SONATA BAY CLUB
HOMEOWNERS' ASSOCIATION, INC.

DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS

(Covenant: a binding and solemn agreement to do or keep from doing a specified thing; a compact. Webster's New World Dictionary)

Approved by the Board of Trustees: **June 10, 2003**
Revised: **October 19, 2010**
Revised: **March 4, 2014**
Revised: **August 15, 2016**
Revised: **June 11, 2019**

SONATA BAY CLUB HOMEOWNERS' ASSOCIATION INC.

DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS

TABLE OF CONTENTS

ARTICLE I.	Definitions	1
ARTICLE II.	Property Subject to this Declaration	2
ARTICLE III.	Property Rights in Common Property	2
SECTION 1.	Members Rights of Easement	2
SECTION 2.	The Common Property	2
SECTION 3.	Extent of Member Easements	2
SECTION 4.	Restrictions and Covenants Applicable to the Property	4
ARTICLE IV.	Assessments	12
SECTION 1.	Membership	12
SECTION 2.	Purpose of Assessments	12
SECTION 3.	Amount of Annual Assessments	13
SECTION 4.	Date of Commencement of Annual Assessments and Due Dates	13
SECTION 5.	Special Assessments	13
SECTION 6.	Limited Priority Liens	13
SECTION 7.	Common Assessments, Certificate as to Payment	14
ARTICLE V.	Miscellaneous Services Authorized	15
SECTION 1.	Services Which May Be Performed at the Option of the Association	15
ARTICLE VI.	General Provisions	15
SECTION 1.	Duration	15
SECTION 2.	Notice	15
SECTION 3.	Enforcement	15
SECTION 4.	Severability	16
SECTION 5.	Amendments	16
SECTION 6.	Bylaws and Administration	16
SECTION 7.	Articles of Incorporation and Bylaws of the Association	17
ARTICLE VII.	Miscellaneous Provisions	17
SECTION 1.	Membership in the Association	17
SECTION 2.	Interpretation of the Declaration and the Bylaws	17
SECTION 3.	Dissolution	17
SECTION 4.	Handicap Use	18
ARTICLE VIII.	Pump Station Landscaping	18

ARTICLE I DEFINITIONS

SECTION1. The following words and terms, when used in this Declaration or any supplemental Declaration (unless the context shall clearly indicate otherwise), the Articles of Incorporation or the Bylaws of the Association, shall have the following meanings:

(a) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Sonata Bay Club Homeowner's Association, Inc., which is on file and maintained by the Association.

(b) "Association" shall mean and refer to the Sonata Bay Club Homeowner's Association, Inc., a New Jersey not for profit corporation, its successors and assigns.

(c) "Board" or "Board of Trustees" shall mean and refer to the Board of Trustees of the Association.

(d) "Bylaws" shall mean and refer to the Bylaws of the Association, a copy of which is attached hereto, as the same may, from time to time, be amended.

(e) "Common Expenses" shall mean and refer to those expenses (including reserves) which are incurred or assessed by the Association in fulfilling its lawful responsibilities (herein sometimes referred to as "Assessment").

(f) "Common Property" shall mean those portions of the Sonata Bay Club community, other than the residential building lots, such as the detention basin and other open areas, together with all improvements or facilities thereon, or any other real or personal property owned (or utilized exclusively by its members) by the Association including, but not limited to, the clubhouse and its amenities.

(g) "Declaration" shall mean and refer to this Declaration of Restrictive and Protective Covenants, as the same may, from time to time, be amended.

(h) "Development" shall mean and refer to the approximately 84.91 acres of land, together with certain improvements thereon, being the community of the Sonata Bay Club.

(i) "Lot" shall mean and refer to any individual building lot shown on any final subdivision map located within any portion of the Development, together with any buildings or improvements thereon.

(j) "Homeowner" shall mean and refer to the recorded owner of the fee simple title to the property (whether one or more persons or entities),

(k) "Member" shall mean and refer to all those Homeowners who are members of the Association as provided in the Articles of Incorporation.

(l) "Property" shall mean and refer to those real property premises located in the Township of Berkeley, County of Ocean, State of New Jersey as more particularly depicted in Exhibit C and described in Exhibit D, which are on file in the Association's office.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

SECTION 1. The property, including every Lot and all Common Property now or hereafter established, is and shall be held, transferred, sold, conveyed, leased and occupied, is subject to this Declaration and all Exhibits hereto. All present and future owners, tenants, their guests, licensees, servants, agents, employees and any other person or persons who shall be permitted to use the facilities of the Association, shall be subject to this Declaration, the Bylaws and to such Rules and Regulations as may be issued by
the Board of Trustees of the Association, from time to time, to govern the conduct of its members in the use and occupancy of the Property. Ownership, rental or occupancy of any of the Lots in the Property shall be conclusively deemed to mean that said owner, tenant or occupant has accepted and ratified this Declaration, the Bylaws and the Rules and Regulations of the Association and will comply with them.

ARTICLE III

PROPERTY RIGHTS IN THE COMMON PROPERTY

SECTION 1. MEMBERS EASEMENT OF ENJOYMENT Subject to the provisions of this Declaration, the Articles of Incorporation, Bylaws and the Rules and Regulations of the Association, every Member shall have a right of easement of enjoyment in and to the Common Property and such easement shall appurtenant to and shall pass with title to every Property.

SECTION 2. THE COMMON PROPERTY. The Association shall properly maintain the Common Property in accordance with this Declaration and the Bylaws.

SECTION 3. EXTENT OF MEMBERS EASEMENTS. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, as provided in the Bylaws to promulgate Rules and Regulations for the use and the enjoyment of the Common Property or to suspend the enjoyment and voting rights of any Member for any period during which any assessment, interest or penalty charge (herein sometimes collectively referred to as "Assessment") remains unpaid during which any infraction of its published Rules and Regulations continues, it being understood that any suspension for either non-payment of any Assessment or a breach of the Rules and Regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the Assessment; and

(b) The right of the Association to charge admission and other fees for the use of the Common Property, and

(c) The right of the Association to dedicate or transfer all or any part of the Common Property to any municipal, county, state, federal or other public 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 purposes of or as to the conditions of such dedication or transfer shall become effective unless such dedication, transfer and determination as to purpose and conditions thereof shall be:

(i) authorized by a vote in person or by proxy of two-thirds (2/3) of the total votes held by all Members of the Association in good standing,

(ii) unless written notice of the proposed resolution authorizing such action is sent to every Member at least sixty (60) days in advance of the scheduled meeting at which such action is to be taken.
(iii) until such time as the Zoning Board of Adjustment of the Township of Berkeley has approved the transfer.

A true copy of such resolution together with a certificate of a 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 the Common Property, prior to the recording thereof, in the office of the Clerk of Ocean County. Such certificate shall be conclusive evidence of authorization by the Membership.

(d) The following easements are hereby established:

(i) A blanket perpetual and non-exclusive easement in, upon, over, across and through the Property (including but not limited to the residential structures constructed upon the Property) for the purpose of the installation, maintenance, repair and replacement of all gas, sewer, water, power and telephone pipes, lines, main conduits, poles, transformers, master television antennas or cable television facilities, sprinkler lines, control boxes and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility systems serving the Property, which easement shall be for the benefit of the Association or any governmental agency or utility company which requires same for the purpose of furnishing one or more of the foregoing services.

(ii) A blanket, perpetual and non-exclusive easement of unobstructed ingress and egress in, upon, over, across and through the Property to the Township of Berkeley, the Association, the respective officers, agents and employees and all policemen, firemen and ambulance personnel in the proper performance of their duties.

(iii) A perpetual easement for the benefit of any Homeowner upon whose Lot the Developer has constructed improvements which encroach upon adjoining Lots or Common Property for the continuance of such encroachments, now existing or which may come into existence hereafter, so that any such encroachment may remain undisturbed so long as the improvements are in existence.

(iv) A blanket perpetual and non-exclusive easement in, upon, over, under, across and through the Property for surface run-off and drainage caused by natural forces and elements, grading and/or the improvements located upon the property. No Homeowner shall directly or indirectly interfere with or alter the drainage and run-off patterns and systems within the Property.

(v) A blanket, perpetual and non-exclusive easement in, over, upon, under, across and through the Property in favor of the Association, through its authorized agents, servants, employees or contractors for the purpose of carrying out the provisions contained in Article III, Section 4(o), (t).

(vi) A blanket and non-exclusive easement in, upon, through and over the Property for the purpose of construction, establishment, installation, maintenance, repair and replacement of all walls, fences and permanent signs placed on the Property, which easement shall be for the benefit of the Members and the Association on a perpetual basis in connection with the proper discharge of its responsibilities with regard to the Properties or Common Property.

(vii) Easements and rights of way for the installation, maintenance, operation, renewal and repair of water, sewer, telephone, electric/gas utilities, television antenna, transmission cable, storm drainage facilities, open drainage swales and ditches are reserved and granted to the appropriate utilities and the Township of Berkeley, as applicable, as shown on the final map of said lands and premises filed with the Office of the Clerk of Ocean County. Within the lines of said easements or rights of way, no structure, above or below ground, plantings or other material shall be placed or permitted to remain which may damage or interfere with the installation, operation, maintenance, renewal or repair of said utilities or drainage facilities, or which may change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in said easements. The easement right of way areas of affected Lots shall be maintained by the Homeowner or occupant of the Lot except for the improvements for which a public authority or a utility company is responsible. An easement for underground television antenna and transmission cable is reserved along the Lot lines of all Lots shown on said filed maps.

SECTION 4. RESTRICTIONS AND COVENANTS APPLICABLE TO THE PROPERTY. In order to preserve the character of the residential community and for the protection of the value of the Homes therein, the Property shall be subject to all covenants, easements and restrictions of record and to the following Restrictions and Covenants, all of which shall run with the land:

(a) There shall be no obstruction of access to any Common Property, the use of which, if any, shall be in accordance with the Rules and Regulations promulgated by the Board.

(b) No Homeowner or tenant or other person on the premises shall remove, alter, change, interfere with or tamper with, in any way, walls or fences which shall be maintained in good condition by the Association and its Board of Trustees. The cost of such maintenance shall be treated as a Common Expense, and paid as provided by this Declaration and the Bylaws of the Association.

(c) Vehicles may park on the paved Common Property and in the Vehicle Storage Lot provided for boats, trailers, campers, recreation vehicles and mobile homes. Inoperable vehicles that are properly registered may be stored in the vehicle parking area for a period not to exceed 45 days. No more than 2 (two) vehicles per household are to be stored in the Vehicle Storage Lot.

(d) No home located thereon may be rented for a term of less than one (1) year by a Homeowner, who has owned said dwelling fewer than eighteen (18) months, or otherwise utilized for a hotel or for transient purposes; the foregoing to be evidenced by:

(i) Rental payments for not less than one (1) year or

(ii) Any Rental if the occupants are provided customary hotel services, such as room service for food and beverages, maid service, furnishings, laundry, linen and bellboy services.

(iii) Any person under the age of fifty-five (55) that wishes to purchase a home for his/her parents or grandparents, shall be permitted to do so, as long as all persons who are to occupy the home meet the age requirements contained in these Declarations of Covenants and Restrictions and the Bylaws of the Association. Additionally, all persons who are to occupy the home must complete a legal affidavit indicating his/her relationship to the owner(s) of the home and his/her date of birth. In the event the owners parents and/or grandparents no longer reside at the home on a full time basis, the owner shall be required to vacate the home within thirty (30) days of said date, unless the owner or his/her spouse has attained the age of fifty-five (55). Additionally said owner(s) shall be permitted to rent the home to a qualified tenant, as defined in Article III, Section 4(x) (ii) and (iv), so long as the owner(s) has/have owned the home for at least 18 months.

(e) No Homeowner may lease less than his entire home. Subject to the foregoing limitations. Any Homeowner shall have the right to lease his home provided that said lease is in writing and made subject to all provisions of this Declaration, including, but not limited to, the Bylaws and other documents referred to herein and provided further that any failure of the lessee to fully comply with the terms and conditions of such documents shall constitute a default under the lease. No leasing shall, however, relieve a Homeowner from his obligations hereunder and he shall remain primarily responsible therefore. In the event a tenant of a Homeowner fails to comply with the provisions of this Declaration, the Bylaws or Rules and Regulations, then in addition to all other remedies which it may have, the Association shall notify the Homeowner of such violation(s) and demand that the same be remedied through the Homeowner's efforts, within thirty (30) days after such notice. If such violation(s) is (are) not remedied within said thirty (30) day period, then the Homeowner shall immediately thereafter, at his sole cost and expense, institute and diligently prosecute an eviction against his tenant on account of such violation(s). Such action shall not be compromised or settled without prior written consent of the Association. In the event the Homeowner fails to fulfill the foregoing obligation, then the Board shall have the right but not the duty to institute and prosecute such action as attorney in fact for the Homeowner and at the Homeowner's sole cost and expense, including all legal fees incurred. Said cost and expenses shall be due and payable upon demand by the Association and shall be deemed to constitute a lien on the particular Lot involved, and collection thereof may be enforced by the Board in the same manner as the Board is entitled to enforce collection of Common Expenses. By acceptance of a deed to any Lot, each and every Homeowner does hereby automatically and irrevocably name, constitute, appoint and confirm the Board as his attorney in fact for the purposes described in this subparagraph (d). (See Sec. 4, (x), (iii) this ARTICLE)

(f) No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than as permitted by the ordinances of the said Township of Berkeley.

(g) No building, fence, wall or other structure of improvement shall be commenced, erected, or maintained upon any Lot within the Property, nor shall any exterior addition to or change (including external color scheme) or alteration be made until the plans and specifications showing the nature, kind, shape, height, materials, exterior colors and location of same shall have been submitted and approved, without

conditions, in writing, as to the harmony of external design and location in relation to surrounding structures and topography by the Architectural Review Committee as empowered by the Board of Trustees to so act. Such committee shall be established and members appointed to the committee as provided in the Bylaws. In the event said committee fails to approve, with or without conditions, or denies such application within sixty (60) days after said plans and specifications have been submitted to it, approval will be deemed to have been granted without conditions. The committee, upon its creation shall adopt design criteria and standards for architectural control which are consistent with the requirements of the Township of Berkeley and acceptable aesthetic principles. The Board of Trustees of the Association, or the Committee with the approval of the Board of Trustees of the Association, shall have the right to establish additional design criteria and standards from time to time which shall be consistent with or augment the criteria adopted heretofore. Despite the above, the Committee shall have the power to grant waivers from architectural design criteria and standards according to procedures and subject to such conditions as may be established by the Board of Trustees.

All applications to any municipal authority for a permit to make an addition, alteration or improvement on any Lot or to a dwelling must first be reviewed by the Committee and approved. Any such application must be executed by the Association and then may be submitted to the municipal agency by the Homeowner. All such approvals by the Association shall not be deemed to incur any liability on the part of the Association to any contractor, subcontractor, or material man on account of any addition, alteration, or improvement, or to any person having any claim for injury to person or damage to property arising there from. The Homeowner shall promptly furnish the Association with a copy of any such permit which he has procured.

(h) Any and all dwellings constructed or erected upon any Lot shall be of a quality of workmanship and materials substantially the same as or better than those originally constructed or erected thereon.

(i) No obnoxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to adjacent Homeowners or other Homeowners within the Property.

(j) No structure of a temporary character, whether manufactured or constructed, or any other outbuilding shall be built or used on any Lot at any time, either temporarily or permanently.

(k) No sign of any kind shall be displayed to public view on any property with the exception of alarm company warning signs no larger than 12 x 12 inches and located within the three foot area around the perimeter at front and rear of residential structure on the lot.

(l) No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot other than usual household pets, which is not to exceed two (2), providing, however, that they are not kept, bred or maintained for any commercial purpose.

(m) No Property shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers.

(n) Every Property shall be connected to the public water supply and sewerage disposal system provided in the area.

(o) Each Owner, tenant or occupant of a property shall be prohibited from utilizing or installing air conditioning units through exterior modifications of the dwelling or through window openings. The only air conditioning units that will be permitted are those units which are considered central in nature and installed on a slab outside of the residential structure.

(p) Each Homeowner and tenant thereof shall maintain each residential structure 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 each residential structure. In the event that a residential structure or property shall not be so maintained, the Association shall have the right to enter the residential structure or property to maintain same after giving the Homeowner 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 with the cost of such maintenance which shall include but not be limited to the maintenance and upkeep of the lawn and the individual property. The cost of such work shall be assessed to the property upon which the services are performed and shall be due and shall become part of the Common Expense Assessment levied upon such a property and as such shall be a lien and obligation of the Homeowner as provided herein, except that payment for any work performed pursuant to this Section shall be due upon presentation to the Homeowner by notice of the Association's invoiced therefore. The property owner may appeal said notice and request a hearing on the matter and such hearing shall be granted the property owner within seven (7) days after the property owners' written appeal and request for hearing to the Board of Trustees has been received. For the purpose of this appeal, three members of the Board of Trustees will constitute a quorum capable of rendering a decision in the matter. A majority vote of the Trustees hearing the appeal will be sufficient to either allow or deny the appeal. IF THE APPEAL IS DENIED, the property owner will have ten (10) days in which to correct the condition. If the condition is not corrected within ten (10) days then the Association may enter and correct the condition as previously indicated. The Association by its Board of Trustees shall have the right to establish rules and regulations governing the exterior maintenance of any residential structure or property.

(q) Each owner of a residential structure shall maintain fire and extended coverage insurance. The insurance policy shall contain a mortgagee endorsement in favor of the holder of the mortgage as his interest may appear at the time of loss. Each owner shall be required to repair, rebuild or replace with new materials of like size, kind and quality as such property had been prior to its damage or destruction by fire or other casualty.

(r) No motor vehicles including, but not limited to mini bikes, snow mobiles and motorcycles may be driven on the open space portion of the Common Property by any Homeowner or guest.

(s) No swimming pools may be erected upon any Lot.

(t) No artificial grass, plants, or other artificial vegetation, or alternative ground cover, such as decorative stone, impervious material, gravel or other similar landscaping material shall be placed or maintained upon the exterior portion of any property. An exception is made for front door treatments and holiday decorations. Decorative stone is permitted around the base of the house and around trees PROVIDING it is contained by some sort of a retainer to avoid overflow onto the lawn areas. In no case shall decorative

stone completely replace large lawn areas such as from the house to the street or public sidewalk. All changes must be approved by the Architectural Review Committee.

(u) No unsightly weeds, underbrush or other vegetation shall be permitted to grow or remain upon any property. No refuse pile or unsightly objects shall be allowed to be placed, remain or accumulate thereon. In the event that any owner shall fail or refuse to keep his property free of unsightly weeds, underbrush or refuse piles or other vegetation or objects, then the Association may enter upon any property and remove the same at the sole cost and expense of the owner.

(v) No Homeowner within the Property shall be permitted to erect, construct, install or maintain a perimeter fence of any kind, type or nature whatsoever. For this purpose the term "perimeter fence" shall include, but not be limited to, any contiguous barrier of any height or thickness and constructed of any material. Pre-existing conditions are exempt.

(i) No Homeowner within the property shall be permitted to erect, construct, install or maintain any non-perimeter decorative fence of any kind, type or nature whatsoever unless said Homeowner shall have first obtained the prior express written permission therefore from the Board of Trustees of the Association. For this purpose the term "non-perimeter decorative fence" shall include, but not be limited to, any barrier of any height or thickness and constructed of any material located on or near any portion of any boundary of a dwelling Lot within the Property.

(ii) The Board of Trustees of the Association may not grant authorization or approval for the erection, construction, installation or maintenance of any non-perimeter decorative fence unless and until the Board of Trustees shall have first viewed the subject dwelling Lot which is the subject of a request to erect a non-perimeter decorative fence and obtained the concurrence and assent for the proposed non-perimeter decorative fence from all neighboring property owners who would be affected thereby either by reason of proximity of their respective Lots to the subject Lot or by line of sight from their respective Lots to the subject Lot.

(w) No clothes, sheets, blankets, laundry of any kind or any other articles shall be hung out or exposed on any part of a Lot or Common Property except articles which may be hung on a single removable clothes line as approved by the Board, which must be located within the rear yard of a Lot and must be removed when not in use; nor shall anything be hung, painted or displayed on the outside walls or outside surface of any of the dwellings.

(x) Age Limitation

(i) All Owners and residents of any Lots agree by the acceptance of a deed to a Property to be bound by the Covenants and Restrictions contained herein, together with any Rules and Regulations which may be promulgated by the Board together with the Bylaws of the Association.

(ii) Occupancy of any dwelling shall be restricted to persons of the age of 55 years or over, provided, however, that a husband and wife, regardless of age residing with his or her spouse or cohabiting domestic partner (as legally defined by court of law) may occupy such dwelling so long as such spouse is of the age of 55 years or over. Further, no dwelling may be occupied by any child under the age of 19 years. In the event that an Owner of a Property dies, testate or intestate, leaving as heirs one or more persons who do not qualify as to age, these restrictions shall in no way be deemed to restrict the ownership of said Property by the heirs, provided, however, that said heir or heirs, their successors or assigns, shall not reside in the dwelling until the age requirement together with such other requirements that may be contained herein, are met. The foregoing is not intended to apply to a cohabiting surviving spouse or cohabiting domestic partner who does not qualify as to age, it being the intent hereof that surviving cohabiting spouses or domestic partners shall be permitted to occupy such dwelling subsequent to the date the age qualified spouse dies.

(iii) No transfer, sale, gift, lease, assignment or grant of any Lot or dwelling unit shall be made by any Homeowner or any subsequent prospective purchaser or lessee until the existing Owner who desires to transfer, makes full disclosure to the Board in writing, of the name and address of the prospective purchaser or lessee, together with evidence that said prospective purchaser or lessee meets all qualifications set forth herein. Said Owner who intends to sell, transfer, give, lease, assign any Property or dwelling shall, before entering into any binding agreement for such with any prospective purchaser, grantee, lessee or assignee, submit the evidence in writing as aforesaid to the Board and such Owner shall not execute said agreement without first obtaining the written consent of the Board, which approval cannot be unreasonably withheld. The Board must act within ten (10) days of the Owner's submission to the Board. In the event the Board does not act within the time set herein above, the Board will be deemed to have consented. In the event the Board withholds its consent, the Board shall set forth the reasons for its denial in writing and present same to the Owner at the time the Owner is informed of the Board's decision. If the Owner is dissatisfied with the Board's decision, the Owner may request a hearing before the Board, with or without legal counsel present, which hearing will be scheduled by the Board within fifteen (15) days of its written decision. All decisions of the Board after the hearing shall, as with the initial decision, be set forth in writing. The Board must render said decision in writing within five (5) days of the scheduled hearing.

(iv) No transfer, sale, gift, lease, assignment or grant shall be made of any Property or dwelling covered by these Covenants and Restrictions to any purchaser, lessee, transferee, or grantee who intends to have as a permanent resident in the Property or dwelling a person under the age of nineteen (19) years. Furthermore, in the event of any transfer of title by operation of law, any occupant of such dwelling must meet all of the requirements contained in subparagraph (ii) hereof, and likewise, no occupant may have or permit any person as a permanent resident under the age of nineteen (19) years.

(y) Owner Responsibilities

(i) Each Homeowner shall be solely responsible for the exterior maintenance of the Lot and dwelling owned by him, and shall be solely responsible for the expenses and costs thereof, including but not limited to the following: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces and other exterior improvements.

(ii) Each Homeowner agrees to maintain the slope areas of said Lot in such a manner as to prevent soil erosion and to maintain slopes, banks, swales and drainage ways located on said Lots for the preservation of designated drainage patterns over his Property, surrounding Properties and Common Properties. Each Owner further agrees that he will not in any way interfere with any established drainage patterns. Nothing contained herein shall be deemed to relieve the Homeowner of the interior maintenance of his dwelling.

(iii) In the event that it is determined by the Association that a Homeowner has failed to perform exterior maintenance, or in other ways has not complied with the provisions of this Section, then the Association shall give such Homeowner written notice to correct the condition within a specified time. In the event that said Homeowner does not correct the condition, the Association shall be authorized to have the condition corrected and collect the cost of same in accordance with the provisions of paragraphs (p) and (u) herein above.

(z) The Board shall have the power to make such Rules and Regulations as may be necessary to carry out the intent of these use restrictions and shall have the right to bring lawsuits to enforce the Rules and Regulations promulgated by it. The Board shall further have the right to levy fines for violations of such Rules and Regulations or the provisions of this Declaration or the Bylaws, provided that the fine for a single violation may not, under any circumstances, exceed $500.00. For each day a violation continues after notice, it may be considered a separate violation. Any fine so levied shall be considered as an assessment levied against a particular Homeowner involved and collection may be enforced by the Board in the same manner as the Board is entitled to enforce collection of other assessments. Fines may be levied against a Homeowner's tenant, and the Homeowner shall be jointly and severally liable with his tenant for the payment of same. In the event the Association institutes legal action for the collection of any fines, then the Defendant shall be responsible for the payment of reasonable attorneys' fees and court costs incurred by the Board incident to the collection of any fine.

(aa) The Association shall have the right, but not the duty or obligation, to maintain those areas owned by the Township of Berkeley which are located adjacent to the Property and which the Association determines it would be in the best interest of its Members to maintain. Cost of such voluntary maintenance shall be paid as a Common Expense.

(bb) To the extent that any residential structure or other structure erected or to be erected on said lands and premises shall have a wall in common with another such residential structure or structures, the general rules of law regarding party walls and

liability for property damage due to negligence, willful acts or omissions shall apply to each party wall which is built as part of the original construction of the said residential structure or structures upon any portions of the said lands and premises. In particular, the following Covenants shall govern and control the users or owners in common of such party walls:

(i) In the event that any portion of the party wall encroaches upon any Property or parcel of said premises, a valid easement for the encroachment and for the maintenance of the same so long as it stands, shall and does exist and no Owner or user thereof shall maintain any action for the removal or abatement of said encroachment. In the event that any one or more of the multi-unit buildings containing such party walls is partially or totally destroyed and is then rebuilt in substantially the same location as originally constructed, and as a result of such rebuilding any portions of the party wall encroach upon any portion of said land and premises, a valid easement for such encroachment and for the maintenance thereof so long as it stands, shall and does exist.

(ii) The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owner or users of said party wall.

(iii) If the party wall is destroyed or damaged by fire or other casualty, any owner or user who has used the party wall may restore it, and if the other Owners or users thereafter make use of the party wall, they shall contribute to the cost or restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners or users to call for a larger contribution from the others under any rules of law regarding liability for negligent or willful acts or omissions to act.

(iv) Any Owner or user, who by his negligent or willful act or by such acts of his agents, servants, employees or licensees, causes the party wall to be exposed to the elements or otherwise damaged, shall bear the whole cost of furnishing the necessary protection against such elements or damage.

(v) Each Owner or user may use said party wall in common with all other Owners and users thereof in accordance with the purpose for which said party wall was intended, without hindering or encroaching upon the lawful rights of the Owners or users thereof. None of such Owners or users shall make any such use of said party wall or do any act affecting the same as will interfere with the use and enjoyment thereof of the other Owners or users.

(vi) Any wall which is common to any Lot line of two Lots and which serves as an integral structural portion of a residence shall be deemed a party wall and subject to the restrictions hereinafter set forth. It shall be considered to be owned by adjoining Owners as tenants in common, without right of partition. The interest of each Owner therein shall be deemed conclusively to pass with the transfer of title to the said Lot despite any reservation or attempted reservation of the Owner's interest in said party wall or the failure of the instrument of conveyance specifically to include such interest.

(cc) Where practical, each Homeowner shall leave and maintain a fifteen (15) foot deep area to the rear of each Property in its natural vegetated condition.

(dd) The Association shall, where practical, maintain a forty (40) foot natural buffer area around the perimeter of the Property.

ARTICLE IV
ASSESSMENTS

SECTION 1. MEMBERSHIP IN THE ASSOCIATION

(a) Every Owner or co-owner of Property shall, upon becoming such Owner or co-owner thereof, be a Member of the Association and shall remain a Member of said Association until such time as his ownership ceases for any reason, at which time his membership of said Association shall cease. **Membership privileges in the Association will not be granted on resale (or other transfer of ownership of Property) until all Association dues, assessments and initiation fees in arrears are paid in full.** Other than as an incident to a lawful transfer of title to a Property, membership in the Association shall be non- transferable and any attempt to transfer shall be null and void. Every Homeowner, by acceptance of a deed or other conveyance for a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay **all charges outstanding at the time of purchase and future charges** as hereinafter more particularly described. Each Assessment, together with such interest thereon, late charges and cost of collection thereof (including reasonable attorney's fees) shall be a continuing lien upon the Property (see Section 6, below) against which each such Assessment is made and shall also be the personal obligation of the Owner of such Property at the time when the Assessment fell due.

(b) In the event that the Association should at any time fail to discharge its obligations to maintain any portion of the Property as required by this Declaration, or to enforce the provisions hereof, the Township of Berkeley shall have the right to so maintain the Property or to enforce such provisions in the same place instead of the Association. The assumption of such maintenance responsibilities shall be in accordance with the procedures set forth in N.J.S.A. 40:55D-43(b). The cost of same shall be assessed, enforced and collected in accordance with the provisions of N.J.S.A. 40:55D-43(c).

(c) No Homeowner may waive or otherwise avoid liability for the aforesaid Common Expenses by non-use of the Common Property.

SECTION 2. PURPOSE OF ASSESSMENTS. The annual Common Expense Assessment levied by the Association shall be used exclusively for promoting the health, safety, pleasure and welfare of the Owners of Properties, and costs and expenses incident to the operation of the Association, including, without limitation, maintenance, replacement and repair of the signs, walls and fences placed on the Property, plus the maintenance of services furnished by the Association, the repair and replacement of improvements on the Common Property, payment of all taxes, insurance premiums, all costs and expenses incidental to the operation and administration of the Association and its facilities and services.

SECTION 3. AMOUNT OF ANNUAL ASSESSMENTS. It shall be an affirmative obligation of the Association and its Board of Trustees to fix Common Expense Assessments in an amount sufficient to maintain and operate the Common Property and improvements which the Association is obligated to so maintain and to place and maintain in full force and effect all of the insurance coverage provided for in the Bylaws.

SECTION 4. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS AND DUE DATES. The Annual Common Expense Assessments provided for herein shall commence on the due date fixed by the Board to be the date of commencement and shall be due and payable on such dates as may from time to time be prescribed by the Board.

SECTION 5. SPECIAL ASSESSMENTS. In addition to the annual Common Expense Assessments authorized in Section 3 of this Article, the Association may levy, in any Assessment year, a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or part, the cost of any construction or any reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Property, including the necessary furniture, fixtures, equipment and other personal property related thereto, or other lawful purpose, including repair or replacement of such walls, fences and signs which the Association shall be obligated to maintain, provided that any such Special Assessment shall be authorized by the vote in person or by proxy or absentee ballot of two-thirds (2/3) of all designated voters in good standing, 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 vote.

SECTION 6. LIMITED PRIORITY LIENS.

(a) The Association shall have a lien on each home for any unpaid assessment duly made by the Association for a share of the Common Expenses or otherwise, including any other moneys duly owed the Association, upon proper notice to the appropriate Homeowner, together with interest thereon, late fees, and reasonable attorney's fees; provided however that the Association shall not record a lien in which the assessment consists solely of late fees. Such lien shall be effective from and after the time of recording in the public records of Ocean County stating the description of the home, name of the record owner, the amount due and the date when due. Such claim of lien shall include sums which are due and payable when the claim of lien is recorded, including accelerated fees for the remainder of the calendar year, and shall be signed and verified by an Officer or Agent of the Association. Upon full payment of all sums secured by the lien, the party making payment shall be entitled to satisfaction of the lien. Except as set forth below, all such liens shall be subordinate to any lien for past due and unpaid property taxes, the lien of any mortgage to which the home is subject and to any other lien recorded prior to the time of recording the claim of lien.

(b) A lien recorded pursuant to the above paragraph shall have a limited priority over recorded mortgages and other liens, other than liens for unpaid property taxes or federal taxes, as follows:

(i)Such priority shall be limited to those liens which are the result of customary assessments, as defined below, the amount of which shall

equal the aggregate assessment against the Homeowner for the six- month period prior to the recording of the lien.

(ii) With respect to a particular mortgage, such priority shall be limited to those liens recorded prior to:

(aa) the Association's receipt of a summons and complaint in an action to foreclose a mortgage on that home; or

(bb) the filing with the proper County recording office of a list giving notice of an action to foreclose a mortgage on that home.

(iii) Where more than one Association lien has been filed, the total amount of the liens granted priority shall not be greater than the assessment for the six-month period specified in paragraph (i) above. Priority among multiple filings shall be determined by their date of recording with the earlier recorded liens having first use of the priority set forth herein.

(iv) A lien of the Association shall not be granted priority over a prior recorded mortgage or mortgages under this subsection if a prior recorded lien of the Association for unpaid assessments has obtained priority over the same recorded mortgage or mortgages as provided in this subsection.

(v) When recording a lien which may be granted priority, the Association shall notify, in writing, any holder of a first mortgage lien on the property of the filing of the Association lien. An Association which exercises a good faith effort but is unable to ascertain the identity of a holder of a prior recorded mortgage on the property will be deemed to be in substantial compliance with this paragraph.

(c) Upon any voluntary conveyance of a home, the grantor and grantee of such home shall be jointly and severally liable for all unpaid assessments pertaining to such home duly made by the Association or accrued up to the date such conveyance without prejudice to the right of the grantee to recover from the grantor any amounts paid by the grantee, but the grantee shall be exclusively liable for those accruing while he is the Homeowner.

(d) Liens for unpaid assessments may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property and shall include any additional assessments which may become due during the pendency of the foreclosure.

SECTION 7. COMMON ASSESSMENTS, CERTIFICATE AS TO PAYMENT.

(a) Written notice of the Common Expense Assessment shall be sent annually to every Homeowner subject thereto.

(b) The Association shall, upon the request of any Homeowner or Institutional Lender, furnish to such Homeowner or mortgagee, a certificate in writing, signed by an officer of the Association, indicating the status of Assessment payments for the subject property. Such certificate shall constitute conclusive evidence of the payment of any Assessments therein stated to have been paid.

ARTICLE V

MISCELLANEOUS SERVICES AUTHORIZED

SECTION 1. SERVICES WHICH MAY BE PERFORMED AT THE OPTION OF THE ASSOCIATION – PROCEDURE.

The Association shall maintain the facilities on the Common Property and carry on the services instituted, from time to time, for the benefit of the Common Property and the Owners of Lots. In addition to such required maintenance of the Common Property and of the improvements of the facilities thereon, and the aforesaid services required to be performed, the Association may furnish (but shall not be required to furnish) such services as the Board may, from time to time, by resolution, deem appropriate. The Association shall be required to maintain the detention basin.

ARTICLE VI

GENERAL PROVISIONS

SECTION 1. DURATION. This Declaration shall be perpetual, run with and bind all the Property, and shall insure to the benefit of and be enforceable by the Association, and the Homeowners, their respective successors, assigns, heirs, executors, administrators and personal representatives, except that the Covenants and Restrictions set forth in Article III, Section 4, shall have been an initial term of forty (40) years from the date of this Declaration as recorded in the office of the Clerk of Ocean County, at the end of which period such Covenants and Restrictions shall automatically be extended for successive periods of ten (10) years each, unless at least two-thirds (2/3) of the 312 Homeowners in number and in interest, at the time of the expiration of the initial period, or any extension period, shall sign an instrument, or instruments (which may be in counterparts) in which they shall agree to terminate any or all of said Covenants and Restrictions in any manner as may be provided by law; but no such Agreement shall become binding unless written notice containing the terms of the proposed Agreement is sent to every Homeowner at least ninety (90) days in advance of the action taken in authorizing said Agreement, and in any event, any such Agreement shall not become effective and binding until three (3) years after recording of the aforesaid fully executed instrument or instruments containing such Agreement.

SECTION 2. NOTICE. Any notice required to be sent to any Member under the provisions of this Declaration or the Articles of Incorporation or the Bylaws of the Association shall be deemed to have been properly sent, and notice thereby given, when mailed by regular post, with postage prepaid, addressed to the Member or Owner at the last known post office address of the person who appears as a Member on the records of the Association at the time of such mailing. Notice to one of two Owners of a Lot shall constitute notice to all Owners thereof. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address. Valid notice may also be given to Members by community news letter or in person.

SECTION 3. ENFORCEMENT. Enforcement of this Declaration shall be by any appropriate proceeding in law or equity and any court or administrative tribunal having jurisdiction, against any person or persons, firm or corporation violating or attempting to violate or circumvent any provision herein contained, either to restrain or enjoin such violation or threatened violation, to recover damages, and against a Lot of any Member to enforce any lien created by this Declaration. Failure by the Association or any Member to enforce any Covenant or Restriction herein contained for any period of time, shall in no

event be deemed a waiver or estoppel of the right to thereafter enforce the same. In the event that the Association should at any time fail to discharge its obligations to maintain any portion of the Property as required by this Declaration, or to enforce the provisions hereof, the Township of Berkeley, as applicable, shall have the right to maintain the Property or to enforce such provisions in the name, place and stead of the Association. The assumptions of such maintenance responsibility shall be in accordance with the procedures set forth in N.J.S.A. 40:55d-43(b). The cost of same shall be assessed, enforced and collected in accordance with the provisions of N.J.S.A. 40:55d-43(c).
Despite any limitations as to the applicability of N.J.S.A. 40:55d-43 (b) and (c) aforesaid to the maintenance of "open space", the provisions of this subparagraph shall apply to all maintenance obligations of the Association as set forth in this Declaration or otherwise. Should either the Association or any of its Members at any time fail to enforce the provisions hereof, the Township of Berkeley upon thirty (30) days notice to the Association shall have the right to institute appropriate legal proceedings in the name of the Association to affect such enforcement.

SECTION 4. SEVERABILITY. Should any Covenant or Restriction herein contained, or any Article, Section, subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the jurisdiction of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other remaining provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

SECTION 5. AMENDMENTS. This Declaration may be amended after prior approval by the Board of Trustees at any time after the date hereof by an affirmative vote of two-thirds of the votes cast by Members in good standing at an Election of the Association duly held in accordance with the provisions of the Bylaws, provided, however, that no Amendment may be affected that would permit:

(a) the Association or any Homeowner to be exempted from the payment of any Common Expense, or

(b) conveyance of any portion of the Common Property to any third person, firm, corporation or any modification or Amendment which varies from a condition set forth in the resolution of approval for preliminary and final site approval for the Property without the express consent, by ordinance or otherwise of the Zoning Board of Adjustment of the Township of Berkeley (or such municipal corporation as may then have zoning and subdivision control jurisdiction over the Common Property).

No amendment shall be effective until recorded in the Office of the Clerk of Ocean County, State of New Jersey.

SECTION 6. BYLAWS AND ADMINISTRATION. The Administration of the Common Property shall be by the Association in accordance with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and any other agreements, documents, Amendments or supplements to the foregoing which may be duly adopted or subsequently be required by any governmental agency having regulatory jurisdiction over the Property.

SECTION 7. ARTICLES OF INCORPORATION AND BYLAWS OF THE ASSOCIATION. The Articles of Incorporation and the Bylaws are on file in the Association's office.

ARTICLE VII
MISCELLANEOUS PROVISIONS

SECTION 1. MEMBERSHIP IN THE ASSOCIATION. Membership in the Association shall be limited to the Owners or Co-Owners of a Lot in the Property. In the event that a Member shall lease or permit another to occupy his Property, the tenant or occupant shall be permitted to enjoy the facilities of the Association but shall not vote in the affairs of the Association, except as the Member shall permit the tenant or occupant to exercise the proxy vote of the Member. Use of the recreational facilities of the Association shall be limited to occupants of Properties and their guests. A maximum of two (2) access cards per unit will be issued to occupants of the property. (In the event of a sole occupant, only one (1) access card will be issued.) Every lawful transfer of title to the Member's property shall include membership in the Association and, upon making such transfer, the previous Owner's membership shall automatically terminate. Membership in the Association may not be assigned or transferred without the transfer of legal title to a Property and any attempt at such a signing or transfer thereof shall be void and of no effect. Members of the Association shall be entitled to one (1) vote for each Property in which they hold the interest required for membership herein. When more than one person holds an interest in any Property, all such persons shall be Members, and the vote for each Property shall be exercised as provided in the Bylaws, but in no event shall more than one (1) vote be cast with respect to any such Property. A Member shall be deemed to be "in good standing" and entitled to vote at any Annual Meeting or at any Special Meeting of the Association if he shall have fully paid all Assessments made or levied against him and against his Property by the Board of Trustees as herein provided, together with all interest, cost, attorney's fees, penalties and other expenses, if any, properly chargeable to him and against his Property, at least three (3) days prior to the date fixed for such Annual or Special Meeting. Similarly, any attorney fees, costs or Judgments will be treated as maintenance assessments and will result in loss of privileges to clubhouse, amenities and all other common areas.

SECTION 2. INTERPRETATION OF THE DECLARATION AND BYLAWS. In the event of a conflict of interpretation between the provisions set forth in this Declaration and the Bylaws, this Declaration shall govern. In the event that the Internal Revenue code is hereafter amended or changed, both the Declaration and the Bylaws shall be interpreted in such a manner as to conform to the provisions of the Internal Revenue code with respect to non-profit entities, it being the intention to preserve the lawful status of the Association as a bona fide and non-profit entity.

SECTION 3. DISSOLUTION.

(a) In the event that it shall be deemed advisable and for the benefit of the Members that the Association should be dissolved, the procedures concerning dissolution set forth in N.J.S.A. 15:1-20 shall be followed.

(b) The Association shall not be dissolved and shall not dispose of any Common Property (Open Space), as such term is defined in the New Jersey Municipal Land Use Law, without first obtaining the approval of the Zoning Board of Adjustment of the

Township of Berkeley, except to an organization conceived and established to own and maintain Open Space for the benefit of the Property and, thereafter such organization shall not be dissolved or dispose of any of its Open Space without first offering to dedicate the same to the governing body of the jurisdiction in which the Property is located.

(c) In the event of dissolution, the assets, including common surplus if any, of the Association, after payment of all debts, including mortgages and other encumbrances, shall be distributed pursuant to the final decree of the court.

SECTION 4. HANDICAP USE. Nothing set forth in this Declaration shall be construed to prohibit the reasonable adaptation of any Property or dwelling for handicap use.

ARTICLE VIII
PUMP STATION LANDSCAPING

The Association shall be obligated, in perpetuity, to maintain the lawn and landscaping on Lot 26, Block 858.02, as same is depicted on the tax maps of the Township of Berkeley, which Lot shall be a pump station for the Property and deeded to the Berkeley Township Sewerage Authority.