

Mercer County Clerk's Office

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RIDOLFI FRIEDMAN FRANK ETAL
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BEAZER HOMES CORP
HOPEWELL TOWNSHIP

Index DEEDS

Book 04500 Page 0015

No. Pages 0117

Instrument MISC DEEDS

Date : 4/28/2003

Time : 11:01:22

Control # 200304280131

INST# RD 2003 024211

Employee ID DENAV

RECORDING	\$	245.00
RECORDING	\$	355.00
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Total:	\$	600.00

STATE OF NEW JERSEY
Mercer County Clerk's Office

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* DO NOT REMOVE THIS COVER SHEET - *
*IT CONTAINS ALL RECORDING INFORMATION *

Catherine DiCostanzo
Mercer County Clerk



AB VOL4500 PG015 R4-28-03

Prepared by:

Alan G. Frank, Jr.
Alan G. Frank, Jr., Esq.

DECLARATION
OF
COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR
WELLINGTON MANOR

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS ("Declaration") is made this 28th day of February, 2003 by BEAZER HOMES CORP. a Tennessee corporation, with a mailing address at 250 Phillips Boulevard, Suite 290, Trenton, New Jersey 08618 (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, via Resolution No. 01-041 adopted on September 25, 2001, the Hopewell Township Planning Board granted final major subdivision and site plan approval for the development of that certain real estate described in Schedule 1 and depicted on Schedule 2, both as attached hereto and made a part hereof, for the development Project (defined below) commonly known as "Wellington Manor" (the "Approval"); and

WHEREAS, the Approval authorizes the real estate described in Schedule 1 to be subdivided into (i) one hundred fifteen (115) building lots for single family detached homes (collectively the "Lots") and (ii) four (4) open space lots to contain, inter alia, four (4) storm water detention basins, a recreation area (including a clubhouse, a swimming pool, two (2) tennis courts, a multi-purpose field and paved parking area), one (1) landscaped street island and certain components of a wastewater collection and conveyance system including a sanitary sewer pump station (collectively the "Common Areas"); and

WHEREAS, the Approval also authorizes the creation of four (4) public streets within the area described in Schedule 1 to be known as Lexington Drive, Buckingham Drive, York Road and

Ⓜ *Ridolfi Friedman Frank et al.*
3131 Princeton Pike Bldg 6A
Lawrenceville NJ 08648

Westminster Court (collectively the "Roadways"), which Roadways, upon completion and dedication, shall be owned and maintained by Hopewell Township; and

WHEREAS, one (1) of said Roadways (i.e. Lexington Drive) has four (4) islands within its right of way which are to be landscaped by Declarant as part of Declarant's construction/installation of the Roadways (the "Lexington Islands"); and

WHEREAS, the Lots, Common Areas and Roadways (including the Lexington Islands) shall collectively be hereinafter referred to as the "Project"; and

WHEREAS, the Approval contemplates that one or more final subdivision maps encompassing the real estate described in Schedule I are to be filed in the Mercer County Clerk's Office (a "Final Map") in order to lawfully establish all of the various Lots, Common Areas and Roadways which have been authorized by the Approval to constitute the Project; and

WHEREAS, Declarant, for itself, its successors and assigns, intends to develop the Project in accordance with the Approval and to this end, desires to provide, among other things, for the perpetual maintenance, preservation, upkeep and repairs or replacements (if necessary) of the Common Areas and their related improvements (including, without limitation, the Wastewater Collection and Conveyance System defined below) and for the maintenance of the Lexington Islands and for the performance of certain services to the Lots and for the means to fund such activities and further desires to subject the Lots and Common Areas to the covenants, conditions, restrictions, easements, charges and liens hereinafter to be set forth, each and all of which is and are hereby declared to be for the benefit of the Lots and Common Areas and every Owner (hereinafter defined) of any and all portions thereof; and

WHEREAS, Declarant has deemed it advisable to create an entity to which shall be delegated and assigned the power and authority to, among other things, maintain the Lexington Islands, maintain and administer the Common Areas, perform certain services to the Lots, administer and enforce the covenants, conditions, restrictions and easements related to the real estate described in

Schedule 1 and collect and disburse all assessments and charges necessary for such applicable maintenance, administration and enforcement, all as hereinafter provided; and

WHEREAS, in furtherance of the above, Declarant has caused or will cause to be created and incorporated a non-profit corporation known or to be known as "Wellington Manor at Hopewell Homeowners' Association, Inc." (the "Association") for the purposes set forth above;

NOW, THEREFORE, Declarant hereby declares that all of the Lots and Common Areas from among the real estate described in Schedule 1 attached shall be held, sold, conveyed, leased, mortgaged, alienated or transferred subject to the following easements, charges, assessments, obligations, liens, restrictions, covenants and conditions, all of which shall run with the real estate described in Schedule 1 for the term of this Declaration.

ARTICLE I

DEFINITIONS

Section 1. "ANNUAL ASSESSMENT" shall mean and refer to those fees or charges levied by the Association upon the Owner of each Lot for the purpose of adequately meeting expenses for the maintenance of the Common Areas within the jurisdiction of the Association and the Lexington Islands and for the promotion and maintenance of the recreation, health, safety and welfare of the residents of the Lots.

Section 2. "ARTICLES OF INCORPORATION" shall mean and refer to the Articles of Incorporation of WELLINGTON MANOR AT HOPEWELL HOMEOWNERS' ASSOCIATION, INC., a copy of which is attached as Schedule 3.

Section 3. "ASSOCIATION" shall mean and refer to WELLINGTON MANOR AT HOPEWELL HOMEOWNERS' ASSOCIATION, INC., its successors and assigns (hereinafter referred to sometimes as "Association").

Section 4. "ASSOCIATION DOCUMENTS" shall mean and refer to this Declaration of Covenants, Conditions, Restrictions and Easements, the Articles of Incorporation of the Association, the By-Laws of the Association and any rules and regulations which the Association may properly promulgate in the future.

Section 5. "BOARD OF TRUSTEES" shall mean and refer to the Board of Trustees of the Association.

Section 6. "BY-LAWS" shall mean and refer to the By-Laws of the Association, a copy of which is attached hereto and made a part hereof as Schedule 4.

Section 7. "COMMON AREAS" shall mean and refer to all real property and improvements in which the Association may hold a fee or other title interest for the common use of the Owners. Common Areas shall include the active and passive open spaces and any facilities and appurtenances therein provided and required by the Approval for the common use and enjoyment of Owners including, but not limited to, pipes, culverts, headwalls, low flow channels, storm water detention basins, a recreation area including a clubhouse, a swimming pool, two (2) tennis courts, parking facilities, a multi-purpose field, a sanitary sewer pump station, a sanitary sewer force main, one (1) landscaped street island and such similar items and facilities as are shown on or otherwise described in any plans or maps or other documents encompassed in the Approval. No changes to the Common Areas from what is contained in the Approval may be made without the approval of the PB (defined below) or other authorized agency of Hopewell Township. The Common Areas comprise the real estate constituting Lots 9.40, 9.41, 9.42 and 7.52 in Block 78 as shown on Schedule 2 attached hereto. The Common Areas shall not include the Lexington Islands.

Section 8. "DECLARANT" shall mean and refer to Beazer Homes Corp., its successors and assigns.

Section 9. "DECLARATION" shall mean and refer to this Declaration of Covenants, Conditions, Restrictions and Easements.

Section 10. "FINAL MAP" shall collectively mean and refer to those certain final subdivision plats depicting the real estate described in Schedule 1, which were filed in the Mercer County Clerk's Office on October 9, 2002 as Map Nos. 3832, 3832A and 3832B.

Section 11. "LOT" shall mean and refer to any of the one hundred fifteen (115) individual building lots or plots of land developed or intended to be developed with a Unit (defined below) as shown upon the Final Map.

Section 12. "MEMBER" shall mean and refer to any Owner who is a member of the Association as hereinafter provided.

Section 13. "OWNER" shall mean and refer to the record owner, whether one or more persons, of fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation.

Section 14. "PB" shall mean and refer to the Planning Board of Hopewell Township.

Section 15. "PROPERTIES" shall mean and refer to that certain real property and all scheduled improvements thereto that may be conveyed to the Association and such areas within the jurisdiction of the Association as are set forth herein and in the By-Laws of the Association.

Section 16. "SPECIAL ASSESSMENT" shall mean and refer to those fees or charges levied by the Association upon the Owner of each Lot for the purpose of capital improvements and/or special and unusual circumstances.

Section 17. "UNIT" shall mean and refer to a structure or part thereof designed, sold and occupied exclusively as a single family detached residence on a Lot located in the Project. For the purpose of this Declaration, each separate Unit shall be subject to all of the rights, privileges and duties as if each were separately owned, irrespective of whether or not this is so in fact.

Section 18. "WASTEWATER COLLECTION AND CONVEYANCE SYSTEM" shall mean and refer to the portions of the lateral sewer lines for all Units running from the "clean outs" situated behind the curbs in front of the Lots containing all such Units to the points where such lateral lines connect with the main sewer lines in the public streets in front of such Lots; the main sewer lines and all related appurtenances such as, but not limited to, manholes located in the public streets and in the Common Areas; a pump station and its related appurtenances situated in the Common Areas and a force main from the pump station running through the Common Areas and the public streets. The entirety of such Wastewater Collection and Conveyance System shall be the sole obligation of the Association to maintain, repair and replace as necessary. The portion of the lateral sewer line from a Unit to the "clean out" situated behind the curb in front of the Lot containing such Unit shall not be a part of the Wastewater Collection and Conveyance System for which the Association shall have the responsibility of maintenance, repair and replacement, as necessary, and such on-Lot portion of the lateral sewer line shall be the sole obligation of the Owner of the Lot containing the Unit to maintain, repair and replace as necessary.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

All premises within the area described in Schedule 1, including the Common Areas and Lots established from among the lands described in Schedule 1 as shown on the Final Map filed in the Mercer County Clerk's Office, shall be and are held, transferred, sold, conveyed, leased and occupied subject to this Declaration and the Schedules hereto attached.

ARTICLE III

PROPERTY RIGHTS

Section 1. OWNERS EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Areas described herein, which shall be appurtenant to and shall pass with the title to every Lot, which rights shall be subject to the following provisions:

(a) The right of the Declarant, its successors and assigns to convey, dedicate, grant or transfer those portions of the Common Areas pursuant to the requirements of the Approval and applicably incorporated in the conditions of any PB action memorializing said Approval.

(b) The right of the Declarant and/or the Association to dedicate, grant, reserve or transfer all or any part of the Common Areas via easement(s) or in fee to any public agency, authority or utility for such purposes, including but not limited to the purposes of installing, maintaining, repairing, replacing and inspecting all appurtenances for the Wastewater Collection and Conveyance System and storm water drainage, with the right(s) of the grantee(s) to have access over and across such portions of the Common Areas which are consistent with the full exercise of such grants;

(c) The right of the Association to borrow money for the purpose of improving the Common Areas and, in aid thereof, to mortgage the Common Areas;

(d) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;

(e) The right of the Association to co-venture or cooperate or otherwise contract with other associations for maintenance of the Common Areas and facilities therein.

Section 2. DELEGATION OF USE. Any Owner may delegate, in accordance with the By-Laws, his right to enjoyment of the Common Areas to members of his family, his lawful tenants, or contract purchasers who reside in the Unit on the Lot subject to any special rules and/or regulations applicably related to the various recreation and other features or facilities within the Common Areas.

Section 3. TITLE TO COMMON AREAS. Declarant shall retain legal title to the Common Areas until such time as it has completed all improvements thereon which are required by the terms of the Approval and which have been inspected and approved by the Hopewell Township Engineer. Limited by the foregoing, Declarant shall not convey the Common Areas to the Association until such time as, in the opinion of the Declarant, the Association is able to maintain the same, but,

notwithstanding such determination by Declarant, Declarant hereby covenants for itself, its successors and assigns, that it may so convey the Common Areas to the Association when Declarant, its successors or assigns, owns less than one third of the dwelling Lots approved for final subdivision by the PB from among the lands described in Schedule I, which conveyance shall be free of the lien of any mortgage or other encumbrance. After fee title to the Common Areas is transferred to the Association, Declarant shall pay the pro-rata share of Assessments for any Units which are owned by Declarant and for which Certificates of Occupancy have been issued by Hopewell Township, subject to the requirement that the Association shall be responsible for all Common Areas maintenance related to those Units of Declarant, whether occupied or not, for which Certificates of Occupancy from Hopewell Township have been issued.

Section 4. EASEMENT FOR UNIT. Each Unit and Lot shall have an easement of use, access, maintenance and repair for any part thereof or thereto appurtenant, as first constructed, which is totally or partially located upon another Owner's Lot or on the Common Areas. It shall be the responsibility of the Owner whose Unit or Lot is benefited by such encroachment to maintain, insure, repair and restore any encroaching element(s) which may be erected in whole or in part on another Owner's Lot or on a portion of the Common Areas.

Section 5. INSURANCE. Each Owner shall be individually responsible for maintaining liability and casualty insurance coverages and, if applicable, flood insurance coverage for his Unit and Lot and for all personal property of the Owner in an amount equal to the maximum insurable replacement value of the Unit. The Association shall be responsible for maintaining fidelity insurance (or as provided by any management company retained by the Association), general liability and property insurance on its assets, as well as Directors' and Officers' insurance and any other insurance coverage as deemed appropriate by the Board of Trustees of the Association. The Association, through its Board of Trustees, shall, in addition to liability and any other types and kinds of insurance as are provided herein and in the Association's By-Laws, be required to obtain and maintain, if applicable, liability insurance insuring the Common Areas and covering the interests of the Association and the Board of Trustees as their interests may appear, in the amount determined by the Board of Trustees.

Section 6. EXTENT OF EASEMENTS OF ENJOYMENT. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Declarant and of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Areas, and in aid thereof to mortgage said Common Areas.

(b) The right of the Association to take such steps as are reasonably necessary to protect the above-described Common Areas against foreclosure.

(c) The right of the Association, through its Board of Trustees, as provided in the By-Laws, to promulgate rules and regulations for the use and enjoyment of the Common Areas or to suspend a Member's use and enjoyment of the Common Areas and the voting rights of any Member for any period during which any Annual Assessments or Special Assessments (referred to as "Assessments" when used collectively) remain unpaid, or for any period during which any infraction of its published rules and regulations continues, it being understood that any suspension for either non-payment of any Assessments 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 Assessments, provided, however, that no such suspension of a Member's right to use and enjoy the Common Areas shall deprive such Member from having access to and from his Lot over and through the Common Areas to the public right of way abutting such Common Areas; and

(d) The Association shall not dispose of any part of the Common Areas, by sale or otherwise, except to an organization conceived and established to own and maintain the Common Areas for the benefit of the Lots as set forth in Article IX, Section 4 below. Such dedication or transfer shall not become effective unless such dedication, transfer and determination as to purpose and conditions thereof shall be authorized by the affirmative vote, in person or by proxy, of two-thirds (2/3) of all of the votes eligible to be cast by all of the Members of the Association, and unless written notice of the proposed form of resolution authorizing such action is sent to every Member at least thirty (30) days in advance of the scheduled meeting of the Association at which such action is scheduled 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 the Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Areas, prior to the recording thereof in the Office of the Mercer County Clerk. Such certificate shall be conclusive evidence of authorization by the membership.

(e) The following easements which are hereby established:

(i) A blanket perpetual and non-exclusive easement in, upon, over, across and through the Common Areas for the purpose of the installation, maintenance, repair and replacement of all storm water detention and vehicular circulation and parking facilities necessary or incidental to the proper functioning of any such storm water drainage or vehicular circulation and parking system serving the Common Areas or Lots, which easement shall be for the benefit of the Declarant, or any governmental agency which requires same for the purposes associated with either or both the foregoing services;

(ii) A blanket and non-exclusive easement in, upon, through and over the Lots and Common Areas for the purpose of construction, installation, maintenance and repair of any improvements on the Lots or Common Areas, which easement shall be to the benefit of the Declarant, its successors and assigns who shall be engaged in the construction, development and sale of Units on the Lots;

(iii) A blanket perpetual and non-exclusive easement of unobstructed ingress and egress in, upon, over, across and through the Common Areas to the Township of Hopewell, the Association and Ewing-Lawrence Sewerage Authority ("ELSA"), their respective officers, agents and employees (but not the public in general) and all policemen, firemen, ambulance and utility or service personnel in the proper performance of their respective duties, voluntary or otherwise (including, but not limited to, inspections of the Common Areas or any facilities therein or thereon as well as the making of emergency or other necessary repairs to a feature within the Common Areas which the Association has failed to perform), and for any applicable repair, maintenance or replacement of a feature within the Common Areas for which the Association or the Township of Hopewell or ELSA

shall have applicable legal liability and/or responsibility. In the event that the Township of Hopewell or ELSA is required to perform any maintenance or repair facilities associated with the Wastewater Collection and Conveyance System which are the primary obligation of Declarant or the Association to maintain and/or repair, Declarant or Association, as applicable, shall pay the Township of Hopewell or ELSA, as applicable, the reasonable cost(s) of said maintenance or repair within thirty-five (35) days of the receipt of a bill therefor from the Township of Hopewell or ELSA, as applicable, and if not so paid within said thirty-five (35) day period, interest shall accrue thereon at the highest rate charged by Ewing Township, Mercer County, New Jersey on delinquent real estate taxes. Except in the event of emergencies, the rights accompanying the easements provided for in this sub-Section shall be exercised during reasonable hours and then, whenever practicable, after advance notice to any Owner(s) directly affected thereby; and

(iv) A perpetual easement in, upon, through and over the Lots for the purposes of grass cutting and snow removal at the Lots, which easement shall be to the benefit of the Association.

Section 7. NON-OCCUPANT MEMBERS' USE. In the event an Owner lawfully leases his Unit, the tenant of the Unit shall be entitled to use any of the Common Areas otherwise available for use by all Owners; provided, however, that the tenant's right to use the Common Areas shall be deemed an assignment of the Owner's right to use same and shall preclude the non-occupant Owner from also using these facilities (unless otherwise determined by the Board of Trustees). Any such tenancy shall be further subject to the restrictions set forth below in Article VII, Section 2 below.

Section 8. NO WAIVER OF USE. No Owner may exempt himself from liability with respect to the payment of Assessments levied by the Association, nor release his Unit or Lot from the lien created for non-payment of Assessments by waiver of the use or enjoyment of the Common Areas, by abandonment of his Unit or Lot, by any conveyance or covenant severing the rights and benefits from the Unit or Lot, or otherwise. The obligation to pay Assessments is absolute and unconditional and, in addition to being a covenant running with the land, is a personal obligation of each Owner and shall not be subject to setoffs or counterclaims.

ARTICLE IV

COVENANT FOR ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS. (a) The Owner of each Lot within the area described in Schedule 1 hereby covenants that by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, such Owner is deemed to covenant and agree to pay to the Association: (i) the Annual Assessment or charges provided in Section 3 of this Article IV and (ii) any Special Assessment provided in Section 4 of this Article IV (collectively the "Assessments"). Such Assessments are to be established and collected as hereinafter provided.

(b) Assessments, together with interest, costs, late charges and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which any such Assessments are made (the "Lien"); provided, however that such Lien shall be deemed to have been satisfied if any installment of any Assessments then due the Association (along with any other charges authorized by this Declaration and then due to the Association from the Owner) shall have been paid in full. Any such Assessments, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when any of the Assessments fell due. The obligation for delinquent Assessments shall pass to such Owner's successors in title, said Assessments being a charge against a Lot in favor of the Association. The Association shall provide for the issuance and shall issue to every Owner or to such Owner's mortgagee, upon reasonable request, a statement of such amounts due. A person other than an Owner may rely upon such statement and such Owner's liability shall be limited to the amounts set forth therein. Liability for the payment of said amount to the Association shall not attach to the purchase of the Lot following a mortgage foreclosure sale, provided the Association has been joined as a party to the foreclosure suit. Such unpaid share shall be deemed to be expenses collectible from the remaining Owners, including the acquirer.

Section 2. PURPOSE OF ASSESSMENTS. The Assessments levied by the Association shall be used exclusively for the purposes of promoting, furthering and/or preserving the recreation, health, safety, and welfare of the residents in the Lots and in particular for the improvement and

maintenance of the Common Areas, the Lots and services facilities devoted to these purposes and related to the use and enjoyment of the Common Areas, including but not limited to such of the following as may be applicable:

- (a) the payment of any applicable real estate taxes on the Common Areas only, if any;
- (b) the payment of liability and property damage insurance premiums and any applicable utility charges which the Association must pay for the Common Areas;
- (c) the maintenance, repair and replacement (as and if necessary) of any and all Wastewater Collection and Conveyance System improvements and/or facilities within the "Wellington Manor" subdivision so as to keep said Wastewater Collection and Conveyance System perpetually in compliance with all laws and regulations applicable thereto, including, without limitation, all laws and regulations related to health and safety;
- (d) the periodic cutting and/or care of grass, and other planted areas or materials in the Common Areas and the Lexington Islands;
- (e) the removal of any wind-blown or accumulated trash or debris from the Common Areas and Lexington Islands and the removal of snow from such paved surfaces in the Common Areas as the Association shall determine or as required by law;
- (f) periodic cutting of the lawn areas on Lots and the removal of snow from driveways, walkways and front Unit entry steps, if applicable, on Lots as well as snow removal from any sidewalk parallel to the street in front of a Lot.
- (g) the maintenance, repair (including the making of structural repairs if necessary) and replacement, as and if necessary, of any of the recreational facilities or storm water detention facilities in the Common Areas;

(h) compliance with ordinances, regulations, government rules and regulations and any easements or restrictions affecting the Common Areas;

(i) the payment of costs associated with programs, facilities or services provided or contracted by the Association which are from time to time determined by the Board of Trustees to be for the general benefit and/or for the health, safety and welfare of the Members and/or their families and/or other lawful occupants of the Units on the Lots; and

(j) the supervisory, management and overhead costs for the foregoing activities.

Section 3. ANNUAL ASSESSMENT. The amount of the Annual Assessment shall be fixed by the Board of Trustees on an annual basis in a sum sufficient to meet the expenses necessary for the improvement, maintenance, repair and replacement, as required, of the Common Areas or improvements therein or thereon and for the promotion and maintenance of the recreation, health, safety and welfare of the residents of the Lots, and each Lot shall be treated equally with regard to an Annual Assessment. The amount of the Annual Assessment may be changed from time to time by action of the Board of Trustees, but such action shall be taken only when justified by changes in circumstances.

Section 4. SPECIAL ASSESSMENTS. In addition to the other Assessments authorized in this Article 4, the Board of Trustees may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto.

Section 5. COMPUTATION OF ASSESSMENTS. The Annual Assessment and any Special Assessment shall be computed by dividing the total number of dwelling Lots subject to this Declaration (i.e. 115) into the total amount(s) calculated pursuant to Sections 3, 4 and 5 above, as the case may be, with the quotient thereby arrived at being the Assessments each Owner shall pay pursuant to the terms of this Declaration. All Assessments must be fixed at a uniform rate for all affected Units.

Section 6. DATE OF COMMENCEMENT OF ASSESSMENTS: DUE DATES. The Assessments provided for herein shall be pro-rated for payment by Owners on a monthly basis or on such other basis as may be determined by the Association. All applicable Assessments (for so long as same shall be applicable) shall commence as to each Lot on the first day following the conveyance of title to each such Lot by the Declarant to the Owner and shall be adjusted according to the number of days or months remaining in the calendar month or year (depending on what installment basis of payment, if any, has been selected by the Association). Written notice of the applicable Assessment(s) shall be sent to every Owner subject thereto. The due date(s) shall be established by the Board of Trustees.

Section 7. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any Assessments not paid within thirty (30) days after the due date(s) shall bear interest from the due date(s) at the rate of eighteen (18%) percent per annum, but in no event shall the interest rate on such delinquent payment(s) be in excess of that rate which is lawful. Any Assessments not paid within fifteen (15) days of their due date(s) shall also be subject to a late charge of \$25.00 for each month or portion thereof for which the Assessment remains delinquent, or such other charge as determined by the Board of Trustees from time to time. Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in said deed, is deemed to covenant and agree to permit the Association to record a Lien in the Mercer County Clerk's Office, at such Owner's cost and expense, including reasonable attorney's fees of not less than \$250.00, by filing a Claim of Lien (the form of which is attached hereto as Schedule 5) at any time after such Owner has failed to pay any installment of any of the Assessments within thirty (30) days of the due date thereof. Any costs for the release or discharge of such Lien from record shall be borne by the affected Owner, his successors or assigns. The Association may bring an action at law against the Owner personally obligated to pay the delinquent Assessments and/or foreclose the Lien against the Lot. The Board of Trustees may change the foregoing interest rate, late charge and grace period as it shall from time to time determine.

Section 8. OBLIGATIONS OF DECLARANT. Until Declarant has sold all of the Units it has constructed in the Project to third party Owners, Declarant's only obligation with respect to

payment of the Annual Assessments attributable to built but unsold Units or to as yet unbuilt Units in the Project shall be to pay the difference between actual and/or accrued income of the Association from collections or accruals of Annual Assessments from third party Owners during the then applicable year for which the budget of Annual Assessments is in effect and the application of transfers of all available funds from the Association's operating funds account and/or working capital account and the actual common expenses (including reserves) of the Association for that same period, which such payment of such differential by Declarant shall be in lieu of any obligation of Declarant to pay any proportionate share of Annual Assessments for (i) any then built but unsold Units covered by the then applicable Annual Assessments budget, or (ii) Units which have not yet been built by Declarant. Declarant shall post no bond or other security for its foregoing obligation hereunder. During the time when Declarant shall only have the obligation to fund the operating "shortfall" (so-called) of the Association as provided in the first sentence of this Section 8, Declarant shall also have no responsibility or obligation whatsoever for the payment of any Special Assessments. Despite the foregoing obligation of Declarant as set forth in the first sentence of this Section 8, Declarant shall always have the right at any time and upon thirty (30) days' prior written notice to the Association, to terminate its obligation to pay the aforescribed differential and commence to pay the pro-rata portion of the Annual Assessments attributable to each of the built but unsold Units or unbuilt Units owned by it on the same basis as all other third party Owners. For so long as Declarant shall have the obligation to fund the excess of expenses over income of the Association (including the reserves portion thereof), any Annual Assessments budget of the Association shall be structured by the Association so as to not include any line items not shown on the original budget to be promulgated by the Board of Trustees pursuant to Section 3 above or delete any line items as shown on said original budget, nor shall the level of services required or goods purchased or insurance coverages carried or reserves to be funded be decreased below the items and amounts as shown on said original budget, except that the original budget, as same may be from time to time amended, and the estimated expense category items reflected thereon may be reasonably increased for future inflation and other reasonable factors not currently known or readily predictable. While Declarant maintains a majority on the Board of Trustees, it shall make no additions, alterations, improvements or purchases which would necessitate any Special Assessments or a substantial increase in installments of the Annual Assessments, unless required by a governmental agency, title insurance company or mortgage lender or in the event of an emergency. In the event that Declarant shall lease any Unit owned by it to a

third party in the ordinary course of business, Declarant shall be responsible for payment to the Association of the applicable Annual Assessments and Special Assessments for such Unit during the term of such tenancy. While the Declarant maintains control of the Association's Board of Trustees, Declarant shall take no action which adversely affects a Unit Owner's rights under N.J.A.C. 5:25-5.5 and all claims relative to any alleged defects in the construction or installation of improvements or facilities constituting or within the Common Areas shall be processed in accordance with N.J.A.C. 5:25-5.5.

Section 9. SUBORDINATION OF THE LIEN TO MORTGAGES. The Lien of any of the Assessments provided for herein shall be subordinate to the lien of any bona fide first mortgage. Sale or transfer of any Lot shall not affect the Lien for Assessments. The sale or transfer of any Lot pursuant to mortgage foreclosure shall not extinguish the Lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the Lien thereof.

Section 10. LIST OF ASSESSMENTS, NOTICE OF ASSESSMENTS, CERTIFICATE AS TO PAYMENT. (a) The Board of Trustees shall cause to be prepared, at least thirty (30) days in advance of the initial due date(s) of each applicable Assessment, a list of the Lots and the Assessments applicable thereto, according to the names of the Owners thereof, which list shall be kept by the Treasurer of the Association and shall be open to inspection.

(b) If a holder of an institutional mortgage of record or other purchaser of a Lot obtains title to such Lot as a result of foreclosure of such first mortgage, such acquirer of title, his successors and assigns shall not be liable for the Assessments by the Association pertaining to such Lot or chargeable to the former Owner thereof which became due prior to acquisition of title as a result of the foreclosure. Such unpaid Assessments shall be deemed to be common expenses collectible from all of the remaining Owners of Lots including such acquirer, his successors and assigns.

(c) 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. A suit to recover a money judgment for unpaid Assessments may be maintained without waiving the lien securing same.

(d) If an Annual Assessment is not made as required, an Annual 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 changed by an amended Annual Assessment. In the event any Annual Assessment proves to be insufficient, the budget and Annual Assessments may be amended at any time by the Board of Trustees, provided that nothing herein shall serve to prohibit or prevent the Board of Trustees from imposing a supplemental, lump sum Annual Assessment in the case of any immediate need or emergency.

Section 11. ACCELERATION OF ASSESSMENT INSTALLMENTS AND OTHER REMEDIES OF THE ASSOCIATION. If a Member shall be in default in the payment of an installment upon an Assessment, the Board of Trustees may accelerate the remaining monthly installments of the Assessment due, and the then unpaid balance of the Assessment shall become due upon the date stated in the notice, but not less than five (5) days after delivery of the notice to the Member, or not less than ten (10) days after the mailing of such notice to him by registered or certified mail, whichever shall first occur. If such default shall continue for a period of thirty (30) days, then the Board of Trustees shall be obligated to:

(a) accelerate the remaining installments of the Assessment,

(b) take appropriate action to file a Lien for such accelerated Assessment, and

(c) notify the mortgagee of the Lot affected of such default if such mortgagee has requested notice from the Association in writing. If said default continues for a period of sixty (60) days, then the Board of Trustees shall have the duty to foreclose the foregoing lien pursuant to law and/or commence a suit against the appropriate Owner(s) to collect said Assessment.

Section 12. COUNSEL FEES. In the event that the Board of Trustees shall effectuate collection of any Assessments by resort to counsel, the Board of Trustees may add to the amount(s) owed a sum or sums of twenty (20%) percent of the gross amount due as counsel fees, in addition to such costs as are allowable by law.

Section 13. EXPENDITURE OF FUNDS. The amounts of monies for common expenses deemed necessary by the Board of Trustees and the manner of expenditure thereof, including, but not limited to, the allocation thereof, shall be a matter for the sole discretion of the Board of Trustees, except to the extent otherwise specifically provided herein.

Section 14. OWNERS' NEGLIGENCE. Each Owner shall be obligated to reimburse the Association for any expenses incurred by it in repairing or replacing any part or parts of the Common Areas damaged by his act, omission or negligence or by the act, omission or negligence of his tenants, agents, guests or licensees, promptly upon receipt of the Association's statement therefor.

Section 15. SURPLUS FUNDS. Any surplus of the Association remaining from collections of Annual Assessments and after payment of or provision for common expenses and any prepayment of reserves established in any Annual Assessment may be used by the Association as determined by the Board of Trustees and, to the extent not so used, may be credited equally to the Owners to reduce their future Annual Assessments.

ARTICLE V

LIMITED CHARGES

Section 1. CHARGES TO INDIVIDUAL OWNERS. The Board of Trustees shall have the right to assess charges against one or more Owners (but not all Owners) to cover costs associated with services provided exclusively to such Owner or Owners. These charges shall be known as Limited Charges. Nothing herein shall obligate the Association to provide services to a limited range of Owners.

Section 2. TIME OF PAYMENT. Payment of any applicable Limited Charges by the affected Owners shall be made in conjunction with payment of Assessments levied pursuant to Article IV of this Declaration.

Section 3. ENFORCEMENT OF COLLECTION AND OTHER PROVISIONS RELATED TO COLLECTION OF LIMITED CHARGES. The Association and the Board of Trustees shall have all of the rights, remedies and enforcement mechanisms available to it pursuant to Article IV of this Declaration for the collection of any applicable Limited Charges.

ARTICLE VI

ASSOCIATION'S MAINTENANCE AND REPAIRS RESPONSIBILITIES

Section 1. ASSOCIATION RESPONSIBILITY. All maintenance, repairs and replacements necessary to keep the Common Areas in a good and orderly state of repair and cleanliness shall be performed by the Association with the cost thereof assessed against the Owners as herein provided, except that any repairs or replacements required due to the negligence or misuse of an Owner and not covered by the Association's insurance may be billed by the Association to such responsible Owner. Specifically within such Association responsibility for maintenance, repair and replacement, as necessary, of improvements to the Common Areas shall be the obligation of the Association to maintain, repair and replace, as necessary, the Wastewater Collection and Conveyance System including, without limitation, all portions thereof which are in the public right of way. The Association shall be required to operate and manage the Wastewater Collection and Conveyance System in accordance with the laws and regulations of the State of New Jersey and its Department of Environmental Protection, ELSA, Hopewell Township and any other governmental entity or agency having lawful jurisdiction and, if so required by applicable law or regulation, to maintain a contract with a licensed sanitary sewer system operator for such Wastewater Collection and Conveyance System. The Association shall also have the responsibility to maintain the storm water detention basins located in the Common Areas – after their lawful installation in accordance with approved plans – pursuant to the standards for maintenance promulgated by Hopewell Township and attached as Schedule 6 to this Declaration, as same may be amended by Hopewell Township from time to time.

Section 2. ENFORCEMENT BY THE MUNICIPALITY. (a) In the event that the Association shall fail to maintain all or part of the Common Areas, including the storm water detention basins therein, and/or the Wastewater Collection and Conveyance System in reasonable order and condition, the Township of Hopewell may serve written notice upon the Association setting forth the manner in which the Association has failed to maintain the Common Areas and/or the Wastewater Collection and Conveyance System in reasonable condition, and said notice shall include a demand that the deficiencies in maintenance be cured within thirty-five (35) days of the date of the notice, and shall state the date and place of a hearing thereon, which shall be within fifteen (15) days of the date of the notice. Thereafter, Hopewell Township, through its designated municipal body or officer, shall have and be entitled to, all the rights, privileges and powers set forth in Public Law 1975, chapter 291, Section 31 b. (N.J.S.A. 40:55D-43 et seq.) and in Section 17-88 of Hopewell Township's Land Use and Development Ordinance including, specifically, but not limited to, the right to enter upon the Common Areas, maintain the same and assess the cost thereof, as provided herein.

(b) The Declarant, for itself, its successors and assigns, the Association and its Members, does hereby expressly covenant, agree, stipulate and authorize Hopewell Township, its agents and employees in case of emergency or in the event of a matter involving the health and safety of municipal residents, to immediately enter upon the Common Areas and take whatever action is reasonably necessary and the reasonable cost of same shall be borne by the Association or the Owners, as set forth below.

(c) The reasonable cost of the maintenance by Hopewell Township shall be assessed pro rata against the Lots in accordance with their assessed value at the time of the imposition of the lien and the municipal assessment so made shall become a lien and tax on said Lots and be added to and be a part of the taxes to be levied and assessed thereon and enforced and collected with interest by the same officers and in the same manner as other taxes.

(d) The Township shall have no obligation to proceed as set forth herein and the Association and the Owners shall hold Hopewell Township harmless from any liability arising from Hopewell Township's actions or failure to act with respect to maintenance of the Common Areas.

(e) In accordance with Section 17-88(b) of the Township of Hopewell Ordinances in the event that Hopewell Township shall undertake the maintenance of any of the Common Areas, the Association shall continuously indemnify, defend and hold Hopewell Township and its officials, agents and employees harmless from and against any and all liens, claims, causes of action, damages, liabilities, demands, suits, obligations, losses, penalties, costs and expenses of any kind (including, but not limited to, court costs and reasonable counsel fees) arising out of the acts and/or omissions of the Association or Board or their employees, agents, consultants or contractors in performing their duties hereunder; except that such indemnity and hold harmless agreement shall not extend to those acts or actions or omissions to act of Hopewell Township or its officials, employees or agents which are wilful or grossly negligent.

ARTICLE VII

USE RESTRICTIONS AND ARCHITECTURAL REVIEW

Section 1. USE RESTRICTIONS. (a) Units and Lots shall be used for residential purposes only; provided that home occupations may be carried on in the Units if the use (i) is incidental to the Unit's primary residential use, (ii) shall have no employees, customers or clients who visit the Unit and (iii) shall be approved by any Hopewell Township or other authorities having jurisdiction over the use.

(b) Each Unit and Lot shall be maintained by its Owner and its occupant(s) in a safe, clean and sanitary manner and condition, in good order and repair and in accordance with all applicable restrictions, conditions, ordinances, codes and any rules or regulations which may be applicable under this Declaration or under law.

(c) In accordance with the present zoning of the Project, the only permitted use of a Unit or Lot is as a residence. No commercial, industrial, recreational or professional activity not permitted by zoning then applicable to the Lot, other applicable laws and ordinances and any rules or regulations thereunder shall be carried on in any Unit or on any Lot at any time. If, in the future, zoning regulations change so as to expand the scope of activities permitted to be conducted within

the Units or on Lots, in addition to any application to be made to Hopewell Township for its approval to lawfully use the Unit in accordance with then-applicable zoning, application shall also be made by an Owner to the Board of Trustees for approval to commence the newly permitted use of his Unit or Lot. Each application shall be considered by the Board of Trustees on an individual basis. Once the Board of Trustees has given its approval to a particular use of a Unit or Lot, it may not revoke the approval so long as the nature and scope of the approved use remains unchanged. Notwithstanding any Board of Trustees approval, no Owner shall permit his Unit or Lot to be used or occupied for any prohibited purpose or for any purpose not lawfully approved by Hopewell Township. Nothing herein shall be construed to prohibit the reasonable adaptation of any Unit for handicapped use.

(d) No Unit or Lot shall be used so as to create a nuisance or an unreasonable interference with the peaceful possession and occupation or proper use of the Common Areas or any other Unit or Lot. Any violation of this section shall be enforceable by the appropriate authorities of Hopewell Township.

(e) Except for work done by the Declarant in connection with the construction and marketing of Units to original Owners, nothing shall be built, caused to be built or done in or to any Unit or Lot which will alter or cause any alteration to the Common Areas without the prior written approval of the Board of Trustees and, if applicable, the appropriate authorities of Hopewell Township.

(f) No Owner or the occupant of any Unit shall carry on, or permit to be carried on, any practice which unreasonably interferes with the quiet enjoyment and proper use of the Common Areas or any other Unit by any other Owner or Owner(s) or which creates or results in a hazard or nuisance at the Project.

(g) Except for lawful promotional signage of Declarant, no sign, including "For Rent" or "For Sale" signs, may be erected by any Owner or occupant on or in any portion of the Project by any Owner or occupant without the lawful approval of Hopewell Township and the prior written approval of the Board of Trustees.

(h) No Owner or occupant may obstruct the Common Areas in any way. No Owner or occupant may store anything in or on the Common Areas without the prior written approval of the Board of Trustees.

(i) No pets shall be permitted to run loose or uncontrolled in or on the Common Areas or on any Lot not owned or occupied by the owner of such pet. Pet owners shall immediately clean up any waste left by pets anywhere at the Project.

(j) No portion of the Project shall be used or maintained as a dumping ground for rubbish, trash, new or used lumber or wood, metal scrap, garbage or other waste.

(k) No Owner or occupant shall erect or maintain an outside antenna or satellite signal reception device on any Unit or Lot or on any other portion of the Project unless same shall be in conformance with then current FCC regulations except that satellite dishes of no greater than 2 ft. in diameter shall be permitted provided that any such permitted dish must be installed so as to be fully below the height of the peak of the Unit's roof.

(l) No Owner or occupant shall operate or leave any non-operating vehicle or vehicles not currently registered and licensed and having a valid and unexpired state motor vehicle inspection on or about the Project. No maintenance or repairing of permitted vehicles may be done anywhere at the Project except within a garage associated with a Unit on a Lot.

(m) Driveways, and other exterior parking areas at the Project shall be used by Owners and residents for four wheel passenger vehicles only. No recreational vehicles, vans (other than non-commercial passenger vans or SUVs), tractors, mobile homes, trailers, boats, boat trailers, trucks or commercial vehicles (whether or not registered as a commercial vehicle with the State Department of Transportation) shall be permitted to be parked at the Project, except on a temporary basis in connection with repairs, maintenance or construction work. Vans, recreational vehicles, SUVs, trailers, pick-up trucks of 3/4 ton capacity or less or commercial vehicles may be permitted to be parked entirely within garages. None of the foregoing restrictions shall apply to trucks or other equipment of Declarant or its agents, servants, contractors, etc. while in use at the Project for the

construction thereof; provided, however, that Declarant's exemption from such restrictions shall cease and terminate not later than 180 days from Hopewell Township's issuance of the last certificate of occupancy for a Unit in the Project in the ordinary course of business.

(n) Unless permitted by law and under the provisions of Section 2 of this Article VIII, no storage tanks, accessory buildings or structures shall be erected or permitted to remain at the Project.

(o) Owners and the Association shall be prohibited from altering any landscaping originally installed in the Common Areas by Declarant but the Association may add landscaping to the Common Areas provided such additional landscaping has been reviewed and approved by the Board of Trustees and, if applicable, the PB. Any such additional landscaping may not be added to those portions of the Common Areas that have been subjected to recorded conservation easements or restrictions unless such proposed, additional landscaping has been explicitly reviewed and approved by the PB and/or its designated landscape architect and any other approving authority as the circumstance may require.

(p) No Owner or occupant shall alter in any way any of the Common Areas or any portion of said Owner's Unit or Lot or any other portion of the Project or shall erect any fence or other structure, including any patio or deck not initially constructed or installed by Declarant with respect to a Unit, without the prior written approval of the Board of Trustees and compliance with all applicable provisions of this Declaration, the By-Laws, any rules and regulations promulgated by the Board of Trustees and any applicable and controlling governmental laws, regulations or ordinances; provided, however, that the foregoing shall not be construed so as to limit the ability of an Owner to landscape his Lot in such manner as determined by such Owner.

(q) Even though not a part of the Common Areas and thus not owned by the Association, the Lexington Islands are required by the terms of the Approval to be initially improved by Declarant and maintained by the Association. No improvements to the Lexington Islands beyond those originally encompassed in the Approval, including landscaping, sidewalks and benches to the

extent applicable, shall be undertaken in the future without the specific consent and approval of the PB.

(r) No exterior Unit or Lot lighting shall be allowed except in accordance with the applicable provisions and standards of the Hopewell Township Land Use and Development Ordinance with respect to exterior lighting for residential properties.

(s) A more detailed list of additional use restrictions is set forth on Schedule 7 and entitled "WELLINGTON MANOR - RULES AND REGULATIONS". The aforesaid use restrictions include limitations imposed by ELSA on wastewater discharges into the Wastewater Collection and Conveyance System and the penalties imposeable by ELSA for violations of those limitations, as those limitations and penalties are currently provided in ELSA's Rules and Regulations and as same may be from time to time amended.

Section 2. RESTRICTIONS ON AGE OF OCCUPANTS; PERMITTED OCCUPANTS.

(a) Each Unit within the Property is intended to be used for and shall be considered as "housing for older persons" as that term is defined in Section 805(d)(2) of the Fair Housing Amendments Act of 1988, 42 U.S.C. 3607(b)(2), as amended, and the regulations promulgated thereunder. In furtherance of the Property's intended use as housing for older persons, Units shall be constructed with certain features designed to provide an accessible physical environment for older persons, including lever type door handles, single lever sink faucets and reinforced walls around tub and shower to support optional installation of "grab bars".

(b) Each Unit must be occupied as the personal residence of at least one (1) person who as of the date of such person's initial occupancy of the Unit is in his or her 55th year of age or older. No children not in their 19th year of age may occupy a Unit except as may be specifically permitted by sub-Section (iii) hereof. In furtherance of these general restrictions on the age of Unit occupants, occupancy of Units shall be restricted to the following "Permitted Occupants":

(i) Persons in their 55th year of age or older.

(ii) Persons (regardless of age), residing with their spouse, provided the spouse of such person is in their 55th year of age or older; provided further, however, that any such person (regardless of age) may continue to occupy the Unit (and shall continue to be a Permitted Occupant) after the death of his or her spouse.

(iii) Persons who are the child of a Permitted Occupant described in clauses (i) or (ii) of sub-Section 2(b) above residing with such Permitted Occupant, provided the child is in his or her 19th year of age or older.

(iv) Persons in at least their 19th year of age or over, residing with and providing physical or economic support to a Permitted Occupant.

(c) Nothing in this Section 2 shall be construed to prohibit the following:

(i) Entertaining by the Permitted Occupant of any Unit of guests of any age in his or her Unit, including temporary residency by such guests for a period not to exceed thirty (30) consecutive days or an aggregate of ninety (90) days in any calendar year.

(ii) Occupancy of a Unit by persons described in clauses (i), (iii) or (iv) of sub-Section 2 (a) above, all of whom are of the age of at least 19 years, by reason of the voluntary absence of the Permitted Occupant of the Unit who is in his or her 55th year of age or older, for a period not to exceed one hundred eighty (180) consecutive days.

(iii) Occupancy of a Unit by persons described in clauses (ii), (iii) or (iv) of sub-Section 2 (a) above, all of whom are of the age of at least 19 years, by reason of the involuntary absence of the Permitted Occupant in at least his or her 55th year of age who has resided in the Unit, as a result of physical or mental illness or infirmity of such Permitted Occupant who is in at least his or her 55th year of age or older.

(d) In order to permit the Association to monitor compliance with these restrictions, upon any sale or lease of a Unit, the selling or leasing Owner and the purchaser or tenant shall deliver to the Association a certification, on a form prescribed by the Board of Trustees, listing the proposed occupants of the Unit after giving effect to such sale or lease and their ages. The Association shall have the right from time to time to require Owners to provide updated certifications regarding the occupants of their Units and reasonable documentation confirming the ages of such occupants.

Section 3. MODIFICATION, INVALIDATION, ENFORCEMENT.

(a) The restrictions contained in this Article, the sizes of the Lots, the descriptions of the Lots and the courses of the Lots may be changed or amended by Declarant or its successors and assigns, and with the approval of the PB, in order to correct or protect any condition which in its opinion, would be beneficial to the Project.

(b) The invalidation of any one of these restrictions by judgment, court order or otherwise shall in no way affect any of the other restrictions which shall remain in full force and effect.

(c) It is understood and agreed that in the event any of the covenants or restrictions herein set forth are violated, unless the same have been released or changed as herein set forth, Declarant, any Owner(s) of Lots or the Association shall have the lawful right to prosecute an action at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions either to prevent such violation or recover damages for the same.

Section 4. ARCHITECTURAL REVIEW AND APPROVAL. (a) After a Unit on a Lot has been conveyed by Declarant, its successors or assigns to the initial third-party Owner thereof, no building, wall or other structure or improvement (excluding landscaping or plantings) shall be commenced, erected, installed or maintained upon the Owner's Lot or Unit or upon any portion of the Common Areas, nor shall any exterior addition to or change (including change of external color scheme) or alteration or addition be made to any Unit, Lot or the Common Areas (which alters the

external appearance of the Unit, Lot or the Common Areas) until the plans and specifications showing the nature, kind, shape, height, materials, finish, colors and location of the same, as well as proof of compliance with all applicable codes, laws and ordinances, shall have been submitted by certified mail to, and approved, with or without conditions, in writing, as to harmony and compatibility of design, location and appearance in relation to surrounding structures and topography, by the Board of Trustees or Architectural Review Committee (the "Committee") empowered by the By-Laws and the Board of Trustees to so act. The Committee shall be established and members shall be appointed to the Committee as provided in the By-Laws. In making a determination as to the acceptability of any proposed alterations, changes or additions, the Board of Trustees or Committee shall consider the effect these alterations, changes or additions will have on the maintenance, repair and replacement obligations of the Association for the Common Areas, including the costs of fulfilling these obligations. The Board of Trustees or Committee shall have the right to impose conditions on any approval given including, without limitation, providing all maintenance, repair and replacement of any such addition or alteration and paying to the Association any additional cost that may be incurred by the Association in performing its obligations due to such addition or alteration. The Board of Trustees or Committee shall have the right to request additional information, plans and materials concerning any proposed alterations, additions and improvements. In the event the Board of Trustees or Committee fails to approve, with or without condition(s), or deny the application within forty-five (45) days after all the plans and specifications, including all additional information, plans and materials which may have been reasonably requested by the Board of Trustees or Committee pursuant to the preceding sentence have been submitted to it, approval will be deemed to have been denied. The Board of Trustees or the Committee, with the approval of the Board of Trustees, shall have the right to establish design criteria and standards for exterior alterations, additions and improvements within the Project. Notwithstanding the above, the Board of Trustees or Committee, when controlled by Owners other than Declarant, shall have the power to grant waivers from architectural design criteria and standards according to procedures and subject to the conditions established by the Board of Trustees. The provisions of this sub-Section (a) shall not apply to the Declarant or a transferee of the Declarant other than a third party Unit purchaser with respect to Lots or Units or any portion of the Project owned by the Declarant or a transferee of the Declarant other than a third party Unit purchaser.

(b) The provisions of this Article are independent of any Hopewell Township zoning or land use regulations or procedures. All Hopewell Township zoning or land use regulations as may apply to any activity or procedure described in this Article VII shall be complied with by the Owner to whom applicable. Nothing in this Article VII shall be construed to prohibit the reasonable adaptation of a Unit or Lot for handicap use.

ARTICLE VIII

MEMBERSHIP AND VOTING RIGHTS

Section 1. MEMBERSHIP. Every Owner of a Lot (including the Declarant, its successors and assigns) shall be a Member of the Association and such membership shall be appurtenant to and shall not be separated from ownership of any Lot. The Owner of a Lot shall become subject to this Declaration immediately upon such Owner's acquisition of fee title to his Lot.

Section 2. VOTING RIGHTS. Each Lot shall be entitled to one (1) vote. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised by the persons holding such interest as they among themselves shall determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

ARTICLE IX

MISCELLANEOUS

Section 1. SEVERABILITY. Invalidation of any one of these covenants and restrictions by judgment or Court order shall in no manner affect any other provisions which shall remain in full force and effect.

Section 2. DURATION AND AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. The Declaration may be amended by vote of not less than two-thirds (2/3) percent of the Lot Owners. Any amendment by the Owners to change permitted uses of Lots or reduce the

size of the Common Areas shall require the prior approval of the PB. Declarant shall not be permitted to cast any votes held by it for unsold Lots or Units for the purpose of amending this Declaration, the By-Laws or any other Association Documents for the purpose of changing the permitted use of a Lot or Unit or for the purpose of reducing the Common Areas or facilities therein. No amendment shall be effective unless and until recorded in the Office of the Clerk of Mercer County. No such amendment may alter or diminish any of the obligations assumed by the Declarant in conjunction with the Approval or any other obligations which may now or later exist by law, without the approval of the PB or other appropriate municipal entity of Hopewell Township. No amendment, in the sole judgment of Declarant, shall impair or adversely affect the rights of Declarant as set forth in this Declaration on its date of execution by Declarant or cause Declarant to suffer any financial, legal or other detriment, including, but not limited to any direct or indirect interference with the sale of Lots by Declarant. This Declaration may be amended in whole or in part, without the approval of other Members, by the Declarant at any time prior to the first conveyance of the title to any Lot to a non-Declarant purchaser, provided, however, that no such amendment which effects a reduction in the size of or improvements to the Common Areas shall be made without the approval of the PB. Such amendment shall not be effective unless and until recorded in the Office of the Clerk of Mercer County. For a period of two (2) years following the sale of the last Lot by the Declarant to a bona fide, third party purchaser, the Declarant may make any amendment to this Declaration, by its own action, without the approval of other Members, for the purpose of complying with the rules or requirements of any governmental or quasi-governmental body having jurisdiction or any institution purchasing, holding or insuring a security interest in any portion of the Properties.

Section 3. CONVEYANCE. Declarant reserves the right, prior to the conveyance to the Association of title to the Common Areas herein described, to determine, in Declarant's sole discretion, but subject to approval of the PB, the type of improvement(s) to be constructed in or upon such Common Areas, provided, however, that any such improvement(s) shall comply with the requirements of the Approval and/or of governmental authorities having jurisdiction over such Common Areas and Declarant further reserves the right, prior to the conveyance of the Common Areas, to apply for and obtain additional governmental approvals affecting such Common Areas including, but not limited to, modifications of, supplements to and amendments of the Approval.

Section 4. DISSOLUTION. The Association cannot be dissolved unless the interests, rights and obligations of the Association in and to the Common Areas shall be dedicated or assigned to the Township or any entity or agency, public or private, approved by Hopewell Township. If Hopewell Township shall not accept said dedication or assignment, then such interests, rights and obligations of the Association shall be transferred to such other public or private agency or instrumentality as will most nearly carry out the original intention of this Declaration. The provisions herein shall apply also if the Association ceases to operate and, in such case, it shall be the duty of the Owners herein to cause said interest, rights and obligations to be dedicated, assigned or transferred as provided herein.

Section 5. INSURANCE. (a) The Association, through its Board of Trustees, shall, in addition to liability and any other types and kinds of insurance as are provided herein and in the Association's By-Laws, be required to obtain and maintain, if applicable, liability insurance insuring the Common Areas and covering the interests of the Association and the Board of Trustees as their interests may appear, in the amount determined by the Board of Trustees. If possible without payment of separate premium, the Association shall have Hopewell Township named as an added insured on such policy as its interest shall appear.

(b) Premiums for any such insurance coverage shall be included in the Annual Assessments for common expenses and such premium charges may be held in a separate escrow account of the Association to be used solely for the payment of said premiums, as same became due.

(c) All policies of physical damage insurance, if possible, shall contain waivers of subrogation and waivers of any reduction of pro-rata liability of the insurer as a result of any insurance carried by any Lot Owner or of invalidity arising from any acts of the insured or any Lot Owner, and shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days' prior written notice to all of the insured, including all mortgagees of Lots.

Section 6. WORKING CAPITAL ACCOUNT CONTRIBUTION. At the time of acquiring title to any Unit from Declarant, its successors or assigns, or any subsequent Owner of the Unit, each successive Owner shall pay to the Association the sum of Three Hundred and 00/100 (\$300.00) Dollars (or such other sum as the Board of Trustees shall from time to time determine), said sum to

provide working capital for the Association. The payment required by this Section 6 shall not be refundable and shall be paid in addition to any Assessments authorized by this Declaration.

IN WITNESS WHEREOF, the undersigned Declarant has caused this instrument to be appropriately executed this 28th day of February, 2003.

ATTEST:

Robert Szedula
Robert Szedula, Div. Asst. Sec.

BEAZER HOMES CORP.

BY: Stephen P. Mutascio
Stephen P. Mutascio, Div. Vice- Pres.

STATE OF NEW JERSEY :
: :S.S.
COUNTY OF MERCER :

BE IT REMEMBERED, that on this 28th day of February, 2003, before me, the subscriber, an Attorney at Law of the State of New Jersey, personally appeared Stephen P. Mutascio, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is the Division Vice-President of Beazer Homes Corp., the Declarant in the foregoing Declaration named, and that the said Declaration was signed and delivered by him as such Division Vice-President of Declarant and I heard him declare that he signed and delivered the same as the voluntary act and deed of said Declarant pursuant to authority from Declarant's Board of Directors, for the uses and purposes therein expressed.

Alan G. Frank, Jr.
Alan G. Frank, Jr.
Attorney at Law of New Jersey

Schedules to Declaration

- Schedule 1 - Legal Description of Property
- Schedule 2 - Site Plan/Survey
- Schedule 3 - Articles of Incorporation (Association)
- Schedule 4 - By-Laws (Association)
- Schedule 5 - Lien Claim (Form)
- Schedule 6 - Detention Basin Maintenance Standards (Hopewell Twp.)
- Schedule 7 - Rules & Regulations (Association)

SCHEDULE 1

DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Township of Hopewell, County of Mercer, State of New Jersey:

BEGINNING at a point, marked by a concrete monument, in the southerly line of Blackwell Road (40 feet from centerline measured at right angles), said point being the westerly terminus of a transitional line joining the southwesterly line of Lawrenceville-Pennington Road (40 feet from centerline measured at right angles) with said southerly line of Blackwell Road and running; thence

1. Along the transitional line joining the southwesterly line of Lawrenceville-Pennington Road and the southerly line of Blackwell Road North $85^{\circ}00'50''$ East 186.82 feet to a concrete monument; thence

Along said southwesterly line of Lawrenceville-Pennington Road the following three (3) courses:

2. Along a curve bearing to the right, having a radius of 2252.00 feet and a length of 260.33 feet, the chord of said curve bearing South $58^{\circ}04'52''$ East, 260.19 feet to a concrete monument; thence

3. South $54^{\circ}46'10''$ East, 88.81 feet to a concrete monument; thence

4. Along a curve bearing to the left, having a radius of 1677.30 feet and a length of 939.07 feet, the chord of said curve bearing South $70^{\circ}48'31''$ East, 926.86 feet to a concrete monument at the northwesterly terminus of a 25 foot radius transitional curve joining the northwesterly line of Wellington Drive (variable R.O.W.) with said southwesterly line of Lawrenceville-Pennington Road; thence

5. Along said transitional curve to the right, having a radius of 25.00 feet and a length of 37.31 feet, the chord of said curve bearing South $44^{\circ}10'10''$ East, 33.94 feet to a concrete monument; thence

Along said northwesterly line of Wellington Drive the following five (5) courses:

6. South $01^{\circ}25'03''$ East, 71.09 feet to concrete monument; thence

7. Along a curve bearing to the right, having a radius of 217.00 feet and a length of 144.67 feet, the chord of said curve bearing South $17^{\circ}40'52''$ West, 142.00 feet to a concrete monument; thence

8. South $36^{\circ}46'47''$ West, 89.62 feet to a concrete monument; thence

9. Along a non-tangent curve to the left, having a radius of 24.00 feet and a length of 3.94 feet, the chord of said curve bearing North $86^{\circ}23'14''$ East, 3.94 feet to a point; thence
10. South $36^{\circ}46'47''$ West, 83.33 feet to a point; thence
11. Along a northwesterly line of the Lands of Hopewell Grant South $36^{\circ}46'47''$ West, 178.78 feet to a concrete monument; thence
12. Along a northerly line of said Lands of Hopewell Grant South $83^{\circ}13'45''$ West, 196.12 feet to an iron pin; thence
13. Still along said northerly line of Lands of Hopewell Grant South $82^{\circ}52'29''$ West, 700.09 feet to concrete monument; thence
14. Along a westerly line of said Lands of Hopewell Grant South $06^{\circ}51'59''$ West, 628.98 feet to an iron pin; thence
15. Along a northerly line of said Lands of Hopewell Grant and Lot 15.02, Block 78, South $83^{\circ}53'29''$ West, 1354.04 feet to an iron pin; thence
16. Along an easterly line of Lot 17, Block 78, North $12^{\circ}44'01''$ West, 589.11 feet to a concrete monument; thence
17. Along a northerly line of said Lot 17 & of Lot 6, Block 78, South $82^{\circ}54'13''$ West, 361.87 feet to an iron pin; thence
18. Along the northeasterly line of Lots 3, 4 & 2, Block 78, North $25^{\circ}39'56''$ West, 689.49 feet to a concrete monument; thence
19. Along the southeasterly line of Lot 68, Block 78, North $17^{\circ}31'15''$ East, 400.13 feet to a concrete monument in said southerly line of Blackwell Road; thence
20. Along said southerly line of Blackwell Road North $82^{\circ}06'20''$ East, 1236.68 feet to a concrete monument; thence
21. Along the southwesterly line of Lot 36, Block 78, South $46^{\circ}08'40''$ East, 302.20 feet to an iron pin; thence
22. Along the southerly line of Lots 45, 56 & 8, Block 78, North $68^{\circ}02'20''$ East, 352.71 feet to a concrete monument; thence
23. Along the easterly line of said Lot 8, Block 78, North $21^{\circ}11'10''$ West, 188.44 feet to a concrete monument in said southerly line of Blackwell Road; thence

24. Along said southerly line of Blackwell Road, along a non-tangent curve to the left, having a radius of 1186.30 feet and a length of 158.58 feet, the chord of said curve bearing North 64°58'51" East, 158.46 feet to the point and place of BEGINNING.

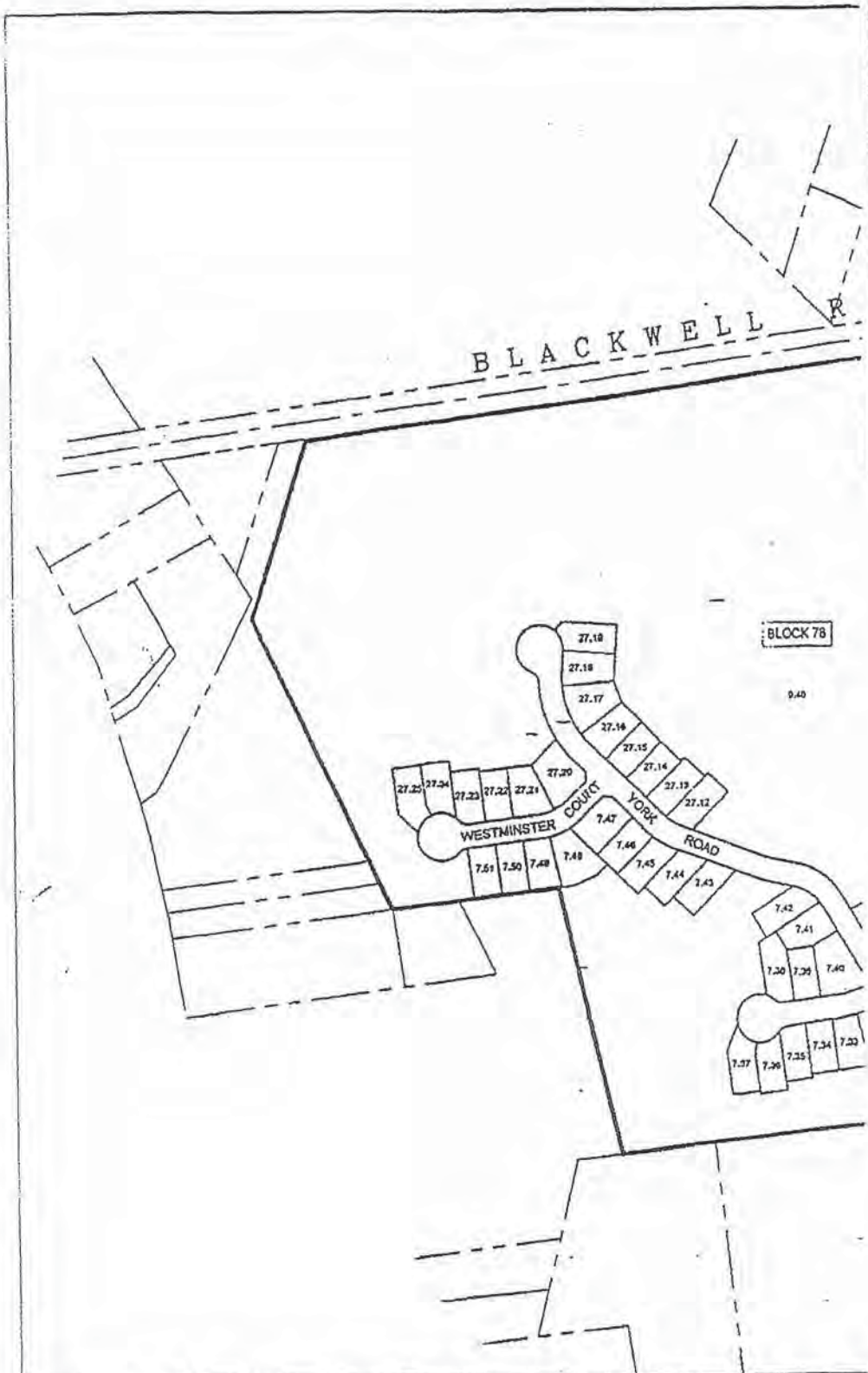
Containing 86.30 acres of land.

As shown on a plan entitled "Final Plat - Section 1 of Lots 7, 9 & 27, Block 78 for Wellington Manor at Hopewell, Hopewell Township, Mercer County, New Jersey" Dated 07/26/01, Last Revised 11/07/01, Scale 1"=100' and prepared by Princeton Junction Engineering, PC.

Description prepared by Martin D. Katz, Professional Land Surveyor License No. 36249, Princeton Junction, New Jersey.

Schedule 2

Composite Subdivision Plan of the Project

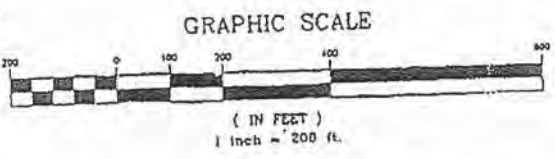


Draft: 4/17/40
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 Check: [Signature]
 Job: 438023
 Date: 1/15/40
 Vol. 400 PG 53

Composite Subdivision Plan
 for
Wellington Manor at Hopewell
 Hopewell Township * Mercer County * New Jersey

Martin D. Katz
 N.J. Professional Land Surveyor License No. 36249

D. Geoffrey Brown
 N.J. Professional Engineer and Land Surveyor License No. 1-15



Bryce M. Rittenhouse* PE&PLS No.13453
 D. Geoffrey Brown PE&PLS No.24327
 Wisley J. Lane* PLS No.30747
 Frank J. Falcone PLS No.32112
 Te J. W. Pivovarnick PLS No.35868
 Martin D. Katz PLS No.36249
 * NJ and PA Licensed.

Princeton Junction Engineering, P.C.
 Professional Engineers, Land Surveyors and Planners
 P.O. Box 610 - 53 North Post Road
 Princeton Junction, New Jersey 08550



Telephone: 609.799.1906 Facsimile: 609.799.1524 Email: PJEPC@pjepe.com

VAL4500 PG054

Schedule 3

ARTICLES OF INCORPORATION
OF
WELLINGTON MANOR AT HOPEWELL HOMEOWNERS' ASSOCIATION, INC.

In compliance with the requirements of Title 15A, Chapter 1 et seq. of the Revised Statutes of New Jersey, the undersigned, all of whom are of full age, have this day voluntarily associated themselves together for the purposes of forming a corporation not for profit and do hereby certify:

ARTICLE I

NAME

The name of the Association is WELLINGTON MANOR AT HOPEWELL HOMEOWNERS' ASSOCIATION, INC.

ARTICLE II

PRINCIPAL OFFICE

The initial principal office of the Association is located c/o Beazer Homes Corp., 250 Phillips Boulevard, Suite 290, Trenton, New Jersey 08618.

ARTICLE III

REGISTERED AGENT

Stephen P. Mutascio, with an address c/o Beazer Homes Corp., 250 Phillips Boulevard, Suite 290, Trenton, New Jersey 08618 is hereby appointed the initial registered agent of this Association.

ARTICLE IV

PURPOSE AND POWERS OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit to the Members thereof, and the specific purpose for which it is formed is to provide for the administration, management, preservation, utilization and control of the Common Areas of and/or to be maintained by the Association as described in that certain Declaration of Covenants, Conditions, Easements and Restrictions for "Wellington Manor" (hereinafter "Declaration") establishing various rights and obligations for the Owners of Lots who are Members of the Association, which Declaration is intended to be recorded simultaneously herewith in the Office of the Clerk of Mercer County, New Jersey. In connection with the use of the Common Areas, the Association shall promote the health, safety and welfare of the Members and shall have the following powers;

(a) To exercise all the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration and the By-Laws of the Association, as the same may be amended from time to time as therein provided, said Declaration and By-Laws being incorporated herein as if set forth at length;

(b) To fix, levy, collect and enforce payment by any lawful means, of all charges or Assessments pursuant to the terms of said By-Laws of the Association, to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, mortgage, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) To borrow money, to mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(e) To have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of New Jersey by law may now or hereafter have or exercise.

ARTICLE V

MEMBERS

Every person or entity who is a record owner of a fee simple interest in a Lot described in the Declaration shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Ownership of any Lot shall be the sole qualification for membership.

ARTICLE VI

BOARD OF TRUSTEES

The affairs of the Association shall be managed by a Board of Trustees consisting of three (3) persons who need not be members of the Association. Pursuant to the By-Laws, the Board of Trustees shall be expanded to five (5) persons. The number of Trustees may be changed pursuant to the By-Laws of the Association. Each of the Trustees shall meet the qualifications established by the By-Laws or the Declaration. The names and addresses of the three (3) persons who are to initially act in the capacity of Trustees until the selection of their successors are:

Stephen P. Mutascio
Beazer Homes Corp.
250 Phillips Boulevard
Suite 290
Trenton, NJ 08618

Anthony M. Rostock
Beazer Homes Corp.
250 Phillips Boulevard
Suite 290
Trenton, NJ 08618

Richard P. Gitter
Beazer Homes Corp.
250 Phillips Boulevard
Suite 290
Trenton, NJ 08618

ARTICLE VII

TERM

The Association shall exist perpetually, but may be dissolved at any time pursuant to appropriate law and the provisions of the Declaration.

ARTICLE VIII

MERGERS AND CONSOLIDATIONS

To the extent permitted by law, the Association may participate in mergers and consolidations with other non-profit associations organized for the same general purposes, provided that any such merger or consolidation shall have the assent of seventy-five (75%) percent of the votes present and entitled to be cast at any meeting of the Association, duly constituted for such purpose, a quorum being present.

ARTICLE IX

MEMBERSHIP

The qualifications for Members shall be set forth in detail in the By-Laws of the corporation or in the Declaration.

ARTICLE X

DISSOLUTION

The method of distribution of assets of the corporation upon dissolution shall be set forth in the By-Laws of the corporation or the Declaration.

ARTICLE XI

AMENDMENTS

These Articles may be amended at any meeting of the Association duly constituted for such purpose, a quorum being present, by an affirmative vote of seventy-five (75%) percent of the vote present and entitled to be cast.

IN WITNESS WHEREOF, for the purposes of forming this non-profit corporation under the laws of the State of New Jersey, we, the undersigned, constituting the incorporators of this Association, have executed these Articles of Incorporation this _____ day of _____, 200__.

Kathryn M. Zingaro
3131 Princeton Pike
Building 6-A
Lawrenceville, NJ 08648

Kathleen Kelly Tarity
3131 Princeton Pike
Building 6-A
Lawrenceville, NJ 08648

Patricia Kaese
3131 Princeton Pike
Building 6-A
Lawrenceville, NJ 08648

Joan Winn
3131 Princeton Pike
Building 6-A
Lawrenceville, NJ 08648

Barbara Jo Tempesta
3131 Princeton Pike
Building 6-A
Lawrenceville, NJ 08648

STATE OF NEW JERSEY)
) :S.S.
COUNTY OF MERCER)

BE IT REMEMBERED, that on this ____ day of _____, 200__, before me, the subscriber, an Attorney at Law of the State of New Jersey personally appeared Kathryn M. Zingaro, Kathleen Kelly Tarity, Patricia Kaese, Joan Winn and Barbara Jo Tempesta, who, I am satisfied are the persons named in and who executed the within Instrument, and thereupon they acknowledged that they signed, sealed and delivered the same as their act and deed, for the uses and purposes therein expressed.

Alan G. Frank, Jr.
Attorney at Law of New Jersey

SCHEDULE 4

BY-LAWS

OF

WELLINGTON MANOR AT HOPEWELL HOMEOWNERS' ASSOCIATION, INC.

TABLE OF CONTENTS

ARTICLE I DEFINITIONS..... 1

 Section 1. EXISTING DEFINITIONS..... 1

 Section 2. NEW DEFINITIONS 1

ARTICLE II VOTING..... 1

 Section 1. VOTING RIGHTS 1

 Section 2. EXERCISE OF VOTES 2

ARTICLE III MEETINGS OF MEMBERS 2

 Section 1. ANNUAL MEETINGS 2

 Section 2. SPECIAL MEETINGS..... 2

 Section 3. NOTICE OF MEETINGS 2

 Section 4. QUORUM..... 3

 Section 5. VOTING 3

ARTICLE IV BOARD OF TRUSTEES: SELECTION: TERM OF OFFICE:..... 3

 Section 1. CONTROL..... 3

 Section 2. NUMBER 4

 Section 3. ELECTION AND TERM OF OFFICE 4

 Section 4. REMOVAL..... 5

 Section 5. COMPENSATION..... 5

Section 6. ACTION TAKEN WITHOUT A MEETING	5
Section 7. DECLARANT'S PROTECTIVE PROVISIONS.....	5
Section 8. NO EXCULPATION	6
Section 9. DECLARANT'S FIDELITY OBLIGATION	6
ARTICLE V NOMINATION AND ELECTION OF TRUSTEES	7
Section 1. NOMINATION.....	7
Section 2. ELECTION.....	7
ARTICLE VI MEETINGS OF TRUSTEES	7
Section 1. REGULAR MEETINGS	7
Section 2. SPECIAL MEETINGS.....	7
Section 3. QUORUM.....	7
ARTICLE VII POWERS AND DUTIES OF THE BOARD OF TRUSTEES	8
Section 1. POWERS	8
Section 2. DUTIES	9
Section 3. ABATING AND ENJOINING VIOLATIONS.....	11
ARTICLE VIII OFFICERS AND THEIR DUTIES	11
Section 1. ENUMERATION OF OFFICERS.....	11
Section 2. ELECTION OF OFFICERS	11
Section 3. TERM.....	12

Section 4. SPECIAL APPOINTMENTS	12
Section 5. RESIGNATION AND REMOVAL	12
Section 6. VACANCIES	12
Section 7. MULTIPLE OFFICES	12
Section 8. DUTIES	12
ARTICLE IX COMMITTEES	13
ARTICLE X BOOKS AND RECORDS	14
ARTICLE XI ASSESSMENTS	14
Section 1. LIEN	14
Section 2. RIGHTS OF HOPEWELL TOWNSHIP	14
ARTICLE XII CORPORATE SEAL	15
ARTICLE XIII AMENDMENTS	15
Section 1. METHOD	15
Section 2. CONFLICT	15
Section 3. PROHIBITION	15
ARTICLE XIV DISSOLUTION	15
ARTICLE XV DISPUTE RESOLUTIONS	16
ARTICLE XVI DISCHARGE OF POWERS	19
ARTICLE XVII BOARD MEETINGS	19

Section 1. OPEN MEETINGS	19
Section 2. RESTRICTIONS TO OPEN MEETINGS.....	20
Section 3. MINUTES AT OPEN MEETINGS	20
Section 4. NOTICE REQUIREMENTS FOR OPEN MEETINGS.....	20
Section 5. ADEQUATE NOTICE	20
Section 6. EMERGENCY MEETINGS	21
ARTICLE XVIII TRANSITION COMMITTEE AND PROCEDURES	21
Section 1. PURPOSE	21
Section 2. AUTHORITY	22
Section 3. PROCEDURES	22
Section 4. BINDING RELEASE	24
Section 5. TRANSITION EXPENSE FUND	24
Section 6. LEGAL EFFECT	24
ARTICLE XIX MISCELLANEOUS	24

BY-LAWS
OF
WELLINGTON MANOR AT HOPEWELL HOMEOWNERS' ASSOCIATION, INC.

The name of the association is WELLINGTON MANOR HOMEOWNERS' ASSOCIATION, INC., (hereinafter referred to as the "Association"). The initial principal office of the Association shall be c/o Beazer Homes Corp., 250 Phillips Boulevard, Suite 290, Trenton, NJ 08618, and thereafter as determined from time to time by the Board of Trustees of the Association, but meetings of the Members and the Board of Trustees may be held at the principal office or such other places as may be designated by the Board of Trustees.

ARTICLE I
DEFINITIONS

Section 1. EXISTING DEFINITIONS. All defined terms herein shall have the same meanings as are set forth in that certain Declaration of Covenants, Conditions, Restrictions and Easements for Wellington Manor filed or intended to be filed in the Mercer County Clerk's Office (the "Declaration").

Section 2. NEW DEFINITIONS. Any defined terms used herein which are not already provided in the Declaration shall have the meanings provided herein.

ARTICLE II
VOTING

Section 1. VOTING RIGHTS. Each Member of the Association shall be entitled to one vote for all purposes under the Declaration equal to the number of Lots owned by such Member. For the purposes hereof, Declarant will be entitled to one vote for each Lot owned by it which appears on the Final Map relating to the premises described in Schedule "A" attached to the Declaration.

Section 2. EXERCISE OF VOTES. The vote of any Member which is held by more than one person may be exercised by any one of them, unless any objection or protest by any holder of such membership is made prior to the completion of a vote, in which case the vote for such Member shall not be counted. Anything in this Declaration to the contrary notwithstanding, nothing herein shall be construed so as to permit more than one (1) vote per Unit in any circumstance hereunder where voting is required.

ARTICLE III
MEETINGS OF MEMBERS

Section 1. ANNUAL MEETINGS. (a) The first Annual Meeting of the Members shall be held during the month of February within three (3) years from the date of incorporation of the Association or within sixty (60) days of the date when all Trustees of the Association shall have become Trustees not controlled by Declarant, whichever shall first occur.

(b) Subsequent regular Annual Meetings of the Members shall be held during the month of February of each year thereafter.

Section 2. SPECIAL MEETINGS. (a) Special Meetings of the Members may be called at any time by the President of the Association or by the Board of Trustees, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes incident to membership.

(b) Upon the occasion when any election of Trustees not controlled by Declarant shall become applicable, a Special Meeting shall be called for the purpose of electing such Trustees as may be necessary.

Section 3. NOTICE OF MEETINGS. Written notice of each Annual Meeting or Special Meeting (collectively a "Meeting") of the Members shall be given by, or at the discretion of, the Secretary of the Association or other person authorized to call the Meeting, by mailing or causing to be personally delivered a copy of such notice at least ten (10) days before such

Meeting to each Member entitled to vote thereat addressed to (or hand-delivered to a responsible person) at the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the Meeting, and, in the case of a Special Meeting, the purpose of the Special Meeting.

Section 4. QUORUM. The presence at the Meeting of Members entitled to cast, or of Members' proxies entitled to cast, at least twenty-five (25%) percent for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws shall constitute a quorum. If, however, such quorum shall not be present or represented at any Meeting, the Members entitled to vote thereat shall have power to adjourn the Meeting from time to time, without notice other than announcement at the Meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. VOTING. At all Meetings of Members, each Member may vote either in person, by proxy or absentee or mailed ballot. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

ARTICLE IV

BOARD OF TRUSTEES: CONTROL: SELECTION: TERM OF OFFICE:

Section 1. CONTROL. The Board of Trustees (or "Board") shall initially be designated and controlled by the Declarant who shall surrender control thereof to the Members as follows:

(a) sixty (60) days after conveyance of twenty-five (25%) percent (i.e. 29) of the Lots, not less than two (2) Member of the Board of Trustees shall be elected by the Members other than Declarant at a Special Meeting called for such purpose.

(b) sixty (60) days after conveyance of seventy-five (75%) percent (i.e. 87) of the Lots, the Declarant's control of the Board of Trustees shall terminate, at which time the Members shall elect the entire Board of Trustees at a Special Meeting called for such purpose; provided, however, that Declarant shall have the right to retain and/or appoint one (1) Member of the Board of Trustees for so long as any Lot shall remain unsold to a third party by Declarant in the normal course of Declarant's business.

Section 2. NUMBER. Until the first Special Meeting of the Association's membership pursuant to Section 1(a) above, the affairs of the Association shall be managed by a Board of Trustees consisting of three (3) persons who shall be Members of the Association except that if Declarant shall control any trusteeships, it shall have the power to appoint any non-Member(s) as its representative(s) to the Board of Trustees. At the time of the Special Meeting to be held pursuant to Section 1(a) above, the Board's membership shall expand from three (3) Trustees to five (5) Trustees (hereinafter Trustees A, B, C, D and E). At the Special Meeting to be held pursuant to Section 1(a) above, Members other than Declarant shall be entitled to vote for and elect Trustees A and B and Declarant shall have the right to appoint Trustees C, D and E. At the Special Meeting to be held pursuant to Section 1(b) above, Members other than Declarant shall be entitled to vote for all of the Trustees of the Board not theretofore elected by them, except that Declarant shall be entitled to appoint Trustee E so long as Declarant owns one (1) or more Lots and holds same for sale in the ordinary course of business.

Section 3. ELECTION AND TERM OF OFFICE. At the Special Meeting of the membership that is called pursuant to Section 1(a) above. Trustees A and B shall be elected for two (2) year terms and Trustees C, D and E shall be appointed to serve until their successors are elected at the Special Meeting called pursuant to Section 1(b) above. At the Special Meeting called pursuant to Section 1(b) above, Trustees C, D and E shall be elected by Members other than Declarant (subject, however, to Declarant's right to appoint Trustee E as provided for in Section 1 above), to serve for an initial term which expires at the Annual Meeting of the Members at which Trustees A and B are not scheduled for re-election, but in no event shall such initial term be less than two (2) years nor more than three (3) years. Thereafter, the term for Trustees C, D

and E shall be for two (2) years; it being the purpose and intent hereof that Trustees A and B shall be elected in alternate years to Trustees C, D and E.

Section 4. REMOVAL. Any Trustee may be removed from the Board of Trustees, with or without cause by a majority of the Members of the Association voting for such removal. In the event of death, resignation or removal of a Trustee who has been elected by Unit owners other than Declarant, his successor shall be selected by the remaining members of the Board of Trustees at a Special Meeting of the Board to be held within thirty (30) days of the vacancy having occurred, and such successor Trustee, who shall be a Unit owner other than Declarant, shall serve for the unexpired term of his predecessor.

Section 5. COMPENSATION. No Trustee shall receive compensation for any service he may render to the Association. However, any Trustee may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 6. ACTION TAKEN WITHOUT A MEETING. The Trustees shall have the right to take any action in the absence of a Board of Trustees meeting which they could take at a Board of Trustees meeting by obtaining the written approval of all the Trustees. Any action so approved shall have the same effect as though taken at a Board of Trustees meeting.

Section 7. DECLARANT'S PROTECTIVE PROVISIONS. After control of the Board of Trustees has become vested in Trustees elected by Members other than Declarant, and for so long as Declarant owns at least one (1) Lot and holds same for sale in the ordinary course of business, the following shall apply:

(a) Neither the Association nor its Board of Trustees shall take any action that will impair or adversely affect the rights of Declarant or cause Declarant to suffer any financial, legal or other detriment, including, but not limited to, any direct or indirect interference with the sale of Lots or Units, or the assessment of Declarant for capital improvements.

(b) The Association and its Board of Trustees shall continue at least the same level of maintenance, operation and services as provided immediately prior to the assumption of control of the Association and the Board of Trustees by Members other than Declarant.

(c) In the furtherance of the foregoing provisions, Declarant shall have the right to veto any and all actions of the Association or its Board of Trustees which violate sub-Sections (a) and (b) above. Declarant shall exercise its veto right, in its sole and absolute discretion, within ten (10) days after its receipt of written notice that a resolution or other action is proposed or has been taken by the Association or its Board of Trustees. In such event, Declarant shall notify the Secretary of the Association of its exercise of its veto right and any such proposal or action shall be null and void and have no further force and effect.

The aforementioned protective provisions shall be construed in accordance with and not in derogation of N.J.A.C. 5:26-8.4 of the regulations promulgated pursuant to the New Jersey Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-21 et seq.

Section 8. NO EXCULPATION. During the time that any of the Declarant's representatives shall serve as a member of the Board of Trustees, such representative(s) shall not be excused from the proper performance of their fiduciary responsibilities.

Section 9. DECLARANT'S FIDELITY OBLIGATION. While the Declarant maintains a majority of representation on the Association's Board of Trustees, Declarant shall post a fidelity bond or other guarantee acceptable to the New Jersey Department of Community Affairs, in an amount equal to the Association's annual maintenance budget. For the second and any succeeding years during which the Declarant shall applicably maintain control of the Association's Board of Trustees, the bond or other guarantee shall also include accumulated reserves.

ARTICLE V
NOMINATION AND ELECTION OF TRUSTEES

Section 1. NOMINATION. Nomination for election to the Board of Trustees of Trustees shall be made from the floor at the Annual Meeting or Special Meeting at which the election of any Trustee(s) shall be a proper purpose of such meeting or by written presentment by any Member of the Association.

Section 2. ELECTION. Election to the Board of Trustees shall be by written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected.

ARTICLE VI
MEETINGS OF TRUSTEES

Section 1. REGULAR MEETINGS. Regular meetings of the Board of Trustees may be held at the discretion of the Board with notice (including telephonic notice) at least three (3) days in advance of such meeting, at such place and hour as may be fixed from time to time by resolution of the Board, but in no event shall meetings be less than annually.

Section 2. SPECIAL MEETINGS. Special meetings of the Board of Trustees shall be held when called by the President of the Association, or by any three (3) Trustees, after not less than three (3) days' notice to each Trustee.

Section 3. QUORUM. A majority of the Trustees shall constitute a quorum for the transaction of business. Every act or decision done or made by majority of the Trustees present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF TRUSTEES

Section 1. POWERS. In addition to powers created by law or in the Declaration or Articles of Incorporation, the Board of Trustees shall have the power to:

(a) adopt and publish rules and regulations governing the use and maintenance of the Lots, the Common Areas and its facilities, and the personal conduct of the Members and their guests on the Common Areas, and to establish penalties for the infraction thereof; and

(b) suspend the voting rights and right to use the Common Areas of a Member during any period in which such Member shall be in default in payment of any Assessment levied by the Association. Such rights may also be suspended after notice and hearing for infraction of published rules and regulations. No such suspension however shall deprive the Member of the right to gain access to and egress from his Lot or Unit over and through the Common Areas to the public right of way abutting the Common Areas; and

(c) exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration; and

(d) declare the office of a member of the Board of Trustees to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Trustees; and

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties and further to contract with any person, or firm or corporation upon such terms as it deems proper for the maintenance, operation, preservation, improvement and management of the Common Areas; and

(f) to take all reasonable action necessary to maintain, preserve, and replace (as necessary) the Common Areas and to take all reasonable action necessary to promote the health, safety and welfare of the Members, the Association and the Properties; and

(g) borrow, mortgage, lease, improve, preserve, maintain, manage and replace improvements of the Common Areas.

Section 2. DUTIES. It shall be the duty of the Board of Trustees of Trustees to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the Annual Meeting of the Members, or at any Special Meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote:

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(i) fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each annual Assessment period;

(ii) send written notice of each Assessment to every Owner subject thereto at least thirty (30) days in advance of each Assessment period;

(iii) establish or file the Lien against any Lot for which Assessments are not paid within thirty (30) days after due date (and thereafter foreclose same in the discretion of the Board of Trustees) or to bring an action at law against the Owner personally obligated to pay the same.

(d) issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid. A reasonable charge may be made by the Board of Trustees of Trustees for the issuance of these certificates. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on Common Areas owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Areas to be maintained in accordance with these By-Laws, the requirements of the ordinances of Hopewell Township, and the provisions of the Declaration;

(h) upon the assumption by the Members of control of the Board of Trustees of the Association, the Declarant shall forthwith have delivered to the Association all items and documents pertinent to the Association such as, but not limited to, a copy of the Declaration, other documents of creation of the Association, By-Laws, minute book, including all minutes, any rules and regulations, an accounting of Association funds, Association funds, all personal property, insurance policies, government permits, if applicable, a membership roster and all contracts and agreements relative to the Association;

(i) the Association, when controlled by the Members, shall not take any action that would be detrimental to the sales of Units on Lots by the Declarant, its successors or assigns, to bona fide third party purchasers in the ordinary course of business and shall continue the same level of maintenance, operation and services as immediately prior to their assumption of control, until the last Unit on a Lot is sold by Declarant, its successors or assigns, in the ordinary course of business;

extent applicable, shall be undertaken in the future without the specific consent and approval of the PB.

(r) No exterior Unit or Lot lighting shall be allowed except in accordance with the applicable provisions and standards of the Hopewell Township Land Use and Development Ordinance with respect to exterior lighting for residential properties.

(s) A more detailed list of additional use restrictions is set forth on Schedule 7 and entitled "WELLINGTON MANOR - RULES AND REGULATIONS". The aforesaid use restrictions include limitations imposed by ELSA on wastewater discharges into the Wastewater Collection and Conveyance System and the penalties imposeable by ELSA for violations of those limitations, as those limitations and penalties are currently provided in ELSA's Rules and Regulations and as same may be from time to time amended.

Section 2. RESTRICTIONS ON AGE OF OCCUPANTS; PERMITTED OCCUPANTS.

(a) Each Unit within the Property is intended to be used for and shall be considered as "housing for older persons" as that term is defined in Section 805(d)(2) of the Fair Housing Amendments Act of 1988, 42 U.S.C. 3607(b)(2), as amended, and the regulations promulgated thereunder. In furtherance of the Property's intended use as housing for older persons, Units shall be constructed with certain features designed to provide an accessible physical environment for older persons, including lever type door handles, single lever sink faucets and reinforced walls around tub and shower to support optional installation of "grab bars".

(b) Each Unit must be occupied as the personal residence of at least one (1) person who as of the date of such person's initial occupancy of the Unit is in his or her 55th year of age or older. No children not in their 19th year of age may occupy a Unit except as may be specifically permitted by sub-Section (iii) hereof. In furtherance of these general restrictions on the age of Unit occupants, occupancy of Units shall be restricted to the following "Permitted Occupants":

(i) Persons in their 55th year of age or older.

(ii) Persons (regardless of age), residing with their spouse, provided the spouse of such person is in their 55th year of age or older; provided further, however, that any such person (regardless of age) may continue to occupy the Unit (and shall continue to be a Permitted Occupant) after the death of his or her spouse.

(iii) Persons who are the child of a Permitted Occupant described in clauses (i) or (ii) of sub-Section 2(b) above residing with such Permitted Occupant, provided the child is in his or her 19th year of age or older.

(iv) Persons in at least their 19th year of age or over, residing with and providing physical or economic support to a Permitted Occupant.

(c) Nothing in this Section 2 shall be construed to prohibit the following:

(i) Entertaining by the Permitted Occupant of any Unit of guests of any age in his or her Unit, including temporary residency by such guests for a period not to exceed thirty (30) consecutive days or an aggregate of ninety (90) days in any calendar year.

(ii) Occupancy of a Unit by persons described in clauses (i), (iii) or (iv) of sub-Section 2 (a) above, all of whom are of the age of at least 19 years, by reason of the voluntary absence of the Permitted Occupant of the Unit who is in his or her 55th year of age or older, for a period not to exceed one hundred eighty (180) consecutive days.

(iii) Occupancy of a Unit by persons described in clauses (ii), (iii) or (iv) of sub-Section 2 (a) above, all of whom are of the age of at least 19 years, by reason of the involuntary absence of the Permitted Occupant in at least his or her 55th year of age who has resided in the Unit, as a result of physical or mental illness or infirmity of such Permitted Occupant who is in at least his or her 55th year of age or older.

(d) In order to permit the Association to monitor compliance with these restrictions, upon any sale or lease of a Unit, the selling or leasing Owner and the purchaser or tenant shall deliver to the Association a certification, on a form prescribed by the Board of Trustees, listing the proposed occupants of the Unit after giving effect to such sale or lease and their ages. The Association shall have the right from time to time to require Owners to provide updated certifications regarding the occupants of their Units and reasonable documentation confirming the ages of such occupants.

Section 3. MODIFICATION; INVALIDATION; ENFORCEMENT.

(a) The restrictions contained in this Article, the sizes of the Lots, the descriptions of the Lots and the courses of the Lots may be changed or amended by Declarant or its successors and assigns, and with the approval of the PB, in order to correct or protect any condition which in its opinion, would be beneficial to the Project.

(b) The invalidation of any one of these restrictions by judgment, court order or otherwise shall in no way affect any of the other restrictions which shall remain in full force and effect.

(c) It is understood and agreed that in the event any of the covenants or restrictions herein set forth are violated, unless the same have been released or changed as herein set forth, Declarant, any Owner(s) of Lots or the Association shall have the lawful right to prosecute an action at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions either to prevent such violation or recover damages for the same.

Section 4. ARCHITECTURAL REVIEW AND APPROVAL. (a) After a Unit on a Lot has been conveyed by Declarant, its successors or assigns to the initial third-party Owner thereof, no building, wall or other structure or improvement (excluding landscaping or plantings) shall be commenced, erected, installed or maintained upon the Owner's Lot or Unit or upon any portion of the Common Areas, nor shall any exterior addition to or change (including change of external color scheme) or alteration or addition be made to any Unit, Lot or the Common Areas (which alters the

external appearance of the Unit, Lot or the Common Areas) until the plans and specifications showing the nature, kind, shape, height, materials, finish, colors and location of the same, as well as proof of compliance with all applicable codes, laws and ordinances, shall have been submitted by certified mail to, and approved, with or without conditions, in writing, as to harmony and compatibility of design, location and appearance in relation to surrounding structures and topography, by the Board of Trustees or Architectural Review Committee (the "Committee") empowered by the By-Laws and the Board of Trustees to so act. The Committee shall be established and members shall be appointed to the Committee as provided in the By-Laws. In making a determination as to the acceptability of any proposed alterations, changes or additions, the Board of Trustees or Committee shall consider the effect these alterations, changes or additions will have on the maintenance, repair and replacement obligations of the Association for the Common Areas, including the costs of fulfilling these obligations. The Board of Trustees or Committee shall have the right to impose conditions on any approval given including, without limitation, providing all maintenance, repair and replacement of any such addition or alteration and paying to the Association any additional cost that may be incurred by the Association in performing its obligations due to such addition or alteration. The Board of Trustees or Committee shall have the right to request additional information, plans and materials concerning any proposed alterations, additions and improvements. In the event the Board of Trustees or Committee fails to approve, with or without condition(s), or deny the application within forty-five (45) days after all the plans and specifications, including all additional information, plans and materials which may have been reasonably requested by the Board of Trustees or Committee pursuant to the preceding sentence have been submitted to it, approval will be deemed to have been denied. The Board of Trustees or the Committee, with the approval of the Board of Trustees, shall have the right to establish design criteria and standards for exterior alterations, additions and improvements within the Project. Notwithstanding the above, the Board of Trustees or Committee, when controlled by Owners other than Declarant, shall have the power to grant waivers from architectural design criteria and standards according to procedures and subject to the conditions established by the Board of Trustees. The provisions of this sub-Section (a) shall not apply to the Declarant or a transferee of the Declarant other than a third party Unit purchaser with respect to Lots or Units or any portion of the Project owned by the Declarant or a transferee of the Declarant other than a third party Unit purchaser.

(b) The provisions of this Article are independent of any Hopewell Township zoning or land use regulations or procedures. All Hopewell Township zoning or land use regulations as may apply to any activity or procedure described in this Article VII shall be complied with by the Owner to whom applicable. Nothing in this Article VII shall be construed to prohibit the reasonable adaptation of a Unit or Lot for handicap use.

ARTICLE VIII

MEMBERSHIP AND VOTING RIGHTS

Section 1. MEMBERSHIP. Every Owner of a Lot (including the Declarant, its successors and assigns) shall be a Member of the Association and such membership shall be appurtenant to and shall not be separated from ownership of any Lot. The Owner of a Lot shall become subject to this Declaration immediately upon such Owner's acquisition of fee title to his Lot.

Section 2. VOTING RIGHTS. Each Lot shall be entitled to one (1) vote. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised by the persons holding such interest as they among themselves shall determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

ARTICLE IX

MISCELLANEOUS

Section 1. SEVERABILITY. Invalidation of any one of these covenants and restrictions by judgment or Court order shall in no manner affect any other provisions which shall remain in full force and effect.

Section 2. DURATION AND AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. The Declaration may be amended by vote of not less than two-thirds (2/3) percent of the Lot Owners. Any amendment by the Owners to change permitted uses of Lots or reduce the

size of the Common Areas shall require the prior approval of the PB. Declarant shall not be permitted to cast any votes held by it for unsold Lots or Units for the purpose of amending this Declaration, the By-Laws or any other Association Documents for the purpose of changing the permitted use of a Lot or Unit or for the purpose of reducing the Common Areas or facilities therein. No amendment shall be effective unless and until recorded in the Office of the Clerk of Mercer County. No such amendment may alter or diminish any of the obligations assumed by the Declarant in conjunction with the Approval or any other obligations which may now or later exist by law, without the approval of the PB or other appropriate municipal entity of Hopewell Township. No amendment, in the sole judgment of Declarant, shall impair or adversely affect the rights of Declarant as set forth in this Declaration on its date of execution by Declarant or cause Declarant to suffer any financial, legal or other detriment, including, but not limited to any direct or indirect interference with the sale of Lots by Declarant. This Declaration may be amended in whole or in part, without the approval of other Members, by the Declarant at any time prior to the first conveyance of the title to any Lot to a non-Declarant purchaser, provided, however, that no such amendment which effects a reduction in the size of or improvements to the Common Areas shall be made without the approval of the PB. Such amendment shall not be effective unless and until recorded in the Office of the Clerk of Mercer County. For a period of two (2) years following the sale of the last Lot by the Declarant to a bona fide, third party purchaser, the Declarant may make any amendment to this Declaration, by its own action, without the approval of other Members, for the purpose of complying with the rules or requirements of any governmental or quasi-governmental body having jurisdiction or any institution purchasing, holding or insuring a security interest in any portion of the Properties.

Section 3. CONVEYANCE. Declarant reserves the right, prior to the conveyance to the Association of title to the Common Areas herein described, to determine, in Declarant's sole discretion, but subject to approval of the PB, the type of improvement(s) to be constructed in or upon such Common Areas, provided, however, that any such improvement(s) shall comply with the requirements of the Approval and/or of governmental authorities having jurisdiction over such Common Areas and Declarant further reserves the right, prior to the conveyance of the Common Areas, to apply for and obtain additional governmental approvals affecting such Common Areas including, but not limited to, modifications of, supplements to and amendments of the Approval.

Section 4. DISSOLUTION. The Association cannot be dissolved unless the interests, rights and obligations of the Association in and to the Common Areas shall be dedicated or assigned to the Township or any entity or agency, public or private, approved by Hopewell Township. If Hopewell Township shall not accept said dedication or assignment, then such interests, rights and obligations of the Association shall be transferred to such other public or private agency or instrumentality as will most nearly carry out the original intention of this Declaration. The provisions herein shall apply also if the Association ceases to operate and, in such case, it shall be the duty of the Owners herein to cause said interest, rights and obligations to be dedicated, assigned or transferred as provided herein.

Section 5. INSURANCE. (a) The Association, through its Board of Trustees, shall, in addition to liability and any other types and kinds of insurance as are provided herein and in the Association's By-Laws, be required to obtain and maintain, if applicable, liability insurance insuring the Common Areas and covering the interests of the Association and the Board of Trustees as their interests may appear, in the amount determined by the Board of Trustees. If possible without payment of separate premium, the Association shall have Hopewell Township named as an added insured on such policy as its interest shall appear.

(b) Premiums for any such insurance coverage shall be included in the Annual Assessments for common expenses and such premium charges may be held in a separate escrow account of the Association to be used solely for the payment of said premiums, as same became due.

(c) All policies of physical damage insurance, if possible, shall contain waivers of subrogation and waivers of any reduction of pro-rata liability of the insurer as a result of any insurance carried by any Lot Owner or of invalidity arising from any acts of the insured or any Lot Owner, and shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days' prior written notice to all of the insured, including all mortgagees of Lots.

Section 6. WORKING CAPITAL ACCOUNT CONTRIBUTION. At the time of acquiring title to any Unit from Declarant, its successors or assigns, or any subsequent Owner of the Unit, each successive Owner shall pay to the Association the sum of Three Hundred and 00/100 (\$300.00) Dollars (or such other sum as the Board of Trustees shall from time to time determine), said sum to

provide working capital for the Association. The payment required by this Section 6 shall not be refundable and shall be paid in addition to any Assessments authorized by this Declaration.

IN WITNESS WHEREOF, the undersigned Declarant has caused this instrument to be appropriately executed this 28th day of February, 2003.

ATTEST:

Robert Szedula
Robert Szedula, Div. Asst. Sec.

BEAZER HOMES CORP.

BY: Stephen P. Mutascio
Stephen P. Mutascio, Div. Vice- Pres.

STATE OF NEW JERSEY :
: S.S.
COUNTY OF MERCER :

BE IT REMEMBERED, that on this 28th day of February, 2003, before me, the subscriber, an Attorney at Law of the State of New Jersey, personally appeared Stephen P. Mutascio, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is the Division Vice-President of Beazer Homes Corp., the Declarant in the foregoing Declaration narr.ed, and that the said Declaration was signed and delivered by him as such Division Vice-President of Declarant and I heard him declare that he signed and delivered the same as the voluntary act and deed of said Declarant pursuant to authority from Declarant's Board of Directors, for the uses and purposes therein expressed.

Alan G. Frank, Jr.
Alan G. Frank, Jr.
Attorney at Law of New Jersey

Schedules to Declaration

Schedule 1 - Legal Description of Property

Schedule 2 - Site Plan/Survey

Schedule 3 - Articles of Incorporation (Association)

Schedule 4 - By-Laws (Association)

Schedule 5 - Lien Claim (Form)

Schedule 6 - Detention Basin Maintenance Standards (Hopewell Twp.)

Schedule 7 - Rules & Regulations (Association)

SCHEDULE 1

DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Township of Hopewell, County of Mercer, State of New Jersey:

BEGINNING at a point, marked by a concrete monument, in the southerly line of Blackwell Road (40 feet from centerline measured at right angles), said point being the westerly terminus of a transitional line joining the southwesterly line of Lawrenceville-Pennington Road (40 feet from centerline measured at right angles) with said southerly line of Blackwell Road and running; thence

1. Along the transitional line joining the southwesterly line of Lawrenceville-Pennington Road and the southerly line of Blackwell Road North $85^{\circ}00'50''$ East 186.82 feet to a concrete monument; thence

Along said southwesterly line of Lawrenceville-Pennington Road the following three (3) courses:

2. Along a curve bearing to the right, having a radius of 2252.00 feet and a length of 260.33 feet, the chord of said curve bearing South $58^{\circ}04'52''$ East, 260.19 feet to a concrete monument; thence

3. South $54^{\circ}46'10''$ East, 88.81 feet to a concrete monument; thence

4. Along a curve bearing to the left, having a radius of 1677.30 feet and a length of 939.07 feet, the chord of said curve bearing South $70^{\circ}48'31''$ East, 926.86 feet to a concrete monument at the northwesterly terminus of a 25 foot radius transitional curve joining the northwesterly line of Wellington Drive (variable R.O.W.) with said southwesterly line of Lawrenceville-Pennington Road; thence

5. Along said transitional curve to the right, having a radius of 25.00 feet and a length of 37.31 feet, the chord of said curve bearing South $44^{\circ}10'10''$ East, 33.94 feet to a concrete monument; thence

Along said northwesterly line of Wellington Drive the following five (5) courses:

6. South $01^{\circ}25'03''$ East, 71.09 feet to concrete monument; thence

7. Along a curve bearing to the right, having a radius of 217.00 feet and a length of 144.67 feet, the chord of said curve bearing South $17^{\circ}40'52''$ West, 142.00 feet to a concrete monument; thence

8. South $36^{\circ}46'47''$ West, 89.62 feet to a concrete monument; thence

9. Along a non-tangent curve to the left, having a radius of 24.00 feet and a length of 3.94 feet, the chord of said curve bearing North $86^{\circ}23'14''$ East, 3.94 feet to a point; thence
10. South $36^{\circ}46'47''$ West, 83.33 feet to a point; thence
11. Along a northwesterly line of the Lands of Hopewell Grant South $36^{\circ}46'47''$ West, 178.78 feet to a concrete monument; thence
12. Along a northerly line of said Lands of Hopewell Grant South $83^{\circ}13'45''$ West, 196.12 feet to an iron pin; thence
13. Still along said northerly line of Lands of Hopewell Grant South $82^{\circ}52'29''$ West, 700.09 feet to concrete monument; thence
14. Along a westerly line of said Lands of Hopewell Grant South $06^{\circ}51'59''$ West, 628.98 feet to an iron pin; thence
15. Along a northerly line of said Lands of Hopewell Grant and Lot 15.02, Block 78, South $83^{\circ}53'29''$ West, 1354.04 feet to an iron pin; thence
16. Along an easterly line of Lot 17, Block 78, North $12^{\circ}44'01''$ West, 589.11 feet to a concrete monument; thence
17. Along a northerly line of said Lot 17 & of Lot 6, Block 78, South $82^{\circ}54'13''$ West, 361.87 feet to an iron pin; thence
18. Along the northeasterly line of Lots 3, 4 & 2, Block 78, North $25^{\circ}39'56''$ West, 689.49 feet to a concrete monument; thence
19. Along the southeasterly line of Lot 68, Block 78, North $17^{\circ}31'15''$ East, 400.13 feet to a concrete monument in said southerly line of Blackwell Road; thence
20. Along said southerly line of Blackwell Road North $82^{\circ}06'20''$ East, 1236.68 feet to a concrete monument; thence
21. Along the southwesterly line of Lot 36, Block 78, South $46^{\circ}08'40''$ East, 302.20 feet to an iron pin; thence
22. Along the southerly line of Lots 45, 56 & 8, Block 78, North $68^{\circ}02'20''$ East, 352.71 feet to a concrete monument; thence
23. Along the easterly line of said Lot 8, Block 78, North $21^{\circ}11'10''$ West, 188.44 feet to a concrete monument in said southerly line of Blackwell Road; thence

24. Along said southerly line of Blackwell Road, along a non-tangent curve to the left, having a radius of 1186.30 feet and a length of 158.58 feet, the chord of said curve bearing North $64^{\circ}58'51''$ East, 158.46 feet to the point and place of BEGINNING.

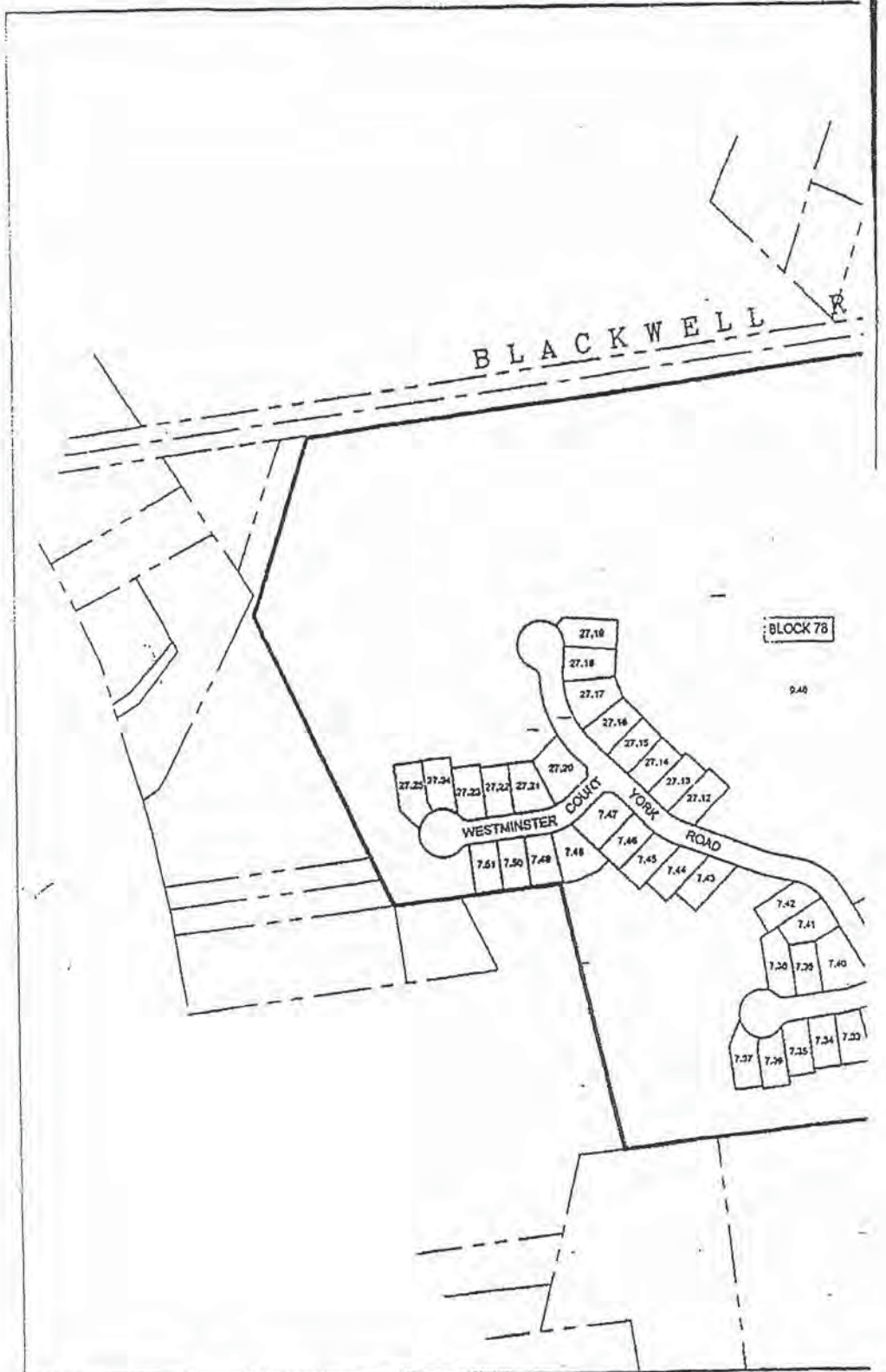
Containing 86.30 acres of land.

As shown on a plan entitled "Final Plat -- Section 1 of Lots 7, 9 & 27, Block 78 for Wellington Manor at Hopewell, Hopewell Township, Mercer County, New Jersey" Dated 07/26/01, Last Revised 11/07/01, Scale 1"=100' and prepared by Princeton Junction Engineering, PC.

Description prepared by Martin D. Katz, Professional Land Surveyor License No. 36249, Princeton Junction, New Jersey.

Schedule 2

Composite Subdivision Plan of the Project



Sheet 1 of 1

Job: K98023
 Proj: Commons 2, 3, 9
 V.L. as per

Composite Subdivision Plan
 for
Wellington Manor at Hopewell
 Hopewell Township • Mercer County • New Jersey

Martin D. Katz
 N.J. Professional Land Surveyor License No. 36249

[Signature]

D. Geoffrey Brown
 N.J. Professional Engineer and Land Surveyor License No. 1-15

W04500 PG053

Schedule 3

ARTICLES OF INCORPORATION
OF
WELLINGTON MANOR AT HOPEWELL HOMEOWNERS' ASSOCIATION, INC.

In compliance with the requirements of Title 15A, Chapter 1 et seq. of the Revised Statutes of New Jersey, the undersigned, all of whom are of full age, have this day voluntarily associated themselves together for the purposes of forming a corporation not for profit and do hereby certify:

ARTICLE I

NAME

The name of the Association is WELLINGTON MANOR AT HOPEWELL HOMEOWNERS' ASSOCIATION, INC.

ARTICLE II

PRINCIPAL OFFICE

The initial principal office of the Association is located c/o Beazer Homes Corp., 250 Phillips Boulevard, Suite 290, Trenton, New Jersey 08618.

ARTICLE III

REGISTERED AGENT

Stephen P. Mutascio, with an address c/o Beazer Homes Corp., 250 Phillips Boulevard, Suite 290, Trenton, New Jersey 08618 is hereby appointed the initial registered agent of this Association.

ARTICLE IV

PURPOSE AND POWERS OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit to the Members thereof, and the specific purpose for which it is formed is to provide for the administration, management, preservation, utilization and control of the Common Areas of and/or to be maintained by the Association as described in that certain Declaration of Covenants, Conditions, Easements and Restrictions for "Wellington Manor" (hereinafter "Declaration") establishing various rights and obligations for the Owners of Lots who are Members of the Association, which Declaration is intended to be recorded simultaneously herewith in the Office of the Clerk of Mercer County, New Jersey. In connection with the use of the Common Areas, the Association shall promote the health, safety and welfare of the Members and shall have the following powers;

(a) To exercise all the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration and the By-Laws of the Association, as the same may be amended from time to time as therein provided, said Declaration and By-Laws being incorporated herein as if set forth at length;

(b) To fix, levy, collect and enforce payment by any lawful means, of all charges or Assessments pursuant to the terms of said By-Laws of the Association, to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, mortgage, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) To borrow money, to mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(e) To have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of New Jersey by law may now or hereafter have or exercise.

ARTICLE V

MEMBERS

Every person or entity who is a record owner of a fee simple interest in a Lot described in the Declaration shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Ownership of any Lot shall be the sole qualification for membership.

ARTICLE VI

BOARD OF TRUSTEES

The affairs of the Association shall be managed by a Board of Trustees consisting of three (3) persons who need not be members of the Association. Pursuant to the By-Laws, the Board of Trustees shall be expanded to five (5) persons. The number of Trustees may be changed pursuant to the By-Laws of the Association. Each of the Trustees shall meet the qualifications established by the By-Laws or the Declaration. The names and addresses of the three (3) persons who are to initially act in the capacity of Trustees until the selection of their successors are:

Stephen P. Mutascio
Beazer Homes Corp.
250 Phillips Boulevard
Suite 290
Trenton, NJ 08618

Anthony M. Rostock
Beazer Homes Corp.
250 Phillips Boulevard
Suite 290
Trenton, NJ 08618

Richard P. Gitter
Beazer Homes Corp.
250 Phillips Boulevard
Suite 290
Trenton, NJ 08618

ARTICLE VII

TERM

The Association shall exist perpetually, but may be dissolved at any time pursuant to appropriate law and the provisions of the Declaration.

ARTICLE VIII

MERGERS AND CONSOLIDATIONS

To the extent permitted by law, the Association may participate in mergers and consolidations with other non-profit associations organized for the same general purposes, provided that any such merger or consolidation shall have the assent of seventy-five (75%) percent of the votes present and entitled to be cast at any meeting of the Association, duly constituted for such purpose, a quorum being present.

ARTICLE IX

MEMBERSHIP

The qualifications for Members shall be set forth in detail in the By-Laws of the corporation or in the Declaration.

ARTICLE X

DISSOLUTION

The method of distribution of assets of the corporation upon dissolution shall be set forth in the By-Laws of the corporation or the Declaration.

ARTICLE XI

AMENDMENTS

These Articles may be amended at any meeting of the Association duly constituted for such purpose, a quorum being present, by an affirmative vote of seventy-five (75%) percent of the vote present and entitled to be cast.

IN WITNESS WHEREOF, for the purposes of forming this non-profit corporation under the laws of the State of New Jersey, we, the undersigned, constituting the incorporators of this Association, have executed these Articles of Incorporation this _____ day of _____, 200__.

Kathryn M. Zingaro
3131 Princeton Pike
Building 6-A
Lawrenceville, NJ 08648

Kathleen Kelly Tarity
3131 Princeton Pike
Building 6-A
Lawrenceville, NJ 08648

Patricia Kaese
3131 Princeton Pike
Building 6-A
Lawrenceville, NJ 08648

Joan Winn
3131 Princeton Pike
Building 6-A
Lawrenceville, NJ 08648

Barbara Jo Tempesta
3131 Princeton Pike
Building 6-A
Lawrenceville, NJ 08648

SCHEDULE 4

BY-LAWS

OF

WELLINGTON MANOR AT HOPEWELL HOMEOWNERS' ASSOCIATION, INC.

TABLE OF CONTENTS

ARTICLE I DEFINITIONS..... 1

 Section 1. EXISTING DEFINITIONS..... 1

 Section 2. NEW DEFINITIONS 1

ARTICLE II VOTING..... 1

 Section 1. VOTING RIGHTS..... 1

 Section 2. EXERCISE OF VOTES 2

ARTICLE III MEETINGS OF MEMBERS 2

 Section 1. ANNUAL MEETINGS 2

 Section 2. SPECIAL MEETINGS..... 2

 Section 3. NOTICE OF MEETINGS 2

 Section 4. QUORUM..... 3

 Section 5. VOTING 3

ARTICLE IV BOARD OF TRUSTEES: SELECTION; TERM OF OFFICE:..... 3

 Section 1. CONTROL..... 3

 Section 2. NUMBER 4

 Section 3. ELECTION AND TERM OF OFFICE 4

 Section 4. REMOVAL..... 5

 Section 5. COMPENSATION..... 5

Section 6. ACTION TAKEN WITHOUT A MEETING	5
Section 7. DECLARANT'S PROTECTIVE PROVISIONS.....	5
Section 8. NO EXCULPATION	6
Section 9. DECLARANT'S FIDELITY OBLIGATION	6
ARTICLE V NOMINATION AND ELECTION OF TRUSTEES	7
Section 1. NOMINATION.....	7
Section 2. ELECTION.....	7
ARTICLE VI MEETINGS OF TRUSTEES	7
Section 1. REGULAR MEETINGS	7
Section 2. SPECIAL MEETINGS.....	7
Section 3. QUORUM.....	7
ARTICLE VII POWERS AND DUTIES OF THE BOARD OF TRUSTEES	8
Section 1. POWERS	8
Section 2. DUTIES	9
Section 3. ABATING AND ENJOINING VIOLATIONS.....	11
ARTICLE VIII OFFICERS AND THEIR DUTIES	11
Section 1. ENUMERATION OF OFFICERS.....	11
Section 2. ELECTION OF OFFICERS.....	11
Section 3. TERM.....	12

Section 4. SPECIAL APPOINTMENTS	12
Section 5. RESIGNATION AND REMOVAL	12
Section 6. VACANCIES	12
Section 7. MULTIPLE OFFICES.....	12
Section 8. DUTIES	12
ARTICLE IX COMMITTEES	13
ARTICLE X BOOKS AND RECORDS	14
ARTICLE XI ASSESSMENTS	14
Section 1. LIEN	14
Section 2. RIGHTS OF HOPEWELL TOWNSHIP	14
ARTICLE XII CORPORATE SEAL	15
ARTICLE XIII AMENDMENTS	15
Section 1. METHOD	15
Section 2. CONFLICT	15
Section 3. PROHIBITION	15
ARTICLE XIV DISSOLUTION.....	15
ARTICLE XV DISPUTE RESOLUTIONS.....	16
ARTICLE XVI DISCHARGE OF POWERS	19
ARTICLE XVII BOARD MEETINGS	19

Section 1. OPEN MEETINGS	19
Section 2. RESTRICTIONS TO OPEN MEETINGS.....	20
Section 3. MINUTES AT OPEN MEETINGS	20
Section 4. NOTICE REQUIREMENTS FOR OPEN MEETINGS.....	20
Section 5. ADEQUATE NOTICE	20
Section 6. EMERGENCY MEETINGS	21
ARTICLE XVIII TRANSITION COMMITTEE AND PROCEDURES	21
Section 1. PURPOSE	21
Section 2. AUTHORITY	22
Section 3. PROCEDURES	22
Section 4. BINDING RELEASE	24
Section 5. TRANSITION EXPENSE FUND	24
Section 6. LEGAL EFFECT	24
ARTICLE XIX MISCELLANEOUS	24

BY-LAWS
OF
WELLINGTON MANOR AT HOPEWELL HOMEOWNERS' ASSOCIATION, INC.

The name of the association is WELLINGTON MANOR HOMEOWNERS' ASSOCIATION, INC., (hereinafter referred to as the "Association"). The initial principal office of the Association shall be c/o Beazer Homes Corp., 250 Phillips Boulevard, Suite 290, Trenton, NJ 08618, and thereafter as determined from time to time by the Board of Trustees of the Association, but meetings of the Members and the Board of Trustees may be held at the principal office or such other places as may be designated by the Board of Trustees.

ARTICLE I
DEFINITIONS

Section 1. EXISTING DEFINITIONS. All defined terms herein shall have the same meanings as are set forth in that certain Declaration of Covenants, Conditions, Restrictions and Easements for Wellington Manor filed or intended to be filed in the Mercer County Clerk's Office (the "Declaration").

Section 2. NEW DEFINITIONS. Any defined terms used herein which are not already provided in the Declaration shall have the meanings provided herein.

ARTICLE II
VOTING

Section 1. VOTING RIGHTS. Each Member of the Association shall be entitled to one vote for all purposes under the Declaration equal to the number of Lots owned by such Member. For the purposes hereof, Declarant will be entitled to one vote for each Lot owned by it which appears on the Final Map relating to the premises described in Schedule "A" attached to the Declaration.

Section 2. EXERCISE OF VOTES. The vote of any Member which is held by more than one person may be exercised by any one of them, unless any objection or protest by any holder of such membership is made prior to the completion of a vote, in which case the vote for such Member shall not be counted. Anything in this Declaration to the contrary notwithstanding, nothing herein shall be construed so as to permit more than one (1) vote per Unit in any circumstance hereunder where voting is required.

ARTICLE III
MEETINGS OF MEMBERS

Section 1. ANNUAL MEETINGS. (a) The first Annual Meeting of the Members shall be held during the month of February within three (3) years from the date of incorporation of the Association or within sixty (60) days of the date when all Trustees of the Association shall have become Trustees not controlled by Declarant, whichever shall first occur.

(b) Subsequent regular Annual Meetings of the Members shall be held during the month of February of each year thereafter.

Section 2. SPECIAL MEETINGS. (a) Special Meetings of the Members may be called at any time by the President of the Association or by the Board of Trustees, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes incident to membership.

(b) Upon the occasion when any election of Trustees not controlled by Declarant shall become applicable, a Special Meeting shall be called for the purpose of electing such Trustees as may be necessary.

Section 3. NOTICE OF MEETINGS. Written notice of each Annual Meeting or Special Meeting (collectively a "Meeting") of the Members shall be given by, or at the discretion of, the Secretary of the Association or other person authorized to call the Meeting, by mailing or causing to be personally delivered a copy of such notice at least ten (10) days before such

Meeting to each Member entitled to vote thereat addressed to (or hand-delivered to a responsible person) at the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the Meeting, and, in the case of a Special Meeting, the purpose of the Special Meeting.

Section 4. QUORUM. The presence at the Meeting of Members entitled to cast, or of Members' proxies entitled to cast, at least twenty-five (25%) percent for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws shall constitute a quorum. If, however, such quorum shall not be present or represented at any Meeting, the Members entitled to vote thereat shall have power to adjourn the Meeting from time to time, without notice other than announcement at the Meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. VOTING. At all Meetings of Members, each Member may vote either in person, by proxy or absentee or mailed ballot. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

ARTICLE IV

BOARD OF TRUSTEES: CONTROL; SELECTION; TERM OF OFFICE:

Section 1. CONTROL. The Board of Trustees (or "Board") shall initially be designated and controlled by the Declarant who shall surrender control thereof to the Members as follows:

(a) sixty (60) days after conveyance of twenty-five (25%) percent (i.e. 29) of the Lots, not less than two (2) Member of the Board of Trustees shall be elected by the Members other than Declarant at a Special Meeting called for such purpose.

(b) sixty (60) days after conveyance of seventy-five (75%) percent (i.e. 87) of the Lots, the Declarant's control of the Board of Trustees shall terminate, at which time the Members shall elect the entire Board of Trustees at a Special Meeting called for such purpose; provided, however, that Declarant shall have the right to retain and/or appoint one (1) Member of the Board of Trustees for so long as any Lot shall remain unsold to a third party by Declarant in the normal course of Declarant's business.

Section 2. NUMBER. Until the first Special Meeting of the Association's membership pursuant to Section 1(a) above, the affairs of the Association shall be managed by a Board of Trustees consisting of three (3) persons who shall be Members of the Association except that if Declarant shall control any trusteeships, it shall have the power to appoint any non-Member(s) as its representative(s) to the Board of Trustees. At the time of the Special Meeting to be held pursuant to Section 1(a) above, the Board's membership shall expand from three (3) Trustees to five (5) Trustees (hereinafter Trustees A, B, C, D and E). At the Special Meeting to be held pursuant to Section 1(a) above, Members other than Declarant shall be entitled to vote for and elect Trustees A and B and Declarant shall have the right to appoint Trustees C, D and E. At the Special Meeting to be held pursuant to Section 1(b) above, Members other than Declarant shall be entitled to vote for all of the Trustees of the Board not theretofore elected by them, except that Declarant shall be entitled to appoint Trustee E so long as Declarant owns one (1) or more Lots and holds same for sale in the ordinary course of business.

Section 3. ELECTION AND TERM OF OFFICE. At the Special Meeting of the membership that is called pursuant to Section 1(a) above, Trustees A and B shall be elected for two (2) year terms and Trustees C, D and E shall be appointed to serve until their successors are elected at the Special Meeting called pursuant to Section 1(b) above. At the Special Meeting called pursuant to Section 1(b) above, Trustees C, D and E shall be elected by Members other than Declarant (subject, however, to Declarant's right to appoint Trustee E as provided for in Section 1 above), to serve for an initial term which expires at the Annual Meeting of the Members at which Trustees A and B are not scheduled for re-election, but in no event shall such initial term be less than two (2) years nor more than three (3) years. Thereafter, the term for Trustees C, D

and E shall be for two (2) years; it being the purpose and intent hereof that Trustees A and B shall be elected in alternate years to Trustees C, D and E.

Section 4. REMOVAL. Any Trustee may be removed from the Board of Trustees, with or without cause by a majority of the Members of the Association voting for such removal. In the event of death, resignation or removal of a Trustee who has been elected by Unit owners other than Declarant, his successor shall be selected by the remaining members of the Board of Trustees at a Special Meeting of the Board to be held within thirty (30) days of the vacancy having occurred, and such successor Trustee, who shall be a Unit owner other than Declarant, shall serve for the unexpired term of his predecessor.

Section 5. COMPENSATION. No Trustee shall receive compensation for any service he may render to the Association. However, any Trustee may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 6. ACTION TAKEN WITHOUT A MEETING. The Trustees shall have the right to take any action in the absence of a Board of Trustees meeting which they could take at a Board of Trustees meeting by obtaining the written approval of all the Trustees. Any action so approved shall have the same effect as though taken at a Board of Trustees meeting.

Section 7. DECLARANT'S PROTECTIVE PROVISIONS. After control of the Board of Trustees has become vested in Trustees elected by Members other than Declarant, and for so long as Declarant owns at least one (1) Lot and holds same for sale in the ordinary course of business, the following shall apply:

(a) Neither the Association nor its Board of Trustees shall take any action that will impair or adversely affect the rights of Declarant or cause Declarant to suffer any financial, legal or other detriment, including, but not limited to, any direct or indirect interference with the sale of Lots or Units, or the assessment of Declarant for capital improvements.

(b) The Association and its Board of Trustees shall continue at least the same level of maintenance, operation and services as provided immediately prior to the assumption of control of the Association and the Board of Trustees by Members other than Declarant.

(c) In the furtherance of the foregoing provisions, Declarant shall have the right to veto any and all actions of the Association or its Board of Trustees which violate sub-Sections (a) and (b) above. Declarant shall exercise its veto right, in its sole and absolute discretion, within ten (10) days after its receipt of written notice that a resolution or other action is proposed or has been taken by the Association or its Board of Trustees. In such event, Declarant shall notify the Secretary of the Association of its exercise of its veto right and any such proposal or action shall be null and void and have no further force and effect.

The aforementioned protective provisions shall be construed in accordance with and not in derogation of N.J.A.C. 5:26-8.4 of the regulations promulgated pursuant to the New Jersey Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-21 et seq.

Section 8. NO EXCULPATION. During the time that any of the Declarant's representatives shall serve as a member of the Board of Trustees, such representative(s) shall not be excused from the proper performance of their fiduciary responsibilities.

Section 9. DECLARANT'S FIDELITY OBLIGATION. While the Declarant maintains a majority of representation on the Association's Board of Trustees, Declarant shall post a fidelity bond or other guarantee acceptable to the New Jersey Department of Community Affairs, in an amount equal to the Association's annual maintenance budget. For the second and any succeeding years during which the Declarant shall applicably maintain control of the Association's Board of Trustees, the bond or other guarantee shall also include accumulated reserves.

ARTICLE V
NOMINATION AND ELECTION OF TRUSTEES

Section 1. NOMINATION. Nomination for election to the Board of Trustees of Trustees shall be made from the floor at the Annual Meeting or Special Meeting at which the election of any Trustee(s) shall be a proper purpose of such meeting or by written presentment by any Member of the Association.

Section 2. ELECTION. Election to the Board of Trustees shall be by written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected.

ARTICLE VI
MEETINGS OF TRUSTEES

Section 1. REGULAR MEETINGS. Regular meetings of the Board of Trustees may be held at the discretion of the Board with notice (including telephonic notice) at least three (3) days in advance of such meeting, at such place and hour as may be fixed from time to time by resolution of the Board, but in no event shall meetings be less than annually.

Section 2. SPECIAL MEETINGS. Special meetings of the Board of Trustees shall be held when called by the President of the Association, or by any three (3) Trustees, after not less than three (3) days' notice to each Trustee.

Section 3. QUORUM. A majority of the Trustees shall constitute a quorum for the transaction of business. Every act or decision done or made by majority of the Trustees present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII
POWERS AND DUTIES OF THE BOARD OF TRUSTEES

Section 1. POWERS. In addition to powers created by law or in the Declaration or Articles of Incorporation, the Board of Trustees shall have the power to:

(a) adopt and publish rules and regulations governing the use and maintenance of the Lots, the Common Areas and its facilities, and the personal conduct of the Members and their guests on the Common Areas, and to establish penalties for the infraction thereof; and

(b) suspend the voting rights and right to use the Common Areas of a Member during any period in which such Member shall be in default in payment of any Assessment levied by the Association. Such rights may also be suspended after notice and hearing for infraction of published rules and regulations. No such suspension however shall deprive the Member of the right to gain access to and egress from his Lot or Unit over and through the Common Areas to the public right of way abutting the Common Areas; and

(c) exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration; and

(d) declare the office of a member of the Board of Trustees to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Trustees; and

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties and further to contract with any person, or firm or corporation upon such terms as it deems proper for the maintenance, operation, preservation, improvement and management of the Common Areas; and

(f) to take all reasonable action necessary to maintain, preserve, and replace (as necessary) the Common Areas and to take all reasonable action necessary to promote the health, safety and welfare of the Members, the Association and the Properties; and

(g) borrow, mortgage, lease, improve, preserve, maintain, manage and replace improvements of the Common Areas.

Section 2. DUTIES. It shall be the duty of the Board of Trustees of Trustees to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the Annual Meeting of the Members, or at any Special Meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote:

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(i) fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each annual Assessment period;

(ii) send written notice of each Assessment to every Owner subject thereto at least thirty (30) days in advance of each Assessment period;

(iii) establish or file the Lien against any Lot for which Assessments are not paid within thirty (30) days after due date (and thereafter foreclose same in the discretion of the Board of Trustees) or to bring an action at law against the Owner personally obligated to pay the same.

(d) issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid. A reasonable charge may be made by the Board of Trustees of Trustees for the issuance of these certificates. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on Common Areas owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Areas to be maintained in accordance with these By-Laws, the requirements of the ordinances of Hopewell Township, and the provisions of the Declaration;

(h) upon the assumption by the Members of control of the Board of Trustees of the Association, the Declarant shall forthwith have delivered to the Association all items and documents pertinent to the Association such as, but not limited to, a copy of the Declaration, other documents of creation of the Association, By-Laws, minute book, including all minutes, any rules and regulations, an accounting of Association funds, Association funds, all personal property, insurance policies, government permits, if applicable, a membership roster and all contracts and agreements relative to the Association;

(i) the Association, when controlled by the Members, shall not take any action that would be detrimental to the sales of Units on Lots by the Declarant, its successors or assigns, to bona fide third party purchasers in the ordinary course of business and shall continue the same level of maintenance, operation and services as immediately prior to their assumption of control, until the last Unit on a Lot is sold by Declarant, its successors or assigns, in the ordinary course of business;

(j) while Declarant controls a majority of the Board of Trustees, Declarant shall have an annual financial statement of Association's funds prepared by an independent account, a copy of which shall be available to each Owner within ninety (90) days of the expiration of the fiscal year of the Association. The audit shall cover the operating budget and reserve accounts.

(k) to provide a fair and efficient procedure for the resolution of housing related disputes between individual Unit Owners and the Association, and between different Unit Owners, that shall be readily available as an alternative to litigation..

Section 3. ABATING AND ENJOINING VIOLATIONS. The violation of any of the Rules and Regulations adopted by the Board of Trustees of Directors or the breach of any provisions of the Declaration or these By-Laws shall give the Board of Trustees of Directors the right, in addition to any other rights granted by the Declaration, these By-Laws or the Rules and Regulations, enjoin, abate or remedy by appropriate legal proceedings either at law or in equity the continuance of any such breach.

ARTICLE VIII

OFFICERS AND THEIR DUTIES

Section 1. ENUMERATION OF OFFICERS. The officers of this Association shall be a President and Vice-President, who shall at all times be members of the Board of Trustees, a Secretary and a Treasurer, and such other officers as the Board of Trustees may from time to time by resolution create.

Section 2. ELECTION OF OFFICERS. The election of officers shall take place at the first meeting of the Board of Trustees following each Annual Meeting of the Members.

Section 3. TERM. The officers of the Association shall be elected annually by the Board of Trustees and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. SPECIAL APPOINTMENTS. The Board of Trustees may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Trustees may from time to time determine.

Section 5. RESIGNATION AND REMOVAL. Any officer may be removed from office with or without cause by the Board of Trustees. Any officer may resign at any time by giving written notice to the Board of Trustees, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. VACANCIES. A vacancy in any office may be filled by appointment by the Board of Trustees. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. MULTIPLE OFFICES. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. DUTIES. The duties of the officers are as follows:

(a) PRESIDENT: The President shall preside at all meetings of the Board of Trustees and the Association; shall see that orders and resolutions of the Board of Trustees are carried out; shall sign all leases, mortgages, deeds and other written instruments (including Notice of Claim of Lien forms) and shall co-sign all checks (unless delegated to a managing agent) and promissory notes.

(b) VICE-PRESIDENT: The Vice President shall act in the place and stead of the President in the event of such President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of such Vice-President by the Board of Trustees.

(c) SECRETARY: The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Trustees and Meetings of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board of Trustees and Meetings of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board of Trustees.

(d) TREASURER: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association including all Assessments and shall disburse such funds as directed by resolution of the Board of Trustees of Trustees; shall sign all checks (unless delegated to a managing agent) and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and statement of income and expenditures to be presented to the membership at its regular Annual Meeting, and deliver a copy of same to each of the Members.

ARTICLE IX
COMMITTEES

The Board of Trustees is authorized to appoint such standing and ad hoc committees as it deems appropriate to make recommendations to the Board with respect to the exercise of its powers and duties under the Declaration and these By-Laws, including but not limited to the Dispute Resolution Committee and an Architectural Review Committee.

STATE OF NEW JERSEY
AFFIDAVIT OF CONSIDERATION OR EXEMPTION
(P.L. 1968, c. 49)
or
PARTIAL EXEMPTION
(P.L. 1976, c. 176)

To be recorded with Deed pursuant to P.L. 1968, c. 49, as amended by P.L. 1991, c. 308 (N.J.S.A. 46:16-6 et seq.)

STATE OF NEW JERSEY
COUNTY OF MERCER

FOR RECORDER'S USE ONLY
Consideration \$ _____
Realty Transfer Fee \$ _____
Date _____ By _____

* Use symbol "C" to indicate that fee is exclusively for county use.

(1) PARTY OR LEGAL REPRESENTATIVE (See Instructions #3, 4 and 5 on reverse side.)

Deponent Alan G. Frank, Jr., Esq., being duly sworn according to law upon his/her oath
(Name)

deposes and says that he/she is the Attorney for Grantor in a deed dated 2/28/03
(State whether Grantor, Grantee, Legal Representative, Corporate Officer, Officer of Title Co., Lending Institution, etc.)

transferring real property identified as Block No. 78 Part of Lot Nos 7, 9 & 27

located at Lawrenceville-Pennington Road, Hopewell Township, Mercer County, New Jersey
(Street Address, Municipality, County)

and annexed hereto.

(2) CONSIDERATION (See Instruction #5.)

Deponent states that, with respect to deed hereto annexed, the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid for the transfer of title to the lands, tenements or other realty, including the remaining amount of any prior mortgage to which the transfer is subject or which is to be assumed and agreed to be paid by the grantee and any other lien or encumbrance thereon not paid, satisfied or removed in connection with the transfer of title is \$ -0-

(3) FULL EXEMPTION FROM FEE Deponent claims that this deed transaction is fully exempt from the Realty Transfer Fee imposed by P.L. 1968, c. 49 for the following reason(s): Explain in detail. (See Instruction #7.) Mere reference to exemption symbol is not sufficient.

7(a) - Consideration of less than \$100.00.

(4) PARTIAL EXEMPTION FROM FEE

NOTE: All boxes below apply to grantor(s) only. ALL BOXES IN APPROPRIATE CATEGORY MUST BE CHECKED. Failure to do so will void claim for partial exemption. (See Instructions #8 and #9.)

Deponent claims that this deed transaction is exempt from the increased portion of the Realty Transfer Fee imposed by P.L. 1976, c. 176 for the following reason(s):

- A) SENIOR CITIZEN (See Instruction #8.)
 - Grantor(s) 62 yrs. of age or over.*
 - One- or two-family residential premises.
 - Owned and occupied by grantor(s) at time of sale.
 - Owners as joint tenants must all qualify except in the case of a spouse.
- B) BLIND (See Instruction #8.)
 - Grantor(s) legally blind.*
 - One- or two-family residential premises.
 - Owned and occupied by grantor(s) at time of sale.
 - No owners as joint tenants other than spouse or other qualified exempt owners.
- DISABLED (See Instruction #8.)
 - Grantor(s) permanently and totally disabled.*
 - One- or two-family residential premises.
 - Receiving disability payments.
 - Owned and occupied by grantor(s) at time of sale.
 - Not gainfully employed.
 - No owners as joint tenants other than spouse or other qualified exempt owners.

* IN THE CASE OF HUSBAND AND WIFE, ONLY ONE GRANTOR NEED QUALIFY

- C) LOW AND MODERATE INCOME HOUSING (See Instruction #8.)
 - Affordable According to HUD Standards.
 - Meets Income Requirements of Region.
 - Reserved for Occupancy.
 - Subject to Resale Controls.

- D) NEW CONSTRUCTION (See Instruction #9.)
 - Entirely new improvement.
 - Not previously used for any purpose.
 - Not previously occupied.

Deponent makes this Affidavit to induce the County Clerk or Register of Deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of P.L. 1968, c. 49.

Subscribed and sworn to before me
this 13th
day of March, 2003

Alan G. Frank, Jr.
Name of Deponent (Sign above line)
Alan G. Frank, Jr., Esq.
3131 Princeton Pike
Building 6A
Lawrenceville, NJ 08648
Address of Deponent

BEAZER HOMES CORP.
Name of Grantor (Type above line)
250 Philips Boulevard
Suite 290
Trenton, NJ 08618
Address of Grantor at Time of Sale

Kathryn M. Zingaro
Kathryn M. Zingaro
Notary Public
of New Jersey
KATHRYN M. ZINGARO
A Notary Public of New Jersey
My Commission Expires October 23, 2004

FOR OFFICIAL USE ONLY This space for use of County Clerk or Register of Deeds.
Instrument Number _____ County _____
Deed Number _____ Book _____ Page _____
Deed Dated _____ Date Recorded _____

IMPORTANT - BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE HEREOF.
This format is prescribed by the Director, Division of Taxation in the Department of the Treasury, as required by law, and may not be altered without the approval of the Director.

ORIGINAL - To be retained by County.
DUPLICATE - To be forwarded by County to Division of Taxation on partial exemption from fee (N.J.A.C. 18:16 - 8.12)
TRIFLICATION - Is your file copy.

ORIGINAL AND DUPLICATE COPY MUST BE SUBMITTED WITH DEED TO COUNTY RECORDING OFFICER

Section Two: General Requirements

- 2.1 Limitations on Wastewater Discharge
- 2.2 General Prohibitions
- 2.3 Specific Prohibitions
- 2.4 Sump Pumps, Down Spouts and Yard Drains
- 2.5 Wastewater Discharge Limitations
 - 1. Table 2-1 Local Limitations
- 2.6 Continuous pH Monitoring Exemption
- 2.7 Regulatory Actions
- 2.8 Reporting Changed Conditions
- 2.9 Inspections of Non-enrolled Users
- 2.10 Sampling and Analysis

2.1 Limitations on Wastewater Discharges

All users of the ELSA sewer system are limited by restrictions and prohibitions set forth in applicable state, Federal, and/or ELSA regulations, including amendments and supplements thereto. All dischargers to ELSA shall discharge wastewater within the limits allowed by ELSA. ELSA at its sole discretion, for its protection and without affecting the water quality of its effluent discharge, may authorize as an alternate, on a case-by-case, pollutant-by-pollutant basis the utilization of proportionate equivalent mass loading, in lieu of concentration based limits. Dilution for any wastewater discharge for the purpose of satisfying these requirements shall be considered a violation of these Rules and Regulations.

2.2 General Prohibitions

A user shall not introduce any wastewater discharge into the ELSA treatment works without prior authority approval. A user shall not introduce into the ELSA treatment works any pollutant or pollutants which cause pass-through or interference or interfere with the operations of the ELSA treatment works. Stormwater inflow, including surface and ground water from sump pumps, cellar or foundation, yard drains and roof drains, shall not be connected to any sewers to the ELSA treatment works. These general prohibitions in Section 2.2 and the specific prohibitions in Section 2.3 shall apply to all users introducing pollutants into the ELSA treatment works.

2.3 Specific Prohibitions

Pursuant to 40 CFR 403.5(b) et seq. and N.J.A.C. 7:14A-1.3 et seq., the following pollutants shall not be introduced into the ELSA treatment works by any users:

1. Pollutants which create a fire or explosions hazard in the ELSA treatment works, including, but not limited to, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21.
2. Pollutants which will cause corrosive structural damage to the ELSA treatment works, but in no case discharges with a pH lower than 6.0 standard units (su) or higher than 10.0 su.
3. Solid or viscous pollutants in amounts, which will cause obstruction to the flow or result in interference or the proper operation of the ELSA treatment works.

4. Any pollutant, including oxygen demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which will cause interference, treatment process upset, and subsequent loss of treatment efficiency at the ELSA treatment works.

5. Heat in amounts, which will inhibit biological activity in the ELSA treatment works resulting in interference, and in no case heat in such quantities that the temperature at the ELSA Treatment Plant exceeds 104 F or 40 C.

6. Petroleum oils, nonbiodegradable cutting oils, or products of mineral oil origin that will cause interference or pass-through. All industrial and commercial facilities with the potential to discharge wastewater containing petroleum oils, nonbiodegradable cutting oils, or products of mineral oil origin. Floatable fats, wax, grease or oils shall install grease traps to prevent their entry into the ELSA treatment works in excess of 100 milligrams per liter (mg/l).

7. Pollutants which result in the presence of toxic gases, vapors, or fumes within the ELSA treatment works in a quantity that may cause acute worker health and safety problems.

8. Any trucked or hauled pollutants, except at discharge points designated by ELSA.

9. Radioactive wastes.

10. Discolored wastewater.

11. Wastes which contain any noxious or malodorous gas or substance, capable of creating a public nuisance or hazard to life or health, or preventing entry into the ELSA system for its maintenance and repair.

12. Wastes which contain heavy metals, toxic materials or any other poisonous materials which in concentrations discharged into the ELSA system will have a deleterious effect on the wastewater treatment process, sludge processing, plant effluent or sludge produced.

13. Discharges which contain any unpolluted waters that may be discharged to a separate storm sewer without pretreatment, including, but not limited to discharge from sump pumps, cellar or foundations drains, yard drains and roof drains.

14. Wastes of such a nature and in such quantities as to impair the hydraulic capacity of the ELSA treatment works, normal and reasonable wear and usage excepted.

15. Wastes containing substances which are not amenable to treatment or reductions by the wastewater treatment processes employed, or are amenable to treatment only to such a degree that the ELSA wastewater treatment plant effluent cannot meet the requirements of the regulatory agencies having jurisdiction over discharge to the receiving waters, or result in concentrations in the sludge produced at the ELSA wastewater treatment plant which do not meet the requirements of the regulatory agencies or of the sludge disposal process being used.

16. Garbage or solid wastes of any kind from the domestic and/or commercial preparation, cooking, dispensing, handling, storage and/or sale of food.

17. Surface-active agents or synthetic detergents, unless of a type previously approved by the authority and with a high degree of biodegradability.

18. Any radiological, chemical or biological warfare agent.

4 Sump Pumps, Down Spouts and Yard Drains

The following are prohibited discharges and are subject to penalty fees in accordance with the enforcement section 4 of this document.

1. Discharges from sump pumps, cellar and foundation drains, yard drains and roof drains.
2. Unauthorized discharge at a manhole or other point in the system.
3. Physical tie-in to the ELSA treatment works without express permission from ELSA.
4. Violation of ELSA's Construction Rules and Regulations, including amendments and supplements thereto.

Table 2-1 presents the maximum concentrations of certain pollutants allowable in wastewater discharges to the treatment works by any user. Dilution of any wastewater discharge for the purpose of satisfying these requirements shall be considered a violation of these Rules and Regulations.

All users are limited by restrictions and prohibitions set forth in applicable State and Federal regulations, including categorical Pretreatment Standards, as promulgated. All dischargers to ELSA shall discharge wastewater within the maximum concentration limitations allowed in the ELSA local limits. The Authority, at its sole discretion, for its protection and without affecting the water quality of its effluent discharge, may authorize as an alternate, on a case by case, pollutant-by-pollutant basis the utilization of proportionate equivalent mass loading, in lieu of the uniform maximum allowable ELSA local limit concentration.

Table 2-1

This table presents the maximum daily concentrations of certain pollutants allowable in wastewater discharges to the treatment works by any user.

MAXIMUM PERMISSIBLE CONCENTRATIONS (mg/L)

<u>Pollutant</u>	<u>1 Day Maximum</u>	<u>30 Day Average</u>
Aldrin	***	***
Dieldrin	***	***
DDE	***	***
DDD	***	***
DDT	***	***
PCB	***	***
Endrin		
(Manufacturer)	0.0075	0.0015
(Formulator)	***	***
Toxaphene		
(Manufacturer)	0.0075	0.0015
(Formulator)	***	***
Benzidine		
(Manufacturer)	0.050	0.010
(Dye Applicators)	0.025	0.010

(The following applies, per sample, to sewerage and wastes discharged into the sewerage system shall not exceed the maximum permissible concentrations.)

<u>Pollutant</u>	<u>Maximum Permissible Concentrations</u>
BOD	300 mg/L
Suspended Solids (TSS)	350 mg/L
Total Solids (TS)	5,000 mg/L
Phenols	0.5 mg/L
Cyanide as Cn	2.0 mg/L
Chromium as Cr	3.0 mg/L
Copper as Cu	1.0 mg/L
Iron as Fe	5.0 mg/L
Nickel as Ni	3.0 mg/L
Zinc as Zn	2.0 mg/L

¹ Prohibited from discharge.

Boron as B	1.0 mg/L
Lead as Pb	0.5 mg/L
Arsenic as As	4.0 mg/L
Cadmium as Cd	0.1 mg/L
Silver as Ag	0.5 mg/L
Selenium as Se	0.5 mg/L
Mercury as Hg	0.1 mg/L

2.6 Continuous pH Monitoring Exemption

ELSA may allow the following exemption for a discharge that exceeds the ELSA limits for pH at the source of the discharge if the discharger meets the following criteria:

1. All ELSA users that utilize or have installed continuous pH monitoring equipment may be allowed a 1% pH excursion as noted in the provisions under 40 CFR part 401 et. seq. and the NJDEP Bureau of Pretreatment and Residuals, New Jersey Pretreatment Implementation Memorandum No. 15.

2. The application of the 1% excursion for continuous pH monitoring will be allowed for acidic discharge where an acidic limit is specified in the ELSA IWPP permit, so long as the discharge does not go below a pH of 5.5 su. In accordance with 40 CFR Part 403.5(b)(2), no discharge with a pH below 5.5 su shall be allowed. Any discharge below 5.5 su shall be subject to an enforcement action despite the exemption allowed under this section.

3. The application of the 1% excursion for continuous pH monitoring will be allowed for alkaline discharge where an alkaline pH limit is specified in the ELSA IWPP permit. No discharge above 12.0 su shall be allowed. Any discharge above 12.0 su may be subject to an enforcement action.

4. Excursions exceeding 1% of the time during a calendar month (i.e., 7 hours, 26 minutes) above the alkaline limit (and/or below the acidic limit) specified in the permit are violations and are subject to enforcement actions.

5. Excursions of more than one continuous hour at any time are violations and are subject to enforcement actions.

2.7 Regulatory Actions

1. If wastewaters containing any substance prohibited, exceeding prescribed limits, or violating restrictions imposed by Section 2 of these Rules and Regulations or the ELSA Pretreatment Program are discharged into the treatment works of the Authority, the Executive Director shall take all actions necessary or:

- A. Prohibit the discharge of such wastewater;
- B. Require a user to modify, reduce or eliminate the discharge of such substances so as to be in conformance with these Rules and Regulations;
- C. Require pretreatment, including storage facilities, or flow equalization necessary to insure complete compliance with these Rules and Regulations;
- D. Require the user making, causing or allowing the discharge to pay all the additional costs or expenses (including fines) incurred by the Township of Ewing and the Township of Lawrence or the Authority; and
- E. Take such other remedial action including discontinuation of service as may be deemed to be desirable or necessary to achieve the purpose of these Rules and Regulations.

2. If after notice of any violation, whether verbal or written, the user fails, in the opinion of the Authority, to commence appropriate corrective action, the Authority shall take appropriate enforcement action. Such a violation may result in the imposition of civil and/or criminal penalties as provided for in N.J.A.C. 7:14 Subchapter 8 and pursuant to N.J.S.A. 58:10A et seq. and these Rules and Regulations.

8 Reporting Changed Conditions

All users of the ELSA Treatment Works shall be required to:

1. Notify the authority, in advance of any discharge, of the quality and quantity of all new introductions of pollutants, or of any substantial change in the pollutants introduced by the existing user, except for such introductions of non-industrial pollutants as the Authority may exempt from this notification requirement when ample capacity remains in the sewer system and/or the treatment works to accommodate new inflows. The notification shall estimate the effects of the changes on the effluents to be discharged.

2. Submit an application for a new permit in the event of any contemplated facility expansion or process modification that would result in new or increased discharges.

3. Give reasonable advance notice to ELSA of any planned changes in the facility or of an activity, which may affect the character of the current discharge from such facility.

4. Notification of changed discharges must be submitted under 40 CFR 403.12(j).

9 Inspections of Non-enrolled users:

ELSA shall have the right of entry to all premises in which a discharge source is or might be located or in which equipment or records concerning the wastewater discharge are kept, for the purposes of inspection, sampling, copying, or photographing.

1. Facility Inspection: All new or existing users may be subject to inspection by ELSA personnel for the purposes of characterizing wastewater discharges, inspecting connections to the sewer system, in response to interferences, upsets, or bypasses of the ELSA sewer system and/or treatment works, in response to suspected or actual violations of the prohibitions and limits contained in this document, or for any actions, omissions, or discharges that ELSA determines to be detrimental to the operation of the sewer system, treatment works, human health and the environment, the proper treatment and disposal of wastewater and/or sludge.

2. An inspection may include all the activities listed under subsection 3.4 of these Rules and Regulations.

Any NJDEP, any branch thereof, and/or personnel from the local township, may accompany ELSA personnel during the inspection. Nothing in these Rules and Regulations will prevent authorized personnel from other agencies, offices, and/or branches from conducting inspections of the facility under the auspices of their official duties.

10 Sampling and Analysis

1. All users proposing to connect to or continue to discharge to any part of the treatment works must make available a sampling point representative of the discharge which is acceptable to ELSA. The point must be available to ELSA, the NJDEP, or the USEPA for purposes of conducting sampling operations, compliance monitoring, or enforcement.

2. All sampling conducted shall be in accordance with 40 CFR 136 and the NJDEP Field Sampling Manual.

3. All samples shall be representative of the daily discharge from the facility. Dilution to meet any of the standards contained in the Rules and Regulations is expressly prohibited.

4. Compliance determination will be based on either instantaneous grab samples and/or 24-hour composite samples of wastewater, or as otherwise may be approved by ELSA, the NJDEP, or the USEPA.

5. The user shall take a minimum of one representative to compile the data necessary to comply with the limits and prohibitions contained in this document. ELSA reserves the right to require additional sampling to satisfactorily determine compliance by the facility.

6. A minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other parameters 24-hour composite samples must be obtained. If composite sampling is demonstrated to the satisfaction of ELSA to be infeasible, a minimum of four grab samples may be taken to demonstrate compliance.

7. All sampling and laboratory analysis of wastewater samples shall be performed in accordance with the techniques and analytical test procedures and appropriate method detection limits promulgated under 40 CFR 136 and/or the New Jersey Field Sampling Manual and amendments thereto.

8. If a procedure has not been promulgated for a particular pollutant, a method approved by ELSA may be used. The user must submit a description of the method used, the holding times, preservative techniques, the quality control measures, and the name, address, phone number of the laboratory being used for this procedure.

9. All analysis must be conducted by a New Jersey certified laboratory. In-house laboratories are not acceptable for analysis, except where analysis is required to be instantaneous.

SECTION FOUR: ENFORCEMENT

1. 4.1-General (pg. 39)
2. 4.2-ELSA Enforcement Rights and Reservations (pg. 40)
3. 4.3-Notification of Violation, Order and Summons (pg. 41)
4. 4.4-Termination of Service (pg. 42)
5. 4.5-Violator Status (Serious Violator, Significant Noncomplier) (pg. 43)
6. 4.6-Civil Administrative Penalties (pg. 44)
7. 4.7-Local Agencies Authorized to Issue Civil Administrative Penalties (pg. 45)
8. 4.8-Report and Decision of Administrative Law Judge (pg. 45)
9. 4.9-Final Decision or Order (pg. 45)
10. 4.10-Appealing a Civil Administrative Penalty or Assessment (pg. 46)
11. 4.11-Affirmative Defenses to Civil Administrative Penalty Assessment (pg. 46)
12. 4.12-Settlement of Civil Administrative Penalties (pg. 49)
13. 4.13-Affirmative Defenses to General Prohibitions and Specific Prohibitions (pg. 50)
14. 4.14-Civil Action (pg. 51)
15. 4.14.1-Failure to Pay a Penalty Assessment (pg. 51)
16. 4.14.2-Wastewater Treatment Operators' Training Account (pg. 52)
17. 4.15-Criminal Action (pg. 53)
18. 4.16-Penalty Determination: Users Not Enrolled in ELSA Pretreatment Program (pg. 55)
19. 4.17-Users Subject to the ELSA Pretreatment Program (ERP Appendix A)
20. 4.18-Construction Rules and Regulations (pg. 57)
21. 4.19-Administrative Consent Order/Compliance Schedules (pg. 58)

SECTION 4 - ENFORCEMENT:

4.1 General:

The User shall ensure that all discharges are consistently in compliance with the terms and conditions of these Rules and Regulations at all times. Any noncompliance constitutes a violation of these Rules and Regulations and is grounds for an enforcement action, including but not limited to, sampling, monitoring and reporting, increased frequency of sampling, monitoring and reporting, discharge termination, issuance of a discharge permit, revocation and/or reissuance of a discharge permit, modification of a discharge permit, denial of permit renewal, monetary penalties, and/or criminal referral to the State authorities. ELSA shall not issue a discharge permit when the conditions of the permit do not provide for compliance with the applicable requirements of the State and Federal Acts or regulations.

Each violation of any provision of the Water Pollution Control Act or any rule, water quality standard, effluent limitation, these Rules and Regulations, administrative order or permit issued pursuant thereto, shall constitute an additional, separate and distinct violation. In addition, the unpermitted discharge of each separate pollutant shall constitute an additional, separate and distinct violation. Each day during which a violation as set forth in these Rules and Regulations shall constitute an additional, separate and distinct violation.

For the purposes of this document the ELSA Enforcement Response Plan is incorporated including all amendments and supplements thereto.

4.2 ELSA Enforcement Rights and Reservations:

ELSA reserves the right to issue, assess, bring forth, and/or petition the following actions, where applicable, when enforcing upon a violation of these Rules and Regulations, a wastewater discharge permit(s), and any amendment thereto. All Users of the ELSA treatment works and sewer system may be subject to the following actions:

1. ELSA may issue an order in accordance with N.J.S.A. 58:10A-10a(1);
2. ELSA may bring a civil action, including injunctive relief, in accordance with N.J.S.A. 58:10A-10a(2) and 58:11-55(b);
3. ELSA may petition the county prosecutor or Attorney General to bring a criminal action in accordance with N.J.S.A. 58:10A-6.i. and 58:10A-10a(5);
4. ELSA may issue a civil administrative penalty in accordance with N.J.S.A. 58:10A-10.5;
5. ELSA may bring an action for a civil penalty in accordance with N.J.S.A. 58:10A-10a(4);
6. ELSA may issue a summons in accordance with N.J.S.A. 58:10A-10.4;
7. ELSA shall assess a penalty for each violation that causes a violator to be, or continue to be, a significant noncomplier as defined in these Rules and Regulations;
8. ELSA shall assess a penalty for each serious violation as defined in these Rules and Regulations;
9. ELSA shall have the ability to assess a penalty in accordance with N.J.A.C. 7:14-8.16;
10. ELSA shall have the ability to assess a penalty for submitting inaccurate or false information in accordance with N.J.A.C. 7:14-8.6;
11. ELSA shall have the ability to assess a penalty for failure to properly conduct monitoring or sampling activities or to submit discharge monitoring reports/self-monitoring reports, or other pre-treatment monitoring reports in accordance with N.J.A.C. 7:14-8.9(c), (d) and (e);
12. ELSA has the ability to suspend or terminate service;
13. ELSA has the ability to assess the violator for all reasonable costs of any investigation, inspection, or monitoring, including but not limited to overtime paid to ELSA employees, which leads to the establishment of the violation, and for reasonable costs of preparing and litigating the case;
14. ELSA may assess the violator for all reasonable costs incurred by ELSA in removing, correcting, repairing, and/or terminating the adverse effects upon water quality, the ELSA sewer system, the ELSA treatment works, and/or the ability to properly dispose of sewerage and/or sludge; and
15. ELSA may assess the violator for the actual amount of any economic benefit accruing to the violator from their actions. Economic benefits may include the amount of any savings realized from avoided capital or noncapital costs resulting from the violation; the return earned or that may be earned on the amount of avoided costs; any benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; or any other benefits resulting from the violation.

4.3 Notification of Violation, Order, Summons:

ELSA may issue a notice or an order requiring the User to comply with certain permit conditions in accordance with N.J.S.A. - 58:10A-10.

1. **Notice of Violation:** Whenever the Executive Director finds that any User has violated or is violating these Rules and Regulations, or any prohibition, limitation or requirement contained herein, he/she may serve upon such User a written notice stating the nature of the violation. The notice will indicate, the name of the violator, the nature of the violation, when it occurred or was reported to ELSA, what status the violation places the violator, and where it occurred. The Authority may request and schedule a meeting, at its convenience, in connection with the alleged violation. A meeting may also be requested concerning the alleged violation. This request must be in writing and submitted within 10 days of receipt of the notice of violation.
2. **Issuance of an Order:** Whenever the Authority finds that any person is in violation of any provision of these Rules and Regulations, ELSA may issue an order requiring such person to comply in accordance with N.J.S.A. 58:10A-10. Whenever the Authority finds that any person is in violation of any provision of these Rules and Regulations, it may issue an order;
 - (1) Specifying the provision or provisions of the Act, or the rule, regulation, water quality standard, effluent limitation, or permit of which the person is in violation,
 - (2) Citing the action which caused such violation,
 - (3) Requiring compliance with such provision or provisions, and
 - (4) Giving notice to the person of its right to a hearing on the matters contained in the order.

3. **Issuance of Summons:** The Authority may issue a summons for a violation of any provision of P.L. 1977, c.74 (C.58:10A-1), including, in the case of the Authority, a violation of any rule, regulation or pretreatment standard adopted by ELSA if the amount of the penalty assessed is \$5,000 or less. The summons shall be enforceable, in accordance with the "Penalty Enforcement Law," N.J.S. 2A:58-1, in the municipal court of the territorial jurisdiction in which the violation occurred. The summons shall be signed and issued by any person authorized to enforce the provisions of P.L. 1977, c.74 (C. 58:10A-1). Proceedings before, and appeals from a decision of, a municipal court shall be in accordance with the Rules Governing the Court of the State of New Jersey. Of the penalty amount collected pursuant to N.J.S.A. 58:10A-10.4, 10 percent shall be paid to the municipality or municipalities in which the court retains jurisdiction for use for court purposes, with the remainder to be retained by the Authority.

Each violation of any provision of the Federal or State Water Pollution Control Act, or any rule, water quality standard, effluent limitation, administrative order or permit issued thereto, may constitute an additional, separate, and distinct violation. Each day during which a violation continues may constitute an additional, separate, and distinct violation and the User may be subject to applicable penalties.

4.4 TERMINATION OF SERVICE:

If any User violates any of these Rules and Regulations, or applicable federal or state regulations, or pretreatment standards, or any conditions of its ELSA discharge permit, ELSA may take such steps as may be necessary to seal or close off the User's sewerage connections from the POTW until ELSA is satisfied that adequate measures have been taken to prevent the recurrence of such violation. Termination of service may be applied to, but solely limited by, the following circumstances:

1. Discharge of such a nature, volume, or frequency that represents an imminent or substantial endangerment to the health or welfare of persons, or to the environment, or cause pass-through and/or interference to the operation of the treatment works, causes ELSA to violate any condition of its NJPDES permit or causes a violation of the ELSA Rules and Regulations;
2. Violations of these Rules and Regulations with such frequency that ELSA has determined the User is not attempting to comply nor will comply with these Rules and Regulations, federal or state regulations, pretreatment standards, or any conditions set by ELSA upon the User for the proper discharge of wastewater; or
3. Non-compliance with the ELSA Construction Rules and Regulations and all the amendments and supplements thereto.

Any person notified of a suspension of the wastewater treatment service shall immediately stop or eliminate the contribution. In the event of a failure of the User to comply voluntarily with the suspension order, ELSA shall take such steps as deemed necessary, including immediate severance of the sewer connection pursuant to N.J.S.A. 58:11-56, to prevent or minimize damage to the treatment system or endangerment to any individuals. ELSA may reinstate the wastewater treatment service upon satisfactory documented proof to ELSA of the elimination of the non-complying discharge.

If the violation is not corrected by timely compliance, the Executive Director may order any User who causes or allows any of the events listed in 1 through 3 above to show cause before ELSA explaining why service should not be promptly terminated. A Notice of Violation shall be served on the offending party. If a hearing is requested by the User or ordered by the Executive Director, ELSA will notify the offending party of the time and place for the hearing to be held by ELSA regarding the violation, and directing the offending party to show cause before the Authority why an order should not be made directing the prompt termination of service. The notice of the hearing shall be served personally or by registered or certified mail, return receipt requested, at least 10 days before the hearing. Notice may be served on any available agent, employee, or officer of the violator.

4.5 Violator Status:

ELSA shall assess a civil administrative penalty pursuant to N.J.S.A. 58:10A-10.5 for violations that meet the criteria under "Serious Violations" as defined within these Rules and Regulations.

If a violator establishes, to the satisfaction of ELSA, that a single operational occurrence has resulted in the simultaneous violation of more than one effluent limit, ELSA may consider, for purposes of calculating the mandatory civil administrative penalties to be assessed, the violation of interrelated effluent limits to be a single violation.

1. Serious Violator:

When a user, who is enrolled in the ELSA pretreatment program, meets the criteria under "Serious Violation" as defined within these Rules and Regulations, they shall be subject to a minimum mandatory civil administrative penalty of \$1,000 against a violator for each serious violation, which assessment shall be made within six months of the serious violation.

2. Significant Noncomplier Status:

When a user, who is enrolled in the ELSA pretreatment program, meets the criteria under the Federal (see definitions #53) or State (see definitions #54) definition of "Significant Noncomplier" they will be subject to the following:

1. The facility treatment works of a User identified as a significant noncomplier shall be subject to an inspection by ELSA with or without the NJDEP, as the case may be. The inspection shall be in addition to the requirements of inspection already described in these Rules and Regulations. The inspection shall be conducted within 60 days of receipt of the discharge monitoring report that initially results in the User being identified as a significant noncomplier. The inspection shall be for the purpose of determining compliance. An inspection is not required but may be done if ELSA has conducted an inspection at the facility within six months of the period within which an inspection is required to be conducted under this subsection.
2. A User designated as a significant noncomplier as defined within these Rules and Regulations may be subject to minimum penalties of \$5,000 for each violation on the basis of which the User was designated as a significant noncomplier. Assessment of penalty shall be made within the six months of the report that designates the User as a Significant Noncomplier.
3. For Federal SNC status only, ELSA shall provide public notice identifying those indirect users which meet the significant noncompliance criteria under 40 CFR 403.8(f)(2)(vii) at any time during the period covered by the Authority's 40 CFR Part 403 Annual Report submitted to the NJDEP pursuant to N.J.A.C. 7:14A-19.6(f). This public notice shall be published in the official daily newspaper designated by the local agency no later than 60 days after the Annual Report due date.

more stringent civil administrative penalty or civil penalty against a person pursuant to section 10 of P.L. 1977, c. 74 (C.58:10A-10).

4.7 Local Agencies Authorized to Issue Civil Administrative Penalties

A delegated local agency may, after consultation with a compliance officer designated by the department, issue a civil administrative penalty for any violation of the provisions of P.L. 1977, c. 74 (C.58:10A-1 et seq.), including a violation of any rule, regulation or pretreatment standard adopted by a delegated local agency, or assess, by civil administrative order, any costs recoverable pursuant to subsection c. of section 10 of that act, including the reasonable costs of investigation and inspection, and preparing and litigating the case before an administrative law judge pursuant to this section, except assessments for compensatory damages and economic benefits. Notice of the penalty or assessment shall be given to the violator in writing by the delegated local agency, and payment of the penalty or assessment shall be due and payable, unless a hearing is requested in writing by the violator, within 20 days of receipt of notice. If a hearing is requested, the penalty or assessment shall be deemed a contested case and shall be submitted to the Office of Administrative Law for an administrative hearing in accordance with sections 9 and 10 of P.L. 1968, c. 410 (C. 52:14B-9 and 52:14B-10).

4.8 Report and Decision of Administrative Law Judge (N.J.S.A. 58:10A-10.6)

Upon conclusion of an administrative hearing held pursuant to section 2 of P.L. 1991, c. 8 (C. 58:10A-10.5), the administrative law judge shall prepare and transmit a recommended report and decision on the case to the head of the delegated local agency and to each party of record, as prescribed in subsection c. of section 10 of P.L. 1968, c. 410 (C. 52:14B-10). The head of the delegated local agency shall afford each party of record an opportunity to file exceptions, objections and replies thereto, and to present arguments, either orally or in writing, as required by the delegated local agency. After reviewing the record of the administrative law judge, and any filings received thereon, but not later than 45 days after receipt of the record and decision, the head of the delegated local agency shall adopt, reject, or modify the recommended report and decision. If the head of the delegated local agency fails to modify or reject the report within the 45-day period, the decision of the administrative law judge shall be deemed adopted as the final decision of the head of the delegated local agency, and the recommended report and decision shall be made a part of the record in the case. For good cause shown, and upon certification by the Director of the Office of Administrative Law and the head of the delegated local agency, the time limits established herein may be extended.

4.9 Final Decision or Order (N.J.S.A. 58:10A-10.7)

A final decision or order of the head of the delegated local agency shall be in writing or stated in the record. A final decision shall include separately stated findings of fact and conclusions of law, based upon the evidence of record at the hearing of the

administrative law judge. A concise and explicit statement of the underlying facts supporting the findings shall accompany findings of fact. A final decision or order may incorporate by reference any or all of the recommendations of the administrative law judge. Parties of record shall be notified either by personal service or by mail of any final decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith by registered or certified mail to each party of record and to a party's attorney of record.

A final decision or order shall be effective on the date of delivery or mailing, whichever is sooner, to the party or parties of record, or shall be effective on any date thereafter, as the delegated local agency may provide in the decision or order. The date of delivery or mailing shall be stamped on the face of the final decision or order. A final decision or order shall be considered a final agency action, and shall be appealable in the same manner as a final agency action of a State department or agency.

4.10 Appealing a Civil Administrative Penalty or Assessment (N.J.S.A. 58:10A-10.8)

- a. A person who is assessed a civil administrative penalty, or is subject to an assessment levied pursuant to section 2 of P.L. 1991, c. 8 (C. 58:10A-10.5), and fails to contest or to pay the penalty or assessment, or fails to enter into a payment schedule with the delegated local agency within 30 days of the date that the penalty or assessment is due owing, shall be subject to an interest charge on the amount of the penalty or assessment from the date that the amount was due and owing. The rate of interest shall be that authorized pursuant to subsection a. of this section.
- b. Any person who fails to pay a civil administrative penalty or assessment, in whole or in part when due and owing, or who fails to agree to a payment schedule therefore, shall be subject to the civil penalty provisions of subsection e. of section 10, of P.L. 1977, c. 74 (C.58: 10A-10).
- c. A civil administrative penalty or assessment imposed pursuant to a final order:
 1. May be collected or enforced by summary proceedings in a court of competent jurisdiction in accordance with the "penalty enforcement law," (N.J.S. 2A: 58-1 et seq.); or
 2. shall constitute a debt of the violator, and the civil administrative penalty may be docketed with the clerk of the Superior Court, and shall have the same standing as any judgment docketed pursuant to N.J.S.A. 2A: 16-1.

4.11 Affirmative Defenses to Civil Administrative Penalty Assessment

- a. A person may be entitled to an affirmative defense to liability for a mandatory assessment of an civil administrative penalty pursuant to section 6 of P.L. 1990, c. 28 (C.58: 10A-10.1) for a violation of an effluent limitation occurring as a result of an upset, an anticipated or unanticipated bypass, or a testing or laboratory error. A person shall be entitled to an affirmative defense only if, in the determination of

- the department or delegated local agency, the person satisfies the provisions of subsection b., c., e., or f., as applicable, of this section.
- b. A person asserting an upset as an affirmative defense pursuant to this section, except in the case of an approved maintenance operation, shall notify the department or the local agency of an upset within 24 hours of the occurrence, or of becoming aware of the occurrence, and, within five days thereof, shall submit written documentation, including properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the violation, and demonstrating, as applicable, that:
1. The upset occurred, including the cause of the upset and, as necessary, the identity of the person causing the upset, except that, in the case of a treatment works, the local agency may certify that despite a good faith effort it is unable to identify the cause of the upset, or the person causing the upset;
 2. The permitted facility was at the time being properly operated;
 3. The person submitted notice of the upset as required pursuant to this section, or, in the case of an upset resulting from the performance by the permittee of maintenance operations, the permittee provided prior notice and received an approval therefore from the department or the delegated local agency; and
 4. The person complied with any remedial measures required by the department or delegated local agency.
- c. A person asserting an unanticipated bypass as an affirmative defense pursuant to this section shall notify the department or the local agency of the unanticipated bypass within 24 hours of its occurrence, and, within five days thereof, shall submit written documentation, including properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the violation, and demonstrating that:
1. The unanticipated bypass occurred, including the circumstances leading to the bypass;
 2. The permitted facility was at the time being properly operated;
 3. The person submitted notice of the upset as required pursuant to this section; and
 4. The person complied with any remedial measures required by the department or delegated local agency;
 5. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and
 6. There was no feasible alternative to the bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime, except that the provisions of this paragraph shall not apply to a bypass occurring during normal periods of equipment downtime or preventive maintenance if, on the basis of the reasonable engineering judgment of the department or delegated local agency, back-up equipment should have been installed to avoid the need for a bypass.

d. Nothing contained in subsection b. or c. of this section shall be construed to limit the requirement to comply with the provisions of paragraph (8) of subsection f. of section 6 of P.L.1977, c. 74 (C.58: 10A-6).

e. A person may assert an anticipated bypass as an affirmative defense pursuant to this section only if the person provided prior notice to the Authority, if possible, at least 10 days prior to the date of the bypass, and the Authority approved the bypass, and if the person is able to demonstrate that:

1. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and
2. There was no feasible alternative to the bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime, except that the provisions of this paragraph shall not apply to a bypass occurring during normal periods of equipment downtime or preventive maintenance if, on the basis of the reasonable engineering judgment of the Authority, back-up equipment should have been installed to avoid the need for a bypass.

f. A person asserting a testing or laboratory error as an affirmative defense pursuant to this section shall have the burden to demonstrate, to the satisfaction of the Authority, that a serious violation involving the exceedence of an effluent limitation was the result of unanticipated test interferences, sample contamination, analytical defects, or procedural deficiencies in sampling or other similar circumstances beyond the control of the permittee.

g. A determination by the Authority on a claim that a violation of an effluent limitation was caused by an upset, a bypass or a testing or laboratory error shall be considered final agency action on the matter for the purposes of the "Administrative Procedure Act" P.L.1968, c.410 (C.52: 14B-1 et seq.), and shall be subject only to review by a court of competent jurisdiction.

h. An assertion of an upset, a bypass or a testing or laboratory error as an affirmative defense pursuant to this section may not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

i. If the department determines, pursuant to the provisions of this section, that a violation of an effluent limitation was caused by an upset, a bypass or a testing or laboratory error, the commissioner shall waive any mandatory civil administrative penalty required to be assessed pursuant to section 6 of P.L.1990, c. 28 (C.58: 10A-10.1), and the violation shall not be considered a serious violation or violation causing a person to be designated a significant noncomplier.

j. The affirmative defense for an upset, a bypass or a testing or laboratory error provided in this section shall only apply to the imposition of mandatory penalties pursuant to section 6 of P.L. 1990, c. 28 (C.58: 10A-10.1) for serious violations and for determining a significant noncomplier. Nothing in this act shall be construed to limit the authority of

the department, or a delegated local agency, to adopt regulations or permit conditions that include or do not include an upset, a bypass or a testing or laboratory error, using different standards, as a defense to any other exceedence of an effluent limitation.

4.12 Settlement of Civil Administrative Penalties (N.J.A.C. 7:14-8.3(e) and (f))

A. The Authority may settle any civil administrative penalty assessed pursuant to this subchapter according to the factors identified in (B) below as follows:

1. In cases where the violator violates an administrative consent order, the Authority may settle a civil administrative penalty as follows:

i. The Authority may reduce the civil administrative penalty up to 50 percent, provided that the penalty as reduced is not less than any applicable minimum amount set forth in N.J.A.C. 7:14-8.5(a) or 8.9(e); and

ii. The Authority may not reduce the amount of any component of a civil administrative penalty, which represents the economic benefit gained by the violator from the violation;

2. Except as provided in (A)(1) above, in the case of a violator which violates something other than an administrative consent order and then enters into an administrative consent order with the Authority, which requires the violator to take prescribed measures to comply with its permit, the Authority shall have full discretion to settle the amount of the civil administrative penalty assessed or due for violations occurring during a period up to 24 months preceding the effective date of the administrative consent order, except that the Authority shall neither:

i. Reduce the amount of the civil administrative penalty less than the minimum amount, if applicable, prescribed in N.J.A.C. 7:14-8.5(a) or 8.9(e); nor

ii. Reduce the amount of any component of a civil administrative penalty, which represents the economic benefit gained by the violator from the violation.

3. In the case of all other violations:

i. The Authority may reduce the civil administrative penalty up to 50 percent, provided that the penalty as reduced is not less than any applicable minimum amount set forth in N.J.A.C. 7:14-8.5(a) or 8.9(e); and

ii. The Authority may not reduce the amount of any component of a civil administrative penalty, which represents the economic benefit gained by the violator from the violation.

B. In settling a civil administrative penalty, the Authority may consider the following:

1. Mitigating or extenuating circumstances not considered in the notice of civil administrative penalty assessment;

2. The implementation by the violator of pollution prevention and/or abatement measures in addition to those minimally required by applicable statute or rule;

3. The implementation by the violator of measures to clean up, reverse or repair environmental damage previously caused by the violation;

4. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Authority in an administrative order and/or a notice of civil administrative penalty assessment and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or

5. Any other terms or conditions acceptable to the Authority.

4.13 Affirmative Defenses to General Prohibitions and Specific Prohibitions

A User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in 40 CFR 403.5 (a)(1) and the specific prohibitions (solid or viscous pollutants, any pollutant which will cause interference with the POTW, heat which will cause interference at the POTW, petroleum oil, nonbiodegradable cutting oil, or products of mineral oil which will cause interference at the POTW, and/or pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW that may cause acute worker health and safety problems) where the User can demonstrate that:

i. It did not know or have reason to know that its Discharge, alone or in conjunction with a discharge or discharges from other sources, would cause Pass Through or Interference; and

ii (A) A local limit designated to prevent Pass Through and/or Interference, as the case may be, was developed in accordance with 40 CFR 403.5 (c) for each pollutant in the User's Discharge that caused Pass Through or Interference, and the User was in compliance with each such local limit directly prior to and during the Pass Through or Interference; or

(B) If a local limit designated to prevent Pass Through and/or Interference, as the case may be, has not been developed in accordance with 40 CFR 403.5 (c) for the pollutant(s) that caused the Pass Through or Interference, the User's Discharge directly prior to and during the Pass Through or Interference did not change substantially in nature or constituents from the User's prior discharge activity when the POTW was regularly in compliance with the POTW's NPDES permit requirements and, in the case of Interference, applicable requirements for sewage sludge use or disposal.

4.14 Civil Action

Any violation of the substantive provisions of these Rules and Regulations, permit conditions or an order of ELSA shall be considered ground for legal action.

1. **Civil Action:** Pursuant to N.J.S.A. 58:10A-10(a)(2) and 58:11-55(b) if any User discharge sewage, storm water, industrial wastes or other wastes to the treatment works contrary to the substantive provisions of these Rules and Regulations or any order of ELSA, ELSA may commence an action for injunctive relief and appropriate legal damages. The Executive Director is authorized to commence a civil action in Superior Court for appropriate relief for any violation of the Act, of these Rules and Regulations, or of a permit issued hereunder. Such relief may include, singly or in combination:
 - a. A temporary or permanent injunction.
 - b. Assessment of the violator for the reasonable costs of any investigation, inspection, or monitoring survey, which led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case.
 - c. Assessment of the violator for any reasonable cost incurred by the State in removing, correcting or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which the action under this subsection may have been brought.
 - d. Assessment against the violator compensatory damages for any loss or destruction of wildlife, fish or aquatic life, or other natural resources, and for any other actual damages caused by an unauthorized discharge.
 - e. Assessment against a violator of the actual amount of any economic benefits accruing to the violator from a violation. Economic benefits may include the amount of any savings realized from avoided capital or noncapital costs resulting from the violation; the return earned or that may be earned on the amount of avoided costs; any benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; or any other benefits resulting from the violation.

Assessments under (d) shall be paid to the State Treasurer, except that compensatory damages shall be paid by specific order of the court to any person who has been aggrieved by the unauthorized discharge.

Assessments pursuant to actions brought by the Executive Director under (b), (c), and (e) shall be paid to the Clean Water Enforcement Fund.

2. **Civil Penalty:** Whenever the Executive Director finds that any person is in violation of any provision of the Act and/or the ELSA Rules and Regulations, he shall bring an action for a civil penalty in accordance with N.J.S.A. 58:10A-10a(4).

4.14.1 Failure to Pay a Penalty Assessment

Any user who violates these Rules and Regulations or an administrative order issued pursuant to N.J.S.A. 58:10A-10(b) or a court order issued pursuant to N.J.S.A. 58:10A-10(c) or who fails to pay a penalty in full pursuant to 58:10A-10(d), or to make a payment pursuant to a payment schedule entered into with the Authority or the NJDEP, shall be subject upon order of a court to a civil penalty not to exceed \$50,000 per day of such violation, and each day's continuance of the violation may constitute a separate violation. Any penalty incurred under N.J.S.A. 58:10A-10(e) may be recovered with costs, and, if applicable, interest charges, in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S. 2A: 58-1). In addition to any penalties, costs or interest charges, the court may assess against a violator the amount of any actual economic benefits accruing to the violator from the violation. The Superior Court shall have jurisdiction to enforce "the penalty enforcement law" in conjunction with the Water Pollution Control Act.

Any person who fails to pay a penalty or assessment, in whole or in part when due and owing, or who fails to agree to a payment schedule therefore, shall be subject to the civil penalty provisions of subsection e. of section 10, of P.L. 1977, c.74 (C.58: 10A-10).

4.14.2 Wastewater Treatment Operators' Training Account

In accordance with C.58: 10A-6(i) 2, of the amount of any penalty assessed and collected pursuant to an action brought by ELSA in accordance with section 10 of P.L. 1977, c. 74 or section 6 of P.L. 1990, c.28 (C.58: 10A-10.1), 10% shall be deposited in the "Wastewater Treatment Operators' Training Account", established in accordance with section 13 of P.L. 1990, c.28 (C.58: 10A-14.5), and used to finance the cost of training operators of municipal treatment works. ELSA shall use the remainder solely for enforcement purposes, and for upgrading municipal treatment works.

4.15 CRIMINAL ACTION:

Whenever the Executive Director finds that any User is in violation of any provision of the Water Pollution Control Act, he shall petition the Attorney General to bring a criminal action in accordance with N.J.S.A. 58:10A-10(f).

Any person who purposely, knowingly, or recklessly violates the Act and/or these ELSA Rules and Regulations, and the violation causes a significant adverse environmental effect, shall, upon conviction, be guilty of a crime of the second degree, and shall, notwithstanding the provisions of subsection a. of N.J.S. 2C:43-3, be subject to a fine of not less than \$25,000 nor more than \$250,000 per day of violation, or by imprisonment, or by both.

As used in this paragraph, a significant adverse environmental effect exists when an action or omission of the defendant causes: serious harm or damage to wildlife, fresh water or salt water fish, any other aquatic or marine life, waterfowl, or to their habitats, or to livestock or agricultural crops; serious harm, or degradation of any ground or surface waters used for drinking, agricultural, navigational, recreational, or industrial purposes; or any other serious articulable harm or damage to, or degradation of, the lands or waters of the State, including ocean waters subject to its jurisdiction pursuant to P.L. 1988, c. 61 (C. 58:10A-47).

Any person who purposely, knowingly, or recklessly violates this Act and/or these ELSA Rules and Regulations, including making a false statement, representation, or certification in any application, record, or other documentation filed or required to be maintained under the Act and/or these ELSA Rules and Regulations, or by falsifying, tampering with or rendering inaccurate any monitoring device or method required to be maintained pursuant to the Act and including these ELSA Rules and Regulations, or by failing to submit a monitoring report, or any portion thereof, required pursuant to the Act including these ELSA Rules and Regulations, shall, upon conviction, be guilty of a crime of the third degree, and shall, notwithstanding the provisions of subsection (b) of N.J.S. 2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$75,000 per day of violation, or by imprisonment, or by both.

Any person who negligently violates the Act and/or these ELSA Rules and Regulations, including making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under the Act and/or these ELSA Rules and Regulations, or by falsifying, tampering with, or rendering inaccurate any monitoring device or method required to be maintained pursuant to the Act and/or these ELSA Rules and Regulations, or by failing to submit a discharge monitoring report, or any portion thereof, required pursuant to this Act and/or these Rules and Regulations, shall, upon conviction, be guilty of a crime of the fourth degree, and shall, notwithstanding the provisions of subsection (b) of N.J.S. 2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment, or by both.

Any person who purposely or knowingly violates an effluent limitation or other condition of a permit, or who discharges without a permit, and who knows at that time that he thereby places another person in imminent danger of the death or serious bodily injury, as defined in subsection (b) of N.J.S. 2C: 11-1, shall, upon conviction, be guilty of a crime of the first degree, and shall, notwithstanding the provisions of subsection (a) of N.J.S. 2C: 43-3, be subject to a fine of not less than \$50,000 nor more than \$250,000, or in the case of a corporation, a fine of not less than \$200,000 nor more than \$1,000,000, or by imprisonment, or by both.

As used in this section, "purposely", "knowingly", "recklessly", and "negligently" shall have the same meaning as defined in N.J.S. 2C: 2-2.

4.16 Penalty Determination:1. USER NOT ENROLLED IN ELSA PRETREATMENT PROGRAM:

To assess a civil administrative penalty pursuant to this section, the Authority shall:

- a. Identify the civil administrative penalty range within the matrix in (2) below by:
 1. Determining the seriousness of the violation pursuant to (3) below; and
 2. Determining the conduct of the violator pursuant to (4) below.

2. The matrix of ranges of civil administrative penalties is as follows:

		<u>SERIOUSNESS</u>		
		Major	Moderate	Minor
	Major	\$10,000 - 50,000	\$5,000 - 25,000	\$2,000 - 13,000
<u>CONDUCT</u>	Moderate	5,000 - 10,000	2,500 - 5,000	500 - 3,000
	Minor	500 - 7,500	500 - 2,500	250 - 1,250

3. The Authority shall determine the seriousness of the violation as major, moderate or minor as set forth in (a) through (c) below.

a. Major shall include:

1. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation by: (A) more than 50 percent for a hazardous pollutant; or (B) more than 100 percent for a nonhazardous pollutant;
2. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by more than 50% of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring; and
3. Any other violation not included in (1) or (2) above which either:
 - A. Has caused or has the potential to cause serious harm to human health or the environment; or
 - B. Seriously deviates from the requirements of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substance Act or violates any rule, water quality standards, effluent limitation, administrative order or permit issued thereto; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement.
4. Any violation which seriously deviates from a requirement of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act or any violation of any rule, water quality standard, effluent limitation, administrative order or permit now or hereafter issued pursuant thereto; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement.

b. Moderate shall include:

1. Any violation, other than a violation of an effluent limitation identified in 3(b)(2) or (3) below, which has caused or has the potential to cause substantial harm to human health or the environment;
2. Any violation of an effluent limitation which is measured by concentration or mass of any discharge exceeding the effluent limitation as follows:
 - (A) By 20 to 50 percent for a hazardous pollutant; or
 - (B) By 40 to 100 percent for a nonhazardous pollutant;
3. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by at least 40 percent but no more than 50 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring; or
4. Any violation, other than a violation of an effluent limitation identified in 3(b)(2) or (3) above, which substantially deviates from the requirements of the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, or any violation of any rule, water quality standard, effluent limitation, administrative order or permit now or hereafter issued pursuant thereto; substantial deviation shall include, but not limited to, those violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement.

c. Minor shall include:

1. Any violation, other than a violation of an effluent limitation identified in 3(c)(2) or (3) below, not included in (a) or (b) above; or
2. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:
 - (A) By less than 20 percent for a hazardous pollutant; or
 - (B) By less than 40 percent for a nonhazardous pollutant; or
3. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by less than 40 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring.

4. The Authority shall determine the conduct of the violator as major, moderate or minor as follows:

- A. Major shall include any intentional, deliberate, purposeful, knowing, or willful act or omission by the violator;
- B. Moderate shall include any unintentional but foreseeable act or omission by the violator; or
- C. Minor shall include any other conduct not included in 4(A) or (B) above.

5. The authority may, in its discretion, move from the midpoint of the range to an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

- A. The compliance history of the violator;
- B. The number, frequency and severity of the violation(s);
- C. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
- D. The deterrent effect of the penalty;
- E. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not reoccur;
- F. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;

- G. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and
- H. Other specific circumstances of the violator or violation.

4.17 USERS SUBJECT TO THE ELSA PRETREATMENT PROGRAM:

Users subject to the requirements of the ELSA Wastewater Pretreatment Program shall refer to the ELSA Enforcement Response Plan contained in Appendix A of this document.

4.18 Construction Rules and Regulations

A violation of the ELSA Construction Rules and Regulations, any amendment or supplement thereto, is subject to a minimum penalty of \$1,000 per violation and up to \$100 per day per violation for a continuing violation.

4.19 ADMINISTRATIVE CONSENT ORDER/COMPLIANCE SCHEDULE:

1. Every schedule of compliance shall require the User to demonstrate to the Authority the financial assurance approved by the Executive Director necessary to carry out the remedial measures required by the schedule of compliance.
2. The Authority shall afford an opportunity to the public to comment on a proposed administrative consent order prior to final adoption if the administrative consent order would establish interim enforcement limits that would relax effluent limitations established in a permit or a prior administrative order. The Authority shall provide public notice of the proposed administrative consent order, and announce the length of the comment period, which shall be not less than 30 days, commencing from the date of publication of the notice. A notice shall also include a summary statement describing the nature of the violation necessitating the administrative consent order and its terms or conditions; shall specify how additional information on the administrative consent order may be obtained; and shall identify to whom written comments are to be submitted. At least three days prior to publication of the notice, a written notice, containing the same information to be provided in the published notice, shall be mailed to the mayor and governing body of the municipality and county in which the violation occurred, and to any other interested persons, including and any other governmental agencies. The Authority shall consider the written comments received during the comment period prior to final adoption of the administrative consent order. Not later than the date that final action is taken on the proposed order, the Authority shall notify each person or group having submitted written comments of the main provisions of the approved administrative consent order and respond to the comments received there from.
3. The Authority, on its own initiative or at the request of any person submitting written comments pursuant to N.J.S.A. 58:10A-6.1(b) may hold a public hearing on a proposed administrative order or administrative consent order, prior to final adoption if the order would establish interim enforcement limits that would relax, for more than 24 months, effluent limitations established in a permit or a prior administrative order or administrative consent order. Public notice for the public hearing to be held shall be published not more than 30 and not less than 15 days prior to the holding of the hearing. The hearing shall be held in the municipality in which the violation necessitating the order occurred. The authority may recover all reasonable costs directly incurred in scheduling and holding the public hearing from the person requesting or requiring the interim enforcement limits.
4. If additional pretreatment and/or operation and maintenance is required for the installation of technology required to meet applicable Pretreatment Standards and Requirements, pretreatment discharge limitations as contained in the discharger's permit and/or the Authority's Local Limitations, the User must create and submit for Authority approval a compliance schedule under 40 CFR 403.12(b)(7) and (c). The timely creation and submittal of a compliance schedule for meeting discharge limitations is the responsibility of the User.

ARTICLE X
BOOKS AND RECORDS

The books and records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available, upon prior reasonable notice, for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI
ASSESSMENTS

Section 1. LIEN. As more fully provided in the Declaration, each Member is obligated to pay to the Association all Assessments, which such Assessments are secured by a continuing Lien upon the Lot against which the Assessments are made. Any Assessments which are not paid when due shall be delinquent. If any Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest, late charges, attorney's fees and costs as provided in the Declaration and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the Lien against the Lot, and interest, costs, late charges and attorney's fees of any such action shall be added to the amount of such Assessment. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

Section 2. RIGHTS OF HOPEWELL TOWNSHIP. In addition to the aforesaid Assessments and in the event the Association fails to properly maintain the Common Areas, Hopewell Township may serve written notice upon the Association, setting forth the manner in which the Association has failed to maintain the Common Areas and Hopewell Township may enter upon and maintain the Common Areas, the reasonable cost of such maintenance being assessed against the Association, and/or each Lot or Owner set forth in the Declaration, and same shall be a tax lien upon the Lots, all as provided by law.

ARTICLE XII
CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: "Wellington Manor at Hopewell Homeowners' Association, Inc."

ARTICLE XIII
AMENDMENTS

Section 1. METHOD. These By-Laws may be amended, at a regular Annual Meeting or Special Meeting of the Members by a vote of a majority of the Members.

Section 2. CONFLICT. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

Section 3. PROHIBITION. Declarant shall not be permitted to cast any votes held by it for unsold Lots or Units for the purpose of amending the Declaration, these By-Laws or any other Association Documents for the purpose of changing the permitted use of a Lot or Unit or for the purpose of reducing the Common Areas or facilities therein.

ARTICLE XIV
DISSOLUTION

The Association cannot be dissolved unless the interests, rights and obligations of the Association in and to the Common Areas shall be dedicated or assigned to Hopewell Township or any entity or agency, public or private, approved by Hopewell Township. If Hopewell Township shall not accept said dedication or assignment, then such interests, rights and obligations of the Association shall be transferred to such other public or private agency or instrumentality as will most nearly carry out the original intention of the Declaration. The provisions herein shall apply also if the Association ceases to operate, and in such case, it shall be

the duty of the Owners to cause said interest, rights and obligations to be dedicated, assigned or transferred as provided herein.

ARTICLE XV
DISPUTE RESOLUTION

The following procedures for resolution of disputes shall be and are the official policy of the Association with respect to such matters:

(a) Any Owner in his individual capacity as the Owner of a Unit, any officer, Director or agent of the Association, the Board acting as a whole or any duly constituted committee of the Board, including any committee created pursuant to Section 5.01(s) of these By-Laws and the Covenants Committee, acting as a whole (a "Complainant") has the authority to informally request that any person or entity subject to the Master Deed, these By-Laws, the Certificate of Incorporation or any adopted Rules and Regulations of the Association (collectively the "Association Documents") cease or correct any act or omission of such person or entity (the "Alleged Violator") which the Complainant believes to be in violation of the Association Documents. Such informal request from the Complainant to the Alleged Violator should be made before the formal process set forth below is initiated.

(b) The Complainant may make an initial attempt to secure compliance with the Association Documents through correspondence (the "Violation Notice") to the Alleged Violator, which Violation Notice shall state the time(s), date(s), place(s), and nature(s) of the violation(s) and set forth a time period (not to exceed five (5) days) within which the alleged violation(s) must be corrected. If the Alleged Violator does not respond in writing to the Violation Notice or make the election to comply within such five (5) day period, the allegations of Complainant's Violation Notice shall be deemed denied by the Alleged Violator. Copies of the Violation Notice and any written response thereto shall be sent to the Association by the issuer of the correspondence. The Association shall maintain such correspondence(s) in its files.

(c) The Complainant and Alleged Violator shall attempt in good faith to resolve any controversy, claim or dispute arising out of or relating to the Association Documents or the breach, enforceability or validity thereof (a "Dispute") promptly by negotiations between such parties within a period not to exceed ten (10) days from the sending of the Violation Notice from Complainant. A Dispute shall not include issues relating to the payment or nonpayment of annual and/or special assessments levied against a Unit in accordance with the Association Documents. Should the Complainant and Alleged Violator fail to resolve the Dispute through negotiations between them by the end of said ten (10) day period (the "Negotiation Period"), a formal mediation process may be initiated upon the written request of any party to the Dispute (the "Request for Mediation"), provided that such written Request for Mediation must be made within five (5) days from the end of the Negotiation Period. The form of any written Request for Mediation shall be in such format as is reasonable. The Request for Mediation shall contain a brief statement generally setting forth the source and nature of the Dispute. The party receiving the Request for Mediation may respond in writing by no later than five (5) days from such party's receipt of the Request for Mediation. The Request for Mediation and any applicable written response shall be addressed to the Dispute Resolution Committee of the Association (the "DRC"), with copy to the other party.

(d) The DRC shall be a permanent committee of the Association and shall consist of three (3) Unit Owners appointed by the Board who shall not be Directors or officers of the Association. Each DRC member shall serve for a term of one (1) year. Any vacancy shall be filled by the Board's appointment of a successor DRC member who shall serve out the unexpired term of his predecessor.

(e) The mediation by the DRC shall be conducted in accordance with such procedures as the DRC shall determine to be fair and equitable under the circumstances. The mediation by the DRC shall be concluded within thirty (30) days from the DRC's receipt of the Request for Mediation (the "Mediation Period").

(f) The DRC shall manage the mediation proceedings during such Mediation Period as it deems best so as to make it expeditious, economical and less burdensome than litigation. The DRC shall be responsible for controlling the procedural aspects of the mediation proceedings. The DRC shall not have the authority to impose a settlement on the parties, but may make recommendations for settlement and assist the parties in reaching a satisfactory resolution of the Dispute.

(g) If the parties agree to settle the Dispute, such settlement shall be memorialized in a written agreement and signed by the parties prior to the conclusion of the Mediation Period (the "Settlement Agreement").

(h) Mediation proceedings shall be conducted in private. Only the parties, their representatives and the DRC shall attend the proceedings. Other persons may attend only upon the express consent of the parties and the DRC. All proceedings of, or writings generated in connection with, the mediation conference, including any applicable Settlement Agreement, any DRC settlement recommendations and any statement made by any party, attorney or other participant, shall in all respects be considered settlement negotiations and privileged, and nothing said or disclosed, nor any document produced, which is not otherwise independently discoverable, shall be offered or received as evidence or used for impeachment or for any other purpose in any future litigation, except that either party shall have the right to seek judicial enforcement of any applicable Settlement Agreement in accordance with its terms.

(i) Any and all costs of the DRC mediation, including without limitation any applicable costs or fees of the DRC, shall be Common Expenses of the Association.

(j) If the Dispute is not settled by the parties within the Mediation Period, the DRC shall render a determination in writing by the end of said Mediation Period (the "DRC Decision") and shall immediately communicate that DRC Decision to the affected parties. Unless any party to the Dispute shall file an action (the "Action") in the Superior Court of New Jersey within thirty (30) days from the date of the DRC Decision (the "Court Appeal Period") seeking a judicial determination of the Dispute, the DRC Decision shall be deemed binding and

final on the parties and enforceable in accordance with its terms in the Courts of New Jersey. Any Action filed prior to the expiration of the Court Appeal Period shall render the DRC Decision non-binding and of no force and effect.

(k) All written correspondence(s) or communication(s) to a Complainant in his individual capacity as the Owner of a Unit, as provided under this Article XV, shall be sent via Certified U.S. Mail, Return Receipt Requested (with copy by regular U.S. Mail) at the Owner's address shown on the Tax Records of Hopewell Township. Any written correspondence(s) provided under this Article XV which are addressed to any Complainant not acting in his individual capacity as the Owner of a Unit or to the DRC shall be sent to such address as the Board uses to receive its U.S. Mail. Correspondence(s) sent by Certified U.S. Mail shall be deemed to have been received by the addressee three (3) days after posting in the U.S. Mail.

ARTICLE XVI DISCHARGE OF POWERS

Subject to such applicable restrictions or limitations as are contained in the Declaration and restrictions or other instruments of creation, the Association may do all that it is legally entitled to do under the laws applicable to its form of organization. The Association shall discharge its powers in a manner that protects and furthers the health, safety and general welfare of the residents of the Project.

ARTICLE XVII BOARD MEETINGS

Section 1. OPEN MEETINGS. All meetings of the Board, except conference or working sessions at which no binding votes are to be taken, shall be open to attendance by all Unit Owners.

Section 2. RESTRICTIONS TO OPEN MEETINGS. Despite Section 1 above, the Board may exclude or restrict attendance at those meetings or portions of meetings dealing with the following:

- (a) Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy;
- (b) any pending or anticipated litigation or contract negotiation;
- (c) any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer, or
- (d) any matter involving the employment, promotion, discipline, or dismissal of a specific employee of the association.

Section 3. MINUTES AT OPEN MEETINGS. At each Board meeting required to be open to all Unit Owners, minutes of the proceedings shall be taken, and copies of those minutes shall be made available to all Unit Owners before the next open Board meeting. Such minutes shall show the time and place of any such Board meeting, the Trustees present, the subject(s) considered, the action(s) taken, the vote(s) of each Board member, and any other information required to be shown in the minutes by the By-Laws. Such minutes shall be made available to the Unit Owners within thirty (30) days.

Section 4. NOTICE REQUIREMENTS FOR OPEN MEETINGS. Adequate notice of any open meeting shall be given to all Unit Owners.

Section 5. ADEQUATE NOTICE. Adequate notice (except for emergency matters as in Section 6 below) means written advance notice of at least 48 hours, giving the date, time, location and, to the extent known, the agenda of any regular, special, or rescheduled meeting such notice shall accurately state whether formal action may or may not be taken. This notice shall be:

- (a) prominently posted in at least one place within the Association's property reserved for such or similar announcements; or

(b) mailed, telephoned, telegraphed or hand delivered to a newspaper of general circulation designated by the Board; or

(c) delivered to Unit Owners in either of the manners provided in Article III of these By-Laws; and

(d) filed with the Association secretary or administrative officer responsible for administering the Association business office.

Section 6. EMERGENCY MEETINGS. In the event that a Board meeting is required to deal with such matters of urgency and importance that delay, for the purpose of providing 48 hours advance notice would result in substantial harm to the interests of the Association, the notice shall be deemed adequate if it is provided as soon as possible following the calling of the meeting.

ARTICLE XVIII

TRANSITION COMMITTEE AND PROCEDURES

Section 1. PURPOSE. In order to provide for a timely mechanism to ensure that Declarant has properly discharged its warranty and construction obligations with respect to the Common Areas which the Association shall ultimately be obligated to maintain, the Board shall establish a committee (the "Transition Committee"), consisting of five (5) Unit Owners other than Declarant which Transition Committee shall be established by the Board at the time of the Special Meeting of the Members to be held pursuant to Section 1(b) of Article IV above. The Transition Committee shall consist of those Unit Owners who are then members of the Board and such other Unit Owner(s) as the Board shall appoint in order to constitute the full five (5) member Transition Committee. The Trustee members on the Transition Committee shall serve only during their respective terms on the Board. Vacancies on the Transition Committee shall be filled as follows: (i) as to Trustee members, by whomsoever shall have replaced such Trustee pursuant to Section 4 of Article IV above, and (ii) as to any non-Trustee member, by a vote of the Board at a special Board meeting held for the purpose of electing a replacement for any non-Trustee membership of

the Transition Committee which has become vacant, such special Board meeting to be held within sixty (60) days of any such vacancy having occurred.

Section 2. AUTHORITY. When formed, the Transition Committee shall inspect and evaluate the condition of those Common Areas or any portion(s) thereof which are not covered by performance guarantees posted with Hopewell Township ("Bonded Improvements") and which Declarant certifies in writing to the Transition Committee are complete in the judgment of Declarant ("Notice of Completion") and ready to be inspected for compliance with Declarant's warranty and construction obligations. The Transition Committee's inspection and evaluation of the condition of the Common Areas which Declarant has determined are complete and ready for the Association's acceptance for maintenance shall be undertaken with the assistance of qualified independent engineering and legal consultants to be selected by the Transition Committee and paid from the Transition Expense Fund described below. After its receipt of any Notice of Completion from Declarant, the Transition Committee shall, if applicable, negotiate in good faith with Declarant any appropriate remedial measures and recommend to the Board the terms and conditions upon which Declarant shall be released from liability with respect to each such completed portion of such Common Areas as are set forth in the Notice of Completion, but not for warranty obligations for individual Units. Bonded Improvements shall be exempt from this process and the acceptance of same by the Township shall be deemed conclusive evidence that the Bonded Improvements have been completed satisfactorily whereupon Declarant shall have no further warranty or construction obligations to the Association with respect to same.

Section 3. PROCEDURES. (a) The Transition Committee shall cause each completed portion of the Common Areas referenced in a Notice of Completion from Declarant, other than Bonded Improvements, to be inspected by and obtain a written report from a qualified independent engineering consultant within sixty (60) days after the Transition Committee's receipt of each Notice of Completion from Declarant. A copy of each said written report shall be furnished to Declarant within ten (10) days after the Transition Committee's receipt of same. The Transition Committee or its designated representative(s) and Declarant shall conduct one or more joint inspections of the Common Areas improvements covered by the Notice of Completion and

pursue such good faith negotiations as may be appropriate to resolve any differences with respect to Declarant's obligations regarding such completed Common Areas improvements.

(b) if an agreement is reached between the Transition Committee and Declarant, and the Transition Committee recommends approval of same, then the Board shall be empowered to and shall release Declarant from all liability with respect to such completed Common Areas improvements, subject to such terms and conditions as may be mutually acceptable to the Transition Committee and Declarant. Any such release shall be legally binding upon the Association, provided that same is approved in writing as to form by an independent legal counsel for the Association who has been selected by the Transition Committee.

(c) if no such agreement as set forth in sub-Section (b) above is reached within one hundred and fifty (150) days after the Transition Committee's receipt of the Notice of Completion, or such longer period as to which Declarant and the Transition Committee shall mutually agree, then Declarant shall have the option to (i) proceed to binding arbitration to resolve all disputed recommendations of the Transition Committee pursuant to the rules of the American Arbitration Association, (ii) accept such portions of the Transition Committee's recommendations as it deems appropriate, or (iii) reject the Transition Committee's recommendations in their entirety. If Declarant elects option (ii) above, then the Board shall execute a binding release of liability of Declarant with respect to all Transition Committee recommendations acceptable to Declarant, subject to such independent legal counsel's approval of the release as to form. Moreover, the Board and the Association shall not be obligated to pursue any claims with respect to any unresolved items under either option (ii) or (iii) until the expiration of one (1) year after the Unit Owners assume control of the Board, it being understood and agreed that by submitting each Notice of Completion to the Transition Committee, Declarant shall have been deemed to have waived for such one (1) year period any statute of limitations defenses with respect to those Common Areas covered by such Notice of Completion.

(d) The procedures set forth above in this Section 3 shall apply to and be followed by Declarant and the Board with respect to all Common Areas for which there has been no previous Notice of Completion furnished by Developer.

Section 4. BINDING RELEASE. Any release of Declarant's liability executed by the Board pursuant to this Article XVIII shall nonetheless be legally binding upon the Association, absolutely and forever, despite Declarant's control of the Board at the time of execution of the release.

Section 5. TRANSITION EXPENSE FUND. Upon the initial acquisition of title to his Unit from Declarant, each Unit Owner, other than Declarant, including any who acquire title to their Unit(s) after completion of transition, shall contribute a membership fee in the amount of \$150.00 to establish a Transition Expense Fund to help underwrite the cost of independent professional consultants necessary to assist the Association in the transfer of Common Areas maintenance responsibility to the Association, as discussed above in this Article. Upon the completion of transition and the formal release of Declarant from all liability with respect to the Common Areas, but not for warranty obligations for individual Units, any surplus monies remaining in the Transition Expense Fund shall be promptly transferred by the Association's Treasurer into any applicable reserve account of the Association as the Board shall then determine to be offset against the budgeted expenses for such reserve account and credited against Assessments for the same fiscal year when such transfer is made.

Section 6. LEGAL EFFECT. The provisions of this Article shall be construed to be complementary to and not in derogation of any other provisions of these By-Laws, the Declaration, the Certificate of Incorporation or of any applicable statute or regulation of the State of New Jersey. Each Unit Owner's acceptance and recording of the deed for his Unit shall constitute an irrevocable and binding consent by such Unit Owner to the terms of this Article.

ARTICLE XIX
MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January, and end on the 31st day of December every year, except that the first fiscal year shall begin on the date of incorporation.

VERIFICATION

STATE OF NEW JERSEY :
: SS
COUNTY OF MERCER :

_____ , being duly sworn upon his/her oath deposes and says:

I am the _____ President of the claimant with respect to the foregoing claim of Lien. The allegations of the claim are true to the best of my knowledge and belief. Said claim of Lien is made in good faith for the causes set forth herein.

WELLINGTON MANOR AT HOPEWELL
HOMEOWNERS' ASSOCIATION, INC.

BY: _____
_____, _____ Pres.

Sworn and subscribed to
before me this _____ day of
_____, 200__.

Notary Public or
Attorney at Law of New Jersey

TO: COUNTY RECORDING OFFICER OF MERCER COUNTY

The Lien established in this Notice of Claim of Lien is fully paid. You are authorized to cancel it of record.

ATTEST: WELLINGTON MANOR AT HOPEWELL
HOMEOWNERS' ASSOCIATION, INC.

_____, _____ Sec. By: _____
_____, _____ President

Date: _____

Schedule 6

Detention Basin Maintenance
Standards of Hopewell Township

DETENTION BASIN MAINTENANCE STANDARDS

OF THE

TOWNSHIP OF HOPEWELL

The concept of stormwater management within Hopewell Township is vitally dependent upon the function of the detention basins located within the Township. All basins are designed to operate under conditions which will require a certain amount of regular active maintenance. In order to insure stormwater management facilities within Hopewell Township will continue to function properly after construction, the following schedule as set forth as the minimum amount of maintenance necessary for each basin:

1. Mowing
 - a. Basin bottoms, side slopes and maintenance access drives shall be mowed at regular intervals during the growing season to maintain optimum cover.
 - b. Reseed, resod, and fertilize the areas of poor stand or areas destroyed by erosion or unauthorized human activity. If necessary, restore eroded areas before reseeding. Fertilize and lime as required to maintain a vigorous stand.
 - c. Fertilize and lime vegetation as required to maintain a vigorous stand.
 - d. Control grazing as required to insure proper vegetative cover.
2. Landscape & Maintenance
 - a. During the growing season, weeds and other undesirable growth shall be removed from the basins, particularly from around outlet structures, headwalls, low flow channels and rip rapped areas.
 - b. Replace dead or dying plants.
 - c. Replace mulch as needed.
3. General Maintenance
 - a. Outlet Works - All outlet control structures shall be inspected and cleaned as necessary. In order to insure that the basins will function properly, any silt and debris buildup must be removed from the bottom of the structures and the outfall pipes.

- b. Sediment Removal - All sediment shall be removed. At the time of sediment removal, other areas of the basins should be checked for sediment accumulation and cleaned if necessary.
- c. Debris Removal - Following heavy storms, basins shall be cleaned of accumulated debris. This is necessary for safety, to prevent the blockage of outlet works, to limit the habitat for undesirable rodents and pests, and to maintain the overall aesthetics of the basins.
- d. Discharge Swale Maintenance - Maintenance of discharge swales varies. Debris to be removed can consist of trash, garbage, yard trimmings, and tree branches. Maintenance is critical to efficient operation and control of channel erosion.
 - 1. Following heavy storms, all debris shall be removed.
 - 2. Grass swales shall be mowed and maintained according to the landscape schedule and the clippings removed.
- 4. Periodic Maintenance - Repair outlet structures, repair low flow channels, repair rodent damage, remove and replace conduit outlet protection and all other slope protection devices and repair or replace all inoperative hinge assemblies.
- 5. Engineering Inspection - An engineering inspection of each basin shall be made to determine effectiveness of current maintenance procedures any short-term or long-term changes that may affect the function and safety of the basins. Among the specific items that should be inspected and reported on, are erosion of the side slopes, breaching of embankments, and deterioration of the headwalls and outlet works. Any erosion on the basin side slopes must be repaired immediately in accordance with prevailing soil erosion standards. Breaching of embankments may be caused by animals, settlement or other factors. Deterioration of outlet structures may cause a basin failure to occur and result in property damage downstream. All observed deficiencies must be reported and corrected immediately upon discovery. These may include displacement of rip-rap, deterioration of low flow channels, etc. Inspections shall be performed during the first two weeks of November. Structural repairs should be made immediately. Restoration of eroded soils shall comply with the prevailing Standards for Soil Erosion and Sediment Control in New Jersey.

TOWNSHIP OF HOPEWELL

Detention Basin Maintenance Checklist

Landscape Measures

WATERSHED _____

CHANNEL REACH _____

INSPECTED BY _____

Date _____

A. Grass Areas Not Inundated by Water

1. Last PH reading _____ Date taken _____

Last liming _____ Kind _____ Amount _____ Date _____

2. Fertilizer _____ Date _____

Kind _____ Date _____

3. Mowed _____

4. General Condition of grass area (lack of weeds, unwanted woody encroachment,
bare areas. et.) _____

5. Pest control _____

6. Disease control _____

B. Grass Areas Inundated by Water

1. Last pH reading _____ Date taken _____

Last liming _____ Kind _____ Amount _____ Date _____

2. Fertilizer _____ Date _____

Kind _____ Date _____

3. Mowed _____

4. General Condition of grass area (lack of weeds, unwanted woody encroachment, bare areas, et.) _____

5. Pest control _____

6. Disease control _____

C. Planted Ground Cover Areas

1. Prune _____

2. Edge _____

3. Re-mulch _____

4. Weed control _____

5. Pest control _____

6. Disease control _____

7. Fertilize _____ Lime _____ Date _____

Kind _____ Amount _____

8. General condition of planted area (bare areas, dead plants, etc.) _____

D. Shrubs and Tree Areas

1. Prune _____

2. Edge _____

3. Re-mulch _____

4. Weed control _____

5. Pest control _____

6. Disease control _____

7. General condition of Planted area (bare areas, dead plants, etc.) _____

E. Pathways and other paved areas

1. Surface condition _____

2. Visibility (blind spots, shrub or tree encroachment, low limbs, etc.) _____

3. Edge _____

4. De-weed cracks _____

5. General condition of pathways and other paved areas _____

TOWNSHIP OF HOPEWELL

Detention Basin Maintenance Checklist

Waterways

WATERSHED _____

CHANNEL REACH _____

INSPECTED BY _____

DATE _____

I. Earth or Vegetated

a. Sedimentation and/or debris _____

b. Bank erosion (include condition of any riprap) _____

- c. Side inlets _____

- d. Tile outlets _____

- e. Condition of maintenance roads _____

- f. Conditions at bridge or culvert inlets and outlets _____

- g. Condition of retaining dikes _____

- h. Vegetative cover _____

- i. Evidence of pollutants, encroachments or other undesirable or
unauthorized practice _____

II. Concrete Channels

- a. Concrete deterioration (cracks, spalls, etc.) _____

- b. Widening or spreading of construction joints _____

- c. Weep holes functioning properly _____

- d. Debris or other obstructions in channel _____

f. Evidence of pollutants entering channel _____

g. Structures or obstructions on maintenance right of way _____

h. Condition of vegetation along sides of channel _____

IV. Other (Include remarks on maintenance needs, who is responsible for positive action, estimates of labor, equipment or materials to correct unsatisfactory conditions) _____

TOWNSHIP OF HOPEWELL

Detention Basin Maintenance Checklist

Structures

WATERSHED _____

STRUCTURE DESIGNATION _____

INSPECTED BY _____

DATE _____

I. Earth Embankment

a. Settlement or cracking _____

- b. Erosion (slope, gutters, waves) _____
- c. Seepage _____
- d. Foundation and embankment drainage system _____
- e. Rodent, wildlife, livestock, or trail bike damage _____

- f. Signs of seepage at downstream toe outlet channel and/or abutments _____

- g. Condition of vegetative cover _____

II. Principal Spillway

- a. Debris on trash racks _____
- b. Debris in riser barrel or blocking parts _____
- c. Condition of concrete in riser _____
- d. Condition of gates, valves, mechanical or electrical controls, ladders, and other metal work _____
- e. Condition of conduits (cracks, separation of joints, leaks, other signs of unusual loading) _____

- f. Condition of outlet works (impact basin, SAF, plunge pool, riprap, and outlet channel) _____

III. Emergency Spillway

- a. Obstructions built in spillway _____

- b. Erosion or sloughing _____

- c. Woody vegetation reducing capacity _____

- d. Condition of vegetative cover and evidence of proper cultural practices
(such as mowing bottom to maintain Ky31 and prevent crown vetch from
taking over) _____

IV. Reservoir Area (Area Inundated by Water)

- a. Undesirable vegetative growth _____

- b. Cut or fallen trees and debris _____

- c. Shoreline erosion _____
- d. Sediment level _____

V. Other (Include remarks on maintenance needs, who is responsible for positive
action, estimates of labor, equipment or materials to correct unsatisfactory
conditions) _____

SCHEDULE 7

WELLINGTON MANOR
RULES AND REGULATIONS

All Owners and their families, visitors, invitees, employees, agents and tenants shall adhere to and comply with the following Rules and Regulations of the Association:

1. The exterior of the Units and all other areas appurtenant to a Unit shall not be painted, decorated or modified in any manner without the prior consent of the Board of Trustees, which consent may be withheld on purely aesthetic grounds within the sole discretion of the Board of Trustees.

2. No article shall be hung from any portion of a Unit or placed upon the outside window sills of the Units.

3. Personal articles shall not be allowed to stand in any of the Common Areas.

4. No animals shall be raised, bred or kept in any part of the Project, except that dogs and/or cats may be kept in a Unit. Unit Owners shall be responsible for the behavior of their pets and shall promptly repair any damage done by, and clean up any waste made by, such pets at the Project. Dogs must be kept under leash at all times when taken outside of the Unit and must be "curbed" away from the Lots.

5. No Owner shall make or permit any noises that will disturb or annoy the occupants of any of the Units or do or permit anything to be done which will interfere with the rights, comforts or convenience of other Owners. No immoral or unlawful use shall be made of the Project or any part thereof.

6. Each Unit Owner shall keep his Unit in a good state of repair and cleanliness. No flowers or other vegetation shall be planted on any part of the Common Areas, without the prior approval of the Board of Trustees, which approval may be withheld on purely aesthetic grounds.

7. No awnings except retractable rear awnings in a style to be approved by the Board of Trustees, window guards, light reflective materials, hurricane or storm shutters, ventilators, fans or air conditioning devices which are visible from outside any Unit shall be used without the prior approval of the Board of Trustees, which approval may be withheld on purely aesthetic grounds.

8. All refuse and garbage shall be disposed of in proper containers and only at such times and in such manner as the Board of Trustees or Township of Hopewell may direct. Burning of trash or refuse is prohibited.

9. No sign, notice or advertisement shall be placed or exposed on or at any window or the exterior of any Unit or Lot except such as shall have been approved in writing by the Board of Trustees, nor shall anything be projected out of any window without similar approval.

10. The agents of the Association and any contractor or workman authorized by the Board of Trustees may enter any Unit at any reasonable hour of the day for any purpose permitted under the terms of the By-Laws or the Declaration. Except in case of emergency, entry will be made by pre-arrangement with the Owners.

11. No vehicle belonging to an Owner or a member of the families, visitors, invitees, employees or tenants of an Owner shall be parked in such manner as to impede or prevent ready access to another parking space. All Owners, their visitors, invitees, agents and families shall obey any reasonable traffic regulations promulgated by the Board of Trustees for the safety, comfort and convenience of the Owners. No repair of vehicles shall be made at any exterior portion of the Project.

12. The parking areas shall be used only for the parking (but not storage) of passenger vehicles. No commercial trucks, trailers, or RV'S, with or without snowmobiles, boats or other equipment thereon may be parked or stored on any portion of the Project (outside of garages) without the prior consent of the Board of Trustees, which may be withheld on purely aesthetic grounds.

13. No Owner shall use or permit to be brought onto any portion of the Common Areas any inflammable oil or liquid, such as gasoline or kerosene, or explosives, fireworks or articles deemed extra-hazardous to life, limb or property.

14. Complaints regarding the management of the Project or regarding actions of other Owners shall be made in writing to the Board of Trustees.

15. Any consent or approval given under these Rules and Regulations by the Board of Trustees or the Association shall be revocable at any time. These Rules and Regulations may be modified, added to or repeated at any time by the Board of Trustees.

16. All Owners shall comply with the ELSA limitations on wastewater discharge and shall be subject to the penalties for violations of ELSA's requirements for wastewater discharge. Sections Two and Four of ELSA's rules and regulations respectively setting forth the current limitations on wastewater discharge and the penalties for violations thereof are attached hereto.