

Tax Parcels:

1-31-14.00-44.23 (Initial Parcel)
1-31-14.00-44.23 (Expansion Parcel)
1-31-14.00-44.00 (SWM Lot)

PREPARED BY/RETURN TO:

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**RECIPROCAL EASEMENT AGREEMENT
WITH COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS, CONDITIONS AND RESTRICTIONS (“**Agreement**”) is made and entered into this ___ day of _____, 2022, by and between HERITAGE SHORES VILLAS, LLC, a Delaware limited liability company (“**Initial Parcel Owner**”), PASSWATERS FARM LLC, a Delaware limited liability company, as owner of the Expansion Parcel (defined below) (“**Expansion Parcel Owner**”) and as owner of the SWM Lot (defined below) (“**SWM Lot Holder**”). The Initial Parcel Owner and Expansion Parcel Owner are collectively referred to as the “**Owners**” or individually as an “**Owner**”.

RECITALS

A. The Initial Parcel Owner is the owner of a parcel of real property situated in the Town of Bridgeville (“**Town**”), Sussex County, Delaware, more particularly described on *Exhibit A* attached hereto and incorporated herein by this reference (“**Initial Parcel**”). The Initial Parcel will be subdivided and developed as 152 residential villa units, consisting of eight (8) two-unit duplexes, six (6) four-unit duplexes, four (4) four-unit townhouses, and sixteen (16) six-unit townhouses, and related residential and recreational improvements, including a pool house, swimming pool, splash pad and playground (collectively, “**Phase 1**”).

B. The Expansion Parcel Owner is the owner of a parcel of real property situated in the Town of Bridgeville, Sussex County, Delaware, more particularly described on *Exhibit B* attached hereto and incorporated herein by this reference (“**Expansion Parcel**”). The Expansion Parcel will be subdivided and developed as 58 residential villa units, consisting of two (2) two-unit duplexes, three (3) four-unit duplexes, and seven (7) six-unit townhouses, and related residential improvements (collectively, “**Phase 2**”). The Initial Parcel and Expansion Parcel are collectively referred to as the “**Parcels**” and individually as a “**Parcel**”.

C. Phase 1 and Phase 2 together will form a single residential community to be known as the “Villas at Bridgeville” (“**Community**”). The Community will be configured and operated as an integrated neighborhood within Heritage Shores, a master planned golf course community on adjacent lands to the south and west of the Community.

D. The SWM Lot Holder is the owner of a parcel of real property situated in the Town of Bridgeville, Sussex County, Delaware, more particularly described on Exhibit C attached hereto and incorporated herein by this reference (“**SWM Lot**”). The SWM Lot will be improved by an extension of storm drain pipes and outfalls and stormwater management ponds to serve the Community within an easement area (“**SWM Easement**”) more particularly described on Exhibit D attached hereto and incorporated herein.

E. The Owners and SWM Lot Holder desire to impose certain easements upon the Parcels and the SWM Lot and to establish certain covenants, conditions and restrictions with respect to said Parcels and SWM Lot, for the mutual and reciprocal benefit and complement of the Parcels and SWM Lot and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for valuable consideration, the Owners and SWM Lot Holder hereby covenant and agree that the Parcels and SWM Lot and all present and future occupants and owners thereof shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Agreement, so that the Parcels and SWM Lot shall be maintained, kept, leased and used in full compliance with and subject to this Agreement and, in connection therewith, the parties hereto on behalf of themselves and their respective successors and assigns covenant and agree as follows:

AGREEMENTS

1. Definitions. For purposes hereof:

1.1 The term “**Access Roads**” shall mean all the roads and drives shown on Exhibit E to be used jointly by the Owners and Permittees for vehicular access, ingress and egress throughout the Community and from units within the Community and public roads.

1.2 The term “**Allowed Rate**” shall mean the maximum interest rate allowed by law.

1.3 The term “**Annual Budget**” shall mean an annual budget for the maintenance, insurance and operation of the Access Roads and Recreation Area which shall be prepared by the Initial Parcel Owner and delivered to the Expansion Parcel Owner by November 1 of each year for the following year.

1.4 The term “**Capital Improvement**” shall mean any capital improvement as defined by Section 3.8.

1.5 The term “**Claims**” shall mean all claims, rights, demands, lawsuits, actions, causes of action, suits, penalties, fines, liabilities, damages, costs and expenses (including, without limitation, attorneys’ fees and court costs).

1.6 The term “**Drainage Improvements**” shall mean the Water Drainage Facilities constructed to serve the Community and located on the SWM Lot within the easement area more particularly depicted and described by *Exhibit D*.

1.7 The term “**Covered Improvements**” means all improvements to the Access Roads, Recreation Area, and any entrance monuments or features, whether located on the Initial Parcel and/or Expansion Parcel, including, without limitation, all structural elements, utilities, grading, equipment, lighting, curbs, signage, fixtures, facilities or other improvements of any kind.

1.8 The term “**Easements**” shall mean those easements granted in Section 2 of this Agreement.

1.9 The term “**Mortgage**” shall mean any indenture of mortgage or deed of trust, bonds and grant of taxable or tax exempt funds from a governmental agency.

1.10 The term “**Mortgagor**” shall mean the mortgagor or trustor under a Mortgage.

1.11 The term “**Net Insurance Proceeds**” shall mean the gross insurance proceeds paid by any insurer or insurers to an Owner (or its designee) for damage to or destruction of the Covered Improvements, less any and all costs, fees and expenses (including, but not limited to, attorneys' fees and expenses) incurred to recover said gross insurance proceeds.

1.12 The term “**Permitted Mortgage**” shall mean any mortgage, pledge, deed of trust or other instrument encumbering the interest of either Owner in whole or in part, and any interests or rights appurtenant to such interest. The term Permitted Mortgage shall not include any mortgage, pledge, deed of trust or other instrument encumbering an individual villa unit or securing debt incurred by a villa unit owner, other than the Initial Parcel Owner or Expansion Parcel Owner.

1.13 The term “**Permitted Mortgagee**” shall mean the holder or beneficiary of any Permitted Mortgage.

1.14 The term “**Permittees**” shall mean the Owners, villa unit owners, tenant(s) or occupant(s) of a Parcel, and their respective officers, directors, managers, members, agents, employees, agents, contractors, subcontractors, customers, visitors, invitees, tenants, family and licensees, as applicable.

1.15 The term “**Phase 1 Common Area**” shall mean the areas of the Initial Parcel that are outside of the exterior walls of buildings or other structures (including, without limitation, those portions which are either unimproved or are improved as, without limitation, parking areas, landscaped areas, driveways, walkways, light standards, curbing, paving, entrances, exits and other similar exterior site improvements, but excluding the Access Roads and Recreation Area).

1.16 The term “**Phase 2 Pro Rata Share**” shall mean 27.6% of the Shared Maintenance Costs, Shared Repair Costs, or Capital Improvements, as applicable, to be paid by the Expansion Parcel Owner to the Initial Parcel Owner.

1.17 The term “**Phase 2 Common Area**” shall mean the public areas of the Expansion Parcel that are outside of the exterior walls of buildings or other structures (including, without limitation, those portions which are either unimproved or are improved as, without limitation, parking areas, recreational areas, landscaped areas, driveways, walkways, light standards, curbing, paving, entrances, exits and other similar exterior site improvements, but excluding the Access Road).

1.18 The term “**Project**” shall mean the improvements located on the Initial Parcel and the Expansion Parcel and the Drainage Improvements.

1.19 The terms “**Recorded**” or “**Recordation**” shall mean recordation in the Office of the Recorder of Deeds for Sussex County, Delaware.

1.20 The term “**Recreation Area**” shall mean the land area bounded by River Run Drive, Choptank Drive, and Branch Run Road, including the parking area, swimming pool, splash pad and playground improvements.

1.21 The term “**Recreation Area Rules**” shall mean rules and regulations adopted from time to time by the Initial Parcel Owner regarding use of the Recreation Area, which rules and regulations shall be subject to the approval of the Expansion Parcel Owner, which approval shall not be unreasonably withheld, conditioned or delayed, and which rules shall not conflict with any of the provisions of this Agreement and shall be adopted and administered by the Initial Parcel Owner in a fair, reasonable and non-discriminatory manner.

1.22 The term “**Restoration**” shall mean the repair, restoration, replacement, or rebuilding of damaged or destroyed Improvements, including, without limitation, any temporary repairs or other work necessary to secure the affected Covered Improvements and protect the safety of other property and persons, and including, without limitation, any alterations, additions, or improvements required by applicable building codes and approved by the Town.

1.23 The term “**Shared Maintenance Costs**” shall mean those maintenance and reserves cost items for the Recreation Area and Access Roads in the amounts set forth in the Annual Budget, which costs shall be shared between the Owners as provided in this Agreement.

1.24 The term “**Shared Repair Costs**” shall mean the cost of repair of and/or capital improvement to the Recreation Area and Access Roads, which costs shall be shared between the Owners as provided in this Agreement.

1.25 The term “**Utilities**” shall mean water mains, storm drains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, cable, gas mains and other utility facilities necessary for the operation of the Parcels and all improvements located thereon.

1.26 The term “**Water Drainage Facilities**” shall mean all lines, conduits, pipes and other apparatus for water drainage, storm water collection, retention, detention and all storage systems necessary in connection therewith, serving one or both Parcels.

2. Easements.

2.1 Grant of Easements.

(a) Grant of Reciprocal Easements. Subject to any express conditions, limitations and reservations contained in this Agreement, including, without limitation, Section 2.3 hereof, the Owners hereby grant, establish, covenant and agree that the Parcels and all Owners and their respective Permittees shall be benefited and burdened by the following nonexclusive, perpetual and reciprocal easements for the benefit of the Owners and all Permittees which are hereby imposed upon the Parcels:

(1) An easement of access, ingress and egress over the Access Roads for pedestrian and vehicular access, ingress and egress to and from the Parcels and adjacent public roads, as applicable, as provided in and limited by this Agreement.

(2) An easement upon, under, over, above and across the Parcels as reasonably necessary (a) for the discharge, drainage and use of storm water runoff, and (b) to maintain, repair and replace Water Drainage Facilities; provided that (1) such easements shall at all times be used in such a manner as not to unreasonably interfere with the normal operation of the burdened Parcel(s), the activities conducted thereon and the businesses conducted therein, (2) except in the event of an emergency, the right of any Owner to enter upon the Parcel of another Owner for the exercise of any right pursuant to such easements shall be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry, and (3) all activities on the Parcels shall be conducted in accordance with applicable laws. The easement granted herein shall include the right of reasonable ingress and egress as may be required to maintain and operate the Water Drainage Facilities. The Water Drainage Facilities shall not be modified, altered, relocated or otherwise changed, without the prior written consent of all Owners, which consent shall not be unreasonably withheld, conditioned or delayed. Except as otherwise provided in this Agreement, each Owner shall operate and maintain, or cause to be operated and maintained, in good order, condition and repair, the Water Drainage Facilities located upon its Parcel and make or cause to be made any and all repairs and replacements that may from time to time be required with respect thereto.

(3) An easement upon, under, over, above and across the Parcels as reasonably necessary for the maintenance, repair and replacement of Utilities provided that (a) such easements shall at all times be exercised in such a manner as not to unreasonably interfere with the normal operation of the burdened Parcel(s) and the uses thereof, (b) except in the event of an emergency, the right of any Owner to enter upon the Parcel of another Owner for the exercise of any right pursuant to such easements shall be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry, and (c) all activities on the Parcels shall be conducted in accordance with applicable laws. The easement granted herein shall include the right of reasonable ingress and egress as may be required to maintain, repair, replace or operate the Utilities. Each Owner shall operate and maintain, or cause to be operated and maintained, in good order, condition and repair, the Utilities serving its Parcel and make, or cause to be made, any and all repairs and replacements that may from time to time be required with respect thereto.

(4) An easement upon, under, over, above and across the Parcels as reasonably necessary to permit the Owners to perform the obligations imposed upon them by this Agreement for maintenance, repair and replacement of the improvements, including, without limitation, the improvements, systems and equipment, located on the Parcels.

(5) An easement upon, under, over, above and across the Parcels as reasonably necessary to reconstruct, maintain, repair, replace or modify improvements necessary or desirable to provide support, including, without limitation, lateral and subjacent support, to any improvements constructed or to be reconstructed on the Parcels and an easement upon, under, over, above and across the Parcels as reasonably necessary to provide support for the improvements located on the Parcels, including, without limitation, lateral and subjacent support.

(6) An easement upon, under, over, above and across the Parcels for minor encroachments upon, under, over, above and across the Parcels which exist or result from construction of any new, rebuilt, repaired or reconstructed improvements located on the Parcels.

(7) An easement upon, under, over, above and across the Parcels as reasonably necessary (a) for the discharge, drainage and use of storm water runoff, and (b) to maintain, repair and replace Water Drainage Facilities; provided that (1) such easements shall at all times be used in such a manner as not to unreasonably interfere with the normal operation of the burdened Parcel(s), the activities conducted thereon and the businesses conducted therein, (2) except in the event of an emergency, the right of any Owner to enter upon the Parcel of another Owner for the exercise of any right pursuant to such easements shall be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry, and (3) all activities on the Parcels shall be conducted in accordance with applicable laws. The easement granted herein shall include the right of reasonable ingress and egress as may be required to maintain and operate the Water Drainage Facilities. The Water Drainage Facilities shall not be modified, altered, relocated or otherwise changed, without the prior written consent of all Owners, which consent shall not be unreasonably withheld, conditioned or delayed. Except as otherwise provided in this Agreement, each Owner shall operate and maintain, or cause to be operated and maintained, in good order, condition and repair, the Water Drainage Facilities located upon its Parcel and make or cause to be made any and all repairs and replacements that may from time to time be required with respect thereto.

(b) Grant of Easements Benefiting the Initial Parcel. Subject to any express conditions, limitations or reservations contained herein, including, without limitation, Section 2.3 hereof, the Expansion Parcel Owner hereby grants, establishes, covenants and agrees that the Initial Parcel, the Initial Parcel Owner and the Permittees of the Initial Parcel Owner shall be benefited, and the Expansion Parcel, the Expansion Parcel Owner and the Permittees of the Expansion Parcel Owner shall be burdened, by (i) a nonexclusive and perpetual easement which is hereby imposed upon the Expansion Parcel and the Expansion Parcel Owner and Permittees of the Expansion Parcel Owner over, upon, across and through the Expansion Parcel as reasonably necessary to permit the Initial Parcel Owner and its Permittees to access, maintain, repair and replace the systems and equipment serving in whole or in part the Initial Parcel which are located on the Expansion Parcel, and (ii) a nonexclusive and perpetual easement for reasonable access,

ingress and egress over the Expansion Parcel so as to provide for the passage of motor vehicles and pedestrians between all portions of the Phase 2 Common Area intended for such purposes, and to and from all abutting streets or rights of way furnishing access to the Initial Parcel.

(c) Grant of Easements Benefiting the Expansion Parcel. Subject to any express conditions, limitations or reservations contained herein, including, without limitation, Section 2.3 hereof, the Initial Parcel Owner hereby grants, establishes, covenants and agrees that the Expansion Parcel, the Expansion Parcel Owner and the Permittees of the Expansion Parcel Owner shall be benefited, and the Initial Parcel, the Initial Parcel Owner and the Permittees of the Initial Parcel Owner shall be burdened, by (i) a nonexclusive and perpetual easement over, upon, across and through the Initial Parcel as reasonably necessary to permit the Expansion Parcel Owner and its Permittees to access, maintain, repair and replace the systems and equipment serving in whole or in part the Expansion Parcel which are located on the Initial Parcel, (ii) a nonexclusive and perpetual easement for reasonable access, ingress and egress over the Initial Parcel so as to provide for the passage of motor vehicles and pedestrians between the Recreation Area and all portions of the Phase 1 Common Area intended for such purposes, and to and from all abutting streets or rights of way furnishing access to the Expansion Parcel, and (iii) a nonexclusive and perpetual easement for the installation, maintenance, repair, replacement and use of signage in the vicinity of the entrances to the Community, including, without limitation, ornamental, entry, promotional, marketing (including by builders constructing homes in the Community), informational, rule setting, warning, safety, wayfinding, directional, traffic, street name, speed limit, and parking (the “**Community Signage**”), but expressly excluding any private signage that may lawfully exist on any individual lot or parcel of land that is purely personal or private in nature, including political signage, which Community Signage shall be compatible with signage established by the Initial Parcel Owner and shall comply with applicable laws and regulations.

(d) Grant of Easement Benefiting Both the Initial Parcel and the Expansion Parcel. Subject to any express conditions, limitations or reservations contained herein, including, without limitation, Section 2.3 hereof, the SWM Lot Holder hereby grants, establishes, covenants and agrees that the Initial Parcel, the Initial Parcel Owner, the Permittees of the Initial Parcel Owner, the Expansion Parcel, the Expansion Parcel Owner and the Permittees of the Expansion Parcel Owner shall be benefited, and the SWM Lot, the SWM Lot Holder and the Permittees of the SWM Lot Holder shall be burdened, by a nonexclusive and perpetual easement over, upon, across and through the portion of the SWM Lot designated as the SWM Easement, as reasonably necessary (i) for the discharge, drainage and use of storm water runoff, and (ii) to construct, access, inspect, maintain, repair and replace Drainage Improvements serving, in whole or in part, the Initial Parcel and or Expansion Parcel. SWM Lot Holder agrees, for itself and its successors and assigns, to grant easement rights to the Town for inspection, maintenance and repair of such Drainage Improvements upon request by the Initial Parcel Owner or Expansion Parcel Owner and for no additional consideration. The easement granted herein shall include the right of reasonable ingress and egress as may be required to maintain and operate the Drainage Improvements.

(e) Temporary Grant of Reciprocal Easements. Each Owner hereby grants, establishes, covenants and agrees that the other Owner and such Owner’s parcel and the Permittees of such other Owner’s parcel shall be benefited, and the granting Owner’s parcel, the granting Owner and the Permittees of the granting Owner shall be burdened, by (i) a nonexclusive ,

temporary construction easement for access to and use of such portions of the other parcel as may be reasonably necessary to facilitate the development of the other Owner's parcel, provided that the benefitted Owner shall obtain the burdened Owner's advance written approval for the location and timing of any temporary lay down, stockpile, staging, grading or other temporary construction use occurring on the burdened Owner's parcel, which temporary use shall not be unreasonably detrimental to or interfere with use or development of the burdened Parcel.

(f) Grant of Maintenance Easement. Subject to any express conditions, limitations or reservations contained herein, including, without limitation, Section 2.3 hereof, the Expansion Parcel Owner hereby grants, establishes, covenants and agrees that the Initial Parcel Owner and its agents, employees, agents, contractors, invitees and licensees shall have a non-exclusive and perpetual easement of pedestrian and vehicular access, ingress and egress over the Expansion Parcel as reasonably necessary to maintain, repair and replace the Access Roads located on the Expansion Parcel in accordance with this Agreement.

2.2 Indemnification. The SWM Lot Holder, Initial Parcel Owner and Expansion Parcel Owner shall indemnify, defend, protect and hold each other harmless from and against all claims, liabilities and expenses (including, without limitation, reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property related to or arising from the negligent, intentional or willful acts or omissions of such Owner and/or its applicable Permittees pertaining to the use of the Easements. If an Owner ("**Responsible Party**") or any Permittee of a Responsible Party damages or destroys any portion of the Parcel or SWM Lot or improvements of the other Owner, the Responsible Party shall reimburse the other Owner or SWM Lot Holder for the full cost of repair of such damage within thirty (30) days after receipt of written demand for payment from the other Owner or SWM Lot Holder, which notice shall include (a) a description of the damage, and (b) the circumstance or occurrence giving rise to the damage and an invoice for the cost of the repair from an independent third party. Any reimbursement not paid by the Responsible Party within the foregoing thirty (30) day period shall accrue interest at the Allowable Rate from the date due until paid. Application of the foregoing provisions to the Initial Parcel Owner shall be restricted or limited as provided by Section 12.16(m).

2.3 Use of Easements.

(a) Each Owner may permit and allow from time to time its Permittees to use the easements hereinabove granted, provided, however, that no such permission shall authorize a use of such an easement contrary to the use as granted hereinabove and no such unauthorized use shall act to extinguish the easement for the use as granted. No consent of any Permittee shall be required to amend or terminate any such easements.

(b) Each Owner and its Permittees shall comply with all applicable laws and governmental regulations and requirements in connection with the use and enjoyment of the Easements.

(c) The Easements shall be used and enjoyed by each Owner and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the intended use of the Parcel of any other Owner or its Permittees, including, without limitation, public access to and

from said intended use, except to the extent that such use causes a temporary interference that cannot reasonably be avoided despite commercially reasonable efforts and is undertaken in such a manner as to mitigate as much as practicable any interference with the use and enjoyment of the affected Parcel (*e.g.*, reasonable notice to be given of the activity to be undertaken and the activities to be confined to periods of time when the use of the affected Parcel is relatively minimal).

(d) No permanent building, structures, trees or other improvements inconsistent with the use and enjoyment of the easements granted pursuant to Sections 2.1(a) (2) and (3) for Water Drainage Facilities and utility installations shall be placed over or permitted to encroach upon such Water Drainage Facilities and utility installations. The foregoing shall not restrict the installation of roads, sidewalks, parking areas or driveways. The Owner of the Parcel served by such installations shall not unreasonably withhold its consent to the reasonable relocation of such installations requested by the Owner of a Parcel on which such installations are located, at such requesting Owner's sole cost and expense, so long as water detention and drainage services or utility services, as applicable, to the other Owner's Parcel are not unreasonably interrupted and the remaining provisions of this Section 2.3 are complied with.

(e) Once commenced, any maintenance, repair or replacement work undertaken in reliance upon an Easement granted herein shall be diligently prosecuted to completion, so as to minimize any interference with intended use of any other Owner or the SWM Lot Holder and its Permittees. Except in the event of an emergency, the right of any Owner to enter upon a Parcel of another Owner or upon the SWM Lot for the exercise of any right pursuant to the Easements, or to prosecute work on such Owner's own Parcel if the same interferes with Easements in favor of another Owner, shall be undertaken only in such a manner so as to minimize any interference with the intended use of the other Owner or SWM Lot Holder and its Permittees. In such case, no affirmative monetary obligation shall be imposed upon the other Owner or SWM Lot Holder, and the Owner undertaking such work shall with due diligence repair, at its sole cost and expense, any and all damage caused by such work and restore the affected portion of the Parcel or SWM Lot upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the commencement of such work. In addition, the Owner undertaking such work shall pay all costs and expenses associated therewith and shall indemnify, defend, protect and hold harmless the other Owner or SWM Lot Holder and its Permittees from all Claims attributable to the performance of such work; provided, however, that such indemnity shall not apply to the extent such Claims result from the gross negligence or willful misconduct of said indemnitee or such indemnity is prohibited by Delaware law.

2.4 General Definitions and Documentation. For the purposes of this Section 2, the following provisions shall apply:

(a) Each easement is granted for the benefit of the applicable portion of the benefitted Parcel's then current Owner and its Permittees to use such easement, provided that no Owner or Permittee shall authorize a use of the easement in excess of the use intended at the date of the grant of such easement.

(b) The word "in" with respect to an easement grant means, as the context may require, "in", "to", "on", "over", "through", "upon", "across" and "under", or any one or more of the foregoing.

(c) Where only a portion of a Parcel is bound and burdened by an easement only that bound and burdened portion shall be deemed to be the servient tenement. Where only a portion of a Parcel is benefited by an easement, only that benefited portion shall be deemed to be the dominant tenement.

(d) Each Owner or the SWM Lot Holder may eject or cause the ejection from its Parcel of the SWM Lot any Person not authorized, empowered or privileged under this Agreement to use such Parcel or SWM Lot. Notwithstanding the foregoing, each Owner may close any portion of its Parcel or the SWM Lot for such reasonable period or periods of time as may be legally necessary in the reasonable opinion of its attorney to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to any such closing, such Owner or SWM Lot Holder shall give written notice to each other Owner of its intention to do so, and shall coordinate such closing with all other Owners so that such closing shall cause no unreasonable interference with the operation of the Community.

3. Maintenance & Construction.

3.1 Common Areas, Buildings and Appurtenances Thereto. Each Owner covenants to keep and maintain, at its sole cost and expense, its Parcel and the improvements located from time to time thereon (excluding the Recreation Area and Access Roads) in good condition and repair in a manner consistent with a high quality, multifamily residential development. The Initial Parcel Owner covenants at all times during the term hereof to, at its sole cost and expense, operate and maintain, or cause the Phase 1 Common Area to be operated and maintained in good order, condition and repair. The Expansion Parcel Owner covenants at all times during the term hereof to, at its sole cost and expense, operate and maintain, or cause the Phase 2 Common Area to be operated and maintained in good order, condition and repair. Following the construction of improvements thereon, maintenance of such common areas shall include, but is not limited to, the following (as applicable), which will be performed in a timely manner:

- (a) Prompt removal of all litter, trash, refuse, and waste;
- (b) Tree and shrub pruning;
- (c) Watering;
- (d) Keeping exterior lighting and mechanical facilities in working order;
- (e) Keeping lawn and garden areas alive, free of weeds, and in an attractive condition;
- (f) Keeping planting beds free of turf grass;
- (g) Keeping sidewalks and driveways in good condition, repair and appearance;
- (h) Complying with all government, health, safety and police requirements applicable to its portion of the Property in all material respects;
- (i) Repainting of improvements; and
- (j) performing any and all such other duties as are necessary to maintain such common areas in a clean, safe and orderly condition.

3.2 Restoration of Damage and Alterations. Subject to Section 6 below, once constructed, in the event of any damage to or destruction of all or a portion of a Common Area on any Parcel, the Owner of such Parcel shall, at its sole cost and expense, with due diligence repair, restore and rebuild such Common Area to its condition prior to such damage or destruction (or with such changes as shall not conflict with this Agreement). Each Owner reserves the right to alter, modify, reconfigure, relocate and/or remove the Common Areas or building areas on its Parcel, subject to the following conditions: (i) the reciprocal easements between the Parcels pursuant to Section 2.1(a) shall not be closed or materially impaired; (ii) the ingress and egress to and from the Parcels and adjacent streets and roads, shall not be altered, modified, relocated, blocked and/or removed without the express written consent of the other Owner, which consent shall not be unreasonably withheld, conditioned or delayed; and (iii) the same shall not violate any of the provisions and easements granted in Section 2.

3.3 Failure to Maintain. If either Owner (“**Defaulting Party**”) permits any adverse condition on any portion of the Common Area located on the Parcel owned by the Defaulting Party or fails to maintain all or any portion of the Common Area on its Parcel and such condition or failure has or will have a material and adverse impact on the other Owner’s (“**Noticing Party**”) ability to finance, develop, maintain, lease, operate, use and/or market all or any portion of the Parcel owned by the Noticing Party, the Noticing Party may provide written notice of such condition or failure to maintain, which notice shall include a reasonably detailed description of the condition or failure to maintain (“**Deficiency Notice**”). If the Defaulting Party fails to remedy the deficiency within thirty (30) days after receipt of the Deficiency Notice (or with respect to deficiencies that cannot reasonably be remedied within such thirty (30) day period, if the Defaulting Party fails to commence to remedy such deficiency within the thirty (30) day period or fails to diligently pursue such remedy to completion no later than forty-five (45) days following receipt of the Deficiency Notice), the Noticing Party may, without waiving any other legal or equitable remedies it may have, enter the Shared Residential Area of the Parcel owned by the Defaulting Party and remedy such deficiency. Upon remedying of such deficiency, the Noticing Party shall be entitled to provide written demand to the Defaulting Party that it reimburse the Noticing Party for one hundred ten percent (110%) of the actual and reasonable costs and expenses it incurred in connection with remedying the deficiency. Any such demand shall include invoices or other reasonable written evidence of such costs and expenses incurred by the Noticing Party. The Defaulting Party shall reimburse such amounts to the Noticing Party within seven (7) days of receipt of such demand. Any amounts not reimbursed within such seven (7) day period shall accrue interest at the Allowed Rate from the date due until paid. The Noticing Party shall not be liable to the Defaulting Party for any loss, damage or liability resulting from or arising in connection with activities of the Noticing Party (or its contractors, representatives and/or agents) on the Shared Residential Area of the Parcel owned by the Defaulting Party, except to the extent such loss, damage or liability results from the gross negligence or willful misconduct of the Noticing Party (or its contractors, representatives and/or agents).

3.4 Utilities. Each Owner shall at all times during the term hereof operate and maintain, or cause to be operated and maintained, in good order, condition and repair, at its sole cost and expense, any utility or other installations serving the Parcel of such Owner and from time to time existing on the Parcel of another Owner pursuant to an easement described herein.

3.5 Maintenance and Repair of Recreation Area and Access Roads. The Initial Parcel Owner shall be solely responsible for maintenance and repair of the Recreation Area and Access Roads, provided, however, all costs of maintaining and repairing the Recreation Area and Access Roads, including, but not limited to, all capital costs associated therewith (after initial construction), shall be shared by the Owners in accordance with Sections 3.5, 3.6 and 3.7 of this Agreement. Maintenance of the Access Roads includes, without limitation, maintenance of the sidewalks and the surface of the roadway areas, removing all papers, debris and other refuse from and periodically sweeping all roadway areas to the extent necessary to maintain the same in a clean, safe and orderly condition, maintaining appropriate lighting fixtures for the roadways, maintaining marking, directional signs, lines and striping as needed. If the Initial Parcel Owner fails to perform its maintenance and repair obligations under this Section, the Expansion Parcel Owner shall be entitled to provide written notice to the Initial Parcel Owner, which notice shall include a detailed description of the maintenance and/or repair deficiency. Initial Parcel Owner shall remedy the deficiency within ten (10) days after receipt of such notice, or in the event of an emergency such shorter period of time as required to reasonably avoid injury to persons or significant damage to property. Notwithstanding the foregoing, a maintenance or repair obligation (other than an emergency maintenance or repair obligation) shall be deemed to have been remedied if the Initial Parcel Owner has begun to remedy such deficiency within the ten (10) day period after receipt of written notice of a deficiency from the Expansion Parcel Owner, and continues diligently to complete such remedy, provided such remedy is completed within twenty (20) days following receipt of the foregoing notice. If the Initial Parcel Owner does not correct a maintenance or repair deficiency within the foregoing time periods, the Expansion Parcel Owner shall be entitled to enter the areas that are subject to the above maintenance or repair deficiency and remedy such deficiency. After completing such maintenance or repair deficiency the Expansion Parcel Owner shall, without waiving any of its other rights or remedies, be entitled at its option (a) to offset its direct third party costs incurred in connection with remedying such deficiency against the next payment(s) of Phase 2 Pro Rata Share; provided that no such offset shall be allowed until the Expansion Parcel Owner has provided the Initial Parcel Owner with invoices from independent third parties evidencing the costs incurred by the Expansion Parcel Owner, and/or (b) by written notice (“**Deficiency Notice**”) to the Initial Parcel Owner demand reimbursement for all direct third party costs incurred in remedying such deficiency, minus the Phase 2 Pro Rata Share, which shall be payable to the Expansion Parcel Owner by that date (“**Payment Date**”) which is ten (10) day following the date on which the Initial Parcel Owner receives the Deficiency Notice and which payment shall include interest at the Allowed Rate on such amount from the Payment Date until paid.

3.6 Shared Maintenance Costs. Notwithstanding anything to the contrary contained in this Agreement, commencing on the date (“**Commencement Date**”) which is the first day of the first calendar month following the date on which certificates of occupancy have been issued for one or more residences on each of the Parcels and continuing every calendar month thereafter, the Expansion Parcel Owner shall pay to the Initial Parcel Owner the Phase 2 Pro Rata Share of the Shared Maintenance Costs. The Expansion Parcel Owner shall pay the Phase 2 Pro Rata Share of the Shared Maintenance Costs to the Initial Parcel Owner on a monthly basis in arrears. Prior to the Commencement Date, the Initial Parcel Owner shall be solely responsible for all of the Shared Maintenance Costs.

3.7 Shared Repair Costs. After the Commencement Date, if the Initial Parcel Owner determines the need for a repair to the Recreation Area (excluding repairs funded by reserves collected as part of the Shared Maintenance Costs and individual repairs not funded by reserves of less than \$5,000) or Access Roads, the Initial Parcel Owner shall request the approval of the Expansion Parcel Owner to such repair, which approval shall not be unreasonably withheld, conditioned or delayed, and the Expansion Parcel Owner shall pay to the Initial Parcel Owner the Phase 2 Pro Rata Share of the cost of any such approved repair. The Phase 2 Pro Rata Share of the Shared Repair Costs shall be paid to the Initial Parcel Owner by the date (“**Repair Delinquent Date**”) which is sixty (60) days after the date of the Expansion Parcel Owner’s receipt of a written notice of completion by Initial Parcel Owner of the repair approved by the Expansion Parcel Owner. If the Expansion Parcel Owner fails to pay its Phase 2 Pro Rata Share by the Repair Delinquent Date, interest on the Phase 2 Pro Rata Share shall accrue at the Allowable Rate and be payable from the Repair Delinquent Date. Prior to the Commencement Date, the Initial Parcel Owner shall be solely responsible for all of the Shared Repair Costs.

3.8 Capital Improvements. If the Initial Parcel Owner determines the need for a capital improvement or other addition to the Covered Improvements (each, a “**Capital Improvement**”), including, without limitation, Capital Improvements required due to damage and/or destruction where insurance proceeds available from insurance maintained by the Initial Parcel Owner under this Agreement are not sufficient to repair such damage and/or destruction, the Expansion Parcel Owner shall pay the Phase 2 Pro Rata Share of the cost of any such Capital Improvement (“**Phase 2 Capital Improvement Share**”), unless such Capital Improvement is due to damage and/or destruction and there are insufficient insurance proceeds available for such repair due to the failure of the Initial Parcel Owner to maintain the Covered Improvements, or to maintain insurance, required under this Agreement, in which case the cost of such repair that should have been covered by insurance proceeds shall be solely the responsibility of the Initial Parcel Owner. The Phase 2 Capital Improvement Share shall be paid to the Initial Parcel Owner by the date (“**Improvement Delinquent Date**”) which is sixty (60) days after the date of the Expansion Parcel Owner’s receipt of a written notice of completion by Initial Parcel Owner of the Capital Improvement approved by the Expansion Parcel Owner, however, if the cost of the Capital Improvement exceeds five percent (5%) of the total amount of the then current Annual Budget, such Capital Improvement shall also require the approval of the Expansion Parcel Owner. If the Expansion Parcel Owner fails to pay its Phase 2 Capital Improvement Share by the Improvement Delinquent Date, interest on the Apartment Capital Improvement Share at the Allowed Rate shall accrue and be payable from the Improvement Delinquent Date. Notwithstanding anything to the contrary contained herein, any increases in the overall Annual Budget of 10% or more from the previous year shall require the consent of the Expansion Parcel Owner, which consent shall not be unreasonably withheld, conditioned or delayed.

3.9 Modification of Covered Improvements. Any modification, alteration, reconstruction, repair or improvement of the Covered Improvements that does not comply with the original as-built plans and specifications for such Covered Improvements must be approved in writing by the Expansion Parcel Owner.

3.10 Security. Each Owner shall be responsible, to the extent it elects to provide same, for the provision and maintenance of security for its Parcel; provided, however, that in the event

an Owner elects to provide security to its Parcel, such security shall be provided in a manner so that it does not unreasonably interfere with any security being provided to the other Parcels. The Initial Parcel Owner shall be responsible for providing security for the Recreation Area. The costs associated with providing security for the Recreation Area will be included in the Annual Budget.

3.11. Initial Construction. Each Owner agrees to perform its respective construction: (i) where approval is required, in accordance with such approved plans; (ii) with due diligence to completion and in a good and workmanlike manner, using first class materials; (iii) so as not to unreasonably interfere with any construction work being performed on any other Parcel or with the use, occupancy and enjoyment of any other Parcel; (iv) to comply with the then current private and governmental requirements applicable thereto (including amendments and modifications), including, without limitation, the building, environmental and zoning laws of the state, county, and town in which the Parcel is situated, and all laws, ordinances, orders, rules, regulations and requirements of all federal, state, county and town governments and the appropriate departments, commissions, agencies, boards and officers thereof (collectively, “**Legal Requirements**”).

4. Recreation Area Rules. The Initial Parcel Owner shall be entitled to adopt, with the written approval of the Expansion Parcel Owner, which approval shall not be unreasonably withheld, conditioned or delayed, Recreation Area Rules which will be adopted and administered by the Initial Parcel Owner in a fair, reasonable and non-discriminatory manner. The Recreation Area Rules may include, without limitation, fees, access passes or requirements, guest or visitor limitations, restrictions or suspensions for noncompliance, and any other rules or restrictions deemed reasonable and necessary by the Initial Parcel Owner in its reasonable discretion. Recreation Area Rules shall be posted at a reasonable place within the Recreation Area or otherwise provided in writing to Expansion Parcel Owner who shall provide same to Expansion Parcel Permittees. To perform maintenance and satisfy its other obligations under this Agreement, the Initial Parcel Owner shall also, from time to time, be entitled to temporarily block access over the Recreation Area or a portion thereof.

5. Insurance.

5.1 Required Insurance Policies. The Initial Parcel Owner and the Expansion Parcel Owner shall maintain insurance coverage as set forth in the following provisions.

(a) Property Risk Insurance. The Initial Parcel Owner shall procure and throughout the term of this Agreement continuously maintain commercial property insurance coverage through a policy of “all risk” commercial property insurance covering the full insurable value of the Covered Improvements against direct physical loss or damage caused by fire, windstorm, hail, lightning, smoke, sprinkler leakage, water damage, vandalism, malicious mischief, riot, civil commotion, vehicles, aircraft, smoke, and such other perils as are customarily included in “all risk” commercial property insurance policies. Coverage shall be provided for increases in construction costs due to changes in building codes or similar laws and shall include standard mortgagee clause language in favor of any and all Permitted Mortgagees. All such commercial property insurance policies shall provide waivers of subrogation in favor of the other Parcel Owner, and all Permitted Mortgagees.

(b) Commercial General Liability Insurance. The Initial Parcel Owner shall procure, and throughout the term of this Agreement shall continuously maintain, a policy of commercial general liability insurance to protect against liability for damages because of bodily injury (including, without limitation, death therefrom) or property damage arising out of or in connection with the operation, maintenance, and repair of the Covered Improvements. Such policy of commercial general liability insurance shall be provided on occurrence type forms equivalent to the current ISO CG 0001 form with per occurrence and annual aggregate limits of not less than \$10,000,000 and deductible or self-insured retention of not more than \$10,000 per occurrence (such policy limit and retention amounts being escalated in accordance with the Consumer Price Index). Such policy shall (i) be primary and non-contributing with respect to other insurance, if any, maintained by the insureds thereunder; (ii) provide for the duty to defend (with defense costs outside policy limits if available at a commercially reasonable cost); (iii) provide a separate limit of \$10,000,000 for completed operations coverage for at least the duration of all statutory limits on actions for property damage; (iv) provide coverage for contractually assumed liability; (v) have a modified cancellation provision prohibiting cancellation by the insurer after the policy has been in effect for thirty (30) days except for nonpayment of premium, fraud or material increase in risk; (vi) not exclude coverage for residential construction; and (vii) if available at commercially reasonable cost, include coverage for soil subsidence or other earth movement. All such policies of insurance shall name as additional insureds the Expansion Parcel Owner. The coverage required hereunder may be provided under a combination of primary, excess, master or portfolio policies, provided that all such policies satisfy the requirements of this subparagraph.

(c) Workers Compensation and Employers Liability Insurance. The Initial Parcel Owner shall, at its sole cost and expense, procure and throughout the term of this Agreement continuously maintain workers compensation and employer's liability coverage with Coverage A limits as required by statute and Coverage B limits of \$1,000,000 each Accident for Bodily Injury by Accident, \$1,000,000 for Bodily Injury by Disease, and \$1,000,000 each Employee for Bodily Injury by Disease. Each such workers compensation policy shall provide a waiver of subrogation in favor of the Expansion Parcel Owner and, to the extent commercially reasonable, the Expansion Parcel Owner's officers, directors, employees, permittees, contractors, subcontractors, and consultants.

5.2 General Insurance Requirements.

(a) All insurance policies required under this Section 5 shall be written by companies authorized to do business in Delaware and which have a "General Policyholders Rating" of at least A-VIII as set forth in the most current issue of the Best's Insurance Guide (or have an equivalent rating from another industry-accepted rating agency).

(b) Upon the request of the Expansion Parcel Owner, the Initial Parcel Owner shall deliver to the Expansion Parcel Owner (or its designee) a certificate of insurance, signed by a broker or agent having authority to bind coverage, reflecting the maintenance of the required coverages, the issuing insurers, policy types, policy numbers, policy periods, and amounts of coverage, annotated, if commercially reasonable, to reflect a modified cancellation provision

prohibiting cancellation by the insurer after the policy has been in effect for thirty (30) days except for nonpayment of premium, fraud or material increase in risk.

(c) Upon the request of the Expansion Parcel Owner, the Initial Parcel Owner shall deliver to the Expansion Parcel Owner a complete copy of each policy of insurance (including, without limitation, all forms and endorsements constituting the complete policy) required under Section 5.1 above.

(d) Not later than ten (10) days prior to the expiration or renewal of each policy required hereunder, the Initial Parcel Owner shall provide to the Expansion Parcel Owner (or its designee) a binder or certificate of renewal evidencing such insurance.

(e) If the Initial Parcel Owner fails to provide evidence of the insurance required hereunder, the Expansion Parcel Owner, after providing five (5) business days' notice to the Initial Parcel Owner, the Expansion Parcel Owner shall have the right to procure the required insurance. Upon the Expansion Parcel Owner's written demand, the Initial Parcel Owner shall immediately reimburse the Expansion Parcel Owner for 72.4% of the cost thereof, together with interest at the Allowed Rate from the date due until paid in full.

6. Damage to or Destruction of Covered Improvements.

6.1 Secure Improvements and Give Notice.

(a) Notwithstanding any other provision of this Agreement to the contrary, in the event of damage to or destruction of any of the Covered Improvements, the Initial Parcel Owner thereof shall at its sole cost and expense immediately take or cause to be taken such actions as are necessary to secure the damaged or destroyed Covered Improvements to prevent further damage thereto and to protect the safety of other property and persons pending the Restoration or other disposition of the Covered Improvements. Subject to the provisions of Section 6.2 below, all costs and expenses borne by the Initial Parcel Owner in satisfaction of its obligations under this subsection (a) shall be reimbursed from the Net Insurance Proceeds, if any, applicable to the damaged or destroyed Covered Improvements.

(b) In the event the Covered Improvements sustain any "**Minor Damage**" (defined as damage to or destruction having an estimated Restoration cost of less than Two Hundred Thousand Dollars (\$200,000), such amount being escalated in accordance with the Consumer Price Index), the Initial Parcel Owner shall within ten (10) days after it becomes aware of such Minor Damage give written notice thereof to the Expansion Parcel Owner generally describing the extent and nature of the damage and destruction, and the Initial Parcel Owner shall diligently pursue and within a reasonable period of time complete the Restoration of the Covered Improvements; shall diligently pursue such insurance coverage for the Minor Damage as may be available; and shall provide such information to the Expansion Parcel Owner as it may reasonably require.

(c) In the event the Covered Improvements sustain any "**Substantial Damage**" (defined as damage to or destruction having an estimated Restoration cost of Two Hundred Thousand Dollars (\$200,000) or more, such amount being escalated in accordance with the

Consumer Price Index), the Initial Parcel Owner shall within ten (10) days after the it becomes aware of such Substantial Damage give written notice thereof to the Expansion Parcel Owner generally describing the nature and extent of the damage or destruction.

(d) Within a reasonable time, and in any event within one hundred eighty (180) days after any event causing Substantial Damage to the Covered Improvements, the Initial Parcel Owner shall furnish or cause to be furnished to the Expansion Parcel Owner evidence reasonably satisfactory to the Expansion Parcel Owner (i) of the total estimated cost of Restoration of the affected Covered Improvements, and (ii) whether the total amount of money available, when added to the Net Insurance Proceeds received and available to pay for the Restoration of the Covered Improvements pursuant to the terms of Section 6.2, will be sufficient to pay the cost of Restoration. In the event the total amount of money available, when added to the Net Insurance Proceeds received and available to pay for the Restoration of the Covered Improvements is insufficient to pay for such Restoration, the Expansion Parcel Owner shall pay 27.6% of such shortfall to the Initial Parcel Owner within sixty (60) days after receipt of the estimated Restoration Costs, with such funds to be used for Restoration Costs, and the Initial Parcel Owner shall pay the remaining balance of the Restoration Costs.

(e) The Initial Parcel Owner shall timely furnish or cause to be furnished to any Permitted Mortgagee such notice and information as the applicable Permitted Mortgage may require with respect to any Minor Damage or Substantial Damage to the Covered Improvements, and with respect to the cost of Restoration with respect to such Improvements.

6.2 Restoration.

(a) The Initial Parcel Owner shall be responsible for the Restoration of the Covered Improvements in accordance with this Agreement.

(b) In the event of Substantial Damage to the Covered Improvements, or to any part thereof, the Initial Parcel Owner thereof shall commence Restoration of same within sixty (60) days after such Substantial Damage, plus any additional period of time which is required to obtain any Net Insurance Proceeds to be used to pay all or a portion of the cost of such Restoration. Thereafter, the Initial Parcel Owner shall diligently pursue, and within a reasonable period of time complete, the Restoration of the damaged or destroyed Covered Improvements.

6.3 Application of Net Insurance Proceeds. Except as provided by Section 12.16(m) and otherwise subject to the provisions of Sections 6.4 and 6.5 below, in the event of Substantial Damage to the Covered Improvements, the Net Insurance Proceeds shall be applied as follows:

(a) Except as otherwise provided in this Section 6.3, all Net Insurance Proceeds shall be paid to the Initial Parcel Owner (or its designee) and applied by the Initial Parcel Owner (or its designee) to the Restoration of the damaged or destroyed Covered Improvements, with the consent of the Expansion Parcel Owner to such application.

(b) If a Permitted Mortgage encumbers the damaged or destroyed Covered Improvements and such Permitted Mortgage requires the insurance proceeds to be paid jointly to the Owner of such Covered Improvements and the Permitted Mortgagee, the Net Insurance Proceeds shall be paid jointly to such Owner (or its designee) and the Permitted Mortgagee and applied solely to the Restoration of Covered Improvements; provided, that, if the Permitted Mortgage requires the insurance proceeds to be paid exclusively to the Permitted Mortgagee, the Net Insurance Proceeds shall be paid exclusively to the Permitted Mortgagee and applied solely to the Restoration of the Covered Improvements.

(c) If more than one Permitted Mortgage encumbers the damaged or destroyed Covered Improvements and if any of such Permitted Mortgages require the insurance proceeds to be paid jointly to the Owner of the Covered Improvements and the Permitted Mortgagees, the Net Insurance Proceeds shall be paid jointly to such Owner (or its designee) and the highest priority Permitted Mortgagee requiring such joint payment and shall be applied solely to the Restoration of the Covered Improvements; provided, that, if such Permitted Mortgage requires the insurance proceeds to be paid exclusively to the Permitted Mortgagee, the Net Insurance Proceeds shall be paid exclusively to the Permitted Mortgagee and applied solely to the Restoration of the Covered Improvements.

(d) In the event the Net Insurance Proceeds exceed the amount actually required for Restoration of the Covered Improvements, the excess Net Insurance Proceeds shall be paid to or retained by the Initial Parcel Owner and applied solely to future reserves to be collected with respect to the Covered Improvements. In the event of any dispute between the Owners that the Restoration has been completed, the excess Net Insurance Proceeds shall be held in trust for such purposes until the dispute shall have been resolved according to the dispute resolution provisions of this Agreement.

(e) Each Owner shall promptly commence and diligently prosecute to completion the resolution of any insurance coverage disputes with respect to the insurance coverage for any damage or destruction of the Improvements located on such Owner's Parcel. The Initial Parcel Owner shall promptly commence and diligently prosecute to completion the resolution of any insurance coverage disputes with respect to insurance coverage for any damage to or destruction of the Covered Improvements.

6.4 Selection of Restoration Trustee.

(a) Except as otherwise provided by Section 12.16(m), as used in this Section 6.4, the term "**Restoration Trustee**" shall mean the trustee or escrow officer selected by the Initial Parcel Owner and the Expansion Parcel Owner, or their respective designees, to disburse Net Insurance Proceeds as allowed under Sections 6.1 through 6.3 above, following any Substantial or Major Damage to the Covered Improvements. The term "Restoration Contractor" shall mean general contractors, architects and engineers selected by the Initial Parcel Owner and/or the Expansion Parcel Owner to perform Restoration work pursuant to Sections 6.1 through 6.3 above.

(b) To the extent any Owner (or its designee, if other than the Restoration Trustee) shall receive Net Insurance Proceeds for the Restoration of the Covered Improvements or

the Parking Structure, after Substantial or Major Damage thereto, such Net Insurance Proceeds shall promptly be paid over to and held in trust by a Restoration Trustee for disbursement as allowed under Sections 6.1 through 6.3 above.

(c) In the event of Substantial or Major Damage to the Covered Improvements, the Initial Parcel Owner and Expansion Parcel Owner shall jointly select a Restoration Trustee from among Citibank, Bank of America, [REDACTED] or any successor of them having an office in Delaware. In the event of a dispute between the Owners as to the selection of the Restoration Trustee, each Owner shall, within fifteen (15) business days after a written demand is served by one Owner upon the other Owner, submit its single nominee for Restoration Trustee to a mutually agreeable third party which shall be empowered to make the selection. The decision of such third party shall be binding upon the Owners and all fees and costs charged by the third party for dispute resolution shall be paid by the Owner whose nominee is not selected.

(d) The Restoration Trustee shall have authority to perform the following services.

(i) Establishment of an escrow and disbursement account for disbursement of Net Insurance Proceeds as allowed under Sections 6.1 through 6.3 above.

(ii) Disbursement of Net Insurance Proceeds to Restoration Contractors as allowed under Sections 6.1 through 6.3 above; provided, that, prior to any such disbursement, the Restoration Trustee shall have received (A) from the Restoration Contractor, a written disbursement request and detailed invoice of cost of labor and materials provided; (B) from each Owner, a written authorization to release the requested disbursement; and (C) such other written authorizations as the Owners may agree are required.

(iii) Disbursement of Net Insurance Proceeds to itself to reimburse itself for reasonable fees and costs for the services authorized by this Section 6.4; provided, that, upon seventy-two (72) hours' notice and a written request of any Owner, the Restoration Trustee shall provide the Owner with complete access to any and all accounting and other records related to the Restoration Trustee's services that the Owner may reasonably request.

6.5 Default.

(a) In the event either Owner shall be in default of its obligations under Sections 6.1 through 6.4 above and shall receive any Net Insurance Proceeds as defined hereinabove, such Net Insurance Proceeds shall be deemed to be held in trust by the defaulting Owner for disbursement and application as provided under Sections 6.1 through 6.4 above.

(b) Any distribution and application of Net Insurance Proceeds under Section 6.5(a) above shall be in addition to, and not in lieu of, any and all other remedies that may be available to any party or parties claiming any rights under this Agreement.

6.6 Damage or Destruction of Improvements Located on the Expansion Parcel and the Initial Parcel. Other than the Covered Improvements addressed above, each Owner covenants to restore the improvements located on such Owner's Parcel.

7. Taxes and Assessments; Payment. Subject to any available real property tax exemptions, each Owner shall pay, or cause to be paid, prior to delinquency, all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to its Parcel and the buildings and improvements thereon, provided that, if the taxes or assessments or any part thereof, may be paid in installments, any Owner may pay each such installment as and when the same becomes due and payable.

7.1. Contest. If any Owner shall deem the taxes and/or assessments, or any part thereof, to be paid by such Owner to be excessive or illegal, such Owner shall have the right to contest the same at its own cost and expense, and shall have the further right to defer payment thereof so long as the validity or the amount thereof is contested in good faith; provided, however, that, if at any time payment of the whole or any part thereof shall be necessary in order to prevent the sale of the property because of the nonpayment of any such unpaid tax or assessment, then the contesting Owner shall pay or cause to be paid the same at least 30 days in advance of the date when payment is necessary to prevent such sale. Any such payment may be paid under protest.

7.2. Non-Payment of Taxes by an Owner. In the event any Owner shall fail to comply with its covenant as set forth in this Section 7, any other Owner may, upon at least 30 days written notice, pay such taxes and penalties and interest thereon, and shall be entitled to prompt reimbursement from the defaulting Owner for the sums so expended, with interest thereon as is permitted pursuant to this Agreement.

8. No Rights in Public; No Implied Easements. Nothing contained in this Agreement, including the grant of easements, shall be deemed to constitute a dedication of any Parcel or any portion or portions thereof to any governmental body, agency or entity, or to the general public, or to be construed to create any rights in or for the benefit of any individual or entity that is not a party to this Agreement. No easements, except those expressly set forth in Section 2 hereto, shall be implied or granted by this Agreement.

9. Condemnation.

9.1 Determination of Award. Any award for the value of an interest in real property and severance damages for injury to remaining real property (“**Award**”), whether the same shall be obtained by agreement prior to or during the time of any court action, or by judgment, verdict or order, or by agreement under the threat of or after any such court action, resulting from a taking by exercise of right of eminent domain or in lieu of the exercise of the right of eminent domain of any portion of the Property subject to this Section 9 or resulting from a requisitioning thereof by any public authority for any purpose arising out of a temporary emergency or other temporary circumstances (hereinafter collectively referred to as “**Condemnation**”), shall be distributed among the parties to this Agreement in accordance with the terms and conditions of this Section 9, notwithstanding any provision of any mortgage, judgment, verdict or order to the contrary. To the extent the Condemnation Award includes a component identified as the undivided interest in the reciprocal easements created by this Section 9 such component shall be divided among the Owners according to the value assessed to such interests by the condemning authority.

9.2 Lender Participation. Nothing herein contained shall be deemed to prohibit any Mortgagee from participating in any Condemnation proceedings on behalf of any Owner who has a Mortgagee, or in conjunction with any such Owner; provided the same does not reduce the Award to any Owner or the distribution thereof in accordance with Section 9.

9.3 Obligation to Repair. In the event of a Condemnation subject to this Section 9, whether partial or total, each Owner shall repair, restore, and rebuild or cause to rebuild its Parcel in a manner consistent with the original construction or such other plans and specifications as are approved by the applicable Owners, to the extent of the condemnation proceeds received by such Owner. Such constructing Owner shall be solely responsible for and shall pay the balance after any Award, if any, of the costs to so restore its Parcel.

9.4 Termination of Benefits. In the event of a permanent taking by Condemnation subject to this Section 9, all easements appurtenant to the portion so condemned shall, upon the taking of such portion, terminate to the extent they are appurtenant to such portion, but shall continue as to any portion not so condemned.

9.5 Unresolved Issues. Any issue which is not resolved by any judgment in the Condemnation proceedings or supplemental determination therein shall be resolved among the Owners acting in good faith.

10. Remedies and Enforcement.

10.1. All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including, without limitation, payment of any amounts due and/or specific performance.

10.2. Self-Help. In addition to all other remedies available at law or in equity, upon the failure of the Initial Parcel Owner to cure a breach of this Agreement in connection with any maintenance or other obligation of the Initial Parcel Owner relating to the Recreation Area or Access Roads within thirty (30) days (or such lesser period of time as may be specified in this Agreement for a particular breach) following written notice thereof by the Expansion Parcel Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period or such lesser period of time), the Initial Parcel Owner commences such cure within such 30-day period or such lesser period of time, and thereafter diligently prosecutes such cure to completion), the Expansion Parcel Owner shall have the right to perform such obligation contained in this Agreement on behalf of the Initial Parcel Owner and be reimbursed by the Initial Parcel Owner upon demand for the reasonable costs thereof together with interest at the Allowed Rate. Notwithstanding the foregoing, in the event of (i) an emergency, (ii) blockage or material impairment of the easement rights, and/or (iii) the unauthorized parking of vehicles on the Expansion Parcel (following such notice, if any, as shall be reasonable under the circumstances), the Expansion Parcel Owner may immediately cure the same and be reimbursed by the Initial Parcel Owner who is in breach of its obligations hereunder upon demand for the reasonable cost thereof together with interest at the Allowed Rate, as above described.

10.3. Remedies Cumulative. All of the remedies permitted or available to Owners under this Agreement, or at law or in equity, will be cumulative and not alternative, and the invocation of any such remedy will not constitute a waiver or election of remedies with respect to any other permitted or available remedy.

10.4. No Termination For Breach. Notwithstanding any provision of this Agreement to the contrary, no breach hereunder shall (a) entitle any Owner to cancel, rescind, or otherwise terminate this Agreement, or terminate the rights of any other Owner with respect to its portion of the Property, or withhold the benefits of this Agreement from any other Owner by reason of any default by such Owner, or (b) defeat or render invalid the lien of any Permitted Mortgage, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

10.5. Irreparable Harm. In the event of a violation by the Initial Parcel Owner or threat thereof of any of the provisions of Sections 2 and/or 5 of this Agreement, the Initial Parcel Owner agrees that such violation or threat thereof shall cause the Expansion Parcel Owner and/or its Permittees to suffer irreparable harm and the Expansion Parcel Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation by the Initial Parcel Owner or threat thereof of any of the provisions of Sections 2 and/or 5 of this Agreement, the Expansion Parcel Owner, in addition to all remedies available at law or otherwise under this Agreement, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of Sections 2 and/or 5 of this Agreement by the Initial Parcel Owner.

11. Term. The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of Recordation of this Agreement and shall remain in full force and effect thereafter in perpetuity, unless this Agreement is modified, amended, canceled or terminated by the written consent of all then record Owners of the Initial Parcel, Expansion Parcel and, if applicable to the drainage easement over SWM Lot, the SWM Lot, in accordance with Section 12.2 hereof.

12. Miscellaneous.

12.1. Attorneys' Fees. In the event an Owner institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

12.2. Amendment. The Owners agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of the Owners, evidenced by a document that has been fully executed and acknowledged by the Owners and Recorded.

12.3. Consents. Wherever in this Agreement the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be

unreasonably withheld, conditioned or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner under this Agreement, to be effective, must be given, denied or conditioned expressly and in writing.

12.4. No Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof will not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and will not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

12.5. Negation of Partnership or Other Entity; Not a Public Dedication. None of the terms or provisions of this Agreement will be deemed to create the relationship of principal and agent or a partnership between or among the Owners in their respective businesses or otherwise, nor will it cause them to be considered joint venturers or members of any joint enterprise. Each Owner will be considered a separate owner, and no Owner will have the right to act as an agent for another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged. Nothing herein contained will be deemed to be a gift or dedication of any portion of the Property or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of the Owner will inure to the benefit of any third party, nor will any third party be deemed to be a beneficiary of any of the provisions contained herein.

12.6. Covenants to Run with Land. The terms of this Agreement constitute covenants running with, and will be appurtenant to, the land affected by this Agreement for the term hereof. All terms of this Agreement will inure to the benefit of and be binding upon the parties which have an interest in the benefited or burdened land and their respective successors and assigns in title. This Agreement is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby. All provisions of this Agreement that govern the conduct of the Owners and that provide for sanctions against the Owners for the breach hereof will also apply to all occupants (including lessees), guests, and invitees. Every Owner shall cause all occupants (including lessees) of the Owner's portion of the Property to comply with this Agreement and any rules and regulations adopted, and will be responsible for all violations and losses caused by those occupants (including lessees), notwithstanding the fact that those occupants (including lessees) of the Owner's portion of the Property are fully liable and may be sanctioned for any violation of this Agreement and rules and regulations adopted pursuant thereto.

12.7. Grantee's Acceptance. The grantee, assignee or sublessee of an estate in any Parcel or any portion thereof, by acceptance of an assignment, deed, mortgage or lease conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent lessee of such Parcel, shall accept such deed, assignment or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee, assignee, mortgagee or lessee shall for itself and its successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee, assignee,

mortgagee or lessee. Any transferee of any Parcel will automatically be deemed, by acceptance of the title to any such Parcel, to have assumed all obligations of this Agreement relating thereto to the extent of its interest in its Parcel and to have agreed with the then Owner or Owners of all other Parcels to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Agreement at no cost to such Owners. Upon the completion of such transfer, the transferor will be relieved of all further liability under this Agreement except liability with respect to matters remaining unsatisfied which arose during its period of ownership of the Parcel so conveyed.

12.8. Severability. Each provision of this Agreement and the application thereof to the Initial Parcel and the Expansion Parcel are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the Owners agree to promptly cause such legal description to be prepared. Ownership of all of the Parcels by the same person or entity shall not terminate this Agreement nor in any manner affect or impair the validity or enforceability of this Agreement.

12.9. Conflicts. If there is conflict or inconsistency between the provisions of this Agreement and any other documents created in connection with the creation of the Project, this Agreement shall control.

12.10. Time of Essence. Time is of the essence of this Agreement.

12.11. Entire Agreement. This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

12.12. Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party. The notice addresses of the Initial Parcel Owner and the Expansion Parcel Owner are as follows:

Initial Parcel Owner:	Heritage Shores Villas, LLC c/o Rocks Engineering Company and Allen & Rocks, Inc. 1934 Old Gallows Road, Suite 500 Tysons, Virginia 22182 ATTN: Michael Rocks Phone: (703) 848-2777 Facsimile: (703) 893-5971 mrocks@rocksc.com
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with a copy to:	S. Randall Cohen, Esq.
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Executive Vice President and General Counsel
c/o Rocks Engineering Company and Allen & Rocks, Inc.
1934 Old Gallows Road, Suite 500
Tysons, Virginia 22182
Phone: (703) 848-4688
Facsimile: (703) 893-5971
rcohen@rocksko.com

Expansion Parcel Owner: Heritage Shores Villas, LLC
c/o Rocks Engineering Company and Allen & Rocks, Inc.
1934 Old Gallows Road, Suite 500
Tysons, Virginia 22182
ATTN: Michael Rocks
Phone: (703) 848-2777
Facsimile: (703) 893-5971
mrocks@rocksko.com

with a copy to:

S. Randall Cohen, Esq.
Executive Vice President and General Counsel
c/o Rocks Engineering Company and Allen & Rocks, Inc.
1934 Old Gallows Road, Suite 500
Tysons, Virginia 22182
Phone: (703) 848-4688
Facsimile: (703) 893-5971
rcohen@rocksko.com

12.13 Governing Law. The laws of the State of Delaware shall govern the interpretation, validity, performance, and enforcement of this Agreement.

12.14 Estoppel Certificates. Each Owner, within thirty (30) days following its receipt of a written request from the other Owner or any Permitted Mortgagee and not more than twice in any 12-month period, shall from time to time sign and deliver to the requesting Owner or Permitted Mortgagee, a statement certifying (a) that this Agreement is unmodified and in full force and effect (or, if that is not the case, so stating and setting forth any modifications), (b) that, to the responding Owner's knowledge, the requesting Owner is not in breach of this Agreement (or, if that is not the case, so stating and setting forth any alleged breaches), and (c) any other information reasonably related to the status of this Agreement. Any such certificate from an Owner shall be in form and content acceptable to the Owner requesting same. This certificate may only be relied upon by the Owner or Permitted Mortgagee requesting the certificate and any parties specifically identified by name in the request, may only be used to estop the responding party from claiming that the facts are other than as set forth in the certificate, and may not be relied upon by any Person or entity, even if named in such estoppel certificate, who knows or should know that the facts are other than as set forth in such certificate.

12.15 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Agreement shall, to the maximum extent permitted by law,

be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

12.16 Permitted Mortgagee Protections.

(a) Right to Encumber. Each Owner shall have the right to encumber its interest in its respective Parcel by any Permitted Mortgage; provided, such Permitted Mortgage is subject to and subordinate to this Agreement.

(b) Breach Won't Defeat Lien. The breach of any of the provisions of this Agreement shall not defeat or render invalid the lien of any Permitted Mortgage of a Parcel or any portion thereof; provided, that, all provisions of this Agreement shall be binding and effective against any third party who acquires a Parcel or any portion thereof by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

(c) Prior Claims and Obligations. No Permitted Mortgagee shall have any personal liability beyond its interest in a Parcel or a portion thereof acquired by it through enforcement of its Permitted Mortgage for the performance or payment of any covenant, liability, warranty or obligation hereunder and each Owner agrees that it shall look solely to the interests of such Permitted Mortgagee in such Parcel for payment or discharge of any such covenant, liability, warranty or obligation.

(d) Notice to Permitted Mortgagees. The Permitted Mortgagee under any Permitted Mortgage affecting a Parcel shall be entitled to receive notice of any default by any Owner hereunder; provided, that, such Permitted Mortgagee shall have delivered a written notice to each Owner specifying the Permitted Mortgagee's name and address and requesting such notices. Failure of an Owner to deliver a copy of such notice of default to the Permitted Mortgagee shall in no way affect the validity of the notice of default as it respects the defaulting Owner, but shall make the same invalid as it respects the interest of the Permitted Mortgagee and its lien upon the affected Parcel. Any such notice to a Permitted Mortgagee shall be given in the same manner as provided in Section 12.12. The giving of any notice of default or the failure to deliver a copy to any Permitted Mortgagee shall in no event create any liability on the part of the Owner so declaring a default.

(e) Right to Cure. In the event that any notice shall be given of the default of an Owner and of such defaulting Owner's failure to cure or to commence to cure such default as provided in this Agreement, then and in that event any Permitted Mortgagee under any Permitted Mortgage affecting the Parcel of the defaulting Owner shall be entitled to receive an additional notice given in the manner provided in Section 12.16(d), that the defaulting Owner has failed to cure such default, and such Permitted Mortgagee shall have sixty (60) days after the receipt of said additional notice to cure any such default, or, if such default cannot be cured within sixty (60) days, to diligently commence curing within such time and diligently cure within a reasonable time thereafter. Permitted Mortgagees may jointly or singly pay any sum or take any other action reasonably necessary to cure any default of their mortgagors hereunder with the same effect as cure by the Owner itself. If any such default or event cannot be cured or remedied by the Permitted Mortgagee without the Permitted Mortgagee obtaining possession of the Parcel by appropriate

proceedings and/or title to said Owner's Parcel by judicial or non-judicial foreclosure proceedings or by deed in lieu thereof, then any such default shall be remedied or deemed remedied if the Permitted Mortgagee shall have complied with the following provisions: (i) within thirty (30) days after receiving said notice, the Permitted Mortgagee (or its nominee) shall have acquired Owner's estate or shall have commenced judicial or non-judicial foreclosure proceedings or appropriate proceedings to obtain possession of the Parcel; (ii) the Permitted Mortgagee shall diligently prosecute any such proceedings to completion; and (iii) after gaining possession of the Parcel, the Permitted Mortgagee (or its nominee) shall perform all other obligations of the Owner as and when the same are due in accordance with the terms of this Agreement; provided, however, that the terms and conditions of this sentence shall not prohibit the Expansion Parcel Owner from exercising its self-help remedies under Section 10.2 above.

(f) Amendment. This Agreement shall not, without the prior written consent of a Permitted Mortgagee, be amended so as to (i) materially modify the location of any Easements; (ii) materially modify the obligations of the Initial Parcel Owner to restore, rebuild or replace any Covered Improvements upon a casualty or condemnation; (iii) terminate this Agreement prior to the ninety-ninth (99th) anniversary of the date hereof; (iv) change the provisions applicable to insurance or condemnation so as to reduce the required coverages or change the interest of any Owner in the allocation, adjustment or distribution of Proceeds; or (v) change any provision of this Section 12.16 or any other provision of this Agreement which, by its terms is specifically for the benefit of Permitted Mortgagees or specifically confers rights on Permitted Mortgagees. No amendment to this Agreement made without the consent of any Permitted Mortgagee shall be binding upon it or its successors in interest should it become an Owner.

(g) Condemnation or Insurance Proceeds. Nothing in this Agreement shall impair the rights of any Permitted Mortgagee pursuant to its Permitted Mortgage to receive Proceeds which are otherwise payable to the Owner granting such Permitted Mortgage, except as may be otherwise expressly agreed to by such Permitted Mortgagee in accordance with the provisions of Section 6.3 hereof.

(h) Title by Foreclosure. Except as otherwise set forth herein, all of the provisions contained in this Agreement shall be binding on and for the benefit of any person who acquires title to a Parcel by foreclosure, trustee's sale, deed in lieu of foreclosure or other involuntary transfer under a Permitted Mortgage.

(i) Modification of Article; Conflicts. Each Owner hereby agrees to cooperate in including in this Agreement by suitable amendment from time to time any provision which may reasonably be requested by any proposed Permitted Mortgagee for the purpose of implementing the Permitted Mortgagee protection provisions contained in this Agreement and allowing such Permitted Mortgagee reasonable means to protect or preserve the lien and security interest of the Permitted Mortgage hereunder as well as such other documents containing terms and provisions customarily required by mortgagees (taking into account the customary requirements of their participants, syndication partners or ratings agencies) in connection with any such financing. The Owners each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate any such amendment; provided, however, that any such amendment shall not in any way materially adversely affect any rights of any Owner

under this Agreement. If there is any conflict between this Section 12.16 and any other provision contained in this Agreement, this Section 12.16 shall control.

(j) Delegation to Mortgagee. Any Owner may delegate irrevocably to any of its Permitted Mortgagees the non-exclusive authority to exercise any or all of such Owner's rights hereunder, but no such delegation shall be binding upon any other Owner unless and until either the delegating Owner or its Permitted Mortgagee shall give to such other Owner a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Permitted Mortgage itself, in which case service upon any other Owner of an executed counterpart or conformed copy of said Permitted Mortgage in accordance with this Section 12.16, together with written notice specifying the provisions therein which delegates such authority to said Permitted Mortgagee, shall be sufficient to give such other Owner notice of such delegation.

(k) No Obligation to Cure. Nothing herein contained shall require any Permitted Mortgagee to cure any default of an Owner hereunder prior to its acquisition of title to a Parcel pursuant to a foreclosure of its Permitted Mortgage, trustee sale thereunder or deed in lieu foreclosure thereof. Upon acquisition of title to a Parcel, but only during such time as the Permitted Mortgagee holds title to the Parcel, such Permitted Mortgagee or the purchaser or grantee, as applicable shall thereafter be liable and responsible for all continuing defaults existing on its Parcel from and after the date of such acquisition.

(l) Separate Agreement. The Owners shall, upon request, execute, acknowledge and deliver to each Permitted Mortgagee requesting the same, an agreement prepared at the sole cost and expense of the Owner whose Permitted Mortgagee requested the same, in form reasonably satisfactory to such Permitted Mortgagee, among the Parties and the Permitted Mortgagees, agreeing to all of the provisions hereof.

(m) HUD Provisions. Notwithstanding anything contained in this Agreement, so long as the U.S. Department of Housing and Urban Development ("HUD") or HUD's successors or assigns is the insurer or holder of the note from Initial Parcel Owner to Dwight Capital LLC ("**FHA Lender**") on Villas at Bridgeville, FHA Project No. 032-35164 ("**FHA Note**"), the following shall apply:

(i) Indemnification by the Initial Parcel Owner shall be limited to insurance proceeds and Surplus Cash as defined in the HUD Regulatory Agreement between Initial Parcel Owner and HUD.

(ii) Insurance proceeds for any casualty related to the Initial Parcel shall be held and administered by the FHA Lender pursuant to the mortgage securing the FHA Note.

12.17 Effect of Force Majeure. If the Declarant or an Owner is delayed, hindered, or prevented from performance of any of its respective obligations under this Agreement by reason of acts of God, strikes, lockouts or other industrial disturbances, shortages of labor or materials, war, acts of public enemies, terrorism, order of any kind of the government of the United States, the State of Delaware, Sussex County, Delaware, Town of Bridgeville, or any other civil or military authority, insurrections, riots, epidemics, landslides, earthquakes, lightning, fires,

hurricanes, storms, floods, washouts, other natural disasters, a party not receiving a governmental permit, license, approval or inspection in time to meet a contractual time period imposed hereunder provided that party, in good faith, was diligent in the application or request for and prosecution of the process to obtain that permit, license, approval or inspection, restraint of government and people, civil disturbances, explosions, acts or omissions of either party (or a subdivision thereof) to this Agreement or other causes not reasonably within the control of the party claiming such inability (other than (a) financial inability to perform, or (b) acts of the party claiming such inability, or a subdivision thereof, including without limitation any ordinances, regulations, orders or similar action by such party or a subdivision thereof), and if such party has not otherwise committed an event of default hereunder which is continuing, the time for performance of such obligation is automatically extended for the period of such delay, provided that the following requirements are complied with by the affected party:

(a) The affected party shall give prompt written notice of such occurrence to the other party; and

(b) The affected party shall diligently use commercially reasonable efforts to remove, resolve, or otherwise eliminate any such event within the reasonable control of such affected party, keep the other party advised with respect thereto, and commence performance of its affected obligations hereunder immediately upon such removal, resolution, or elimination.

12.18 Captions and Capitalized Terms. The captions preceding the text of each article and/or section are included only for convenience of reference. Captions will be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

12.19 Singular and Plural. Whenever required by the context of this Agreement, the singular will include the plural, and vice versa, and the masculine will include the feminine and neuter genders, and vice versa.

12.20 No Merger. The common ownership of the Parcels at the execution hereof or the subsequent merger of title in and to any one or more Parcels, or any portions thereof, by sale, transfer or other conveyance, will not operate as a merger or termination of any other rights created and established hereunder, it being the intent that such rights will survive notwithstanding the merger of title.

12.21 Mortgage Subordination. Any mortgage or deed of trust affecting any portion of the Property will at all times be subject and subordinate to the terms of this Agreement and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale, will acquire title subject to all of the terms and provisions of this Agreement.

12.22 Effect of Agreement. Reference in any deed, mortgage, trust deed or any other recorded documents to the restrictions and covenants herein described or to this Agreement will be sufficient to create and reserve such covenants to the respective grantees, mortgagees, or

trustees of such parcels as fully and completely as if those restrictions and covenants were fully related and set forth in their entirety in said documents.

SIGNATURES ON FOLLOWING PAGE

DRAFT

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

EXPANSION PARCEL OWNER:

PASSWATERS FARM LLC, a Delaware limited liability company
By: Brookfield Washington, L.L.C. a Delaware limited liability company
it's Managing Partner

By: _____(SEAL)
Printed Name: _____
Title: _____

SWM LOT HOLDER:

PASSWATERS FARM LLC, a Delaware limited liability company
By: Brookfield Washington, L.L.C. a Delaware limited liability company
it's Managing Partner

By: _____(SEAL)
Printed Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA

: SS.

COUNTY OF FAIRFAX

:

BE IT REMEMBERED, that on this ____ day of _____, 2022, personally came before me, the Subscriber, a Notary Public for the Commonwealth and County aforesaid, _____, _____ of Brookfield Washington, L.L.C., a Delaware limited liability company, as Managing Partner of PASSWATERS FARM LLC, a Delaware limited liability company; that the signature of the said _____ is in his/her own proper handwriting; and that the act of signing, sealing, acknowledging and delivering said Agreement was duly authorized by the said limited liability company.

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

Notary Public

My Commission Expires: _____

INITIAL PARCEL OWNER:

HERITAGE SHORES VILLAS, LLC, a Delaware limited liability company
By: Brookfield Washington, L.L.C., a Delaware limited liability company
its Managing Partner

By: _____(SEAL)
Printed Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA :
: SS.
COUNTY OF FAIRFAX :

BE IT REMEMBERED, that on this ____ day of _____, 2022, personally came before me, the Subscriber, a Notary Public for the Commonwealth and County aforesaid, _____, _____ of Brookfield Washington, L.L.C., a Delaware limited liability company, as Managing Partner of HERITAGE SHORE VILLAS, LLC, a Delaware limited liability company; that the signature of the said _____ is in his/her own proper handwriting; and that the act of signing, sealing, acknowledging and delivering said Agreement was duly authorized by the said limited liability company.

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

Notary Public
My Commission Expires: _____

EXHIBIT A
“Initial Parcel”

That lot or parcel of land situate, lying and being in the Town of Bridgeville, Sussex County, Delaware, more particularly described as “Phase 1” within and depicted by a plat entitled “Subdivision, Villas at Bridgeville”, prepared by Rauch Inc., dated Sept. 2021, last revised January 25, 2022, and recorded in the Office of the Recorder of Deeds for Sussex County, Delaware in Plat Book 360, page 55, and consisting of 22.866 acres±. The aforesaid plat is incorporated herein and reference to the plat is hereby made for more particular description of such parcel by metes, bounds, courses and distances.

BEING all that lot or parcel of real property located in the Town of Bridgeville, Northwest Fork Hundred, Sussex County, Delaware, which was conveyed unto the Grantor by deed dated April 19, 2022 and recorded among the records of the Office of the Recorder of Deeds in and for Sussex County, State of Delaware in Deed Book No. 5706, page 88.

EXHIBIT B
“Expansion Parcel

That lot or parcel of land situate, lying and being in the Town of Bridgeville, Sussex County, Delaware, more particularly described as “Phase 2” within and depicted by a plat entitled “Subdivision, Villas at Bridgeville”, prepared by Rauch Inc., dated Sept. 2021, last revised January 25, 2022, and recorded in the Office of the Recorder of Deeds for Sussex County, Delaware in Plat Book 360, page 55, and consisting of 5.471 acres±. The aforesaid plat is incorporated herein and reference to the plat is hereby made for more particular description of such parcel by metes, bounds, courses and distances.

BEING a portion of those lots or parcels of real property located in the Town of Bridgeville, Northwest Fork Hundred, Sussex County, Delaware, which were conveyed unto the Grantor by deed dated March 16, 2004 and recorded among the records of the Office of the Recorder of Deeds in and for Sussex County, State of Delaware in Deed Book No. 2955, page 20.

EXHIBIT C
“SWM Lot”

That lot or parcel of land situate, lying and being in the Town of Bridgeville, Sussex County, Delaware, more particularly described as “_____” within and depicted by a plat entitled “_____”, prepared by Rauch Inc., dated _____, last revised _____, and recorded in the Office of the Recorder of Deeds for Sussex County, Delaware in Plat Book ____, page ____, and consisting of _____ acres±. The aforesaid plat is incorporated herein and reference to the plat is hereby made for more particular description of such parcel by metes, bounds, courses and distances.

BEING a portion of those lots or parcels of real property located in the Town of Bridgeville, Northwest Fork Hundred, Sussex County, Delaware, which were conveyed unto the Grantor by deed dated March 16, 2004 and recorded among the records of the Office of the Recorder of Deeds in and for Sussex County, State of Delaware in Deed Book No. 2955, page 20.

DRAFT

EXHIBIT D
Easement Area on SWM Lot

DRAFT

EXHIBIT E

SITE PLAN

DRAFT