall have the right, but not the obligation, to require the Association to perform such obligation by notifying the Association in writing. In the event the Association shall fail to undertake such performance within thirty (30) days of receipt of the aforesaid notice from the Township of Mantua, then the Township of Mantua shall have the right, but not the obligation, to pursue the remedies set forth in section 4.03(a) of this Master Declaration. These restrictions and covenants shall be deemed to be in addition to, and not in derogation of, any applicable land use regulations now or hereafter set forth in the ordinances of the Township of Mantua or in laws or regulations of any other government agency.

**Land Use:** No Unit or any part of the Property, except for those Units used by the Declarant or any Lot Developer as sales offices, administrative offices or models, shall be used for any purpose other than as a private residence. No business, trade or profession shall be conducted in any Unit (except for home-office uses to the extent, if any, permitted under the Township of Mantua Zoning and Land Use Ordinance, as applicable and as amended, without the prior written approval of the Board).

**No Dumping:** No portion of the Property shall be used or maintained for the dumping of rubbish or debris except areas that may be designated for disposal by the Association. Trash, garbage and other waste shall be disposed of in closed containers at curbside for regular collection, or as otherwise directed by the Board of the Township of Mantua, or their authorized agents. Owners shall comply with any and all recycling regulations that are promulgated by the Board, the Township of Mantua, or any other Government Agency with jurisdiction, and all recyclable materials shall be disposed of in containers designated as appropriate by the Board, the Township of Mantua or any other Government Agency.

**Drilling:** No drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon the Property.

**Lands Not Privately Owned:** After the Declarant has completed the construction of the Common Property and areas to be dedicated to the Township of Mantua, lands not privately owned or dedicated for roadway purposes or subject to right-of-way agreements shall not be altered in any way as to trees, shrubs or other natural vegetation, excavated, filled or graded except upon the specific written approval of the Association. No Owner or occupant shall build, plant or maintain any matter or thing upon, in, over or under the Common Property.

**Fences. Hedges, Plantings:** No fence or wall shall be erected or permitted in front of the front wall line of the main house structure of any Unit, or wall at the rear of a Unit without prior written approval by the Architectural Design Review Committee in accordance with Article XV hereof. With respect to corner lots, the front wall line shall mean the two (2) wall lines of the main house structure that are nearest the two (2) streets forming the corner. Any fences which an Owner may be permitted hereunder to erect shall be in accordance with the Design Standards (as hereafter defined). In addition, the height, composition, color and other characteristics of any fence, wall, hedge or mass planting shall comply with the requirements of the Township of Mantua.

**Pools:** No above ground pools shall be permitted.

**Signs:** Except for signs advertising the sale of a Unit as permitted herein, no sign of any kind, other than those of the Declarant or Lot Developer, shall be displayed to the public view on any Unit. However, Owners may place one (1) sign, not more than three (3) feet, advertising the sale or lease of their Unit.

**Compliance with Law:** No person shall carry on any use or activity on the Property or maintain anything on the Property that would violate any federal, state, or municipal law, regulations, ordinance or directive.

**Nuisance:** No person shall engage in, allow or permit any activity on the Property which constitutes a nuisance to the residents or other Units or neighboring property owners, or which interferes with the peaceful use and enjoyment of the Property. This paragraph shall not apply to any construction, repair, installation, maintenance, sales, marketing, or administration activities of the Declarant or any Lot Developer as long as any Unit held by it for sale remains unsold in the ordinary course of business.

**No Hazardous Activities:** No activities shall be conducted on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged on the Property, and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe interior fireplace. No hunting of any type shall be permitted on the Property. No person shall permit anything to be done to or kept upon the Property which will result in the cancellation of insurance or the increase of premiums on any insurance maintained by the Association or other Owners.

**Insurance:** Unless the Board otherwise permits in writing, each Owner will be required to repair, rebuild or replace each Unit destroyed by fire or other casualty within a reasonable time from the date of any such casualty with new structures and materials of like size, kind and quality as existed prior to its damage or destruction by fire or other casualty. To assist in this end, each Unit Owner shall maintain adequate fire and extended casualty coverage insurance for his Unit. All work to be performed must comply with the architectural standards and procedures set forth in Article XV hereof. An Owner may petition the Board for an exemption of the rebuilding requirement. In the event the Board grants such exemption, the Owner shall remain responsible to restore the damaged area to a condition compatible with the remainder of the Property as determined by the Board in a manner that adequately protects the safety of the other Owners and which does not diminish the visual harmony of the neighborhood.

**Architectural Control:** All Units shall be subject to the architectural controls and procedures set forth in Article XV hereof.

**Wetlands, Wetlands Transition Areas, Flood Plains and/or Flood Hazard Areas:** As shown on the Site Plan, wetlands and flood plains exist on the Property. Specific restrictions under New Jersey and federal law exist regarding the usage of these areas with which each Owner shall comply. Areas within conservation easements shown on the subdivision plans ("A") shall not be disturbed in any way.

**Sight Triangles.** Within any sight triangle shown on any recorded plat for the Property, the Owner of a Unit subject to the sight triangle shall ensure that the portion of the Unit within the sight triangle shall be maintained in accordance with any applicable township or County Ordinance or Specification. Any Owner who violates the provisions of this Section shall be given written notice of such violation and an opportunity to correct such violations within ten (10) days after such notice is given. Failure to cure the violation within such ten (10) day period shall entitle the Community Association to impose fines and take such other action set forth in Section 6.04 hereof, and shall assess a Remedial Assessment against the Owner as herein provided for costs incurred by the Community Association. The Community Association shall be entitled to collect all costs from such Owner which it may incur in the enforcement of this paragraph, and such charges shall be deemed assessments hereunder.

**Landscape Buffer Easements:** Within any Landscape Buffer Easement shown on any recorded plat for the Property, it shall be the obligation of the Community Association to maintain the Landscape buffer Easement area as if it were Common Property. An Owner shall make no change to the grade or landscaping within the Landscape Buffer Easement without the prior written approval of the Architectural Design Review Committee in accordance with Article XV hereof and the Board, and if required, by the Township. A fence may be placed within the Landscape Buffer Easement provided the Owner receives prior written approval from the Architectural Design

Review Committee in accordance with Article XV hereof and any approval required by the Township. The Architectural Design Review Committee shall strongly consider a common fence location and scheme when considering whether to allow an Owner to place a fence within the Landscape Buffer Easement. Any Owner who violates the provisions of this Section shall be given written notice of such violation and an opportunity to correct such violations within ten (10) days after such notice is given. Failure to cure the violation within such ten (10) day period shall entitle the Community Association to impose fines and take such other action as is reasonably required, including restoration of the Landscape Buffer Easement, and to assess a Remedial Assessment against the Owner as herein provided for costs incurred by the Community Association. The Community Association shall be entitled to collect all costs from such Owner which it may incur in the enforcement of this paragraph, and such charges shall be deemed assessments hereunder.

**9.02 Handicapped Use.** Nothing herein shall be deemed to prohibit the reasonable adaptation of any Unit for handicapped use.

**9.03 Rules and Regulations.** The Board shall have the power to make such Rules and Regulations as it deems necessary or advisable to carry out the intent of any or all of the provisions of this Declaration or of the Bylaws.

**9.04 Exemption of Declarant.** Without in any way limiting the generality of the foregoing, this Declaration shall not prevent or limit the right of the Declarant and each Lot Developer, their respective successors and assigns, to excavate and grade, to construct and alter drainage patterns and facilities, to construct buildings and other types of improvements, to maintain models and constructions, sales and leasing offices and similar facilities, and to post signs incidental to construction, sales and leasing, within the Property. However, the rights of each Lot Developer, their respective successors and assigns, to take such actions shall be subject to regulation by the Declarant.

## ARTICLE X

### EMINENT DOMAIN

**10.01 Notice and Participation of Unit Owners.** If the Common Property or any part thereof shall be taken, injured or destroyed by eminent domain, each Member shall be entitled to notice of such taking and to participate only through the Association in the proceedings incident thereto.

**10.02 Allocation of Awards.** Unless otherwise required pursuant to the eminent domain award, any awards made in connection with such proceedings either shall be applied by the Board to reduce the Annual Common Expense Assessment or shall be distributed to all Members (or to an Owner and the holder of a Unit Mortgage encumbering such Owner's Unit, as their respective interests may appear) in accordance with the Fee Percentage Schedule, or applied to reserves, as the Board, in its sole discretion, shall deem appropriate.

## ARTICLE XI

### PROTECTIVE PROVISIONS FOR THE BENEFIT OF MORTGAGE HOLDERS

**11.01 General.** Notwithstanding anything in this Declaration or the other Governing Documents to the contrary, the provisions of this Article XI shall control with respect to Permitted Mortgage Holders, Eligible Unit Mortgage Holders, and holders of Unit Mortgages, as their respective interests appear.

**11.02 Notice to Permitted Mortgage Holders.** Each Permitted Mortgage Holder shall be entitled to timely notice of

(a) Any condemnation or casualty loss that affects the Common Property encumbered by its mortgage or a material portion of the Common Property of the Association; and

(b) A lapse cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(c) Any proposed action that requires the consent of the Permitted Mortgage Holder.

**11.03 Prior Approval of Permitted Mortgage Holders.** The prior approval of fifty-one percent (51%) of the Permitted Mortgage Holders is required for any amendment to this Declaration or to any of the other Governing Documents of the Association which could materially impact the interests of Permitted Mortgage Holders, including, without limitation, any amendment which would change any provision relating to:

- (a) reserves for maintenance, repair and replacement of the Common Property;
- (b) responsibility for maintenance and repairs of the Common Property;
- (c) rights to the use of the Common Property;
- (d) convertibility of Units into Common Property of the Association or vice versa
- (e) The addition, annexation or withdrawal of property to or from the Common Property or the Property excluding any amendment for the addition of the Additional Lands;
- (f) insurance or fidelity bonds;
- (g) a decision by the Association to establish self-management rather than professional management when professional management had been previously required by the Governing Documents or by a Permitted Mortgage Holder;
- (h) restoration or repair of the Common Property (after damage, destruction or condemnation) in a manner other than that which may be specified in this Declaration;
- (i) any action to transfer the legal status of the Common Property; or
- (j) any provisions that expressly benefit Permitted Mortgage Holders,

A Permitted Mortgage Holder shall be deemed to have implicitly approved any amendment as provided if such Permitted Mortgage Holder shall fail to submit its objections or comments to any written proposal for amendment within thirty (30) days after it receives notice of the proposed amendment, which notice shall be delivered by certified or registered mail, return receipt requested.

**11.04 Inspection of Records.** Any Permitted Mortgage Holder shall, upon not less than forty-eight (48) hours prior written request, be permitted to inspect the books and records of the Association and certified true copies of the Governing Documents of the Association, which inspection shall be held at the office of the Association during normal business hours; and to receive an annual audited financial statement of the Association within one hundred twenty (120) days following the end of any fiscal year of the Association.

**11.05 Notice to Eligible Unit Mortgage Holders.** Each Eligible Unit Mortgage holder shall be entitled to timely notice of

- (a) Any condemnation or casualty loss that affects a material portion of the Common Property of the Association; and
- (b) Any sixty (60) day delinquency in the payment of the Annual Common Expense Assessment or other assessments or charges owned to the Association by the Owner of the Unit encumbered by the mortgage of such Eligible unit Mortgage Holder.

**11.06 Lien Subordinate.** Any lien the Association may have on any Unit for the payment of assessments authorized hereunder which are attributable to such Unit is subordinate to the lien or equivalent security interest of any mortgage on the Unit recorded prior to the date any such assessment became due.

**11.07 Liability for Assessments.** Any holder of a Unit Mortgage which is a first mortgage lien on a Unit that obtains title to the Unit as a result of foreclosure of its mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser in a foreclosure sale, or their respective successors and assigns, is not liable for the

assessments by the Association pertaining to such Unit or chargeable to the former Owner which became due prior to acquisition of title by such mortgage holder or purchaser in foreclosure sale. Such unpaid share of assessments shall be deemed to be Common Expenses collectible from all the Owners (including such acquirer, his successors and assigns) in accordance with the Fee Percentage Schedule.

**11.08 Distribution of Insurance Proceeds or Condemnation Awards.** Any insurance proceeds or condemnation awards which are to be distributed to Owners in accordance with this Declaration shall be paid to each Owner and the holder of a Unit Mortgage encumbering such Owner's Unit, as their respective interests may appear. The Board shall maintain a list of Eligible Unit Mortgage Holders and other holders of a Unit Mortgage who notify the Board of their mortgage on any Unit. Only Eligible unit Mortgage Holders and other holders of a Unit Mortgage who are identified on the books of the Board on the date such distributions are to be made shall be entitled to the protection of this section. However, the Board shall have no duty to update its records books other than in accordance with notice of a Unit Mortgage provided to the Board or to inquire as to the existence of any Unit Mortgage, and shall have no liability to any holder of a Unit Mortgage not properly identified to the Board.

## ARTICLE XII

### DECLARANT'S RIGHTS AND OBLIGATIONS

**12.01 Ratification, Confirmation and Approval of Agreements.** The fact that some or all of the officers, Trustees, Members or employees of the Association and the Declarant maybe identical, and the fact that the Declarant or its nominees, have theretofore or may hereafter enter into agreements with the Association or with third parties, will not invalidate any such agreements, and the Association and its Members will be obligated to above by and comply with the terms and conditions thereof The purchase of a Unit, and the acceptance of the Deed therefore by any party, shall constitute the ratification, confirmation and approval by such purchaser and for his heirs, legal representatives, successors and assigns, of the propriety and legality of said agreements or said agreement, or any other agreements authorized and permitted by New Jersey law, this Declaration or the other Governing Documents.

**12.02 Rights Reserved to the Declarant.** Notwithstanding any provision hereof or of the Governing Documents to the contrary, but in addition to all rights reserved to the Declarant by other provisions of this Declaration, the Declarant hereby reserves, for as long as it owns in the ordinary course of business one or more Units in the Property.

- (a) The right to construct, sell, lease, mortgage or sublease any unsold Units within the property;
- and
- (b) The right to maintain any sales offices, construction offices, management offices, customer service offices, leasing offices, models, signs and advertising within the Property.

**12.03 Transfer of Special Declarant Rights.** No exemptions or rights created for or reserved to the Declarant hereunder ("Special Declarant Rights") may be transferred except with title to the real estate evidenced by an instrument recorded in the Office of the Clerk of Gloucester County, New Jersey. The instrument shall not be effective unless executed by the transferee. Each transferee who received Special Declarant Rights may thereafter transfer only those rights received by it as evidenced by the instrument of title executed in accordance herewith.

**12.04 Rights of Lot Developers.** Notwithstanding the provisions of Section 12.03 hereof each Lot Developer, its successors and assigns, shall have all rights and exemptions expressly created under this Declaration for the benefit of Lot Developers without the need for the instrument conveying title to Units to any Lot Developer to expressly provide for such rights. Each Lot Developer, its successors and assigns, shall have the further rights provided herein in Sections 12.02, but only for so long as the Units transferred to it are held for sale in the ordinary course of business. However, such rights may be exercised by each Lot Developer only to the extent of its interest and only upon Units owned by it.

**12.05 Liability of Transferor.** Upon transfer of any Special Declarant Rights, the liability of the transferor is as follows;

A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him. Lack of privity does not deprive any Member of standing to bring an action to enforce any obligation of the transferor.

If a transferor retains any Special Declarant Right, or if a transferee of a Special Declarant Right is an Affiliate (as defined in Section 12.08 hereof) of the transferor, the transferor is subject to liability for all obligations and liabilities imposed on the transferor by law or by this Declaration which may arise after the transfer, and is jointly and severally liable with the transferee for the liabilities and obligations of the transferee which relate to the Property.

A transferor who retains no Special Declarant Rights has no liability for any act or omission or any breach of a contractual or warrant obligation arising from the exercise of any Special Declarant Rights by a transferee who is not an Affiliate of the transferor

**12.06 Transfer of Rights Requested.** Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, sale by a trustee under a deed of trust, or sale under any bankruptcy or receivership proceedings, of any Units owned by the Declarant for sale in the ordinary course of business, a person acquiring title to all of such Units being foreclosed or sold, but only upon his written request, shall have the right to succeed to all Special Declarant Rights or only to those Special Declarant Rights set forth under Section 12.02. The judgment or instrument conveying title shall provide for transfer of only the Special Declarant Rights requested.

**12.07 Foreclosure, Bankruptcy, Receivership.** Upon foreclosure or the sale by a trustee under a deed of trust of the Units owned by the Declarant and encumbered by the particular mortgage being foreclosed or under which the Declarant has defaulted, the Declarant ceases to have any Special Declarant Rights with respect to such Units.

Upon the adjudication of bankruptcy of the Declarant or completion of receivership proceedings; The Declarant ceases to have any Special Declarant Rights with respect to the Units then owned by the Declarant, and the period of control of the Board by the Declarant terminates unless the judgment or instrument conveying title provides for transfer of all Special Declarant Rights to a successor to the Declarant.

**12.08 Liability of Successors.** The liabilities and obligations of persons who succeed to Special Declarant Rights are as follows:

A successor to all Special Declarant Rights who is an Affiliate of the transferor is subject to all obligations and liabilities imposed on the transferor by law or by this Declaration.

A successor to all Special Declarant Rights, other than a successor described in paragraphs hereof, who is not an Affiliate of the transferor is subject to all obligations and liabilities imposed upon the transferor by law or this Declaration, but he is not subject to liability for misrepresentations or warranty obligations on improvements made by the Declarant or any predecessor in interest, except the obligation to comply with any applicable requirements of The Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-21, et seq. and the regulations thereto, and of the New Jersey Department of Community Affairs regarding offerings to purchasers and any liability relating thereto.

Nothing in this Article XII subjects any successor to Special Declarant Rights to any claims against or other obligations of a transferor other than claims and obligations arising under this Declaration.

For purposes of this Article XII, the term "Affiliate" shall mean any entity which controls, is controlled by, or is under common control with the transferor. An entity "controls" the transferor if the entity is a general partner, officer, director, or employer of the transferor, directly or indirectly or acting in concert with one or more entities, or through one or more subsidiaries, owns controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the transferor, controls in any manner the election of a majority of the directors of the transferor, or has contributed more than twenty (20%) percent of the equity capital of the transferor. An entity "is controlled by" the transferor if the transferor is a general partner, officer, director, or employer of the entity, directly or indirectly or acting in concert with one or more entities, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the entity, controls in any manner the election of a majority of the directors of the entity, or has contributed more than twenty percent (20%) of the capital of the entity. Control does not exist if the powers described in this Section are held solely as security for an obligation and are not exercised.

## ARTICLE XIII

## INSURANCE

**13.01 General Insurance Requirements.** The Board, on behalf of the Association, shall obtain, or cause to be obtained, master policies of insurance as hereinafter described, which shall provide that any payment for loss shall be paid to the Association or to an insurance trustee designated by the Board. The Association shall maintain the appropriate insurance coverage as is required under applicable law and under the guidelines and regulations promulgated by the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Company ("FHLMC"), the Department of Housing and Urban Development ("HUD"), and the Veteran's Administration ("VA"), or their successors (to the extent that approval is or shall be obtained from such entity). The company or companies from which the Board shall obtain the insurance coverage required hereby must be qualified and reputable companies authorized to do business in the State of New Jersey and rated as "excellent" by AM. Best Company, Inc. in its key rating guide for insurance providers of similar coverage.

The types and amounts of insurance coverage described herein are minimal based upon the standards established by FNMA in effect for 1991. The Board shall review, at least annually, all insurance coverage required hereunder with respect to its compliance with this Declaration and standards set by FNMA, FHLMC, HUD or VA (to the extent such entity's approval is required), as well as with respect to what is reasonably appropriate coverage for projects. In the event the Board determines that the insurance coverage required hereunder is not consistent with the requirements set by FNMA, FHLMC, HUD or of VA (to the extent such entity's approval is required), or is not otherwise reasonably appropriate coverage when compared to coverage for projects similar, the Board shall have the power to obtain such consistent and reasonably appropriate coverage, notwithstanding the specific provisions for insurance contained herein. Consent of Unit Owners or Permitted Mortgage holders or any other person shall be included in the Common Expenses and charged to Owners as part of the Annual Common Expense Assessment.

**13.02 Insurance Policy Provisions.** All policies of master insurance required hereunder shall provide that they may not be canceled or substantially modified by any party without at least ten (10) days prior notice to the Association and to each first mortgagee listed in the insurance policies. All policies shall further provide that:

- (a) Any insurance trust agreements shall be recognized;
- (b) The right of subrogation against Unit Owners shall be waived;
- (c) The insurance shall not be prejudiced by any act, negligence or omissions of the Unit Owners which are not in control of the Association; and
- (d) The policy is primary in the event the Unit Owner has other insurance that covers the same loss.

Certificates of Insurance with proper mortgagee endorsement shall be issued to any Permitted Mortgage Holder who shall request same by written notice to the Board. The certificates of insurance shall indicate on their face that they are part of such master policies of insurance covering the Common Property. The certificates of insurance shall show the relative amounts of insurance covering the Common Property.

The original of each master policy shall be deposited with the Association as insurance trustee, and a memorandum thereof shall be provided by the Association to any Permitted Mortgage Holder who shall request same in writing. The Association, as insurance trustee, shall receive any proceeds as are paid and hold the proceeds in accordance with the terms of this Declaration.

**13.03 Required Insurance.** The Board shall obtain the following insurance coverage:

- (a) Physical Damage and Additional Peril Insurance: To the extent available in the normal commercial market place, the Board shall obtain "blanket" or "all-risk" hazard insurance covering damage to the Common Property in an amount equal to the maximum insurable replacement value as determined annually by the Board. Such coverage shall afford protection against loss or damage by fire, lightning, windstorm and other risks normally included within all-risk extended coverage, including vandalism and malicious mischief Unless a higher

maximum amount is required by law, the maximum deductible amount under such policy shall be the lesser of Ten Thousand Dollars (\$10,000.00), or one percent (1.0%) of the policy face amount.

(b) **Public Liability Insurance:** The Board shall obtain broad-form comprehensive public liability and property damage insurance covering liability and cost of defense against claims for bodily injury, death, or property damage, such insurance to afford protection in respect of bodily injury or death, and in respect of property damage. Such policy shall contain a severability of interest provision or a specific endorsement to preclude the insurer's denial of a claim because of negligent acts or omissions of the Association or of other Unit Owners and shall also contain cross liability endorsements to cover liabilities of the Association or the Unit Owners as a group to a Unit Owner.

(c) **Flood Insurance:** In the event the Common Property or any portion there is situated within an area having special flood hazards or for which insurance has been made available under National Flood Insurance Administration Program ("NFIP"), or such other successor agencies providing such insurance, the Association shall maintain a blanket policy of flood insurance on the Common Property. Such flood hazard insurance coverage shall be in an amount at least equal to the lesser of the (i) maximum coverage available under the NFIP or its successor, or (ii) one hundred percent (100%) of the current replacement value of the Common Property. Unless a higher deductible amount is required by law, the maximum deductible amount for such policy shall be the lesser of (i) Five Thousand Dollars (\$5,000.00) or (ii) one percent (1.0%) of the policy face amount. Nothing herein shall require the Community Association to obtain flood insurance on open space.

(d) **Worker's Compensation Insurance:** The Board shall obtain Worker's Compensation Insurance as necessary to meet the requirements by law.

(e) **Errors and Omission Insurance:** The Board shall obtain errors and omission insurance and such other insurance as the Board shall deem necessary.

(f) **Fidelity Insurance (Bonds):** The Board shall obtain fidelity insurance or fidelity bonds (collectively described as "Fidelity Bonds") covering those officers and employees of the Association and those agents and employees hired by the Association to handle funds of the Association, whether or not any of such individuals receive compensation for services. The amount of the Fidelity Bonds shall be determined by the Board, and shall, at minimum, be equal to the maximum funds that will be in the custody of the Association or its management agent at any time while the Fidelity Bonds are in force. The premium on such Fidelity Bonds shall be paid by the Association. If bonds and not insurance are obtained, the bonds shall name the Association as the obligee.

Unless obtained in the discretion of the Board, any management agent who handles funds for the Association shall provide its own Fidelity Bonds. The amount of such Fidelity Bonds shall be sufficient to cover the maximum funds that will be held by such managing agents at any time while the Fidelity Bonds are in force. However, in no event shall the Fidelity Bonds be for an amount less than the sum of three (3) months of the then current Annual Common Expense Assessments charged to all Units plus the amount of reserves. If a bond is obtained, the bond shall name the Association as the obligee.

(g) **Vehicular Liability Insurance:** To the extent obtainable in the normal commercial marketplace, the Board shall obtain vehicular insurance to cover all motor vehicles owned or operated by the Association.

(h) **Other Insurance:** The Board shall obtain such other insurance as the Board deems necessary or appropriate in its reasonable judgment as may be required for comparable development such as the Property.

#### **13.04 Repair or Replacement Following Damage or Destruction to Property Insured by Association.**

(a) **Obligation to Repair:** Where a loss or damage occurs to any portion of the Common Property, the Association shall repair and restore the damage caused by the loss, unless repair or replacement would be illegal under any state or local health or safety statute or ordinance, or at least sixty-seven percent (67%) of the Unit Owners vote not to repair and;

(b) **Estimates/Contract for Repair:** Upon the occurrence of any loss or damage to the Common

Property, the Board shall promptly obtain reliable and detailed estimates of the cost of repair and restoration. If the damaged Common Property is to be repaired, then, upon notification of the receipt of insurance proceeds by the Insurance trustee or at such earlier date as may be determined by the Board, the Board shall enter into a contract for a specific dollar amount with a licensed contractor or contractors for the repair or rebuilding of all of the damaged or destroyed portions of the Common Property, as nearly as practicable to the original plans and specifications thereof and in accordance with all applicable building codes. Where necessary given the nature of the damaged Common Property to be repaired, the Board shall employ a properly qualified party to supervise the repair and rebuilding to insure that such work, services and supplies are of proper quality and that construction is completed in a workmanlike manner and according to plans and specifications approved by the Board.

(c) **Insurance Proceeds Insufficient:** If the net proceeds of the insurance are sufficient to pay the estimated cost to repair or replace the damaged Common Property, but the net proceeds prove to be insufficient to pay for the actual cost of work that has been completed, the Board, promptly upon determination of the deficiency, shall levy an Emergency Assessment for the deficiency against each Owner in accordance with the Fee Percentage Schedule. The funds received from such assessments shall be added by the Board to the insurance proceeds available for such repair and restoration.

(d) **Limitation on Permitted Mortgage Holder's Rights:** In the event the net insurance proceeds are insufficient to pay for the estimated cost of restoration and repair, but the Owners approve a Special Assessment for the deficiency such that sufficient funds are on hand to pay fully for the necessary repair and restoration of the damaged Common Property, then no Permitted Mortgage Holder or other mortgagee shall have the right to require the application of insurance proceeds to the payment of the indebtedness secured by a mortgage on the damaged Common Property, unless the Association is in default of such mortgage and the mortgage encumbers the damaged Common Property.

(e) "In the event the Association fails to repair any damage or destruction to any portion of the Common Property, the maintenance and repair which may be required by any applicable ordinance, law, regulation or provision of this Master Declaration, the Township of Mantua shall have the right, but not the obligation, to require the Association to perform such obligation by notifying the Association in writing. In the event the Association shall fail to undertake such performance within thirty (30) days of receipt of the aforesaid notice from the Township of Mantua, then the Township of Mantua shall have the right, but not the obligation, to pursue the remedies set forth in section 4.03(a) of this Master Declaration. These restrictions and covenants shall be deemed to be in addition to, and not in derogation of, any applicable land use regulations now or hereafter set forth in the ordinances of the Township of Mantua or in laws or regulations of any other government agency.

**13.05 Damage or Destruction: No Repair or Replacement:** If the Common Property is not to be repaired or restored:

(a) The insurance proceeds attributable to damaged Common Property shall be applied first to (i) reduce the indebtedness secured by a mortgage on the damaged Common Property, then to (ii) restore the damaged area to a condition compatible with the remainder of the Property as determined by the Board (and an Emergency Assessment may be made for such purpose if the insurance proceeds are insufficient); and

(b) The remainder of the insurance proceeds, if any, in the sole and absolute discretion of the Board, either shall be utilized by the Association to offset Common Expenses or reduce other indebtedness secured by a mortgage on the Common Property, added to reserve accounts, or distributed to the Unit Owners (or to a Unit Owner and to the holder of a Unit Mortgage on such Owner's Unit, as their respective interests may appear) in accordance with the Fee Percentage Schedule.

**13.06 Association's Power to Compromise Claim.** The Board is hereby empowered to compromise and settle claims arising under insurance policies purchased by the Association and to execute and deliver releases therefore, upon the payment of claims.

**13.07 Effect of Use on Insurance Premiums.** No Unit shall be used, occupied or kept in a manner which will in any way increase fire, liability or other insurance premiums payable by any other Unit Owner. No Unit Owner shall take any action with respect to the Common Property, nor shall any part of the Common Property be used, occupied or kept in any manner which would violate any law, statute, ordinance or regulation of any

governmental body or which would lead to the cancellation of any insurance policy or policies or increase of insurance premiums payable by the Association.

## ARTICLE XIV

### INTENTIONALLY DELETED

## ARTICLE XV

### ARCHITECTURAL CONTROL

**15.01 Architectural Control.** No landscaping, building, fence, wall or other structure or improvement (including, without limitation, pools and outdoor sheds) shall be commenced, erected or maintained upon any Unit nor shall any exterior addition to or change or alteration be made to any Unit (collectively, the "Improvements"), until the plans and specifications showing that proposed Improvements, the materials to be used, and the locations and effect of the same upon such Unit, shall have been submitted to and approved in writing by the Architectural Design Review Committee (as hereinafter defined).

**15.02 Approval Process.** Any Owner seeking to make Improvements to his Unit shall submit a detailed plan of the Improvements to the Architectural Design Review Committee. The Architectural Design Review Committee shall have the right to approve such plans or to limit approval upon change of any effect of the Improvements in an effort to keep the Improvements consistent with and in harmony with the overall scheme and architecture of Mantua Woods. Approval of any Improvements which meet the design criteria and architectural standards established by the Architectural Design Review Committee pursuant to Section 15.03 hereof shall not be unreasonably withheld. In the event the Architectural Design Review Committee fails to approve or disapprove the Improvements within sixty (60) days after such plans have been submitted for approval, approval will be deemed denied, and the applicant may reapply for approval at any time.

Approval of any proposed Improvements shall be by majority vote of the Reviewers (as hereafter defined). An Owner whose proposed Improvements have been denied by the Architectural Design Review Committee shall have a right to appeal to the Board. The Board, in its sole discretion, may review the decision of the Architectural Design Review Committee, and the decision of the Board shall be final and binding on the Owner.

**15.03 Design Criteria.** The Board shall adopt Design Standards which shall be used by the Architectural Design Review Committee in making its decisions (the "Design Standards"). The Architectural Design Review Committee shall have the right to recommend modifications to such Design Standards for any Improvements, but any such modifications to the Design Standards shall be effective only if approved in writing by the Board. A copy of the current Design Standards shall be available for review at the office of the Association during normal business hours. Upon written request of an Owner, the Association shall promptly provide copies of all design criteria and the then current Design Standards on file and may charge such Owner a reasonable fee therefore. Nevertheless, the Architectural Design Review Committee shall have the power to grant waivers from any such design criteria and the Design Standards according to procedures and subject to such conditions as may be established by the Board.

**15.04 Violation of Architectural Controls.** Any Owner who violates the provisions of this Article or who constructs any Improvements other than in accordance with the plans approved by the Architectural Design Review Committee shall be given written notice of such violation and an opportunity to correct such violations within twenty (20) days after such notice is given. Failure to cure the violation within such twenty (20) day period shall entitle the Association to impose fines and take such other action set forth in Section 17.03 hereof and in the event an injunction is issued demanding that the Improvements be removed and the property restored, then the Board shall have the right to remedy the violation in accordance with such injunction and assess a Remedial Assessment against the Owner as herein provided for costs incurred by the Association. The Association shall be entitled to collect all costs, including court fees and fees for legal counsel, from such Owner which it may incur in the enforcement of this Article, and such charges shall be deemed assessments hereunder.

**15.05 Appointment of Reviewers.** The Architectural Design Review Committee shall initially be comprised exclusively of the Declarant until seventy-five percent (75%) of the aggregate number of Units in the full

build-out of Mantua Woods have been sold and title conveyed to Owners other than the Declarant and Lot Developers; provided, however, that the aggregate number of Units shall be reduced to the number of Units which are permitted by government approvals to be constructed on the lands subjected to this Declaration; and the Declarant shall have the option to surrender its right to act as the Architectural Design Review Committee to the Board at any time prior to the conveyance of seventy-five percent (75%) of the Units as stated aforesaid. Thereafter, the Architectural Design Review Committee shall be comprised of the Board, or the Board may delegate its responsibilities to a committee of not less than three (3) Members, who, when serving in such capacity shall be referred to as "Reviewers". The Reviewers shall be appointed by the Board from among the Owners. If one or more candidates shall not agree to serve as a Reviewer, the Board may serve as such Reviewer. The qualification and term of Reviewers shall be set forth more particularly in the Bylaws.

**15.06 Declarant Exemption.** Notwithstanding any provision of this Article XV or of the other Governing Documents to the contrary, no restriction or architectural controls shall apply to the Declarant or to any Unit owned by the Declarant for so long as the Declarant holds title to any Unit for sale in the ordinary course of business.

## ARTICLE XVI

### INTENTIONALLY DELETED

## ARTICLE XVII

### GENERAL PROVISIONS

**17.01 Duration.** The provisions of this Declaration shall be perpetual in duration, shall run with and bind all of the land included in the Property and shall inure to the benefit of and be enforceable by the Association and its Members, their respective successors, assigns, heirs, executors, administrators, and personal representative, on behalf of the Association. This Section 17.01 shall not be amended without the written consent of the Township of Mantua.

**17.02 Amendment of Declaration.** The Board may record an amendment to this Declaration at any time provided the amendment has been approved by the affirmative vote of at least sixty-seven percent (67%) of all Members then in Good Standing. Such vote shall be made in person or by proxy at a meeting duly called for this purpose and at which the required quorum is present or by mail ballot as provided in the Bylaws. In the alternative, an amendment may be made by an agreement (which agreement may be in counterparts), signed and acknowledged, in the manner required for the execution of a deed, by sixty-seven (67%) percent of all Members in Good Standing at the time such document is fully executed, and such amendment shall be effective when recorded in the Office of the Clerk of Gloucester County, New Jersey. Declarant specifically reserves the right to amend this Declaration for the purposes set forth in Section 2.02 above without the need for consent or approval of any Member or the Board. However, no amendment shall be effective unless approved by Permitted Mortgage Holders to the extent required under Article XI. This paragraph is by way of supplement to and not in derogation of the powers of amendment reserved to the Declarant pursuant to Article VIII hereof.

Notwithstanding any provision hereof to the contrary, if any amendment is necessary in the judgment of the Board to cure any ambiguity or to correct or supplement any provision of this Declaration that is unenforceable by law, defective, missing or inconsistent with any other provision hereof or with any of the other Governing Documents, or if such amendment is necessary to conform this Declaration with the requirements of the FNMA, VA or FHLMC at a time when such entity holds, or intends to hold, one or more mortgages on any Unit or the Common Property, then at any time and from time to time the Board may effect an appropriate corrective amendment without the approval of the Owners or any Permitted Mortgage Holders or any other party having an interest in the Property or any Unit, upon receipt by the Board of an opinion from independent legal counsel that the proposed amendment is permitted by the terms of this sentence.

Any amendment by the members to change permitted uses of lots or reduce the size of or otherwise modify the common property shall require the prior approval of the Planning Board. No amendment shall be effective unless and until recorded in the Office of the Clerk of Gloucester County. No such amendment may alter, increase or diminish any of the obligations assumed by Declarant, its successors assigns, in conjunction with

the approval or any other obligation which may now or later exist by law, without the approval of the Planning Board or other municipal entity of the Township of Mantua, as appropriate.

**17.03 Enforcement.** Enforcement of this Declaration or of the other Governing Documents shall be by an appropriate proceeding in law or equity in any court or administrative tribunal having jurisdiction against any person or persons, firm or corporation violating or attempting to violate any provisions thereof either to restrain or enjoin such violation or threatened violation, or to enforce any lien created by this Declaration. Enforcement may be by the Declarant. Failure by any such party to enforce any covenant or provision of this Declaration or of any of the Governing Documents for any period of time shall in no event be deemed a waiver or estoppels of the right to thereafter enforce the same.

Notwithstanding anything to the contrary contained herein, and except where irreparable injury would otherwise result, the Declarant, the Association or any Owner shall not bring any action in any court, administrative or arbitral tribunal for enforcement of this Declaration or any of the Governing Documents until the provisions of this paragraph have been followed. In the event of any violation, attempted violation or threatened violation of this Declaration or any of the Governing Documents, the party seeking enforcement shall notify the Board and, if the Board determines a violation exists, it shall give written notice of the violation to the person(s) alleged to be involved, which notice shall direct such person(s) to cure the violation within twenty (20) days after such notice is given. If such person(s) fail(s) to cure the violation within such twenty (20) day period, the Board may institute proceedings to remedy the violation. In the event the Board shall fail to send notice of such violation, the party seeking enforcement may do so, and if the violation is not cured within twenty (20) days from the date of such notice, the party seeking enforcement may institute proceedings on behalf of the Association to remedy the violation.

The Board shall have the right to levy fines for any violation of this Declaration or of the other Governing Documents; provided, however, that the fine for a single violation may not, without a written resolution of the Board, exceed \$25.00 per day with each day that a violation continues after notice to cease such violation is sent by the Association to the violator being considered a separate violation. Any amounts charged to an Owner for a violation under this Section shall be considered a Miscellaneous Assessment as described under Section 5.13 hereof to be levied against the Owners involved.

**17.04 Notice.** Except where specifically provided otherwise herein, any notice required or permitted hereunder shall be deemed given to any Owner when such notice is mailed by regular or certified mail, postage paid, addressed to the last address of such Owner registered by such Owner with the Association. The Association shall maintain an appropriate file of Owners addresses. However it shall be an affirmative obligation of each Owner to provide the Association with such Owner's address and any change of address. Notice may also be served upon an Owner by personal delivery to any occupant over 14 years of age at the last address of the Owner registered with the Association. Any Owner may also be served by affixing a notice to or sliding same under the front door of the Owner's last address registered with the Association. Notice to any one of co-Owners of any Unit shall be deemed notice to all such Owners, and the Association shall have no obligation to deliver notice other than as provided herein.

**17.05 Rule Against Perpetuities.** If any provisions of this Declaration shall be interpreted to constitute a violation of the rule against perpetuities, then such provision shall be deemed to remain in effect until the death of the last survivor of the now living descendants of Richard J. Hughes and William T. Cahill, former Governors of New Jersey, plus twenty-one (21) years thereafter.

**17.06 Controlling Effect.** This Declaration shall control in the event of any conflict between the terms and conditions set forth in this Declaration and the terms and conditions of the other Governing Documents.

**17.07 Validity.** The invalidity of any provision(s) of this Declaration, or of any of the Governing Documents shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration or such Governing Documents, and all of the other provisions of this Declaration and of the Governing Documents shall continue in full force as if such invalid provisions had never been included.

**17.08 Waiver.** No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce it, or delay in enforcing, irrespective of the number of violations or breaches that may occur or length of such delay.

**17.09 Dissolution of the Association.** In the event the Owners vote to dissolve the Association, the procedures concerning dissolution set forth in the New Jersey statutes with respect to nonprofit corporations shall be followed. However, dissolution of the Association shall not permit the alienation of the Common Property; such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other entity that is devoted to similar purposes as the Association, including, without limitation, the Township of Mantua, subject to its acceptance.

**17.10 Gender and Numbers.** The use of the masculine gender in this Declaration shall be deemed to refer to both the masculine and the feminine gender, and the use of the singular shall be deemed to refer to the singular or plural, and vice versa, whenever the context so requires.

## **ARTICLE XVIII**

### **EXHIBITS**

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

**EXHIBIT A**

**Site Plan**

|           |   |
|-----------|---|
| EXHIBIT B | Common Property                                 |
| EXHIBIT C | Fee Percentage Schedule                         |
| EXHIBIT D | Bylaws of the Association                       |
| EXHIBIT E | Certificate of Incorporation of the Association |

IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first above written, by its duly authorized Manager pursuant to a resolution duly adopted by its Members;

Witness:

By: Triad III, L.L.C.,  
A New Jersey Limited Liability  
Company

\_\_\_\_\_  
By: Operating Manager

STATE OF NEW JERSEY :

SS

COUNTY OF GLOUCESTER:

I CERTIFY that on the day of \_\_\_\_\_, 2000, \_\_\_\_\_, personally came before me, and this person acknowledged under oath, to my satisfaction, that these:

- (a) this person is the Operating Manager of the L.L.C. named in this document;
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer who is  
the  
President of the corporation;
- (c) this document was signed and delivered by the corporation as its voluntary act and duly authorized by a proper resolution of its Board of Directors;
- (d) this person knows the proper seal of the corporation which was affixed to this document; and
- (e) this person signed this proof to attest to the truth of these facts.

Signed and sworn to before me on

\_\_\_\_\_, 200\_\_\_\_\_