

Fourth - #2017261

EXHIBIT A  
TO  
PUBLIC OFFERING STATEMENT  
FOR  
BLUE HERON PINES HOMEOWNER'S ASSOCIATION, INC.

The Master Deed  
and  
Declaration of Covenants, Conditions and Restrictions  
for the  
Blue Heron Pines Homeowner's Association, Inc.

*Corrected Amendment to Master Deed*

DEED BOOK 6743 PAGE 73  
DATE 7-27-00

*Michael Garim*

ATLANTIC COUNTY CLERK

*108029*

*Amendment to M. Deed*

DEED BOOK 6743 PAGE 83  
DATE 7-27-00

*Michael Garim*

ATLANTIC COUNTY CLERK J.A.

*108031*

*Third Amendment*

DOCTYPE

*Blue Heron Pines Homeowners Association Inc*

INST # 2010700 DATE 1-30-02

*Michael Garim*

ATLANTIC COUNTY CLERK

*of*

DB5839P002

DOCTYPE

*Policy Resolution Residential Unit Limiting*

INST # 46397 DATE 1-3-01

*Michael Garim*

ATLANTIC COUNTY CLERK

DOCTYPE

*First Amend. to By-Laws*

INST # 162092 DATE 3-5-01

*Michael Garim*

ATLANTIC COUNTY CLERK

DOCTYPE

*Fifth Amend. Covenant*

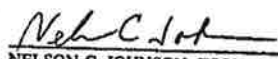
INST # 2034240 DATE 4-12-02

*Michael Garim*

ATLANTIC COUNTY CLERK

THE MASTER DEED  
AND  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE  
BLUE HERON PINES HOMEOWNER'S ASSOCIATION, INC

Prepared by and after  
Recording return to:

  
NELSON C. JOHNSON, ESQUIRE  
Nelson C. Johnson, P.C.  
Raners Estates  
219 N. White Horse Pike  
PO Box 1233  
Hammonton, NJ 08037-5233

DB5839P003

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR THE**

**BLUE HERON PINES HOMEOWNER'S ASSOCIATION, INC.**

**TABLE OF CONTENTS**

	<b>Page</b>
<b>ARTICLE I: Definitions.</b>	<b>2</b>
<b>ARTICLE II: Property and Persons Subject to this Declaration.</b>	<b>8</b>
Section 2.01	8
<b>ARTICLE III: Development of Blue Heron Pines</b>	<b>9</b>
Section 3.01: Development in Accordance with General Development Plan	9
Section 3.02: Additions to Tract	9
<b>ARTICLE IV: General Restrictions</b>	<b>10</b>
Section 4.01: Uniform Appearance	10
Section 4.02: Compliance with Law	11
Section 4.03: Nuisance	11
Section 4.04: No Hazardous Activities	11
Section 4.05: Insurance	11
Section 4.06: Approval of Building	11
Section 4.07: Placement of Utilities	11
Section 4.08: Use of Common Property	12
Section 4.09: Exemption of Golf Course Owner and Residential Developer	12
Section 4.10: Rules and Regulations	12
Section 4.11: Maintenance Standards	12
Section 4.12: Conservation Restriction	13
<b>ARTICLE V. Easements and Reservations</b>	<b>13</b>
Section 5.01: Grant of Easements	13
Section 5.02: Easements Affecting the Subject Property	14
Section 5.03: Easements Affecting the Homeowner's Common Property	15
Section 5.04: Members' Easement of Enjoyment	16
Section 5.05: Reservations	17

DB5839P004

ARTICLE VI: Title to Homeowner's Common Property	17
Section 6.01	17
Section 6.02	18
ARTICLE VII: Blue Heron Pines Homeowner's Association, Inc.	18
Section 7.01: Organization	18
Section 7.02: Membership	18
Section 7.03: Associate Membership	18
Section 7.04: Voting Rights	18
Section 7.05: Joint or Common Ownership	19
Section 7.06: Proxy Voting	19
Section 7.07: Board of Directors	19
Section 7.08: Duties and Responsibilities	19
Section 7.09: Rights, Powers and Authority	19
Section 7.10: Delegation	19
Section 7.11: Certificate of Incorporation and Bylaws	20
Section 7.12: Developer's Control of the Association	20
Section 7.13: Indemnification	22
ARTICLE VIII: Architectural Design Review Committee	23
Section 8.01: Creation	23
Section 8.02: Membership	23
Section 8.03: Review of Proposed Plans	23
Section 8.04: Rules and Regulations	23
Section 8.05: Notice of Applications and Decisions	29
Section 8.06: Zoning and Other Governmental Controls	29
Section 8.07: Variances	29
Section 8.08: Appeals	30
Section 8.09: Inapplicability to Developer or any Builder	30
ARTICLE IX: Assessments for Common Expenses	30
Section 9.01: Nature and Purpose	30
Section 9.02: Creation of the Lien and Personal Obligation for Assessments	30
Section 9.03: Assessments Against Developer and Builders	31
Section 9.04: Pro-Rated Assessments	31
Section 9.05: Annual Budget and Allocation	31

DB5839P005

of Assessments	32
Section 9.06: Payment of Assessments	32
Section 9.07: Assessments and Related Obligations as Liens Against the Units and Obligations Running with the Land	32
Section 9.08: Special Assessments	33
Section 9.09: Charges for Damages, Violations and Failures of Unit Owners	33
Section 9.10: Subordination of Assessment Liens	33
Section 9.11: Report of Assessment Liens	34
Section 9.12: Enforcement of Assessment Obligations	34
Section 9.13: Exempt Property	34
Section 9.14: Interest in Common Surplus	35
 ARTICLE X: Reserved	 35
 ARTICLE XI: Miscellaneous Services Authorized	 35
Section 11.01: Improvements and Facilities Provided by Developer	35
Section 11.02: Services which May Be Performed at the Option of the Homeowner's Association	35
 ARTICLE XII: Damage or Destruction to Homeowner's Common Property; Condemnation	 36
Section 12.01: Damage or Destruction	36
Section 12.02: Eminent Domain	37
 ARTICLE XIII: Institutional Lender's Rights	 37
Section 13.01: Protective Provisions for the Benefit of Institutional Lenders	37
Section 13.02: Subordination	37
Section 13.03: Additional Protections	38
 ARTICLE XIV: Duration	 39
Section 14.01	39
 ARTICLE XV: Amendments	 40
Section 15.01: In General	40
Section 15.02: Certain Amendments by Developer	40
Section 15.03: Lenders' Approvals	40

DB5839P006

ARTICLE XVI: Severability	41
Section 16.01:	41
ARTICLE XVII: Enforcement	41
Section 17.01: Who May Enforce	41
Section 17.02: Notice of Violation	41
Section 17.03: Fines	42
Section 17.04: Non-Waiver	42
Section 17.05: Remedies Cumulative	42
ARTICLE XVIII: Developer's Rights and Obligations	42
Section 18.01: Ratification, Confirmation and Approval of Agreements	42
Section 18.02: Rights Reserved to the Developer and Builders	42
Section 18.03: Transfer of Special Developer's Rights	43
Section 18.04: Liability of Transferor	43
Section 18.05: Transfer of Rights Requested	44
Section 18.06: Foreclosure, Bankruptcy, Receivership	44
Section 18.07: Liability of Successors	44
ARTICLE XIX: Miscellaneous	45
Section 19.01: Notices	45
Section 19.02: Construction and Interpretation	47
Section 19.03: References to Include Successors and Assigns, and Others in Certain Cases	47
Section 19.04: Rule Against Perpetuities	47
Section 19.05: By-laws and Administration; Changes in Documents; Power of Attorney	48

**Exhibits to the Master Deed:**

- 1 - Legal (Metes and Bounds) Description and Survey of Entire Tract
- 2 - Legal (Metes and Bounds) Description of the Subject Property, Phase 2B
- 3 - Survey of the Subject Property, Phase IIB
- 4 - Certificate of Incorporation of Blue Heron Pines Homeowner's Association, Inc.
- 5 - By-laws of Blue Heron Pines Homeowner's Association, Inc.
- 6 - Blue Heron Pines Architectural Guidelines
- 7 - Freshwater Wetlands Maps and Legal (Metes and Bounds) Description
- 8 - Easements Affecting Development
  - A. Utility/Drainage Easement
  - B. Utility/Drainage Easement
  - C. Utility/Drainage Easement
  - D. Utility/Drainage Easement
  - E. Utility/Drainage Easement
  - F. Utility/Drainage Easement
  - G. Utility/Drainage Easement
  - H. Utility/Drainage Easement
  - I. Utility/Drainage Easement
  - J. Utility/Drainage Easement
  - K. Bus Shelter Easement
  - L. Open Space Easement

vii

DB5839P008

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**BLUE HERON PINES HOMEOWNER'S ASSOCIATION, INC.**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE BLUE HERON PINES HOMEOWNER'S ASSOCIATION, INC. ("Declaration"), made as of July 14, 1995 by OLE HANSEN & SONS, INC., a New Jersey corporation, having its principal office at 22 N. Franklin Avenue, Pleasantville, New Jersey 08232 (hereinafter the "Developer"), and BLUE HERON PINES DEVELOPMENT COMPANY, L.L.C., having its principal office at 22 N. Franklin Avenue, Pleasantville, New Jersey (hereinafter the "Builder").

**WITNESSETH:**

WHEREAS, the Developer and the Builder each own portions of approximately 353.6 acres of land located in the Township of Galloway, County of Atlantic and State of New Jersey, commonly known and herein referred to as "Blue Heron Pines;" and

WHEREAS, the Developer and the Builder each intend to develop or to cause the development of portions of Blue Heron Pines as a planned unit residential community consisting of residential areas with permanent open spaces for the benefit of the community; and

WHEREAS, the Developer and the Builder each intend to develop or to cause the development of residential areas within Blue Heron Pines consisting of single family detached homes with common open space and Utility Systems, described in Exhibit I attached hereto and made a part hereof, all such residential areas hereinafter referred to as the "Entire Tract"; and

WHEREAS, Developer desires to develop and improve or to cause the development and improvement of the Entire Tract in Phases of development and the Builder desires to develop detached single family residential dwellings within Phase IIE; and

WHEREAS, Developer and the Builder desire to subject that portion of the Entire Tract defined in Article I hereof and as set forth in Section 2.01 of Article II hereof as the "Subject Property" to the covenants, restrictions, easements and conditions hereinafter set forth, it being intended that the easements, covenants, restrictions, and conditions shall run with the Subject Property and shall be binding on all persons or entities having or acquiring any right, title, or interest in the real property or any part thereof, and shall inure to the benefit of each other thereof; and

1

DB5839P009



WHEREAS, Developer has deemed it desirable for the efficient preservation of the values and amenities of the community to create a nonprofit community association to be known as the Blue Heron Pines Homeowner's Association, Inc. (the "Homeowner's Association"), which shall be delegated and assigned the powers of maintaining and administering the community properties and facilities, administering and enforcing the covenants and restrictions, collecting and disbursing the assessments and charges hereinafter created and performing other necessary functions for the benefit of the land and the residents; and

WHEREAS, Developer and the Builder intend that all subsequent purchasers of residences and Lots, be provided with notice of the existence of the easements, covenants, conditions and restrictions, and that title to each Lot or Unit be conveyed subject to those easements, covenants, conditions and restrictions, so that the resulting benefits and burdens will be deemed equitable servitudes affecting the Lots or Units, and covenants running with the land, and will bind and benefit all subsequent purchasers of all Lots and Units.

NOW THEREFORE, Developer and the Builder do hereby make, declare and publish their intentions and do submit the real property described in Article II hereof as the "Subject Property," consisting of approximately 11 acres of land, as more particularly described in Exhibits 2 and 3 attached hereto and made a part hereof, to be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, obligations, and liens (generally referred to as "Covenants, Conditions and Restrictions" or alternatively as Restrictions") hereinafter set forth, and to the provisions of the Certificate of Incorporation and the By-Laws and any Rules and Regulations of the Homeowner's Association for the specific purpose of ownership and management of the community property and facilities of the residential areas of Blue Heron Pines.

#### ARTICLE I: DEFINITIONS

The following words and terms, when used in this Declaration, the Certificate of Incorporation and By-laws, (unless the context clearly shall indicate otherwise), shall have the following meanings:

- (a) "ADRC" shall mean and refer to the Architectural Design Review Committee which shall consist of a minimum of three (3) persons appointed by the Board.
- (b) "Affiliate" shall mean and refer to any entity which controls, is controlled by, or is under common control with a transferor of Special Developer Rights, as defined in Article XVIII of this Declaration. An entity "controls" a transferor if the entity (i) is a general partner, officer, director or employer of the transferor, (ii) 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 20% of the voting interest in the transferor, (iii) controls in any manner the election of a majority of the directors of the transferor, or (iv) has

DB5839P010

contributed more than 20% of the capital of the transferor. An entity "is controlled" by the transferor if the transferor (i) is a general partner, officer, director or employer of the entity, (ii) 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 20% of the voting interest in the entity, (iii) controls in any manner the election of a majority of the directors of the entity, or (iv) has contributed more than 20% of the capital of the entity. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

(c) "Architectural Guidelines" shall mean and refer to the design and architectural standards as prepared by S. Vic Jones & Associates applicable to the construction of all residential, commercial, retail and office improvements in or on Blue Heron Pines, attached as Exhibit 6 hereto and made a part hereof.

(d) "Assessment" shall mean and refer collectively to any and all assessments referred to in Article IX including fines, late charges, charges, fees, costs of collection (including reasonable attorneys' fees), interest, capital contributions, escrow deposits or other sums required to be paid to the Homeowner's Association by any or all Unit Owners under the Homeowner's Governing Documents or any duly adopted resolution of the Board.

(e) "Associate Member" shall mean and refer to the tenant of a Unit Owner residing in a Unit.

(f) "Blue Heron Pines" shall mean and refer to that planned community, aggregating approximately 353.59 acres, intended to include Units of various types, together with other residential, retail and commercial improvements and amenities, located in the Township of Galloway, Atlantic County, New Jersey, and built or to be built in accordance with the Major Site and Sub-Division Plan.

(g) "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Homeowner's Association and any reference herein or in the Certificate of Incorporation, By-laws or any Rules and Regulations to any power, duty, right of approval or any other right of the Homeowner's Association shall be deemed to refer to the Board and not to Members of the Homeowner's Association, unless the context expressly indicates to the contrary.

(h) "Builder" shall mean and refer to any person or entity, not an Affiliate of Developer which acquires title from Developer to one or more Lots, or any portion thereof, for the purpose of constructing Unit(s) thereon. Such designation of Builder status shall be evidenced by a written instrument executed by Developer and Builder. A copy of such instrument shall be filed with the Secretary of the Homeowner's Association.

(i) "Building" shall mean any Single-Family Home, garage, or other structure designed, constructed, or capable of use for human entry, occupancy or habitation.

(j) "By-laws" shall mean and refer to the By-laws of the Homeowner's Association, a copy of which is attached hereto as Exhibit 5 and made a part hereof, and all future amendments thereto.

(k) "Certificate of Incorporation" or "Certificate" shall mean and refer to the Certificate of Incorporation of the Homeowner's Association, a copy of which is attached hereto as Exhibit 4 and made a part hereof, and all future amendments thereto.

(l) "Common Elements" shall mean and refer to any and all those portions designated as common elements pursuant to the Master Deed.

(m) "Common Expenses" shall mean and refer to those expenses which are incurred or anticipated by the Homeowner's Association for discharging the responsibilities and exercising the powers conferred on it by this Declaration, the Certificate of Incorporation, By-laws and other provisions of law.

(n) "Condominium" shall mean and refer to any Phase which has been established under the condominium form of ownership pursuant to the New Jersey Condominium Act.

(o) "Condominium Association" shall mean and refer to any association for homeowners within a Condominium Phase.

(p) "Condominium Governing Documents" for a particular Condominium Phase shall mean and refer to the Declaration together with any Supplemental Declaration applicable to the Condominium Section, the Master Deed of the Condominium and the Certificate of Incorporation, By-Laws and any Rules and Regulations of the Condominium Association.

(q) "Condominium Special Assessment" shall mean and refer to any assessment imposed to defray the cost of capital improvements or unexpected repairs to Condominium Common Elements, or initial start-up costs of, or any financial emergency affecting, a Condominium.

(r) "Condominium Unit" shall mean any residential unit within any Condominium Phase.

(s) "Declaration" or "Declaration of Covenants, Conditions and Restrictions" shall mean and refer to this Declaration, as the same may be hereafter amended in the manner provided in Article XV hereof.

(t) "Developer" shall mean and refer to Ole Hansen & Sons, Inc., its successors and/or assigns, including any successor Developer contemplated in Article XVIII.

(u) "Development Plan" or "General Development Plan" or "Major Site Plan and Subdivision Plan" shall mean and refer to the total general scheme of intended uses of land in Blue Heron Pines approved by the Galloway Township Planning Board as may be amended from time to time, and as further discussed in Article III, Section 3.01, if applicable.

4

DB5839P012

(v) "Entire Tract" shall mean and refer to that portion of the real property commonly referred to as Blue Heron Pines located in the Township of Galloway, Atlantic County, New Jersey, intended to be developed as residential areas.

(w) "Golf Course Owner" shall mean and refer to Ole Hansen & Sons, Inc., its successors and/or assigns, including any owner, operator or lessee of Blue Heron Pines Golf Club.

(x) "Homeowner's Association" and "Association" shall mean and refer to the Blue Heron Pines Association, Inc., its successors and/or assigns.

(y) "Homeowner's Common Property" shall mean and refer to those areas of land owned by the Homeowner's Association and so designated on any present or future recorded final subdivision map of all or part of the Subject Property and all landscaping, bus shelters, two entrance signs, improvements and buildings upon, within or under that land, which are actually devoted or available to the beneficial common use and enjoyment of all Members. Homeowner's Common Property shall also mean and refer to any and all personal property owned by the Homeowner's Association. Homeowner's Common Property shall not include streets which are or shall be dedicated to the Township of Galloway.

(z) "Homeowner's Governing Documents" shall mean and refer to the Declaration, Certificate of Incorporation, By-Laws and Rules and Regulations of the Homeowner's Association.

(aa) "Improvement" shall mean any roadway, driveway, walkway, light fixture, fence, wall, pipe, component of any Utility System, or other man-made structures, except Buildings, which are constructed, designed, or capable of use as a part of the Subject Property.

(bb) "Institutional Lender" shall mean and refer to any bank, mortgage banker, insurance company, savings and loan association, governmental agency or other financial institution or pension fund, which holds a mortgage of record upon any Lot or Unit, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the respective successors and assigns of such institution or fund.

(cc) "Landscaping" shall mean any trees, shrubs, flowers, hedges, grasses, soils, or other living vegetation, as well as any non-living Things (except Buildings and Improvements) located, placed, or arranged in or upon any landscaped area, including, without limitation, landscape, stones or rocks.

(dd) "Lot" shall mean and refer to any numbered plot of land on a Plat, intended for the construction of a Unit thereon, and all Landscaping, Buildings, Improvements and Things thereon. Expressly excluded from the definition of "Lot" shall be such real property designated as Homeowner's Common Property.

(ee) "Lot Owner" shall mean and refer to the record Owner or co-Owners, whether one or more Persons, of a Lot as shown in the records of the Atlantic County Clerk, but despite any applicable theory of mortgage, shall not mean or refer to any mortgagee or director under a deed of trust unless and until such mortgagee or director under a deed of trust has acquired title pursuant to foreclosure proceedings or any proceeding in lieu of foreclosure.

(ff) "Maintenance Standards" shall mean and refer to any and all standards and requirements adopted by the Board of Directors of the Homeowner's Association for maintaining Lots, Units, common areas and facilities within the Subject Property in good repair and condition, and any amendments thereto.

(gg) "Member" or "Membership" shall mean and refer to Persons who are Members of the Homeowner's Association pursuant to this Declaration, the By-laws and the Certificate.

(hh) "Multi-Unit Structure" shall mean and refer to any building containing more than one (1) unit.

(ii) "Owner" shall refer to a Lot Owner and a Unit Owner.

(jj) "Permitted Mortgage" shall mean and refer to any mortgage lien encumbering a Lot or Unit which is held by an Institutional Lender, or which is a purchase money mortgage held by the Developer, a Builder, or by the seller of a Lot or Unit, or any mortgage lien which is expressly subordinate to any existing and future liens imposed against a Unit by the Homeowner's Association.

(kk) "Person" shall mean natural persons, corporations, partnerships, unincorporated associations, trusts, estates, and any other legal entity capable of holding title to real property.

(ll) "Phase" shall mean that part of the Entire Tract for which Developer has obtained final subdivision or site plan approval from all appropriate governmental authorities and which is subject to the Declaration.

(mm) "Plat" shall mean and refer to any final subdivision map or site plan of an area within the Entire Tract which has been recorded in the Office of the Clerk of Atlantic County, New Jersey.

(nn) "Publish" when used with reference to any Rules and Regulations adopted pursuant to this Declaration, the Certificate of Incorporation, or By-Laws, shall mean posting a true copy of the Rules and Regulations in the administrative office of the Homeowner's Association. "Publish" shall also mean any reasonable alternate method established by the Board to provide notice to interested persons, including but not limited to, publication in a local newspaper, or an Association newsletter.

(oo) "Rules and Regulations" shall mean the rules and regulations of the Homeowner's Association as may from time to time be established and amended by the Board pursuant to this Declaration. "Rules and Regulations" shall also mean and refer to Maintenance Standards.

(pp) RESERVE

(qq) RESERVE

(rr) RESERVE

(ss) RESERVE

(tt) RESERVE

(uu) RESERVE

(vv) "Single-Family Home" or "Single-Family Unit" shall mean a detached single-family residential dwelling, and attached or detached garage located on a Lot within the Entire Tract.

(ww) "Site Plan" or "Subdivision Plan" shall mean a development plan or subdivision plan of one or more Lots prepared in accordance with the land use ordinances of the Township of Galloway, Atlantic County, New Jersey and approved by the Galloway Township Planning Board.

(xx) "Special Assessment" shall mean any assessment described in Section 9.08 of this Declaration, imposed to defray the cost of capital improvements or unexpected repairs to the Homeowner's Common Property, or initial start-up costs of, or any financial emergency affecting, the Homeowner's Association.

(yy) "Subject Property" shall mean and refer to that certain real property located within the Entire Tract, all as more particularly described in Exhibits 2 and 3 annexed hereto and made a part hereof, and any additions thereto made pursuant to a Supplemental Declaration of Covenants, Conditions and Restrictions, which Subject Property shall be the only area of Blue Heron Pines now within the jurisdiction of the Homeowner's Association.

(zz) "Supplemental Declaration" or "Supplemental Declaration of Covenants, Conditions and Restrictions" shall mean and refer to any supplemental declaration of covenants, conditions and restrictions which may be recorded by Developer, which subject additional properties to the provisions of this Declaration or which contains such complementary provisions for such added properties as are deemed appropriate by the Developer.

(aaa) "Thing" shall mean any personal movable property, fixtures, or other natural or man-made objects or substances of any nature whatsoever.

(bbb) RESERVE

(ccc) RESERVE

(ddd) RESERVE

(eee) RESERVE

(fff) RESERVE

(ggg) "Unit" shall mean and refer to a Single-Family Home or dwelling designated and operated exclusively as a single family residence and located in the Entire Tract and subject to this Declaration. For the purpose of this Declaration, each separate dwelling shall constitute a separate Unit and be subject to all of the rights, privileges, liabilities and duties as if each were separately owned, irrespective of whether this is so in fact. "Unit" shall also refer to an individual residential building Lot shown on any subdivision map for and located within any portion of the Entire Tract upon which a Single-Family Home is to be built.

(hhh) "Unit Owner" shall mean and refer to the record Owner or co-Owners, whether one or more Persons, of a Unit, as shown in the records of the Atlantic County Clerk, but, despite any applicable theory of mortgage, shall not mean or refer to any mortgagee or director under a deed of trust unless and until such mortgagee or director under a deed of trust has acquired title pursuant to foreclosure proceedings or any proceeding in lieu of foreclosure; nor shall the term "Unit Owner" mean or refer to any lessee or tenant of a Unit Owner.

(iii) "Unsubdivided Land" shall mean and refer to any portion of the Entire Tract or Subject Property which has not received final subdivision or site plan approval from the Township of Galloway.

(jjj) "Utility System" shall mean all wires, pipes, tanks, pumps, conduits, and other components of any system designed, installed, or used to provide water, sewer, gas, heat, light, power, telephone or television service to the Lots, Units, Homeowner's Common Property or Common Elements.

**ARTICLE II: PROPERTY AND PERSONS SUBJECT TO THIS DECLARATION**

Section 2.01. This Declaration shall be applicable to the Subject Property. The Subject Property shall be held, transferred, sold, conveyed and occupied subject to this Declaration. All present and future Owners and tenants, their guests, licensees, servants, agents, employees and other Persons who shall be permitted to use the Homeowner's Common Property shall be subject to this Declaration, the Certificate of Incorporation, the By-laws and the Rules and Regulations as may be issued by the Board from time to time to govern the conduct of the Members and the use of the Homeowner's Common Property. This Declaration shall bind Developer, the Homeowner's Association, all present and future Owners, their respective tenants, lessees,

DB5839P016

guests, agents, servants, employees, licensees, heirs, executors, administrators, successors and assigns, and any other Person within or upon the Subject Property now or in the future. Ownership, rental or occupancy of any Lot, or Single-Family Home in the Subject Property shall be conclusively deemed to mean that the Owner, tenant or occupant has accepted and ratified this Declaration, the Certificate of Incorporation, the By-laws and the Rules and Regulations of the Homeowner's Association and the obligation to comply with them.

#### ARTICLE III: DEVELOPMENT OF BLUE HERON PINES

Section 3.01. Development in Accordance with General Development Plan. Developer intends to divide the Entire Tract into several Phases, to develop or cause to be developed each Phase and, at Developer's option, to designate part of each Phase as Homeowner's Common Property. It is contemplated that the Entire Tract will be developed as a planned unit residential community in which the development of, and restrictions upon, each Phase thereof will benefit each other Phase and the whole thereof. It shall be understood that Developer shall be free to develop or cause to be developed such Phases or part of such Phases as, in the exercise of its discretion, it deems in the best interest of the development of Blue Heron Pines; that it shall not be required to follow any predetermined sequence or order of improvement and development; and that it may bring within the scheme of this Declaration additional lands, and develop the same before completing the development of the Subject Property previously subject to this Declaration.

Section 3.02. Additions to Tract. Lands in addition to the Subject Property may hereafter become subject to this Declaration in the following manner:

(a) Planned Future Addition to Complete the General Development Plan for Blue Heron Pines. The Developer shall have the right, but not the obligation, without the further consent of the Homeowner's Association or any Person, Unit Owner, Lot Owner, Member, Associate Member, Builder, Permitted Mortgage holder, Institutional Lender or other party, to bring within the scheme of this Declaration additional lands of the Entire Tract or which are contiguous to the Entire Tract and are approved by the Township of Galloway to be added to the Subject Property and developed as part of Blue Heron Pines. Such additional properties shall be deemed to be "contiguous" even though separated from the Subject Property by streets, roads, highways, rivers, streams, rights of way, railroads, utility easements, or other intervening physical features or property interests not inconsistent with the general contiguity of the lands in question. If other lands are so added to the Subject Property described on Exhibits 2 and 3, this Declaration shall thenceforth apply to them in the same manner as would have been the case had such other lands been initially described on Exhibits 2 and 3. Such other lands shall be added by the recording of a Supplemental Declaration which shall contain (i) a reference to this Declaration by book and page number wherein this Declaration, and any amendments hereto, have been recorded, (ii) an adequate legal description and survey of the lands being added to Exhibits 1, 2 and 3, respectively, and (iii) Developer's written consent if the land being added is not owned by Developer.



(b) Mergers, Combinations or Homeowner's Consolidations. Upon merger, combination or consolidation of the Homeowner's Association with another association, the properties, rights, and obligations of the Homeowner's Association may, by operation of law, be transferred to another or surviving consolidated nonprofit corporation organized for similar purposes or, in the alternative the properties, rights, and obligations of another such nonprofit corporation may, by operation of law, be added to the Homeowner's Association as a surviving corporation pursuant to a merger, combination or consolidation. The surviving or consolidated corporation may administer as one scheme the covenants, conditions and restrictions established by this Declaration within the Subject Property, together with the covenants, conditions and restrictions established upon such lands as may be a part of such other properties or are within the scheme. No such merger, combination or consolidation, however shall affect any revocation or change or addition to the covenants and restrictions established by this Declaration within the Subject Property, except as herein provided.

(c) Supplemental Declaration. Any Supplemental Declaration of Covenants, Conditions and Restrictions filed of record with the Clerk of Atlantic County, New Jersey pursuant to this Article III may contain such complementary additions and modifications of the covenants, conditions and restrictions and exhibits contained in this Declaration as may be necessary or convenient, in the judgment of the Developer, to reflect and adapt to any difference in character of the added properties, provided, however, such additions and modifications are not inconsistent with the scheme of this Declaration.

#### ARTICLE IV: GENERAL RESTRICTIONS

In order to preserve the character of Blue Heron Pines and to protect the property values therein, the Subject Property shall be owned, held, transferred, conveyed, assigned, sold, leased, occupied, and enjoyed subject to the following covenants and restrictions:

Section 4.01. Uniform Appearance. In order to promote architectural harmony and minimize aesthetic impacts upon the natural surroundings, subsequent to construction on the Lots and Common Property, no building, fence, wall or other structure shall be erected thereon, nor shall any exterior addition, change or alteration thereon be made until the plans and specifications showing the nature, kind, shape, height, materials and location of same shall have been submitted to and approved in writing as to harmony of external design and location in relation to the surrounding structures and topography by the Association, Golf Course Owner, Developer and Architectural Design Review Committee. If the aforementioned fails to approve in writing such construction, design and location within sixty (60) days after said plans and specifications have been submitted to it, such failure to respond shall be deemed a disapproval of same. Adjacent houses shall vary in architectural style and color arrangement. All homes shall be constructed with a garage and the garage space shall not be converted to living space. Additionally, overnight on-street parking by any resident or guest is expressly prohibited.

Section 4.02. Compliance with Law. No Person shall carry on any use or activity on the Subject Property, or maintain anything on the Subject Property, which would violate any federal, state, or municipal law, regulation, ordinance or directive.

Section 4.03. Nuisance. No Person shall engage in, allow or permit any activity on the Subject Property which constitutes a nuisance to the residents, or which interferes with the peaceful use and quiet enjoyment of the Subject Property. This paragraph shall not apply to any construction, repair, installation, maintenance, sales, marketing, or administration activities of the Builder or Developer so long as any Lot or Unit held by Builder or Developer for sale remains unsold.

Section 4.04. No Hazardous Activities. No activities shall be conducted on the Subject 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 Subject Property, and no open fires shall be lighted or permitted on the Subject Property except in a contained barbecue Unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace. No hunting of any type shall be permitted on Common Property. No Person shall permit anything to be done to or kept upon the Subject Property which will result in the cancellation of any insurance.

Section 4.05. Insurance. The Association shall obtain and maintain all reasonable or necessary property, liability, worker's compensation, Directors and Officers liability, and other insurance for or involving the Association or the Common Property, including fidelity bonds securing the faithful performance of those responsible for Association funds. Each Owner shall obtain and maintain all reasonable or necessary property, liability, and other insurance for or involving his or her Unit. All insurance required to be maintained by the Association and each Owner shall be specified in the By-laws.

Section 4.06. Approval of Building. Despite anything herein to the contrary or in the Certificate of Incorporation or By-laws of the Association, Developer reserves the right for so long as Developer owns any Unsubdivided Land, Lots or Units to approve the type, kind, character, size, color and style of any Buildings and other Improvements upon the Common Property, or any Lots or Units to be conveyed, and no site disturbance, development, or construction will be permitted without Developer's review and approval of complete development plans and specifications. Developer's review shall include, but is not limited to, architectural design, site design and layout of roads, buildings, and other improvements, lighting, entry monuments for Sections, and Landscaping. Developer's review powers shall automatically vest in the Association at the time of the sale of the last Unit held by Builder or Developer for sale in the Subject Property. Despite this assignment, the Association's review powers shall not extend to any development plans and specifications.

Section 4.07. Placement of Utilities. All Utility Systems on or to any Lot or Unit shall be placed underground. No transformer, or electric, gas, water, sewer or other meter or device of any type, or heating, ventilating, or air-conditioning equipment, or any other apparatus shall

be located on any pole, nor shall the same be placed on the roof or hung on the outside of any building unless totally enclosed; and where the same are placed on the surface of the ground, they shall be appropriately screened from view, except that Developer may exempt from such screening requirement transformers, meters, and similar devices owned by a utility or other company or public, governmental, or quasi-governmental entity, and designed and installed for area-wide service. All such installations (including all those exempted under this Section) shall be subject to the written approval of Developer. Each Owner shall abide by all applicable rules and regulations of all utility and other companies and public, governmental, and quasi-governmental entities which supply any of the services mentioned above.

**Section 4.08. Use of Common Property.** The Common Property shall not be utilized for any purpose not expressly permitted by this Declaration. There shall be no obstruction of the Common Property, nor shall anything be stored in or upon the Common Property without the prior consent of the Association Board. The Common Property shall be used only for the furnishing of the services and facilities for which it is reasonably intended and suited.

**Section 4.09. Exemption of Golf Course Owner and Residential Developer.** Without in any way limiting the generality of the foregoing, this Declaration shall not prevent or limit the right of Golf Course Owner and its successors or assigns to excavate and grade, to construct and alter drainage patterns and facilities, to construct Buildings and any other types of Improvements, to maintain model Units and construction, sales and leasing offices and similar facilities, and to post signs incidental to construction, sales and leasing, anywhere within the Subject Property and to maintain the golf course at such times as are convenient to the golf course owner; provided, however, that no such activities shall be carried on in such a way as to create a health hazard or unreasonably interfere with the use and enjoyment of any Owner or any resident of the Owner's Lot or Unit. With the purchase of a single family home in the development, a purchaser expressly consents to off-peak hour maintenance by the golf course owner and waives the right to make a claim of any kind complaining of excessive noise resulting from the maintenance equipment used by the golf course owner.

No action shall be taken by the Association that might reasonably be expected to result in a material change in the architectural and/or aesthetic standards established and/or implemented for the community without the expressed prior written consent of the Golf Course Owner. No Community Rules or Regulations of the Association or Amendment to the Association By-Laws, will become effective without prior written consent of the Golf Course Owner.

**Section 4.10. 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 covenants, conditions and restrictions contained in this Declaration.

**Section 4.11. Maintenance Standards.** All Units, Lots, and Homeowner's Common Property shall be maintained in accordance with all applicable provisions of the Governing Documents and any and all Maintenance Standards. All lawn and landscaping maintenance of

the individual units shall be performed by the Association. Other than replacement of vegetation previously planted by the developer, there shall be no new planting of perennial trees or shrubs added to the landscaping of the individual homes without approval of the Architectural Design Review Committee. The lawn and landscaping maintenance shall be performed by the Association and shall be part of the assessment against the individual properties.

Section 4.12. Conservation Restriction. The Conservation Restriction is a condition imposed upon the applicant pursuant to the Pinelands Commission and Galloway Township approvals that a portion of the property consisting of Freshwater Wetlands and associated transition buffers be left totally undisturbed. NOTE: Neither the freshwater wetlands nor the transition buffers may be developed for any purpose. They shall remain totally undisturbed, in their natural condition. Phase IIE is not affected by these restrictions on development as there are no freshwater wetlands in Phase IIE. The protected conservation area is described by a physical map as well as a legal metes and bounds description which will be included in the Master Deed and as shown as Exhibit A-7. The Conservation Restriction provides an undisturbed, extensive, naturally-vegetated area which restriction is intended and will run with the land and prohibit the following in both the Wetlands and Wetlands Buffer Area: any construction or placing of buildings, roads, signs, billboards or other advertisements, or other structures on or above the ground; the dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials; removal or destruction of trees, shrubs or other vegetation; excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance; surface use except for purposes permitting the land or water to remain predominantly in its natural condition; activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wildlife habitat preservation or other acts or uses detrimental to the retention of land or water areas in their natural condition.

This preservation of the wetland areas and adjacent upland can be expected to benefit primarily herptile species, dependent on seasonal ponding and the dense vegetative cover found there, including salamanders, toads, frogs and turtles and other indigenous species adapted to "hydric" or wetland habitats. Because these areas will be protected during construction and thereafter in perpetuity due to deed restriction, there should be no habitat destruction or resultant species relocation.

#### ARTICLE V: EASEMENTS AND RESERVATIONS

Section 5.01. Grant of Easements. The Subject Property shall be owned, held, transferred, conveyed, assigned, sold, leased, occupied, used and enjoyed subject to the easements set forth in this Article and any and all other easements of record. Every easement created herein shall be subject to regulation by the record Owner of the Homeowner's Common Property, whether Developer or the Homeowner's Association, as to time, type, intensity, location of, and conditions applicable to, use and/or enjoyment.

**Section 5.02. Easements Affecting the Subject Property.** The Subject Property, including all Lots and Homeowner's Common Property, shall be subject to the following easements:

(a) A non-exclusive perpetual easement in, upon, under, through and over, and to enter upon, the Subject Property, or any Lot, Unit or Homeowner's Common Property for the purpose of construction, installation, maintenance and repair of improvements or performing any work or activity permitted or required as provided in this Declaration or as may be otherwise permitted or required by law, together with ingress thereto and egress therefrom; and for the use of all roadways and parking areas; and for the utilization of existing and future model Units for sales promotion and exhibition until the expiration of two (2) years from the date the last Unit is sold and conveyed in the normal course of business; and to inspect any Unit or Lot, to remedy any violation of law and of the Governing Documents and to perform any operations required in connection with the maintenance, repair or replacement of the Homeowner's Common Property or any equipment, facilities or fixtures affecting or serving the Homeowner's Common Property. This easement shall be reserved to Developer and any Builder, for so long as any Lot or Unit held by Developer or a Builder remains unsold (or as otherwise expressly provided in this paragraph) and thereafter to the Homeowner's Association and Golf Course Owner. The right to enter in, upon, under, through and over any Unit hereunder shall be exercised only during reasonable daylight hours when possible and after at least 48-hours advance notice to the Unit Owner. In case of an emergency, however, such right of entry shall be immediate whether or not the Unit Owner is notified or present at the time.

(b) A non-exclusive perpetual easement in, upon, over, under, and through the Subject Property for the purpose of permitting, allowing and authorizing minor encroachments upon any Lot or the Homeowner's Common Property by any Landscaping, Building, Improvement, or Thing, including without limitation, any party wall, Unit, deck, porch, patio, road, driveway, walkway, pathway, or component of any Utility System. This easement shall be held by Developer, Builders, the Homeowner's Association, Golf Course Owner, and any Owner, whenever any of them owns an encroaching structure. The term "minor encroachments" shall mean those encroachments which do not substantially interfere with the use and enjoyment, for any purpose permitted by this Declaration, of the Lot, Unit or Homeowner's Common Property upon which the encroachment exists.

(c) A perpetual and non-exclusive easement in, upon, over, under, across and through the Subject Property for the purpose of the installation, maintenance, repair and replacement of all sewer, water, storm water, gas, electric, power and telephone pipes, lines, mains, conduits, poles, transformers, master television antennas or cable television facilities and any and all other equipment or machinery necessary or incidental to the proper functioning of any Utility System serving the Subject Property or the Entire Tract. This easement shall be held by the Developer, Golf Course Owner, any Builder or any governmental agency or utility company, their successors and assigns, which require same for the purpose of furnishing one or more of the foregoing services.

(d) A non-exclusive easement to enter the Subject Property and to inspect the condition of the Homeowner's Common Property or any encumbered Lot or Unit. This easement is for the benefit of all Institutional Lenders and the right of entry hereunder shall be exercised only during reasonable daylight hours and then, whenever practicable, only after at least 48-hours advance written notice to and with the permission of the Board (for Homeowner's Common Property) and the Unit or Lot Owner affected (for a Unit or Lot).

Section 5.03. Easements Affecting the Homeowner's Common Property. The Homeowner's Common Property shall be subject to the following easements:

(a) A perpetual non-exclusive easement to use any and all sewer, water, storm water, gas, electric, telephone, cable television, and other utilities facilities within the right of way of the Homeowner's Common Property and serving a Unit or Lot. This easement shall be held by all Owners in common with all other Owners, their licensees and invitees.

(b) A perpetual non-exclusive easement for ingress to and egress from, access to and travel within, upon, over, under, across and through the Homeowner's Common Property for purposes of providing police and fire protection, emergency medical attention, trash collection, and other services necessary to the health, safety, and welfare of the Owners, their licensees and invitees. This easement is granted to the Township of Galloway and their respective authorized officers, agents, servants, representatives, and employees (but not the public in general), and authorized municipal, state and federal police, fire, and emergency personnel engaged in the proper performance of official duties. Except in the event of emergencies, the rights accompanying this easement shall be exercised only during reasonable daylight hours and then, whenever practicable, only after at least 48-hours advance notice to and with permission of the Board (for Homeowner's Common Property) and Unit Owners affected thereby.

(c) A perpetual non-exclusive easement to maintain the Homeowner's Common Property in the event the Homeowner's Association fails to do so. The easement is for the benefit of the Golf Course Owner, Galloway Township and its authorized officers, agents, servants, representatives, and employees (but not the public in general) and shall be exercisable in accordance with N.J.S.A. 40:55D-43.

(d) A non-exclusive easement for surface water runoff and drainage caused by material forces and elements, grading or Buildings and Improvements located upon the Entire Tract and for construction and maintenance of any drainage improvements serving more than one Lot. This easement is reserved to Developer and any Builder, their successors or assigns, so long as any Lot held by Developer or any Builder remains unsold, and by the Homeowner's Association and Golf Course Owner thereafter, in perpetuity. No Owner shall interfere with or alter the drainage and runoff patterns and systems within the Entire Tract.

(e) A non-exclusive easement for the use and maintenance of a school bus shelter in lot 4.02 of Phase 2E running to the benefit of the Homeowner's Association and the families and children of the residence of the single family homes constructed in Phase 2E.

(f) A non-exclusive easement running to the benefit of the Association to permit access to, and travel upon, over and across the property of OHS for the purposes of maintaining a sign identifying the development located south of Bally Bunnan Drive.

Section 5.04. Members' Easement of Enjoyment. Subject to the provisions of the Certificate, this Declaration, the Bylaws, and the Rules and Regulations, every Member, their families, guests, tenants and lessees, shall have a right and easement of use and enjoyment of, in and to the Homeowner's Common Property, in common with other Members and such other Members' families, guests, tenants and lessees, for any purpose not prohibited by the Governing Documents, subject to the following:

(a) The right of the Homeowner's Association, as provided in this Declaration and the By-Laws, to promulgate Rules and Regulations for the use and enjoyment of the Homeowner's Common Property or to suspend the enjoyment rights of any Member for any period during which any Assessment remains unpaid, or for any period during which any infraction of its Rules and Regulations continues, it being understood that any suspension for either nonpayment of any Assessment or a breach of any Rules and Regulations shall not constitute a waiver or discharge of the Member's obligation to pay any Assessment; and

(b) The right of the Homeowner's Association to charge admission and other fees for the use of Homeowner's Common Property and any facilities thereon; and

(c) The right of the Homeowner's Association to dedicate or transfer all or any part of Homeowner's Common Property owned by it to any municipal, county, state, federal or other agency, authority, or utility, for such purposes and subject to such conditions as may be agreed upon by the Members, provided that no such dedication, transfer, or determination as to the purpose or as to the conditions of dedication or transfer, shall become effective unless such dedication, transfer or determination shall be authorized by the vote in person or by proxy of seventy-five (75%) percent of the full membership of the Homeowner's Association. Written notice of the proposed resolution authorizing such action has been sent to every Member at least ninety (90) days in advance of the scheduled meeting at which such action is to be taken. A true copy of such resolution, together with a certificate of the result of the vote taken thereon shall be made and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting Homeowner's Common Property, prior to the recording thereof in the Office of the Atlantic County Clerk. Such certificate shall be conclusive evidence of authorization by the Members. Despite anything herein to the contrary, authorization or consent of the Members, the Homeowner's Association or any Person, Owner, Associate Member, Builder, Permitted Mortgage holder, Institutional Lender or other party shall not be required for the Developer to exercise its right to dedicate or transfer roadways and drainage facilities located within the Homeowner's Common Property to Galloway Township or other governmental entity pursuant to Section 5.05 and Article VI herein; and

(d) The right of Developer to mortgage Homeowner's Common Property prior to conveyance to the Homeowner's Association and to take such other actions as would be necessary to prevent foreclosure.

Section 5.05. Reservations. Developer reserves to itself, and its successors and assigns, including the Homeowner's Association, the unconditional right and authority to grant perpetual easements in, upon, under, through, over and above the Subject Property for purposes of (a) providing services to the Owners, and (b) installing, maintaining, repairing, replacing, using, operating, and improving Utility Systems, or components thereof, to serve the Subject Property. These services and Utility Systems shall include without limitation trash collection, mail delivery, water, sewer, solid waste and wastewater disposal, electric, gas, fuel oil, telephone, and cable or other television. Such easements may be granted to any governmental entity or utility or other company providing essential services. Developer further reserves unto itself, its successors and assigns, during the period of Developer's control, the right to relocate, change or modify from time to time any Lot line (other than those Lots which have been conveyed to an Owner) or subdivision plan, street, avenue, roadway, highway, utility easement, Section or area. Developer further reserves to itself and its successors and assigns, including the Homeowner's Association, the unconditional right to convey and dedicate to the Township all Developer's right, title and interest in and to all or any portion of the roadways and drainage facilities within the control of Developer to the Township of Galloway. In addition, Developer expressly reserves unto itself, its successors and assigns, including the Homeowner's Association, the right at or after the time of grading of any streets or roadways or any part thereof for installation of any utilities, to enter upon any abutting Lot and 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 state found prior to such grading. Developer and its successors and assigns, including the Homeowner's Association, shall have the right to require each Owner to execute such further grant or other documentation as may be reasonably required by a utility company or other company or public, governmental or quasi-governmental entity in accordance with this Declaration.

#### ARTICLE VI: TITLE TO HOMEOWNER'S COMMON PROPERTY

Section 6.01. Developer covenants that it will hold the Homeowner's Common Property subject to the Restrictions. Developer may retain legal title to the Homeowner's Common Property until it has completed all the improvements in the planned development known as Blue Heron Pines and until such time as, in the opinion of the Developer, the Homeowner's Association is able to maintain the Homeowner's Common Property. Despite any provision herein to the contrary, Developer hereby covenants for itself, its successors and assigns, that it shall convey the Homeowner's Common Property, subject to the Restrictions herein, to the Homeowner's Association prior to or upon termination of Developer's control of the Board, as hereafter defined. Developer shall convey title to the Homeowner's Common Property subject to such reserved easements, licenses, and/or powers as may be necessary or proper to permit Developer and Builders to develop the balance of the Entire Tract and market Lots in accordance with plans approved by all governmental authorities with jurisdiction, and subject to this



Declaration. In addition, Developer hereby retains the right to dedicate portions of the Homeowner's Common Property to the Township of Galloway prior to conveying title to the Homeowner's Association.

Section 6.02. Developer may convey title to all the Homeowner's Common Property at one time, or in phases, as final subdivision of the Subject Property and Entire Tract proceeds. Developer may convey title to all or part of the Homeowner's Common Property at a time earlier than that required by this Article. Until the Homeowner's Association receives title to the Homeowner's Common Property, Developer shall pay all real property taxes thereon, and shall maintain, repair, and replace the Homeowner's Common Property as necessary. Thereafter, all expenses relating to the Homeowner's Common Property shall be the responsibility of the Homeowner's Association.

**ARTICLE VII: BLUE HERON PINES HOMEOWNER'S ASSOCIATION, INC.**

Section 7.01. **Organization.** The Homeowner's Association shall be a not-for-profit corporation formed under the laws of the State of New Jersey created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Certificate of Incorporation and By-Laws or in this Declaration. Neither the Certificate of Incorporation nor By-Laws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 7.02. **Membership.** Every Unit Owner shall be a Member of the Homeowner's Association. Developer and any Builder shall be Members of the Homeowner's Association for so long as same shall own any Unit or Unsubdivided Land. Persons who hold mortgages or other security interests in 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 shall begin automatically at the time any person becomes the Owner of a Unit. Membership shall cease at the time any person ceases to be the Owner of a Unit. Membership in the Homeowner's 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.

Section 7.03. **Associate Membership.** Any Person who is lawfully permitted to use and occupy any Unit as a tenant or lessee of an Owner shall be an Associate Member of the Homeowner's Association. Associate Members shall not be permitted to vote on Homeowner's Association business, but shall be permitted to attend Homeowner's Association meetings, and to use and enjoy the Homeowner's Common Property subject to the Restrictions. Each Associate Member shall be required to register with the Homeowner's Association Secretary within 10 days after commencement of his/her lease.

Section 7.04. **Voting Rights.** Each Member in good standing other than the Developer and a Builder, shall be entitled to cast one (1) vote for each Unit owned in any election of

Directors. In all other matters of Homeowner's Association business, all Members, including the Developer and Builders, shall be entitled to vote except as otherwise provided in the Governing Documents. Voting rights and procedures shall be as set forth in the Certificate and the By-laws.

**Section 7.05. Joint or Common Ownership.** If any property interest, ownership of which entitles the Owner thereof to vote, is held jointly or in common by more than one Person, the vote or votes for which such property interest is entitled shall also be held jointly or in common in the same manner. In the event that such joint or common Owners are unable to agree among themselves as to how their vote or votes are to be cast as a unit, the vote shall be split equally among the co-Owners. Any joint or common Owner shall be entitled to cast the vote or votes belonging to all his or her co-Owners unless another of his or her co-owners shall have delivered to the Homeowner's Association prior to the election a written statement to the effect that the Owner wishing to cast the vote or votes has not been authorized to do so by the co-Owners.

**Section 7.06. Proxy Voting.** Subject to any and all applicable provisions of the By-laws, any Owner, including Developer or any Builder, may give a revocable written proxy to any person authorizing the latter to cast the Owner's vote(s) on any matter.

**Section 7.07. Board of Directors.** There shall be a Board of Directors of the Homeowner's Association which shall initially consist of three (3) persons. The number of Directors shall be increased as provided in the By-laws. Directors shall be elected, appointed, removed, and charged with responsibilities in accordance with the By-laws. Unless otherwise specifically provided, all rights, powers, authority, duties, and responsibilities of the Homeowner's Association shall be exercised, discharged or delegated, as the case may be, by the Board of Directors.

**Section 7.08. Duties and Responsibilities.** The Homeowner's Association shall discharge all duties as are set forth in, or as may be fairly implied from, this Declaration, the Certificate of Incorporation, the By-laws, the Rules and Regulations or other applicable law. The Homeowner's Association shall discharge, its duties in a manner that protects and furthers the health, safety and general welfare of the residents of the Subject Property.

**Section 7.09. Rights, Powers and Authority.** All rights, powers, and authority conferred upon the Homeowner's Association hereafter are intended to, and shall be deemed to, touch and concern the land. The Homeowner's Association shall have all rights, powers and authority conferred expressly by this Declaration, the Certificate of Incorporation, and By-laws, as these sources may be amended from time to time. The Homeowner's Association shall have such further rights, powers, and authority as are incidental to, fairly implied from, or necessary or proper for, (a) the exercise of those rights, powers, and authority which are expressly conferred by the above sources, and/or (b) the proper discharge of the duties and responsibilities imposed on the Homeowner's Association by the above sources. The Homeowner's Association shall, in addition, have all those powers conferred by the laws of the State of New Jersey governing

nonprofit corporations which are necessary or proper to further the purposes of the Homeowner's Association as stated in the Certificate of Incorporation.

**Section 7.10. Delegation.** The Homeowner's Association the affirmative and perpetual duty and obligation to provide for the maintenance, management, preservation, administration and operation of all Common Property and to perform all of the powers, duties and responsibilities delegated to the Homeowner's Association by this Declaration, in accordance with the terms of the Homeowner's Governing Documents.

The Homeowner's Association's duties and responsibilities under this section with respect to a particular Phase shall commence upon the issuance of the first Certificate of Occupancy for a Unit within that Phase. The assumption of the duties and responsibilities by the Homeowner's Association hereunder shall not constitute any expression that any Common Property is completed or, if completed, is completed satisfactorily. The Homeowner's Association shall have no liability in connection with any incomplete Common Property or defective Homeowner's Common Property based on the assumption of duties and responsibilities hereunder. Each Builder of a Phase shall notify the Secretary of the Homeowner's Association of the issuance of the first Certificate of Occupancy in the Phase.

**Section 7.11. Certificate of Incorporation and By-Laws.** The Certificate of Incorporation and By-laws of the Homeowner's Association are incorporated herein and made a part of this Declaration by reference. The Certificate of Incorporation and By-laws may be amended as provided for in those instruments. Any amendment to those instruments shall become part of this Declaration, and shall be recorded in the Atlantic County Clerk's Office.

**Section 7.12. Developer's Control of the Association.** Despite anything to the contrary contained herein, Developer shall have the right, but not the duty, to appoint Officers and Directors of the Homeowner's Association, and to control the business of the Homeowner's Association, in accordance with the following procedures and time periods for transition of control from the Developer to Owners who are not the Developer or Builders, and as provided in the By-laws. This transition of control shall be based on the total number of Units ultimately built on the Entire Tract.

(a) Prior to the sixtieth (60th) day after conveyance to Owners, who are not the Developer or Builders, of title to 25% or more of the total number of Units contemplated for the Entire Tract, Developer shall appoint all Directors. Within sixty (60) days after conveyance to Owners who are not the Developer or Builders, of title to 25% of such Units, at least 25% of the Directors shall be elected by those votes not controlled by the Developer or a Builder. Within sixty (60) days after conveyance to Owners, who are not the Developer or Builders, of title to 50% of such Units, at least 40% of the Directors shall be elected by those votes not controlled by Developer or a Developer. Within sixty (60) days after conveyance to Owners, who are not the Developer or Developers, of title to 75% of such Units, all Board members, except as specified below, shall be elected by those votes not controlled by Developer or a Builder. In the event that 75% of the Units are not conveyed to Owners who are not Developers

or Builder by the twentieth (20th) anniversary date of the recording of this Declaration, all Directors shall be elected by Owners other than Developer or Builders.

(b) Despite the above provisions, Developer shall be entitled to appoint one (1) voting member of the Board at all times so long as any Unit held by Developer or Builder for sale remains unsold and held for sale in the normal course of business. Developer shall have the right to surrender control of the Board of Directors sooner than specified above, provided that a majority of those votes not controlled by Developer or a Builder are cast in favor of assuming control.

(c) When the Owners assume control of the Board of Directors, Developer shall promptly deliver to the Homeowner's Association all documents and materials pertinent to the business of the Homeowner's Association, including without limitation copies of this Declaration, the Certificate of Incorporation, By-laws, Rules and Regulations, minute book, an accounting of Homeowner's Association funds, applicable insurance policies, governmental permits and approvals, personal property of the Homeowner's Association, all contracts and agreements currently in force and affecting the Homeowner's Association, and a Membership roster.

(d) After the Owners assume control of the Board of Directors, the Homeowner's Association shall not take any action that would be detrimental to or would adversely affect the sale of Lots or Units by Developer or Builder. Without in any way limiting the scope of the preceding sentence, action which would be detrimental to, or would adversely affect the sale of Lots or Units by Developer or a Builder shall include (i) any amendment of this Declaration, the Certificate of Incorporation, or By-Laws having the effect of terminating, restricting, or reducing any right, protection, power, or authority held or enjoyed by Developer or any Builder thereunder; (ii) any action restricting Developer's or any Builder's right to develop the Entire Tract in a manner not inconsistent with this Declaration, or maintain signs, or a sales and/or administrative office(s) on the Entire Tract; and (iii) any action restricting or reducing the level of maintenance, operation and services provided by the Homeowner's Association at the time Developer's control of the Board of Directors terminates.

(e) Despite anything to the contrary contained herein, until the last Lot or Unit held, in the regular course of business, by Developer or a Builder for sale is sold, Developer shall hold an absolute power to veto any action taken by the Homeowner's Association which would be detrimental to Developer's or Builders' rights or interests in the sale of units hereunder, as determined in the sole reasonable discretion of the Developer. During such period Developer shall be given thirty (30) days notice of any meeting called for the purpose of amending this Declaration, the Certificate of Incorporation, the By-laws, or any amendment thereto. Failure to give such notice shall invalidate any amendment adopted at such a meeting. If an amendment is adopted at such a meeting, and if Developer fails to exercise its veto power within ten (10) days after Developer receives notice of the adoption of the amendment, the amendment shall be effective and Developer shall have waived its veto powers under this paragraph. Nothing

contained herein shall limit Developer's other legal remedies, including an action for injunctive relief, for a violation of its rights under this section.

(f) During the period that Developer appoints a majority of the Board of Directors, the Homeowner's Association shall not make additions, alterations, or improvements affecting the Homeowner's Common Property if the effect of that action would be to necessitate a Special Assessment or a substantial increase in any monthly Assessment; provided, however, that the prohibition of this paragraph shall not apply to any addition, alteration or improvement required by a governmental agency, title insurance company, existing or prospective Institutional Lender, or unexpected emergency condition affecting the Subject Property.

(g) Nothing contained herein to the contrary shall serve to exculpate members of the Board of Directors appointed by the sponsor from their fiduciary responsibilities.

(h) The developer shall not be permitted to cast any votes held by him for unsold lots, parcels, units, or interests for the purpose of amending the master deed, by-laws or any other document for the purpose of changing the permitted use of a lot, parcel, unit or interest, or for the purpose of reducing the common elements or facilities. The developer shall at times conform to the requirements of the Declaration of Covenants and Restrictions.

(i) While the developer maintains a majority of representation on the executive board, he shall post a fidelity bond or other guarantee acceptable to the Agency, in an amount equal to the annual budget. For the second and succeeding years, the bond or other guarantee shall include accumulated reserves.

(j) While the developer maintains a majority of the executive board, he shall have an annual audit of association funds prepared by an independent accountant, a copy of which shall be delivered to each unit owner within 90 days of the expiration of the fiscal year of the association. The audit shall cover the operating budget and reserve accounts.

(k) While the developer maintains control of the executive board, he shall take no action which adversely affects a homeowners rights under N.J.A.C. 5:25-5.5. Claims relative to defects in common elements shall be processed in accordance with N.J.A.C. 5:25-5.5.

(l) In the event the sponsor exercises its right to rent or lease to non-contract occupants, the sponsor shall be responsible for the payment of the appropriate maintenance fee to the Association, pursuant to the terms of the Public Offering Statement, Declaration of Covenants and Restrictions, Master Deed and By-Laws of the Condominium.

Section 7.13. Indemnification. The Homeowner's Association shall indemnify any Person made a party to any action, suit, or proceeding, whether civil, administrative, or investigative (other than an action by or in the right of the Homeowner's Association) by reason of the fact of such Person's capacity as Director, officer, committee member, employee, servant or agent of the Homeowner's Association, against expenses (including reasonable attorney's fees

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 shall be ultimately 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 by the settlement as to which the Homeowner's Association is advised by counsel that the Person to be indemnified, more likely than not, was guilty of gross negligence or willful misconduct. Any indemnification which the Homeowner's Association has elected to provide under this section shall be made by the Board by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding or as otherwise provided in the By-Laws or by law. The indemnification provided by this section shall not be deemed exclusive of any other rights to which anyone seeking indemnification may otherwise have.

**ARTICLE VIII: ARCHITECTURAL DESIGN REVIEW COMMITTEE**

**Section 8.01 Creation.** The ADRC shall be established by the Homeowner's Association Board pursuant to the By-laws. The ADRC shall be responsible for reviewing and approving or disapproving any and all plans for any construction or other activity which falls within the scope of Section 4.01 subject to approval by the Residential Developer and Golf Course Owner.

**Section 8.02 Membership.** There shall be not less than three members of the ADRC who need not be Members. ADRC members appointed by the Board shall serve for two year terms. The initial terms of ADRC members may be 1, 2, and 3 years, respectively, however, so that the tenure of all members does not end in the same year. ADRC members shall be subject to removal by the Board at any time with or without cause.

**Section 8.03 Review of Proposed Plans.** Except as otherwise provided in this Declaration, no Person shall be permitted to engage in any construction or other activity which falls within the scope of Section 4.01 without first submitting an application to the ADRC and obtaining approval for the proposed plans. The ADRC shall review and approve or disapprove such proposed plans according to the standards established herein, and such further consistent standards as may be established by the Board or the ADRC as provided for herein. The ADRC shall not approve any application unless it determines that the proposal is architecturally consistent and harmonious with the remainder of the community and the natural surroundings. The ADRC shall not approve any application unless it determines (a) that the application is consistent with the overall community plan in regard to, among other things, setbacks, height, and use, and complies with the Architectural Guidelines, (b) that the application is consistent with good principles of design and engineering practice in regard to drainage, grading, structural soundness, and other relevant matters, (c) that the application will not adversely affect the operation of any water, sewer, septic, or other Utility System serving the Subject Property, (d) that the application will not have an unjustified, unnecessary, or undue adverse impact on the natural surroundings, including surrounding trees and other vegetation, and (e) that the application will not substantially impair the intent and purposes of the Declaration, or the health, safety, or welfare of the Owners. Nothing contained in this Article VIII nor in any other

provisions of this Declaration shall be construed to prohibit the reasonable adaptation of any unit for handicap use. The following standards shall apply:

- (a) No tank for storage of gas or liquids may be maintained unless hidden from external view.
- (b) No rubbish, trash, garbage, refuse or other similar material shall be placed, stored or exposed to view within twenty (20) feet of the property line of any Lot or Unit; within a Wetlands or a Wetlands-transition area, as designated by the New Jersey Department of Environmental Protection or other governmental entity responsible for such designations. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground, screened, or so placed and kept as not to be visible from any street or waterway within the Subject Property at any time, except during refuse collections. No trash, rubbish, garbage, or other refuse shall be dumped or stored or accumulated; no outside burning of wood, leaves, trash, garbage or household refuse shall be permitted.
- (c) No sign of any kind shall be displayed to the public view on any Unit or Lot, without the prior approval of the ADRC except for any signs utilized by the Developer for directional, identification, traffic, sales or marketing purposes. No sign of any other kind shall be displayed on any Unit or Lot, without the written approval of the ADRC other than a sign limited in size to 18 inches by 24 inches containing the words "For Sale" or "For Rent" indicating the name of the seller or lessor and a phone number.
- (d) No outdoor clothes poles, clothes lines and similar equipment shall be permitted.
- (e) Any Unit which may be destroyed in whole or in part by fire, windstorm, or by any other cause or act of God must be rebuilt, and all debris removed, and the property on which it was situate restored to a slightly condition all with reasonable promptness; provided, however, that in no event shall any debris remain longer than sixty (60) days from the date on which the damage or destruction first occurred.
- (f) No tree over four (4) inches in diameter at a point measured two (2) feet above the ground shall be removed from any improved Lot unless approved by the ADRC. The Developer or any Builder shall be exempt from such approval if the removal is for construction or development purposes.
- (g) No radio antenna or television antenna or satellite dish of any kind shall be constructed or placed on the Subject Property.
- (h) No Unit except those owned by the Developer and used for sales offices, administrative offices or model homes shall be used for any purpose other than a private residence; provided, however, for as long as the Developer holds at least one Lot or Unit for sale, the Developer shall be entitled to lease any Unit from its Owner and the Owner permitted to lease a Unit to the Developer for use as a sales office, administrative office or model home.

(i) The property subject to these covenants and restrictions may be used for single family residential living Units and for no other purpose. No business or commercial building may be erected on any Lot and no business may be conducted on any part thereof. No building or other improvement shall be erected upon any Lot without prior approval from Developer. No Lot shall be subdivided, resubdivided or reduced in size unless each divided portion thereof is consolidated with one or more contiguous Lots under one ownership. Garages may not be converted into living space.

(j) So long as OHS is the Owner of the golf course, no Lot and no interest therein, upon which a residential Unit has not been constructed, shall be sold or transferred, by the Builder and/or Owner of such Lot unless and until the Builder and/or Owner has first offered to sell such Lot to OHS and OHS has waived, in writing, its right to purchase said Lot. Any sale of a Lot, or any interest therein, upon which a residential Unit has not been constructed, without notice to OHS and waiver of its right of first refusal shall be void.

(k) No changes in elevations of any property, nor change in the topography of any Lot, which may impact upon the run-off of storm water as provided for by the original site plan documents prepared by Hansen, shall be made without first obtaining the written approval of the Golf Course Owner and Developer.

(l) All Units adjacent to any portion of the golf course shall be encumbered by an easement to the benefit of the golf course patrons enabling them to retrieve golf balls and walk upon the property when necessary while playing the golf course. Any such entry shall not be deemed a trespass. Unit owners, their guests, assigns, family, servants, tenants and other persons shall not trespass onto golf course property.

(m) No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse, pile or unsightly object shall be allowed to be placed or suffered to remain anywhere thereon. In the event the Owner shall fail or refuse to keep the premises free of weeds, underbrush or refuse, piles or other unsightly growth or objects, then OHS may enter upon said premises and remove the same at the expense of the Association, which shall assess the individual property Owner for payment. Any such entry shall not be deemed a trespass.

(n) Each unit owner shall install an underground automated irrigation system in the front yard of each home and the plans for the same shall be approved by OHS.

(o) No fence, hedge, wall or other dividing instrumentality shall be constructed or maintained on any Lot unless approved by Developer.

(p) No rubbish, trash, garbage or other waste materials shall be kept or permitted on any Lot or in any common area, except in sanitary containers located in an appropriate area, concealed from public view.



(q) No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or on the common areas. However, dogs, cats and other common household pets may be kept on Lot subject to such rules and regulations as may be adopted by the Association, so long as they are not kept, bred, or maintained for commercial purposes. No animals shall be allowed to run loose at any time and Owners must keep the subject property free and clear of any and all waste generated by the animal.

(r) The use of any driveway or parking area which may be in front or, adjacent to or part of any Lot, as a habitual parking place for commercial vehicles is prohibited. The term "commercial vehicles" shall include all automobiles, trucks and vehicular equipment including station wagons, which bear signs or shall be printed on the same or some reference to any commercial undertaking or enterprise or vehicles more than 6 feet in height.

(s) No Owner or any other person, firm or corporation shall build or cause to be built any exterior addition, improvement or structure, or any other manner or thing which alters the height or other exterior dimensions of the structure, the area covered by the structure, or the use or exterior color scheme thereof, without first having the approval of the Architectural Design Review Committee in writing.

(t) The Owner of each Unit, Lot or Parcel shall maintain such Unit, Lot or Parcel in a safe, clean and sanitary manner, in good order and repair and in accordance with all those covenants, conditions, restrictions, rules and regulations as may apply to such Unit, Lot or Parcel. In the event that a Unit, Lot or Parcel shall not be so maintained, the Association shall have the right to enter upon the Unit, Lot or Parcel to maintain the same, after giving the Owner at least fifteen (15) days' written notice, to cure any maintenance problems or deficiencies and, in such event, the Association shall have the right to assess the particular Owner for the cost of such maintenance. The Association by its Board of Directors shall have the right to establish rules and regulations governing the exterior maintenance of any Unit, Lot or Parcel.

(u) No Owner shall carry on any practice, or permit any practice to be carried on, which unreasonably interferes with the quiet enjoyment by any other Owner or occupancy of a Lot, Parcel or Unit or which creates a hazard or nuisance on the property.

(v) In the event of taking in condemnation of the Open Space and Community Facilities or any portion thereof, the award for such taking shall be payable to the Association for use by the Association to defray costs and expense of operation, maintenance and replacement of Open Space and Community Facilities.

(w) No Owner shall be permitted to lease his Unit or Lot unless the lease be in writing and the form thereof approved by the Association. No owner shall be permitted to lease his unit more than one time in a calendar year. All leases shall provide that the lease shall be subject in all respects to the provisions of the By-Laws, the Declaration of Covenants, Conditions and Restrictions and Rules and Regulations of the Association and that any failure by the lessee to comply with the terms of these Association documents shall be a default under the lease. The

Owner shall not be relieved of any of his obligations under these Association documents by virtue of his leasing his Unit, Lot or Parcel. Any Owner who leases or sells his Unit, Lot or Parcel shall provide his lessee or purchaser, at the Owner's expense, with a current copy of this Declaration, the By-Laws, any rules and regulations promulgated by the Association and such other covenants, conditions or restrictions and related documents as may apply to such Unit, Lot or Parcel. At least three (3) days prior to the execution by an Owner of a Lease for or an agreement for the sale of such Unit, Lot or Parcel, the Owner shall submit to the Association a certificate signed by his lessee or purchaser that certifies that such lessee or purchaser has received copies of such documents and rules and regulations as are applicable to such Unit, Lot or Parcel. Within five (5) days after the execution by an Owner or a lease for such Unit, Lot or Parcel, the Owner shall submit a copy of the executed lease to the Association. In addition, upon the sale by an Owner of his Unit, Lot or Parcel, the selling Owner shall furnish a certificate issued by the Association containing the following information:

- (i) a statement of the amount of the annual charges payable monthly and any unpaid annual charge or other assessment currently due and payable from the selling Owner.
- (ii) a statement of any other fees payable by Owners.
- (iii) a statement of any capital expenditures currently proposed or adopted by the Association for the current and two next succeeding fiscal years.
- (iv) a statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the Association for any specified project.
- (v) a copy of the most recent regularly prepared balance sheet and income and expense statement, if any, of the Association.
- (vi) a copy of the current operating budget of the Association.
- (vii) a statement describing any insurance coverage which may be provided for the benefit of Owners.

The Association shall fully cooperate in the preparation and provision of such certificate and information to a selling Owner within fifteen (15) days after such is requested in writing by such Owner. An Owner providing such a certificate to a purchaser is not liable to the purchaser for any erroneous information provided by the Association and included in the certificate. A purchaser shall not be liable for any unpaid assessment or fee greater than that set forth in such certificate. The Association shall have the power to assess the reasonable cost of the preparation of such certificate to the selling Owner and require payment thereof.

(aa) No motor vehicle, including, but not limited to, mini-bikes, snowmobiles and motorcycles, may be driven on the open space portion of the common property and golf course property by any Owner or guest.

(bb) No above-ground swimming pools may be erected on any Lot. In-ground pools shall be permitted, subject to approval in accordance with the standards contained herein.

(cc) No tents, trailers, vans, storage tanks, or temporary or accessory buildings or structures shall be erected or permitted to remain on any Lot without the written consent of the Architectural Design Review Committee.

(dd) No boats, recreational vehicles or other motor vehicles, except fourwheel passenger automobiles, shall be placed, parked or stored upon any Lot or Parcel, nor shall any maintenance or repair be performed upon any boat or motor vehicle upon any Lot or Parcel, except upon such areas specifically designated for such use by the Developer or the Board of Directors.

(ee) No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the Architectural Design Review Committee.

(ff) No Owner or lawful occupier of any Lot or Unit shall be permitted to drill any well or construct any casement or water retrieval or access facility.

(gg) The Developer, Golf Course Owner, and the Association shall have the free right and privilege at all times hereafter, without let or hindrance, to go upon any and all of the lands conveyed or developed; to construct, reconstruct, repair, renovate or to correct work done by themselves, their agents, servants, workmen or contractors.

(hh) An easement for the present and future installation and maintenance of electric service, master and/or cable TV service, telephone service, water, sewer (storm water and sanitary sewer), gas and drainage facilities and the appurtenances necessary to the same, which easement shall run in favor of the Developer, the Association and the entity or entities owning or operating such facilities.

(ii) The display or use of items visible in the interior of any Unit from the exterior thereof is subject to the rules and regulations of the Association. Despite the foregoing, the Developer, shall have the right to display signs for promotional, sales, exhibits and administrative purposes upon any portion of the common property or upon any Lot or Unit owned by it until the last Lot within the property is sold and conveyed.

(ij) Each Unit Owner shall be solely responsible for the exterior maintenance of the Unit Lot and Unit owned by him, and shall be solely responsible for the expenses and costs therefore, including but not limited to the following: paint, repair, replacement and care of

roofs, gutters, downspouts, exterior building surfaces, other exterior improvements, and landscaping.

Streetscape improvements (i.e. mail boxes, street signs, landscape features) are intended to be consistent with one another in appearance and intent. No improvements of this nature shall be made without first obtaining written approval of Association, Developer, and Golf Course Owner of their appearance, size, shape, and colors. All mailboxes shall be as specified by the Developer and be identical.

Section 8.04. Rules and Regulations. The ADRC shall, subject to approval of the Board, establish reasonable rules and regulations to govern (a) the detail required in plans and specifications for any proposed construction or other activity within the scope of its jurisdiction, (b) procedures allowing the ADRC to obtain in timely fashion additional relevant information not required by its rules, (c) time periods for ruling applications complete and approved or disapproved, (d) extensions of those time periods for good cause, (e) notices of decisions, (f) fees for processing applications, (g) time limits for completing any construction work on the Subject Property, and (h) any other subject within the scope of its responsibilities.

Section 8.05. Notice of Applications and Decisions. The ADRC shall provide notice to all members of all applications and decisions under this section. Unless the Board shall fix a different method, notice of applications shall be given by posting a copy of the ADRC agenda in the administrative office of the Homeowner's Association at least 5 days prior to the date of the meeting at which an application will be considered. The agenda shall identify the name and address of the applicant, the address, lot and block numbers of the Subject Property, a brief description of the nature of the application, and the date, time and place of the meeting at which the application will be considered. Notices of decisions shall be given, unless the Board shall fix a different method, by posting in the administrative office of the Association within 5 days after the date of a meeting a summary of actions taken by the ADRC at the meeting.

Section 8.06. Zoning and Other Governmental Controls. Nothing in this Article shall be construed to exempt any person from (a) the requirements of any Zoning or land development ordinance of the Township of Galloway, or (b) the requirements of any other law, statute, ordinance, rule or regulation promulgated by any federal, state or municipal government. Prior to submitting to any municipal body or official any application for development, or any application for any construction permit, Zoning permit, soil removal permit, or other permit or approval relating to or involving the physical character of the Subject Property, an application shall be submitted to and approved by the ADRC in accordance with this Article.

Section 8.07. Variances. The ADRC may in particular cases, with the affirmative vote of two-thirds of the ADRC, and the written approval of the Golf Course Owner grant variances from any standards established herein, or from any standards subsequently established by the Board, governing architectural, dimensional, and/or other requirements. Variances may be approved only when circumstances such as undue hardship, topography, or aesthetic or environmental considerations warrant relief. The granting of variances shall be left to the sound

discretion of the ADRC provided, however, that all requirements for approval of any application shall be met, and no variance shall be granted if its effect would be substantially to impair the integrity of the common plan or scheme established for the community through this Declaration, or the health, safety or welfare of the Owners, their licensees or invitees.

Section 8.08. Appeals. Any Owner, whether or not the applicant, may appeal to the Board any decision of the ADRC under Section 8.03. Appeal shall be taken by filing a written notice of appeal with the Secretary to the Board within 10 days of the date public notice of the decision is given pursuant to Section 8.05. The Board shall review the matter within 30 days of the filing of the notice of appeal at an informal hearing at which all interested persons may attend and be heard. The Board may affirm, reverse, or modify the decision of the ADRC.

Section 8.09. Inapplicability to Developer or any Builder. None of the provisions of this Article shall apply to the Developer or any Builder so long as any Lot or Unit held by Developer or any Builder for sale remains unsold.

#### ARTICLE IX: ASSESSMENTS FOR COMMON EXPENSES

Section 9.01. Nature and Purpose. Except as provided in Section 9.03 of this Article, Assessments shall be levied against all Units to defray the Common Expenses arising from the proper exercise and discharge of the rights, powers, authority, duties and responsibilities of the Homeowner's Association. By way of inclusion but not limitation, Assessments shall be imposed to defray the cost of maintaining and repairing the Homeowner's Common Property, including all roadways, the stormwater drainage system, providing necessary or proper services to the Units in connection with the Homeowner's Common Property, paying taxes and insurance premiums, annual contributions to the volunteer groups providing emergency services, and operating and administering the Homeowner's Association and the Homeowner's Common Property. The amount of Assessments deemed necessary by the Board and the manner of expenditure thereof shall be a matter for the sole discretion of the Board.

Section 9.02. Creation of the Lien and Personal Obligation for Assessments. Every Unit Owner, except Developer and any Builder, 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 Homeowner's Association: (i) annual Assessments for Common Expenses ("Annual Assessments"); (ii) Special Assessments; and (iii) any and all fines, late charges, charges, fees, costs of collection (including reasonable attorneys' fees), interest, capital contributions, escrow deposits or other sums required to be paid to the Homeowner's Association by any or all Unit Owners under the Homeowner's Governing Documents or any duly adopted resolution of the Board (hereinafter collectively referred to as "Assessments"). This obligation shall be in addition to any other assessments, fines, charges and other sums that a Unit Owner may be obligated to pay hereunder or pursuant to any other Governing Documents. All Assessments shall be fixed, established and collected from time to time as herein provided, and shall be apportioned equally among all Unit Owners. All

Assessments, together with such interest thereon, late charges and costs of collection thereof (including reasonable attorneys' fees), shall be a charge and shall constitute a continuing lien upon the Unit against which such Assessment is made. Each such Assessment, together with such interest thereon, late charges, and cost of collection thereof (including reasonable attorneys' fees and expenses), as hereinafter provided, shall also be the personal obligation of the Owner of the Unit when the Assessment fell due. In the case of joint ownership, all of the co-Owners shall be jointly and severally liable. Further, the Township of Galloway shall have a continuing lien against each such Unit for its pro rata share of all real estate taxes due and payable to the Township of Galloway by the Homeowner's Association for real estate taxes assessed against the Homeowner's Common Property. Such lien shall be apportioned equally among all Units and shall be enforceable by the Township of Galloway in the manner provided by law with respect to the real estate tax assessments.

No Unit Owner may waive or otherwise avoid liability for the aforesaid Assessments by non-use of the Homeowner's Common Property, or otherwise.

**Section 9.03. Assessments Against Developer and Builders.** Despite anything to the contrary herein, Developer and Builders shall not be subject to any Assessments during the period that Developer controls the Homeowner's Association; provided, however, as required under N.J.A.C. 5:26-8.6(b), for any Unit owned by the Developer or a Builder for which a Certificate of Occupancy has been issued, the Developer or the Builder, as the case may be, shall be responsible for payment of the Annual Assessment attributable to that Unit if any benefit is derived by that Unit from the items included in the annual budget of the Homeowner's Association. In lieu of such Assessments, Developer shall be obligated to subsidize the Homeowner's Association for any operational deficits actually incurred during such period. This subsidy shall be given to the extent operating expenses of the Homeowner's Association set forth in the annual budget exceed the amount of Assessments for Common Expenses collected from Unit Owners other than Declarant and Builders. The Developer shall not be responsible to subsidize any deficit resulting from nonpayment of Assessments by Unit Owners. Any subsidy shall not be used to reduce artificially the amount of Assessments. This section may not be amended without the written consent of the Declarant and Builders.

**Section 9.04. Pro-Rated Assessments.** When a Unit is first conveyed by Developer or any Builder to any Person, and the conveyance does not occur on the first day of an Annual Assessment period, the portion of the then current Annual Assessment payable by the new Member shall be pro-rated to equal an amount which bears the same relationship to the Annual Assessment as the remaining number of months in the then current Annual Assessment period bears to 12. The resulting portion of the first Annual Assessment for which a new Member is liable shall be immediately due upon the Member's acquisition of title to the Unit; provided, however, such Member shall be entitled to pay same in installments in the same manner as other Members except, if necessary, the installment due at the closing of title shall be adjusted if the closing does not occur on the first day of a month or other installment due date.

**Section 9.05. Annual Budget and Allocation of Assessments.** The fiscal year of the Homeowner's Association shall commence on January 1, unless the Board shall fix a different date. Prior to that date, the Board shall prepare an annual estimated budget for the coming year. The budget shall provide for all reasonable anticipated expenses to be incurred by the Homeowner's Association in the coming year in exercising and carrying out its lawful powers and responsibilities, together with reasonable reserves for contingencies, and reserves for future capital expenditures. In addition to maintenance of the common areas, the Homeowner's Association shall be responsible for maintenance of the two signs identifying development together with the school bus shelter. The projected budget shall be reduced by the amount of anticipated income for the coming year, and by any anticipated surpluses from the prior year. The Board shall then make Annual Assessments against the Units for which an initial Certificate of Occupancy has been issued, in accordance with the provisions of this Article and the By-laws. Annual Assessments for each Unit shall be equal to that fraction of the total Common Expenses, the numerator of which is one and the denominator of which is the number of Units ultimately intended to exist in the Subject Property. After the date that Owners other than the Developer and Builders assume control of the Board of Directors, but not during the period that the Developer controls the Board, if the Annual Assessment is not made as required, such Assessment shall be presumed to have been made in the amount of the last prior year's Annual Assessment and any installments of such Annual Assessment shall be due upon each installment payment date until a new Annual Assessment is made.

**Section 9.06. Payment of Assessments.** Annual Assessments shall be payable in advance in monthly installments, or in such other installments as may be established by the Board. Each monthly installment shall be due on the first day of each month. If any Assessment is not paid within 10 days of the due date, or within such later time (not to exceed 20 days) as the Board may fix, the delinquent Member shall automatically be liable for a late charge in the amount of 10% of the Assessment. The delinquent Assessment, plus the late charge, shall bear interest from the date the late charge arose at the rate of eighteen percent (18%) per year, or at the highest rate allowed by law, whichever is greater, until paid in full. If legal action is required to collect these obligations, the delinquent Owner shall be liable to the Homeowner's Association for all reasonable attorneys' fees and other costs incurred to bring about collection. In the event an Owner fails to pay any installment of an Assessment, together with late charges and interest thereon, the Homeowner's Association shall be entitled to accelerate remaining installments of such Assessment as provided in the By-laws.

**Section 9.07. Assessments and Related Obligations as Liens Against the Units and Obligations Running with the Land.** All obligations to pay Assessments, delinquent Assessments, late charges, interest, and attorneys' fees and expenses to collect these obligations shall run with the land and bind all Owners and their successors in title. Such obligations shall pass with title to each Unit. As a result, a new Owner will be obliged to pay Assessments as they arise and will be subject to a money judgment for any unpaid obligations incurred by a prior Owner. Such obligations shall also give rise to a continuing lien against the Unit burdened thereby. This lien shall pass with the title to the Unit. The lien shall bind the Unit in the hands of all Owners and their successors in title. In addition to and not as a substitute for the

obligations set forth above, delinquent Assessments, late charges, interest and related attorneys fees and costs which exist at the time title to a Unit is conveyed shall also constitute personal obligations of the Owner who incurred them.

Section 9.08. Special Assessments. The Board may levy Special Assessments to defray the cost of (a) making capital improvements upon or within the Homeowner's Common Property, (b) making unexpected repairs to capital improvements upon or within the Homeowner's Common Property, or (c) any financial emergency affecting the Homeowner's Association. No Special Assessments shall be levied under clause (a) above while Developer maintains a majority on the Board of Directors, unless required by a government agency, title agency, title insurance company or mortgage lender, or in the event of an emergency. Further, no Special Assessment shall be levied under clause (a) at any time unless such Assessment is authorized by vote in person or by proxy of seventy-five percent (75%) of the full membership of the Association at a meeting duly called for this purpose at which a quorum exists, written notice of which shall be sent to all Members at least thirty (30) days in advance and which notice shall set forth the purpose of the meeting. The date or dates for payment of a Special Assessment shall be fixed in the resolution of the Board authorizing the Special Assessment. Annual Assessments shall not be imposed to defray the cost of improvements or other items for which a Special Assessment may be levied under this section. Nothing in this section, however, shall bar or forbid the Homeowner's Association from levying regular Annual Assessments to establish reserves for replacement of capital improvements. The determination of an emergency or immediate repair need shall be in the sole discretion of the Board. Despite anything to the contrary herein, the Developer, Builder and Institutional Lenders shall not be required to pay any Special Assessment for capital improvements made pursuant to clause (a) herein to which they have not expressly consented; and, further, this provision may not be amended without the written consent of the Developer and every Builder and Institutional Lender.

Section 9.09. Charges for Damages, Violations and Failures of Unit Owners. If any Unit Owner or any Unit Owner's family member, guest, tenant, lessee or pet causes damage to any Homeowner's Common Property which necessitates repair thereto, or fails to maintain or repair anything for which maintenance and repair is the Unit Owner's responsibility, or if the Homeowner's Association is required to expend monies or services to remedy any violations of any provision of the Homeowner's Governing Documents, the Board may impose a special charge upon any Unit Owner involved for the cost of performing repairs or maintenance or for remedying such violations (including reasonable attorneys' fees), as the case may be. Such special charge shall constitute a lien against any Unit owned by such Unit Owner, and a personal obligation of the Unit Owner, and may be enforced in the same manner as other types of Assessments, but such special charge shall not be imposed without at least 20 days prior written notice to the affected Unit Owner and an opportunity for the affected Unit Owner to be heard at a meeting of the Board or any Committee established for such purpose.

Section 9.10. Subordination of Assessment Liens. The lien arising from Assessments, delinquent Assessments, late charges, interest, and attorneys' fees and expenses incurred to collect these obligations shall be subordinate to the lien for any past due and unpaid taxes and



to the lien of any Permitted Mortgage placed upon any Unit now or in the future. This section shall apply only to Assessments which have become due and payable before a sale or transfer pursuant to a judgment of foreclosure or in lieu of foreclosure. Such a sale or transfer shall not relieve the Unit, or any Person who shall become its Owner as a result of such a sale or transfer, from any Assessment, liability, obligation or lien which arises after the sale or transfer.

**Section 9.11. Report of Assessment Liens.** The Board shall provide each Owner with written notice of his or her Annual Assessments, if applicable, at least 30 days prior to the beginning of the fiscal year for which the Assessment is imposed. Any Owner, Institutional Lender, contract purchaser, or other properly interested Person, may, by written request to the Homeowner's Association Secretary, accompanied by such fee as the Homeowner's Association shall reasonably establish, obtain a written report signed by the Secretary certifying the then current status of Assessments and other charges due for the Unit in which such Person or entity is interested. Such certificate shall constitute conclusive evidence of the status of any Assessment due.

**Section 9.12. Enforcement of Assessment Obligations.** The Homeowner's Association may enforce the lien arising from obligations to pay delinquent Assessments, late fees, and interest by commencing an action in the nature of foreclosure and proceeding in the same manner as a mortgagee suing to foreclose a mortgage on real property. The Homeowner's Association may enforce any Owner's obligations to pay delinquent Assessments, late fees, and interest by commencing an action against the Owner, or Owners, liable for such obligations. Each person who (a) was an Owner at the time the obligation arose or (b) became an Owner while the obligation was due and owing or delinquent shall be jointly and severally personally liable for the entire obligation. The remedies provided in this section shall be cumulative, and the election of one shall not bar relief by means of the other. The delinquent Owner or Owners shall be liable for all reasonable attorneys fees and costs incurred to collect any delinquent obligation arising under this Article.

Any and all fines, late charges, charges, fees, costs of collection (including reasonable attorneys' fees), interest, capital contributions, escrow deposits, or any other sums required to be paid to the Homeowner's Association by any or all of its Members by the provisions of this Declaration, the Certificate of Incorporation, the By-laws, the Rules and Regulations of the Homeowner's Association or by any duly adopted resolution of the Board, shall be deemed Assessments which each Member has covenanted and agreed to pay according to the provisions of this Article, and for which the Homeowner's Association shall have a lien against a Unit Owner's Unit and for which a Unit Owner is liable under this Declaration, and may be enforced and shall be collectible in the same manner as other types of Assessments. The Board may notify a mortgagee of a default in the payment of any Assessment with respect to an encumbered Unit.

**Section 9.13. Exempt Property.** The following property subject to this Declaration shall be exempt from the Assessments, charges, and liens created herein: (a) all properties dedicated to and accepted by a local public authority and all property which, because of municipal, county, state or federal public use, cannot be devoted for use as a dwelling; (b) all Homeowner's

Common Property; (c) all properties exempted from taxation under the laws of the State of New Jersey (including but not limited to Homeowner's Common Property used for church, school, municipal, county, state or charitable purposes), upon the terms and to the extent of such legal exemption; and (d) all Lots, Units or Unsubdivided Land subject to this Declaration owned by the Developer or a Builder.

Section 9.14. Interest in Common Surplus. Any common surplus of the Homeowner's Association or portion thereof, resulting from the excess of income over expenses and any common surplus of the Homeowner's Association resulting from the proceeds of any disposition of assets of the Homeowner's Association in any fiscal year shall be carried into the following fiscal year unless otherwise decided by the Board in its sole discretion. In the event the Board decides to distribute any common surplus of the Homeowner's Association to the Members, such common surplus shall be allocated by the Board among all of the Members in the same manner as Annual Assessments for Common Expenses.

**ARTICLE X: RESERVED**

**ARTICLE XI: MISCELLANEOUS SERVICES AUTHORIZED**

Section 11.01. Improvements and Facilities Provided by Developer. Developer shall have the right to make such improvements and provide and preserve such facilities on Homeowner's Common Property as it considers to be advantageous to Blue Heron Pines and to the Members and the Homeowner's Association shall, upon request by Developer, be obligated to accept such improvements and facilities and to properly maintain the same at Homeowner's Association's expense, provided that all required approvals have been obtained from the governmental agencies having jurisdiction.

Section 11.02. Services which May Be Performed at the Option of the Homeowner's Association. In addition to the required maintenance of Homeowner's Common Property and of the improvements and facilities thereon, and provided that same are not otherwise provided by any other entity, the Homeowner's Association may furnish (but shall not be required to furnish) such programs and services as the Board, from time to time, by resolution may propose, but not until after such additional services are authorized by a vote of seventy-five (75%) percent of the full membership of the Association in person or by proxy, at a meeting duly called for such purpose at which a quorum exists, written notice of which shall be sent to all Members at least thirty (30) days in advance, such notice shall contain the purpose of the meeting and the proposed additional service or program to be authorized. Upon such express approval thereof by the Members, the Board shall place into effect such additional services or programs, and assess the costs thereof in the manner provided herein.

**ARTICLE XII: DAMAGE OR DESTRUCTION TO  
HOMEOWNER'S COMMON PROPERTY: CONDEMNATION**

Section 12.01. Damage or Destruction. If Homeowner's Common Property, or any part thereof, is damaged or destroyed by fire or casualty, the repair, restoration or ultimate disposition of any insurance proceeds shall be in accordance with the following:

(a) If the insurance proceeds derived from such loss amount to \$50,000 or less, then the Board shall contract with any licensed contractor or contractors to rebuild or repair such damaged and destroyed portions of the Homeowner's Common Property in conformance with its original state and pursuant to plans and specifications which reflect such original state, or if adherence to such original plans and specifications is impracticable or undesirable in the discretion of the Board, then in conformance with revised plans and specifications, provided such repairs or rebuilding shall be of a quality and kind substantially equivalent to the original construction and shall be subject to the review provisions of Section 4.06 and Article VIII of this Declaration, as applicable, and any other relevant provisions herein. The Board shall accept bids only in specific amounts and shall not enter into any cost-plus or other sliding scale arrangements for compensation to the contractor.

(b) If the insurance proceeds derived from such loss exceed \$50,000, all such insurance proceeds shall be paid directly to an insurance Director as may be designated by the Board, as director for all Institutional Lenders holding Permitted Mortgages on any portion of the Subject Property, and all Unit Owners as their interests may then appear. Disbursement of such funds shall be made in accordance with the following:

(i) Upon notification of the receipt of insurance proceeds by the insurance director, or at such earlier date as may be determined by the Board, the Board shall enter into a contract for a specific dollar amount with a licensed contractor or contractors for the repair or rebuilding of the damaged or destroyed portions of the Homeowner's Common Property as nearly as practical to the original state and in accordance with applicable building codes;

(ii) Said contract shall have provisions for periodic disbursements of funds by the director. Disbursements to contractors shall be made subject to the prior presentation of an architect's certificate and contractor's requisition containing such provisions as may be appropriate under the circumstances and being deemed suitable by the Board;

(iii) The Board shall employ licensed architects or other properly qualified persons 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.

(c) If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction or repair, assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs.

For as long as Developer subsidizes the Homeowner's Association in accordance with Article IX, Section 9.03, it shall subsidize any deficiency in insurance funds contemplated hereunder. The Developer's contribution to such deficiency shall be in the same proportion of the total deficiency as Developer's subsidy to the total budget, calculated at the time that Assessments are made against Unit Owners in connection with the deficiency contemplated hereunder.

(d) If the amount of available insurance proceeds should exceed the cost of any such reconstruction or repair, the excess shall be retained by the Homeowner's Association and applied by it to reduce Assessments or to add reserves, as the Board shall, in its sole discretion, deem appropriate or advisable.

Section 12.02. Eminent Domain. If Homeowner's Common Property shall be taken, injured or destroyed by eminent domain, each affected Member shall be entitled to notice of such taking and to participate through the Homeowner's Association in the proceedings incident thereto. Any awards made in connection with such proceedings shall be collected by the Homeowner's Association. The Homeowner's Association shall apply any portion of the award not used for restoration or repair of Homeowner's Common Property to reduce Assessments or to add to reserves, as the Board shall, in its sole discretion, deem appropriate or advisable.

#### ARTICLE XIII: INSTITUTIONAL LENDER'S RIGHTS

Section 13.01. Protective Provisions for the Benefit of Institutional Lenders. Any Institutional Lender shall, upon written request and payment of reasonable fees, be entitled to receive from the Homeowner's Association written notice of the following: (a) meetings of the Board of Directors called to consider revocation of, or any amendment to, this Declaration, the Certificate of Incorporation, or By-laws, (b) any default longer than 60 days in payment of any Assessment against a Unit on which the Institutional Lender holds a mortgage (hereafter referred to as an "encumbered Unit"), (c) substantial damage to or destruction of any encumbered Unit or part of the Homeowner's Common Property, (d) the filing or threat to file a condemnation action against any encumbered Unit or the Homeowner's Common Property.

With respect to any of the above changes, if notice thereof has been forwarded to each Institutional Lender who has requested notice thereof, and such Institutional Lender has not delivered a negative response in writing within thirty (30) days of such notice, then such Institutional Lender shall have been deemed to approve each event.

Section 13.02. Subordination. Any lien the Homeowner's Association may have on any Unit for the payment of Assessments attributable thereto is subordinate to the lien or equivalent security interest of any Permitted Mortgage on the Unit recorded prior to the date any such Assessment became due.

**Section 13.03. Additional Protections.**

(a) Any Institutional Lender shall, upon written request and payment of reasonable fees, (i) be permitted to inspect the books and records of the Homeowner's Association and certified true copies of this Declaration, the Certificate of Incorporation of the Homeowner's Association and the By-laws of the Homeowner's Association during normal business hours; (ii) receive an annual audited financial statement of the Homeowner's Association within ninety (90) days following the end of any fiscal year of the Homeowner's Association; and (iii) receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Homeowner's Association.

(b) Any Institutional Lender who holds a Permitted Mortgage lien on a Unit who obtains title to the Unit as a result of foreclosure of the Permitted Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser in a foreclosure sale, or their respective successors and assigns, shall not be liable for the share of Common Expenses or Assessments by the Homeowner's Association pertaining to such Unit or chargeable to the former Unit Owner which became due prior to acquisition of title. Such unpaid share of Common Expenses and Assessments shall be deemed to be Common Expenses collectible from all of the remaining Unit Owners including such acquirer, its successor and assigns.

(c) Despite the absence of any express provision to such effect in the mortgage instrument, in the event that there is any default in the payment of any installment of an Assessment with respect to any Unit, either regular or special, any Institutional Lender holding a mortgage which encumbers such Unit shall be entitled to declare such mortgage in default and foreclose in the same manner that is permitted by such mortgage with respect to any default in the payment of real estate taxes.

(d) In the event of substantial damage to or destruction of Homeowner's Common Property, any Institutional Lender which may be affected shall be entitled to timely written notice from the Homeowner's Association of any such damage or destruction. No Unit Owner or other party shall have priority over such Institutional Lender with respect to distribution of any insurance proceeds allocable to an encumbered Unit.

(e) If any Unit or Homeowner's Common Property, or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by a condemning authority, then every Institutional Lender holding a Permitted Mortgage on such Unit so affected is entitled to timely written notice from the Homeowner's Association of any such proceeding or proposed acquisition and no Unit Owner or other party shall have priority over such Institutional Lender with respect to the distribution of proceeds of any award or settlement allocable to such encumbered Unit.

(f) The Homeowner's Association may not, by act or omission, alienate, release, transfer, hypothecate, abandon, partition, subdivide, encumber or sell Homeowner's Common Property or any portion thereof, without the approval of all Institutional Lenders requesting

notice in accordance with Section 13.01 hereof; however, this section shall not apply to the granting of easements for public utilities or for other similar or related purposes consistent with the intended use of Homeowner's Common Property. The prior written approval of at least sixty-seven percent (67%) of the Institutional Lenders shall be required before the effectuation of any decision by the Members to terminate the legal status of the Homeowner's Common Property as Homeowner's Common Property for reasons other than substantial destruction or condemnation thereof.

(g) Despite the provision concerning amendment of this Declaration contained in Article XV, nor the amendment provisions contained in the By-Laws, unless at least two-thirds (2/3) of the Members entitled to vote (excluding the Developer or any Builder) have given their prior written approval thereof, the Homeowner's Association shall not be entitled:

(i) To change the method of determining the Common Expenses, Assessments and other charges levied upon a Unit Owner; or

(ii) By act or omission to change, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of Units, the exterior maintenance of Units, or the maintenance of the Homeowner's Common Property.

(h) The prior written approval of at least 75% of the Institutional Lenders shall be required for any material amendment to the Declaration, By-Laws or Certificate of Incorporation including, but not limited to, any amendment which would change any provision relating to: (i) voting rights; (ii) reserves for maintenance, repair and replacement of Homeowner's Common Property; (iii) responsibility for maintenance and repairs; (iv) rights to the use of Homeowner's Common Property; (v) convertibility of Units into Homeowner's or other Common Property/Elements or vice-versa; (vi) insurance or fidelity bonds; (vii) restoration or repair of the Homeowner's Common Property (after damage, destruction or condemnation) in a manner other than that which may be specified in this Declaration; (viii) any action to terminate the legal status of the Homeowner's Common Property after substantial damage or condemnation occurs; or (ix) any provision that expressly benefits Institutional Lenders.

#### ARTICLE XIV: DURATION

Section 14.01. This Declaration shall run with and bind the Subject Property and shall benefit, burden, and be enforceable by (a) Developer for so long as it shall own any Lot, Unit or part of the Homeowner's Common Property, (b) by the Golf Course Owner, (c) the Homeowner's Association, and (d) each Owner, and their respective heirs, administrators, executors, successors, and assigns, for a term of 50 years from the date this Declaration is recorded in the Atlantic County Clerk's Office. Thereafter, the terms of this Declaration shall be automatically extended for successive periods of 10 years unless an instrument revoking the Declaration has been filed in the recording office of Atlantic County. To be effective, the revoking instrument must be (a) signed by at least seventy-five percent (75%) of the Members

in good standing other than the Developer and Builders; by Developer and/or Builders representing at least two-thirds (2/3) of any and all votes in the Homeowner's Association held by the Developer and Builders; by two-thirds (2/3) of all Institutional Lenders holding a mortgage upon any part of the Subject Property; and by an authorized representative of Galloway Township, and (b) recorded at least three years prior to its effective date.

#### ARTICLE XV: AMENDMENTS

Section 15.01. In General. Subject to the provisions of sections 15.02 and 15.03 of this Article, this Declaration may be amended at any time by a vote of seventy-five percent (75%) the full membership in good standing present either in person or by proxy at a legally convened meeting of the Members of the Homeowner's Association in accordance with the By-laws. In the alternative, an amendment may be made by an agreement, signed and acknowledged by all of the Members in the manner required for the execution of a deed for recording. The Developer and Builders shall not be entitled to cast any votes held by them for unsold Units or Lots to amend this Declaration, the By-laws or any other document for the purpose of changing the permitted use of a Lot or Unit, or for the purpose of reducing the Homeowner's Common Property. Amendments shall not be effective until an instrument reciting the amendment verbatim and certifying its approval in accordance with the procedures established herein has been recorded in the Office of the Clerk of Atlantic County. The amendment must be signed and acknowledged by the President and the Secretary of the Homeowner's Association. No amendment may be effected which would permit (a) the Homeowner's Association or any Unit or Lot Owner (other than Developer or Builder) to be exempted from the payment of any Assessment, or (b) any action which contravenes the provisions of the By-laws, or (c) conveyance of any portion of the Homeowner's Common Property to any third person, firm, or corporation, without the express consent, by ordinance or otherwise, of the governing body of the Township of Galloway (or such municipal corporation as may then have zoning and subdivision control jurisdiction over the Homeowner's Common Property.

Section 15.02. Certain Amendments by Developer. Despite anything to the contrary contained in this Article, but subject to the provisions of Section 15.03 below, during the period of Developer's control, Developer may amend this Declaration, the Certificate of Incorporation, or the By-Laws, or any amendment to those instruments, without the requirement of any vote, and without the approval of any Owner, provided that the amendment is for a lawful purpose, is required by any title insurance company, mortgage lender, prospective mortgage lender, or governmental authority with jurisdiction, and does not substantially and adversely affect the value of any Lot, Unit, the Homeowner's Common Property.

Section 15.03. Lenders' Approvals. Any amendment to this Declaration, the Certificate of Incorporation, or By-laws, shall require the written approval (and endorsement of that approval on the recorded amendment) of all affected Institutional Lenders if the amendment materially and adversely affects the priority of their liens.

**ARTICLE XVI: SEVERABILITY**

Section 16.01. Developer deems the continued validity and enforceability of the Restrictions as a common plan or scheme to be essential to preserving the values of all Lots and Units within the Subject Property, and to avoiding the substantial deterioration of such values. To that end, Developer hereby declares that in the event that any article, section, paragraph, clause, or other part of this Declaration, the Certificate of Incorporation, or By-laws shall be adjudicated void, invalid, illegal, or unenforceable for any reason by any court or other tribunal having jurisdiction, such adjudication shall not invalidate or in any way affect any other part of those instruments. All remaining provisions of the Restrictions shall remain in full force and effect.

**ARTICLE XVII: ENFORCEMENT**

Section 17.01. Who May Enforce. This Declaration shall be enforceable by Developer for so long as it shall own any Lot, Unit or part of the Homeowner's Common Property by the Golf Course Owner, and by the Homeowner's Association, or any Owner, in any court or administrative body having jurisdiction. Actions and proceedings may be brought against any person, including the Homeowner's Association or any Owner, who has violated, is violating, has attempted to violate, is attempting to violate, or has threatened to violate, this Declaration. The Developer, the Golf Course Owner, the Homeowner's Association or any Owner shall be entitled to seek and recover damages, declaratory relief, injunctive relief, and/or other appropriate relief. Actions may be maintained against any responsible Person or against any Lot or Unit. In the event that the Developer, the Golf Course Owner, the Association or its Members should at any time fail to enforce the provisions hereof, the Township of Galloway, upon thirty (30) days prior written notice to the Homeowner's Association, shall have the right to institute appropriate legal proceedings in the name of the Homeowner's Association to effect such enforcement.

In the event the Homeowner's Association shall fail to discharge its obligations to maintain any portion of the Homeowner's Common Property as required by this Declaration, the Township of Galloway shall have the right to enter upon and maintain Homeowner's Common Property in accordance with the provisions of N.J.S.A. 40:55D-43(b). The cost of such maintenance by the municipality shall be assessed pro rata against the Units and Lots affected thereby, and shall be enforceable by the Township of Galloway, in the manner provided by law with respect to the real estate taxes assessed directly against each Unit.

Section 17.02. Notice of Violation. Despite anything to the contrary contained herein, and except where irreparable injury would otherwise result, the Developer, the Golf Course Owner, any Builder, the Homeowner's Association, any Owner, or Galloway Township shall not bring any action in any court or administrative or arbitral tribunal for enforcement of this Declaration until the provisions of this paragraph have been complied with. In the event of any



violation, attempted violation, or threatened violation of this Declaration, the party seeking enforcement shall give the responsible Person written notice of the violation, which notice shall direct that Person to cure the violation within twenty (20) days of receipt of the notice. If the responsible person fails, in the judgment of the enforcing party, to cure the violation within the twenty (20) days allowed, the enforcing party may institute proceedings to remedy the violation.

Section 17.03. Fines. The Board shall have the right to levy fines for any violation of the Homeowner's Governing Documents, provided, however, that the fine for a single violation may not, under any circumstances, exceed \$25.00. Each day that a violation continues after receipt of notice by a violator may be considered as a separate violation. Any fine so levied shall be considered an Assessment to be levied against the particular Member involved, and collection may be enforced by the Board in the same manner as the Board is entitled to enforce collection of Assessments.

Section 17.04. Non-Waiver. The failure to enforce, or delay in enforcing, any of the rights or remedies provided herein shall not be deemed to constitute a waiver of any such rights or remedies, an estoppel against such enforcement, or laches, on the part of Developer, the Golf Course Owner, any Builder, the Homeowner's Association, any Owner, or Galloway Township.

Section 17.05. Remedies Cumulative. Each of the remedies provided by the Restrictions, whether set forth in or fairly implied from this Article, or elsewhere, shall be cumulative. The election of one remedy shall not be deemed a waiver of any other remedy. The party seeking relief against any violation, however, shall be entitled to but one satisfaction. This limitation shall not be construed to deny the party seeking relief the right to both injunctive relief and damages, where appropriate.

#### ARTICLE XVIII: DEVELOPER'S RIGHTS AND OBLIGATIONS

Section 18.01. Ratification, Confirmation and Approval of Agreements. The fact that some or all of the officers, Directors, Members or employees of the Homeowner's Association and the Developer may be identical, and the fact that the Developer or its nominees, have heretofore or may hereafter enter into agreements with the Homeowner's Association or with third parties, will not invalidate any such agreements and the Homeowner's Association and its Members, from time to time, will be obligated to abide by and comply with the terms and conditions thereof. The purchase of a Lot or Unit, and the acceptance of the Deed therefor by any party, shall constitute the ratification, confirmation and approval by such purchaser, his or her heirs, legal representatives, successors and assigns, of the propriety and legality of such agreement(s), or any other agreements authorized and permitted by New Jersey law, this Declaration, the Certificate of Incorporation or the By-laws.

Section 18.02. Rights Reserved to the Developer and Builders. In addition to such other rights of the Developer and Builders created in or reserved by this Declaration, and despite anything to the contrary herein or in the Certificate of Incorporation or By-laws the following rights are hereby reserved for the Developer and Builders, their successors and assigns:

42

DB5839P050

(a) for so long as the Developer or a Builder owns one or more Lots or Units or Unsubdivided Land in the Entire Tract, the right to sell, advertise, deliver, construct, lease, mortgage or sublease, or cause to be sold, advertised, delivered, constructed, leased, mortgaged or sublet any unsold Lots or Units owned by them within the Subject Property;

(b) the right, but not the obligation, for a period of 30 years from the date of the recording of this Declaration, to develop or cause to be developed any or all of the Entire Tract and additional "contiguous" (as defined in Article III) lands and Units brought within the scheme of this Declaration, as may be approved by the appropriate governmental authorities having jurisdiction over such development;

(c) the right for a period of 30 years from the date of the recording of this Declaration, to modify the development plans for Blue Heron Pines, with the approval of any and all appropriate government authorities as necessary. Such modification may include, without limitation, changing the aggregate acreage and number of Units of the Entire Tract and Subject Property, as well as the nature of improvements, configuration, design, mix, materials, Unit and/or model types, square footage or percentage interest of any Phase, unsold Unit, Homeowner's Common Property, Condominium Common Property and of any Common Elements which have not been legally designated for a specific Unit which has been conveyed to an individual Unit purchaser; and

(d) for so long as the Developer or a Builder owns one or more Lots or Units or Unsubdivided Land in the Entire Tract, the right to maintain sales offices, construction offices, management offices, customer services offices, leasing offices, models, signs and advertising in Units or on Homeowner's Common Property or Condominium Homeowner's Common Property.

**Section 18.03. Transfer of Special Developer's Rights.** Upon the acquisition by a Builder of title from Developer to one or more Lots, or any portion thereof, for the purpose of constructing Unit(s) thereon, special rights expressly reserved to both Developer and Builders under this Declaration ("Special Builder Rights") shall automatically be acquired by the Builder and may be exercised by such Builder in conjunction with Developer and other Builders subject to the terms of this Declaration and any agreement between the Developer and the Builder. Such acquisition of Special Builder Rights shall not be deemed a "transfer of Special Developer Rights" for purposes of this Article. As used in this Article, the "transfer of Special Developer Rights" shall mean and refer to (a) a transfer by a Builder of Special Builder Rights and (b) a transfer by Developer of rights reserved under this Declaration for the Developer only. The rights referred to in (a) and (b) of this section shall hereinafter be collectively referred to as "Special Developer Rights." No Special Developer Rights may be transferred except by an instrument evidencing the transfer recorded in the Office of the Clerk of Atlantic County, New Jersey. The instrument shall not be effective unless executed by the transferee.

**Section 18.04. Liability of Transferor.** Upon transfer of any Special Developer Rights, the liability of the transferor is as follows:

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

(b) If a transferor retains any Special Developer Rights, or if a successor to any Special Developer Rights is an Affiliate of the transferor, the transferor is subject to liability for all obligations and liabilities imposed on a Developer or by the Declaration, arising after the transfer, and is jointly and severally liable with the successor for the liabilities and obligations of the successor which relate to the Subject Property.

(c) A transferor of any or all Special Developer Rights has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of any such Special Developer Rights by a successor who is not an Affiliate of the transferor.

**Section 18.05. Transfer of Rights Requested.** Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a director under a deed of trust, or sale under any bankruptcy or receivership proceedings, of any Lots or Units owned by Developer or a Builder in the Entire Tract, a Person acquiring title to all the Lots or Units being foreclosed or sold, but only upon such Person's request, succeeds to all Special Developer Rights held by the Developer or Builder, or only to any such Special Developer Rights to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the Special Developer Rights requested.

**Section 18.06. Foreclosure, Bankruptcy, Receivership.** Upon foreclosure, tax sale, judicial sale, sale by a director under a deed of trust, or sale under any bankruptcy or receivership proceedings, of all Lots or Units in the Entire Tract owned by the Developer or Builder:

(a) the Developer or Builder, as the case may be, ceases to have any Special Developer Rights, and

(b) as applicable, the period of Developer control terminates unless the judgment or instrument conveying title from Developer provides for transfer of all such Special Developer Rights held by Developer to a successor to the Developer.

**Section 18.07. Liability of Successors.** The liabilities and obligations of Persons who succeed to Special Developer Rights are as follows:

(a) A successor to Special Developer Rights who is an Affiliate is subject to all obligations and liabilities imposed on the predecessor by law or by the Declaration.

(b) A successor to any Special Developer Right, other than a successor described in paragraphs (c) or (d) hereof who is not an Affiliate, is subject to all obligations and liabilities

imposed upon the predecessor by law or the Declaration which relate to the exercise or non-exercise of Special Developer Rights, but not subject to liability for misrepresentations or warranty obligations on improvements made by any previous Developer or made before the Subject Property became subject to this Declaration, or for a breach of fiduciary obligation by any predecessor, or any liability or obligation imposed on the predecessor as a result of the predecessor's acts or omissions after the transfer of Special Developer Rights.

(c) A successor to only a Special Developer Right to maintain models, sales offices and signs, if not an Affiliate, may not exercise any other Special Developer Right, but is not subject to any liability or obligation as a Developer, except the obligation to comply with the requirements of the New Jersey Planned Real Estate Development Full Disclosure Act and Regulations and the New Jersey Department of Community Affairs regarding offerings to Unit purchasers and any liability resulting therefrom.

(d) A successor to all Special Developer Rights who is not an Affiliate of the predecessor and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to Lots or Units under Section 18.05, may declare an intention in a recorded instrument to hold those rights solely for transfer to another party. Thereafter, until transferring all such Special Developer Rights to any Person acquiring title to any Lot or Unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the predecessor to control the Board for the duration of any period of Developer's control, and any attempted exercise of those rights is void. So long as a successor Developer may not exercise Special Developer Rights under this subparagraph, such successor Developer is not subject to any liability or obligation as a Developer other than liability for the successor's acts and omissions under the Declaration.

(e) Nothing in this Article subjects any successor to a Special Developer Right to any claims against or other obligations of a transferor other than claims and obligations arising under the Declaration.

#### ARTICLE XIX: MISCELLANEOUS

Section 19.01. Notices. All notices required or permitted under this Declaration, the Certificate of Incorporation, or the By-Laws, shall be written and shall be served as provided below. Notices shall be served upon Developer by certified mail, return receipt requested, addressed to:

Thomas J. Kuhar, President  
Ole Hansen & Sons, Inc.  
22 N. Franklin Avenue  
Pleasantville, NJ 08232

DB5839P053

With copies to:

Roger B. Hansen, Chairman  
Ole Hansen & Sons, Inc.  
22 N. Franklin Avenue  
Pleasantville, NJ 08232

David M. Goddard, Vice President  
Ole Hansen & Sons, Inc.  
22 N. Franklin Avenue  
Pleasantville, NJ 08232

Nelson Johnson, Esq.  
A Professional Corporation  
219 N. White Horse Pike  
PO Box 1233  
Hammononton, NJ 08037-5233

Blue Heron Pines Golf Club  
550 West Country Club Drive  
Galloway-NJ 08201

or such other address as Developer shall from time to time provide to the Homeowner's Association. Notice may also be served upon Developer by personal service upon any officer or director.

Notice shall be served upon the Homeowner's Association by certified mail, return receipt requested, addressed to:

Blue Heron Pines Homeowner's Association, Inc.  
c/o Ole Hansen & Sons, Inc.  
22 N. Franklin Avenue  
Pleasantville, NJ 08232

or such other address as the Homeowner's Association shall from time to time provide to Developer. Notice may also be served upon the Homeowner's Association by personal service upon any officer or Director.

Notice may be served upon any Owner by regular mail, postage paid, addressed to the last known address of such Owner as indicated in an appropriate file maintained by the Homeowner's Association. It shall be an affirmative obligation of each Owner to provide the Homeowner's Association with such Owner's address, and any changes of address. Notice may

46

DB5839P054

also be served upon an Owner by personal delivery to any occupant over 14 years of age of the last known address of the Owner. Owners may also be served by affixing any notice to or sliding the same under, the front door of the Owner's last known address. Notice to any one of multiple owners of any Unit shall be deemed notice to all such Owners.

Section 19.02. Construction and Interpretation. This Declaration shall be construed to accomplish the purposes for which it is made, including without limitation the creation of a community which is architecturally harmonious and harmonious with the natural surroundings, the preservation and enhancement of property values through mutual restriction, and the health, safety, welfare, convenience and enjoyment of the Owners.

In the event of any conflict between the terms of this Declaration and the Certificate of Incorporation or By-laws, the terms of this Declaration shall control. In the event of any conflict between the terms of the Certificate of Incorporation and the By-Laws, the terms of the Certificate of Incorporation shall control.

Unless the context requires a contrary construction, the use of the singular shall include the plural, and the use of the plural shall include the singular. The use of any one gender (i.e., masculine, feminine, or neuter) shall include each other gender.

Section 19.03. References to Include Successors and Assigns, and Others in Certain Cases. All references herein to any Owner or Owners shall, unless the context clearly indicates otherwise, be deemed to include the Owner's heirs, administrators, executors, successors, and assigns.

All references herein to Developer, any Builder or the Homeowner's Association shall be deemed to include their respective successors and assigns.

The Homeowner's Association, Developer and any Builder shall be permitted to delegate the performance of any duty or responsibility, or the exercise of any right, power, or authority, hereunder to proper agents, servants, representatives, employees or independent contractors. Wherever this Declaration, the Certificate of Incorporation or By-Laws confers on Developer, a Builder or the Homeowner's Association any duty, responsibility, right, power, or authority, all references to Developer, a Builder or the Homeowner's Association shall be deemed to include their proper respective agents, servants, representatives, employees, and independent contractors.

Section 19.04. Rule Against Perpetuities. If any provision of this Declaration shall be interpreted to constitute a violation of the rule against perpetuities, then such provisions shall be deemed to remain in effect until the death of the last survivor of the now living descendants of Robert F. Kennedy, deceased, former Senator of the State of New York, plus twenty-one (21) years thereafter.

**Section 19.05. By-laws and Administration: Changes in Documents: Power of Attorney.** The administration of the Homeowner's Common Property shall be by the Homeowner's Association in accordance with the provisions of this Declaration, the Certificate, the By-laws, the Rules and Regulations and of any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently be required by any Institutional Lender designated by the Developer or by any governmental agency having regulatory jurisdiction over the Subject Property or Entire Tract or by any title insurance company selected by the Developer to insure title to any portion thereof. Developer hereby reserves for itself, its successors and assigns, for a period of 20 years from the date the first Unit is conveyed by a Builder, or until the last Unit within the Entire Tract is conveyed, whichever occurs first, the right to execute on behalf of all contract purchasers, Unit Owners, Lot Owners, Builders, mortgagees, other lienholders or parties claiming a legal or equitable interest in the Subject Property, any such agreements, documents, amendments or supplements to the above described documents which may be required by any such Institutional Lender, prospective mortgage lender, governmental agency or title insurance company, or contemplated under Articles III, V and XVIII hereof; provided, however, that no such agreement, document, amendment or supplement which adversely affects the value of any Unit or substantially increases the financial obligations of a Unit Owner or reserves any additional or special privileges for the Developer not previously reserved, shall be made without the prior written consent of the affected Unit Owners and Institutional Lenders; or if such agreement, document, amendment or supplement adversely affects the priority or validity of any mortgage which encumbers any Unit, without the prior written consent of the holders of any such mortgages.

By acceptance of a deed to any Unit or by the acceptance of any other legal or equitable interest in the Subject Property or Entire Tract, each and every such contract purchaser, Unit Owner or Lot Owner, Builder, mortgagee, or other lienholder or party having legal or equitable interest in the Subject Property or Entire Tract does automatically and irrevocably name, constitute, appoint and confirm Developer, its successors and assigns, as attorney-in-fact for the purpose of executing such agreements, documents, amendments or supplements to the Declaration, the By-laws and the Certificate necessary to effect the foregoing, subject to the limitations set forth above in the preceding paragraph.

The powers of attorney aforesaid are 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 Lots or Units and be binding upon the heirs, personal representatives, successors and assigns of any of the foregoing parties. Further, said powers of attorney shall not be affected by the death or disability of any principal and are intended to deliver all right, title and interest of the principal in and to said powers.

IN WITNESS WHEREOF, the undersigned have caused this Instrument to be executed by the day and year first above written.

ATTEST:

OLE HANSEN & SONS, INC.  
A New Jersey Corporation

Michael G. Long

Thomas J. Kuhar  
THOMAS J. KUCHAR, President

ATTEST:

BLUE HERON PINES DEVELOPMENT  
COMPANY, L.L.C.,

Michael G. Long

Thomas J. Kuhar  
THOMAS J. KUCHAR,  
Chief Operating Manager



STATE OF NEW JERSEY )  
:ss.  
COUNTY OF ATLANTIC )

BE IT REMEMBERED that on this 14<sup>th</sup> day of July, 1995, MICHAEL A. LENTZ personally came before me and this person acknowledged under oath, to my satisfaction, that:

- (a) he is the Secretary of OLE HANSEN & SONS, INC., the corporation named in the attached document;
  - (b) he is the attesting witness to the signing of the document by the proper corporate officer, Thomas J. Kuhar, who is the President of the corporation;
  - (c) the document was signed and delivered by the corporation as its voluntary act;
  - (d) he knows the proper seal of the corporation which was affixed to the document;
- and
- (e) he signed this proof to attest to the truth of these facts.

Michael A. Lentz  
MICHAEL A. LENTZ, Secretary

Sworn to and subscribed  
before me this 14<sup>th</sup> day  
of July, 1995.

Naomi Mullen  
Notary Public

NAOMI B. MULLEN  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires July 16, 1997

50

DB5839P058

STATE OF NEW JERSEY )  
                                  :SS.  
COUNTY OF            )

BE IT REMEMBERED that on this 14<sup>th</sup> day of July, 1995, Michael A. Lentz, personally came before me and this person acknowledged under oath, to my satisfaction, that:

- (a) he is the Manager of Finance of Blue Heron Pines Development Company, L.L.C., the limited liability corporation named in the attached document;
  - (b) he is the attesting witness to the signing of the document by the proper corporate officer, Thomas J. Kuhar, who is the Chief Operating Manager of the corporation;
  - (c) the document was signed and delivered by the corporation as its voluntary act;
  - (d) he knows the proper seal of the corporation which was affixed to the document;
- and
- (e) he signed this proof to attest to the truth of these facts.

*Michael A. Lentz*  
\_\_\_\_\_  
MICHAEL A. LENTZ,  
Manager of Finance

Sworn to and subscribed  
before me this 14<sup>th</sup> day  
of July, 1995.

*Naomi Mullen*  
\_\_\_\_\_  
Notary Public

NAOMI B. MULLEN  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires July 16, 1997