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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR THE MONON & MAIN**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MONON & MAIN** (the "Declaration") is made as of this 22<sup>nd</sup> day of September, 2006 by **MONON & MAIN, LLC**, an Indiana limited liability company (the "Declarant").

**RECITALS:**

**WHEREAS**, the Declarant is the owner of certain real property located at Carmel, Hamilton County, Indiana, which is more specifically described in Exhibit "A", which is attached hereto and incorporated herein by reference (the "Property").

**WHEREAS**, the Declarant desires to create on the Property a residential community (the "Community") which shall have permanent open spaces and other common facilities for the benefit of the residents of the Community.

**WHEREAS**, the Declarant desires to provide for the preservation of the values of the Community and such other areas as may be subjected to this Declaration, and to provide for the maintenance of the open spaces and other facilities, and, to this end, declare and publish their intent to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, it being intended that they shall run with title to the Property and shall be binding on all persons or entities having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof.

**WHEREAS**, the Declarant has deemed it desirable for the efficient preservation of the values of the Community to create an association to be known as the Monon & Main Homeowners Association, Inc., an Indiana not-for-profit corporation (the "Association") to which shall be delegated and assigned the powers of owning, maintaining and administering the common areas and facilities, administering and enforcing the covenants and restrictions made in and pursuant to this Declaration and collecting and disbursing the assessments and charges hereafter created.

**NOW, THEREFORE**, the Declarant, for and in consideration of the premises and the covenants contained herein, grants, establishes and conveys to each owner of each Lot (as herein defined), mutual, non-exclusive rights, privileges and easements of enjoyment on equal terms and in common with all other owners of Lots in and to the use of any common areas and facilities; and further, the Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, reservations, easements, charges and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their respective successors and assigns, and shall inure to the benefit of each owner thereof.

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#### ARTICLE I DEFINITIONS

Section 1.1. **“Architectural Review Committee”** or **“ARC”** means the committee appointed and acting from time to time in accordance with the provisions of Article VII below.

Section 1.2. **“Association”** shall mean and refer to the Monon & Main Homeowners Association, Inc., an Indiana not-for-profit corporation, its successors and assigns.

Section 1.3. **“Common Area”** or **“Common Areas”** shall mean and refer to all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Members, and shall include all of the Property which is shown on such Plat and/or as described herein, and which is not part of a Lot. No part of the Common Area shall be dedicated to the public. The Common Area within the Property shall be what is identified on the Plat as Common Area and shall comprise four components; namely:

- (a) private streets comprising the streets identified on the Plat as \_\_\_\_\_ and \_\_\_\_\_ (collectively, the **“Private Streets”**);
- (b) concrete sidewalks located adjacent to the Private Streets and in areas between buildings and adjacent to buildings (the **“Sidewalks”**);
- (c) areas specifically identified as parking areas, located adjacent to Private Streets and between buildings (the **“Parking Areas”**). Parking Areas are further described and defined in Article IX below; and
- (d) open space, which shall include all parts of the Common Area not occupied by the Private Streets, Sidewalks, and the Parking Areas (the **“Open Space”**).

Section 1.4. **“Declarant”** shall mean and refer to Monon & Main, LLC, an Indiana limited liability company, and its successors or assigns.

Section 1.5. **“Declaration”** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Monon & Main, which is to be recorded in the Office of the Recorder of Hamilton County, Indiana.

Section 1.6. **“Development Period”** shall mean the period of time during which Declarant owns at least one (1) Lot.

Section 1.7. **“Dwelling Unit”** shall mean and refer to any improvement to the Property intended for any type of independent ownership for use and occupancy as a residence by a single household and shall, unless otherwise specified, mean townhomes.

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Section 1.1.8. "Improvements" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to, buildings, walkways, sprinkler pipes, roads, driveways, fences, screening walls, block walls, retaining walls, awnings, patio covers, stairs, decks, landscaping, antennae, satellite dishes, solar equipment, hedges, windbreaks, pools, spas, recreational equipment, trampolines, entry gates, if any, planted trees and shrubs, poles, and signs.

Section 1.1.9. "Lot" shall mean and refer to any discrete plot of land created by and shown on a Plat upon which a Dwelling Unit is intended to be constructed in accordance with applicable zoning ordinances; provided, however, that where a Dwelling Unit (i) is separated from an adjacent Dwelling Unit by a Party Wall, or (ii) shares a Party Wall with an adjacent Dwelling Unit, the center line of such Party Wall and its vertical extensions shall constitute the common boundary line (lot line) between adjacent Lots, and the closure of the boundary lines of such adjacent Lots shall be accomplished by extending perpendicular lines from the horizontal extremities of such Party Wall to the closest boundary line or lines for such Lots as shown on any Plat or any part thereof; provided, further, that where any exterior wall of a Dwelling Unit is not a Party Wall, but extends outside the boundary lines (lot lines) of any Lot (as shown on any such Plat or part thereof) upon which such Dwelling Unit is primarily located, the boundary lines of such Lot shall be deemed extended to include all of the ground area occupied by such Dwelling Unit. It is the intent hereof that, in any and all events in which a boundary line as shown on any Plat or part thereof does not coincide with the actual location of the respective wall of the Dwelling Unit because of inexactness of construction, settling after construction, or for any other reason, this Declaration and any Plat or any part thereof shall be interpreted and construed so that all ground area underlying and lying beneath a Dwelling Unit shall be and constitute part of the Lot upon which such Dwelling Unit is primarily located to the end that all of such ground area shall be subject to fee simple ownership by the Owner of such Dwelling Unit; to the extent necessary to accomplish and implement such intention, interpretation and construction, the boundary lines of the Lots shall be determined in accordance with the foregoing definitional provisions and boundary lines as so determined shall supercede the boundary lines for Lots shown on any Plat or part thereof.

Section 1.1.10. "Member" shall mean and refer to every person or entity who holds a membership in the Association, as more particularly set forth in Article II below.

Section 1.1.11. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot, including a contract seller but excluding those holding such interest in a Lot solely by virtue of a contract to purchase a Lot or as security for the performance of an obligation. If more than one (1) person or entity is the record owner of a Lot, the term Owner as used herein shall mean and refer to such owners collectively, so that there shall be only one (1) Owner of each Lot.

Section 1.1.12. "Party Wall" shall mean and refer to each wall which is built as part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between Lots. Party Walls are further described and defined in Article X below.

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Section 1.13. **"Plat"** shall mean and refer to a final plat or an "as-built" subdivision plat, of all or part of the Property, recorded with the Recorder of Hamilton County, Indiana.

Section 1.14. **"Property"** shall mean and refer to that certain real property located in Hamilton County, Indiana, which is more specifically described in Exhibit A, which is attached hereto and incorporated herein by reference as the same may be duly subdivided and platted, and any additions thereto which, from time to time, may be subjected to the covenants, conditions, restrictions, reservations, easements, charges and liens of this Declaration.

#### **ARTICLE II MEMBERSHIP**

Every Owner of a Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. No Owner shall have more than one (1) membership in the Association for each Lot it owns.

#### **ARTICLE III VOTING RIGHTS**

Section 3.1. **Classes.** The Association shall have two (2) classes of voting membership as follows:

Class A: Class A Members shall be all Members with the exception of the Class B Member. A Class A Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership pursuant to Article II herein.

Class B: The Class B Member shall be the Declarant. A Class B Member shall be entitled to five (5) votes for each Lot in which it holds the interest required for membership pursuant to Article II herein. The Declarant's Class B membership interest shall be converted to and shall become a Class A membership interest with one (1) vote for each Lot in which it holds an interest upon the happening of any of the following events, whichever occurs first (the "Applicable Date"):

- (a) within four (4) months after the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) seven (7) years from the date of recordation of this Declaration.

Section 3.2. **Multiple Ownership Interests.** If more than one (1) person or entity holds an ownership interest in any Lot, the vote for such Lot shall be exercised as the owners of the Lot among themselves determine and may be exercised by any one (1) of the people or entities holding such ownership interest, unless any objection or protest by any other holder of such ownership interest is made prior to the completion of a vote, in which case the vote for such membership interest shall not be counted, but the Member whose vote is in dispute shall be

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counted as present at the meeting for quorum purposes if the protest is lodged at such meeting. In no event shall more than one (1) vote be cast with respect to any Lot.

Section 3.3. Board of Directors. The Board of Directors shall be appointed and/or elected as prescribed by the Association's Articles and Bylaws. The Board of Directors shall manage the affairs of the Association.

#### ARTICLE IV PROPERTY RIGHTS

Section 4.1. Member's Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to:

- (a) the right of the Association to limit the number of guests of Members on the Common Area or to make any part of the Common Area available to occupants of adjacent real estate or members of the general public;
- (b) the right of the Association to adopt and enforce rules and regulations governing the use of the Common Area and the personal conduct of Owners, occupants and guests thereon, including, without limitation, the imposition of fines for the violation thereof
- (c) the right of the Association to suspend the voting rights, the right to run for office within the Association, and rights of a Member to the use of any nonessential services offered by the Association, to the extent that access and the provision of utilities to the Lot through the Common Area are not precluded, for any period during which any assessment against such Member's Lot remains unpaid or for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(d) the right of the Association at any time, or upon dissolution of the Association, and consistent with the then-existing zoning and subdivision ordinances of the City of Carmel (the "City") and/or Hamilton County, Indiana (the "County") and consistent with its designation of the Common Area as "open space", to transfer all or any part of the Common Area to an organization conceived and organized to own and maintain common open space, or, if such organization will not accept such a transfer, then to the City and/or County (herein sometimes collectively referred to as the "Local Governing Authority") or other appropriate governmental agency, or, if such a transfer is declined, then to another entity in accordance with the laws governing the same, for such purposes and subject to conditions as may be agreed to by the Members. Except in the case of dissolution, any such transfer shall have the assent of at least two-thirds (2/3) of each class of Members entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written notice of which having been sent to all Members not less than twenty-five (25) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting. Upon such assent and in accordance therewith, the officers of the Association shall execute the

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necessary documents. The re-subdivision or adjustment of the boundary lines of the Common Area and the granting of easements by the Association shall not be deemed a transfer within the meaning of this Article;

(e) the right of the Association to grant, with or without payment to the Association, licenses, rights-of-way and easements through or over any portion of the Common Area;

(f) the right of the Association to lease part or all of the Common Area per the terms and conditions of a lease acceptable to and approved and authorized by the Board of Directors of the Association and executed for and on behalf of the Association by the President of the Association; provided however that such lease(s) must:

- (i) be only to non-profit organizations;
- (ii) prohibit assignment and subleasing;

(iii) require the prior, written approval of the Association by and through the Board of Directors of the Association of uses of the Common Area and facilities, which must be in accordance with this Declaration;

(iv) be consistent with the then-existing ordinances of the Local Governing Authority; and

(v) be consistent with the open space designation of the Common Area;

(g) the right of the Declarant or the Association to re-subdivide and/or adjust the boundary lines of the Common Area consistent with applicable zoning and subdivision ordinances as either deems necessary for the orderly development of the subdivision;

(h) all rights reserved by the Declarant in Article VIII hereof and

(i) the right of the Declarant to erect, maintain and operate real estate sales and construction offices, displays, signs and other facilities for sales, marketing and construction purposes.

The Association, acting through its board of directors (the "Board of Directors"), may exercise these rights without the need for any approval from any Member, unless provided otherwise in this Declaration.

**Section 4.2. Delegation of Use.** Any Member may delegate its right of enjoyment to the Common Area and facilities to the members of its immediate household, its tenants or contract purchasers who reside on the Member's Lot. However, by accepting a deed to such Lot, every Owner covenants that should the Owner desire to rent its Lot, the rental agreement shall

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contain specific conditions which require the tenant to abide by all Association covenants, rules and regulations, and any Owner desiring to rent a Lot further covenants that the tenant will be provided a complete set of all Association covenants, rules and regulations.

#### ARTICLE V ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, except the Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other instrument of conveyance, is deemed to covenant and agree to pay to the Association: (i) Annual Assessments (as hereinafter defined), (ii) Special Assessments (as hereinafter defined), and any other amounts as may be provided for hereunder to be due from any Owner in connection with his, her or its ownership of a Lot in the Community. Such assessments are to be established and collected as hereinafter provided. The Association's Annual Assessments and Special Assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on each applicable Owner's Lot (excluding Lots owned by the Declarant) and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due and shall not be the personal obligation of a successor in interest unless expressly assumed by such successor. The Annual Assessments and Special Assessments, when assessed upon resolution of the Board of Directors for each year, shall become a lien on the Lot in the amount of the entire Annual Assessment or Special Assessment, but shall be payable in equal installments, collected on a monthly, bi-monthly, quarterly, semi-annual or annual basis, as determined by the Board of Directors.

Section 5.2. Purpose of Assessment. The assessments levied by the Association shall be used for the following purposes:

- (a) the improvement, maintenance, snow removal and repair of all Common Areas including the Private Streets, the Sidewalks, the Parking Areas, and the Open Space;
- (b) the maintenance, repair, irrigation, and fertilizing of all landscaping located within the Common Area including, without limitation, trees, lawns, shrubbery, and other plantings;
- (c) to paint and maintain the siding and exterior wood trim of the Dwelling Units;
- (d) to fulfill the duties of the Association specified in Article XI below; and
- (e) to carry out such other purposes as the Board of Directors may, in its sole discretion, determine to be appropriate.

**Section 5.3. Establishment of Annual Assessment.**

(a) The Association must levy in each of its fiscal years an annual assessment (the "Annual Assessment"), against each Lot. The amount of such Annual Assessment shall be established by the Board of Directors, subject to the limitations imposed by Section 5.4, below, and written notice of such shall be sent to every Owner at least thirty (30) days in advance of the commencement of each Annual Assessment period. The Annual Assessment shall become applicable as to all Lots (as shown on a recorded subdivision plat) on the first day of the month following the first conveyance of a Lot to an Owner who is not the Declarant. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year.

(b) The amount of the Annual Assessment shall be determined by the Board of Directors according to its estimate of the cost of providing services or rights of use which are common to all of the Lots.

**Section 5.4. Basis and Maximum Annual Assessment.** Until January 1 of the year immediately following conveyance of the first Lot to an Owner other than the Declarant, the maximum Annual Assessment shall be \_\_\_\_\_ (\$ \_\_\_\_\_).

(a) From and after January 1 of the year immediately following the first conveyance of a Lot to an Owner other than the Declarant, the maximum Annual Assessment shall increase, effective January 1 of each year, without the need for a vote of the Members, by an amount equal to (i) the anticipated increase in costs of insurance, taxes, snow removal, recycling, trash and waste removal, plus (ii) an amount equal to the amount of the prior year's Annual Assessment times ten percent (10%).

(b) The Board of Directors may determine not to increase the maximum Annual Assessment to the full extent of the automatic increase provided by subparagraph (a) of this Section, in which case the Board of Directors may determine to increase the Annual Assessment by any lesser amount.

(c) From and after January 1 of the year immediately following the first conveyance of a Lot to an Owner other than the Declarant, the maximum Annual Assessment may be increased above that established by subparagraph (a) annually, provided that, to be effective, any such change shall have the assent of more than fifty percent (50%) of the votes of each class of Members who are entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written notice of which (setting forth the purpose of the meeting) shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

(d) The Declarant shall pay to the Association until the Applicable Date, an amount equal to the difference, if any, between the annual expenditures of the Association made pursuant to Article V, herein and the aggregate amount of the Annual Assessments collected by the Association. Any such amounts paid by the Declarant shall



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be considered a loan to the Association and shall be repaid by the Association on or before the Applicable Date. Provided however, Declarant shall not be obligated to fund the Association reserves.

**Section 5.5. Special Assessments.** In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including the fixtures and personal property related thereto, or for any other specified purpose (the "Special Assessment"). Any such Special Assessment shall be levied against all of the Lots which benefit from the construction, reconstruction, repair or replacement of capital improvements giving rise to the Special Assessment, pro rata according to each Lots benefit, as reasonably determined by the Board of Directors, which determination shall be final. The amount of the Special Assessment shall be the same for each Lot. To be effective, any such assessment shall have the assent of more than two-thirds (2/3) of the votes of each class of Members who are entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written notice of which setting forth the purpose of the meeting having been sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

**Section 5.6. Quorum for any Action Authorized Under Sections 5.4 or 5.5.** At the first calling of a meeting under Section 5.4 or Section 5.5 of this Article, the presence at the meeting of Members or proxies entitled to cast sixty percent (60%) of all the votes of each class of Members shall constitute a quorum. If the required quorum does not exist at any such meeting, another meeting may be called subject to the notice requirements set forth in Section 5.4 and Section 5.5 and to applicable law, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 5.7. One Time Assessment.** Upon the closing of the initial conveyance of a Lot to an Owner other than the Declarant, the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution towards its working capital and startup fund, in an amount equal to two (2) months Annual Assessment, and a start-up fee in the amount of fifty dollars (\$50.00), which payment shall be non-refundable and shall not be considered as an advance payment of any other assessment or other charge otherwise owed the Association with respect to such Lot. Such working capital and startup funds shall be held and used by the Association for payment of, or reimbursement to Declarant for advances made to pay expenses of the Association for the early period of the operation of the Association and the Property, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire addition equipment or services deemed necessary by the Board of Directors.

**Section 5.8. Rate of Assessment.** The Annual Assessment shall be fixed at a uniform rate and due and owing for all Lots, except for Lots owned by the Declarant, and the Special Assessments shall be fixed at a uniform rate and due and owing for all Lots, except for unoccupied Lots owned by the Declarant.

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**Section 5.9. Declarant Exempt.** Subject to the terms of Section 5.4 (d) herein, notwithstanding anything in this Declaration to the contrary, under no circumstances shall the Declarant be liable for or obligated to pay any Annual Assessments, Special Assessments, or One-Time Assessments.

**Section 5.10. Notice of Assessment and Certificate.** Written notice of the Annual Assessments and any Special Assessments shall be sent to every Member. The due dates for payment of the Annual Assessments and any Special Assessments shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer or authorized agent of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 5.11. Remedies of the Association in the Event of Default.** If any assessment pursuant to this Declaration is not paid within thirty (30) days after its due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. In addition, in its discretion, the Association may:

- rule;
- (a) impose a penalty or late charge as previously established by
  - (b) bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. A suit to recover a money judgment for nonpayment of any assessment levied pursuant to this Declaration, or any installment thereof, may be maintained without perfecting, foreclosing or waiving the lien provided for herein to secure the same;
  - (c) suspend a Member's voting rights, right to hold an office within the Association, and right to use nonessential services offered by the Association to the extent that access and the provision of utilities to the Lot through the Common Area are not precluded. An Owner, whose rights have been suspended in this manner, shall have no right to any refund or suspension of his, her or its obligations to pay such assessments for the duration of such suspension or otherwise; and
  - (d) accelerate the due date of the unpaid assessment so that the entire balance shall become immediately due, payable and collectible.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or facilities, abandonment of its Lot, or the failure of the Association or the Board of Directors to perform their duties.

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**Section 5.12. Subordination of the Lien to Mortgages.** The lien for the assessments provided herein shall be subordinate to the lien of any properly recorded first mortgage encumbering a Lot. Notwithstanding anything contained in this Section 5.12 or elsewhere in this Declaration, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefore. No such sale, transfer or conveyance shall relieve the Lot, or the purchaser thereof at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien for such assessments.

**Section 5.13. Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all property dedicated to and accepted by a local public authority; and (b) the Common Area, however, no developed or undeveloped Lot, land or improvements devoted to dwelling use shall be exempt from said assessments.

**Section 5.14. Reserves for Replacements.** The Association shall establish and maintain a reserve fund for (a) the maintenance, repair and replacement of the Common Area and improvements located thereon and for (b) the painting of the siding and exterior wood trim of the Dwelling Units by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board of Directors, which reserve fund shall be sufficient, in the sole opinion of the Board of Directors, to accommodate such future maintenance, repair and replacement and which shall be a component of the Annual Assessment. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by any state or by any agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacement of the Common Area and the painting of the siding and exterior wood trim of the Dwelling Units may be expended only for the purpose of effecting the replacement of the Common Area, major repairs to, replacement and maintenance of any improvements within the Common Area, including but not limited to sidewalks, parking areas, landscape improvements, street or common area lighting, streets or roadways developed as a part of the Property, equipment replacement, painting of the siding and exterior wood trim of the Dwelling Units, and for start-up expenses and operating contingencies of a nonrecurring nature relating to the Common Area. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any Member in any such reserves shall be considered an appurtenance of the Member's Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

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**ARTICLE VI  
RESTRICTIVE COVENANTS**

Section 6.1. Residential Use. The Property shall be used exclusively for residential purposes and permitted uses as defined in the City of Carmel, Indiana Zoning Ordinance No. A-462-04 set forth on the attached Exhibit "B" ("Zoning Ordinance") and except as provided in Section 6.19 hereof. The Declarant reserves the right, pursuant to a recorded subdivision or re-subdivision plat, to alter, amend, and change any Lot line or subdivision plan or plat. No building shall be erected, altered, placed or permitted to remain on any Lot other than one Dwelling Unit and appurtenant structures, approved by the Association and appropriate Local Governing Authorities, for use solely by the occupant of the Dwelling Unit.

Section 6.2. Architectural Review Board Approval. No Structure (as herein defined) or addition to a Structure shall be erected, placed, painted, altered or externally modified or improved on any Lot until the plans and specifications, including design, elevation, material, shape, height, color and texture, and a site plan showing the location of all improvements with grading modifications, shall be filed with and approved in writing by the Architectural Review Board, and, if required, by appropriate Local Governing Authorities and, where required, appropriate construction permits obtained. As used herein, the term "Structure" shall include, but not be limited to, any building or portion thereof, including, without limitation, walls, decks, patios, stairs, windows, window boxes, doors, fences, play equipment, greenhouses, skylights, address markers, mail boxes, name plates, flag poles, lawn ornaments, trees, hedges, shrubbery, solar panels, satellite dishes, antennae, shutters, awnings, fences, pools, hot-tubs, pavement, walkways, driveways, garages and/or garage doors, or appurtenances to any of the aforementioned.

Section 6.3. Laundry. No clothing, laundry or wash shall be aired or dried on any portion of the Property within public view.

Section 6.4. Sight Lines. No fence, wall, tree, hedge or shrub shall be maintained in such a manner as to obstruct sight lines for vehicular traffic.

Section 6.5. Maintenance. Other than as specifically and expressly set forth in Section 11.1 below, an Owner shall, at all times, maintain its Dwelling Unit and all appurtenances thereto in good repair and in a state of neat appearance from all exterior vantage points. Prior to landscaping any Lot (other than flowers within approved flower beds), the Owner of such Lot must submit a written landscape plan to the Architectural Review Board for its review and approval or disapproval. The Owner shall not be permitted to remove any trees or shrubs on the Lot without the approval of the Architectural Review Board, except as may be ordered by Local Governing Authorities or by the Architectural Review Board to maintain proper sight lines. No approval for removal of any trees or shrubs will be granted by the Architectural Review Board unless appropriate provisions are made for replacing the removed trees or shrubs.

Section 6.6. Signs. The only signs permitted on the Property shall be customary home and address signs and real estate sale or lease signs and those permitted by the Zoning Ordinance which have received the prior written approval of the Architectural Review Board ("Permitted

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Signs"). No more than one (1) Permitted Sign shall be displayed to public view on any Lot and must be less than or equal to two (2) square feet in total surface area and may not be illuminated. All Permitted Signs advertising the property for sale or rent shall be removed within three (3) days from the date of the conveyance of the Lot or of the execution of the lease agreement, as applicable.

**Section 6.7. Animals.** No domesticated or wild animal shall be kept or maintained on any Lot, except for common household pets such as dogs and cats which may be kept or maintained, provided that they are not kept, bred or maintained for commercial purposes and do not create a nuisance or annoyance to surrounding Lots or the neighborhood and are kept in compliance with applicable laws and ordinances of the Local Governing Authority. Pets will not be permitted outside of a Dwelling Unit unless on a leash and any Owner walking a pet within the Community or on any Common Area will immediately clean up any solid animal waste and properly dispose of the same. Law enforcement and animal control personnel shall have the right to enter the Property to enforce local animal control ordinances. Unless permitted by the Board of Directors of the Association, no Owner shall maintain more than two (2) of the same type (dog, cat, bird) of pet nor more than four (4) total pets; provided, however, that fish which are located in indoor aquariums and which pose no risk to the public health shall not be considered pets for the purpose of this restriction.

**Section 6.8. Trash Storage.** Trash shall be collected and stored in trash receptacles only and not solely in plastic bags. Trash and garbage receptacles shall not be permitted to remain in public view and shall remain inside of each Owner's garage except on days of trash collection, except those receptacles designed for trash accumulation located in the Common Area. No accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on the exterior of any Dwelling Unit.

**Section 6.9. Antennae Systems.** To the extent not inconsistent with federal law, exterior television and other antennae, including satellite dishes, are prohibited, unless approved in writing by the Architectural Review Board. The Architectural Review Board shall adopt rules for the installation of such antennae and/or satellite systems, which rules shall require that antennae and satellite dishes be placed as inconspicuously as possible and only when fully screened from public view on the rear and above the eave line of any Dwelling Unit. Satellite dishes will not exceed 18 inches in diameter. It is the intent of this provision that the Architectural Review Board shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the Architectural Review Board conflict with federal law, such rules as do not conflict with federal law shall remain in full force and effect.

**Section 6.10. Painting.** No person shall paint the exterior of any building, or portion thereof. All Dwelling Units in the Community will, at all times, be painted in a uniform color, without variation.

**Section 6.11. Finished Exteriors.** The exteriors of all Structures, including, without limitation, walls, doors, windows and roofs, shall be kept in good maintenance and repair. No Structure shall be permitted to stand with its exterior in an unfinished condition for longer than

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six (6) months after the commencement of construction. In the event of fire, windstorm or other damage, the exterior of a Structure shall not be permitted to remain in a damaged condition for longer than three (3) months, unless expressly excepted by the Board in writing. Absent approval from the Architectural Review Board to the contrary, all maintained, repaired, or replaced roofs and other structure exterior shall be the same color and texture as the original roof and other structure exterior.

**Section 6.12. Fences.** Except for any fencing installed by the Declarant on any Lot or in any Common Areas, no fence or similar enclosure shall be erected or built on any Lot.

**Section 6.13. Vehicles.** No inoperable, junk, unregistered or unlicensed vehicle shall be kept on the Property. No portion of the Property shall be used for the repair of a vehicle.

**Section 6.14. Commercial Vehicles.** No commercial or industrial vehicle, such as but not limited to moving vans, trucks, tractors, trailers, vans, wreckers, tow trucks, hearses and buses, shall be regularly or habitually parked or parked overnight on the Property, except upon the prior written approval of the Architectural Review Board.

**Section 6.15. Recreational Vehicles.** No recreational vehicles or equipment, such as but not limited to boats, boating equipment, jet-skis, wave runners; all terrain vehicles ("ATVs"), recreation vehicles ("RVs"), travel trailers, camping vehicles or camping equipment shall be parked on the Property without the prior, written approval of the Architectural Review Board, as to location, size, screening and other relevant criteria. The Association shall not be required to provide a storage area for these vehicles.

**Section 6.16. Towing.** The Board of Directors shall have the right to tow any vehicle parked or kept in violation of the covenants contained within this Article, upon twenty-four (24) hours' notice and at the vehicle owner's sole expense.

**Section 6.17. Garage Usage.** Subject to the Zoning Covenants, any conversion of any garage that will preclude the parking of vehicles within that garage is prohibited. Owner's shall keep their garages at all times in a manner that will permit the usage of such garage for parking of passenger automobiles, vans and/or trucks.

**Section 6.18. Rental Agreements.** Any rental agreement for a Dwelling Unit must be for an initial period of at least six (6) months, must be in writing and must be subject to the rules and regulations set forth in this Declaration and in the other Association documents. Every such rental agreement must include a provision stating that any failure by the tenant, its household members or guests, to comply with the terms of this Declaration shall be a default under the rental agreement, and the Owner shall be responsible for enforcing that provision.

**Section 6.19. Initial Construction and Marketing.** The Declarant, may, during its construction and/or sales period, erect, maintain and operate real estate sales and construction offices, model homes, awnings, flag poles, trap fencing, displays, signs and special lighting on any part of the Property and on or in any building or structure now or hereafter erected thereon and shall not be bound by the provisions of this Article to the extent application thereof would

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delay, hinder or increase the cost of construction and/or marketing of Dwelling Units for sale in the Community.

**Section 6.20. Holiday and Seasonal Decorations.** Any holiday or seasonal decorations or ornamentation that are placed on the exterior of a Dwelling Unit or Structure, or that is otherwise visible from the exterior of such Dwelling Unit or Structure, shall be first approved by the Architectural Review Board.

**Section 6.21. Window Boxes.** No window boxes containing flowers or any other vegetation shall be erected or attached to any Dwelling Unit.

**Section 6.22. Dusk to Dawn Coach Lights.** Each Owner shall maintain any and all coach lights installed as a part of the initial construction of each Dwelling Unit in good order, condition and repair, including, without limitation, any necessary repairs or maintenance as may be required for the effective operation of all "dusk to dawn" photocell switches and replacement of light bulbs so that those coach lights remain continuously operational from dusk to dawn.

**Section 6.23. General Prohibition.** All swing sets, playground equipment, hot tubs, above and below-ground pools, basketball goals, trampolines, flag poles, outbuildings, storage buildings, exterior storage structures, attached or detached kennels, dog runs, electric bug killers, awnings (except those used by Declarant) and temporary storage structures are prohibited.

**Section 6.24. Nuisance.** No noxious or offensive activity shall be carried on or permitted to be carried on upon the Property, nor shall anything be done or placed thereon which is or may become an annoyance or nuisance to the neighborhood. Nothing shall be done or kept or permitted to be done or kept by an Owner in any Dwelling Unit, or on any Lot, or on any of the Common Areas, which will cause an increase in the rate of insurance paid by the Association or any other Owner. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any part of the Common Area or any other Owner, or which would be a violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau. No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the Community or which might be a nuisance, annoyance, or inconvenience, or which might cause damage, to other Owners and occupants of Dwelling Units or neighboring property, including, without limiting the generality of the foregoing, noise by the use of any musical instrument, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machinery. No exterior lighting on a Lot shall be directed outside the boundaries of the Lot. No outside toilets shall be permitted on any Lot (except during a period of construction and then only upon obtaining prior written consent of the Architectural Review Board), and no sanitary waste or other wastes shall be permitted to be exposed.

**Section 6.25. Additional Rules and Regulations.** The Association shall have the authority to adopt such rules and regulations regarding this Article as it may from time to time consider necessary or appropriate.

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**ARTICLE VII  
ARCHITECTURAL REVIEW BOARD**

**Section 7.1. Architectural Review Committee.**

(a) **Members of ARC.** The ARC shall be comprised of not less than three (3) nor more than five (5) members, the number of which may be increased by a majority vote of the Board. The initial members of the ARC shall be representatives of Declarant until three (3) years after the first Closing of the sale of a Lot ("Third Anniversary"). After the Third Anniversary the Board may appoint and/or remove one (1) member of the ARC, and Declarant shall have the right and power at all times to appoint and remove a majority of the members of the ARC or to fill any vacancy of such majority, until the expiration of the Development Period, after which the Board shall have the power to appoint and remove all of the members of the ARC. The Declarant may voluntarily surrender the right to appoint and release members of the ARC before termination of the above referenced time period. In that event, the Declarant may require, for the duration of the period, that specified actions of the ARC be approved by the Declarant before they become effective. ARC members appointed by Declarant need not be Members of the Association, but ARC members appointed by the Board shall be from the Membership of the Association. The ARC shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed plans conform harmoniously to the exterior design and existing materials of the buildings in the Development. Board members may also serve as ARC members.

(b) **Review of Plans and Specifications.** The ARC shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the ARC. No construction, alteration, removal, location, relocation, repainting, demolishing, addition, installation, modification, decoration, redecoration or reconstruction of Improvements, including landscaping, in the Community shall be commenced or maintained, until the plans and specifications therefore showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the ARC and approved in writing by the ARC; provided, however, that any Improvement may be repainted without ARC approval so long as the Improvement is repainted the identical color which it was last painted.

It shall be the responsibility of the Owner to submit the written plans and specifications (the "Applicant") to an authorized agent of the ARC. Until changed by the Board, the address for the submission of such plans and specifications shall be the principal office of the Association. The ARC shall approve plans and specifications submitted for its approval only if it deems that the installation, construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area or the Development as a whole, that the appearance



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of any structure affected thereby will be in harmony with the surrounding structures, that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Areas or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association. Declarant, and any person or entity to which Declarant may assign all or a portion of its exemption hereunder, need not seek or obtain ARC approval of any Improvements constructed on the Community by Declarant or such person or entity, as the case may be.

The ARC may condition its approval of proposals or plans and specifications for any Improvements (1) upon the Applicant's furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Development as a result of such work, (2) on such changes therein as it deems appropriate, (3) upon the Applicant's agreement to complete the proposed work within a stated period of time, or (4) all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The ARC may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee to accompany each application for approval, or stating additional factors which it will take into consideration in reviewing submissions. The ARC may provide that the amount of the fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated. All plans and specifications for any construction or other Improvement (other than walls, fences, curbs, asphalt or cement areas, landscaping and non-structural alterations, modifications or additions) shall be prepared by a designer or licensed architect and shall include a site development plan showing existing and proposed topographic elevations.

Notwithstanding the foregoing provisions of this Section, Improvements which are damaged or destroyed may be repaired, restored, replaced and/or reconstructed in conformance with previously approved plans, specifications and materials without the necessity of submitting additional plans and specifications to the Board or obtaining the Board's approval.

Until receipt by the ARC of any required plans and specifications, the ARC may postpone review of any plans submitted for approval. Decisions of the ARC and the reasons therefore shall be transmitted by the ARC to the Applicant at the address set forth in the application for approval within sixty (60) days after receipt by the ARC of all materials required by the ARC. Any application submitted pursuant to this Section 7.1 shall be deemed approved unless written disapproval or a request for additional information or materials by the ARC shall have been transmitted to the Applicant within sixty (60) days after the date of receipt by the ARC of all required materials. The Applicant shall meet any review or permit requirements of the ARC and the appropriate governmental authorities prior to making any alterations or Improvements permitted hereunder. Provided, however, regardless of how approval is obtained, the applicant shall be obligated to conform and abide by the architectural rules, standards, covenants and restrictions contained in this Declaration, and as amended and adopted by the ARC, from time to time.

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(c) Meetings of the ARC. The ARC shall meet from time to time as necessary to perform its duties hereunder. The Board may from time to time, by resolution unanimously adopted in writing, designate a ARC representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARC, except the granting of variances pursuant to Section 7.1 (b). In the absence of such designation, the vote or written consent of a majority of the ARC shall constitute an act of the ARC.

(d) No Waiver of Future Approvals. The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

(e) Compensation of Members. The members of the ARC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

(f) Inspection of Work. The ARC or its duly authorized representative may at any time inspect any work for which approval of plans is required under this Section 7.1 ("Work"), which right to inspect shall include the right to require any Owner to take such action as may be necessary to remedy any noncompliance with the ARC-approved plans for the work or with the requirements of this Declaration ("Noncompliance").

(i) Time Limit. The ARC's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the latest to occur of the following events: (i) submittal of the plans for the Work to the ARC for its approval as provided in this Section 3; (ii) completion of the Work as provided in the ARC-approved plans; and (iii) written notice from the Owner to the ARC that the Work has been completed. This time limit for inspection and notification by the ARC shall be extended indefinitely if any of these conditions has not occurred. If the ARC fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans.

(ii) Remedy. If an Owner fails to remedy any Noncompliance within thirty (30) days from the date of notification from the ARC, the ARC shall notify the Board in writing of such failure. Upon Notice and Hearing, as provided in the Bylaws, the Board shall determine whether there is a Noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a Noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board, at its option, may Record a Notice of

Noncompliance and commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the Noncompliance.

(g) Scope of Review. The ARC shall review and approve, conditionally approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, solely on the basis of aesthetic considerations, consistency with this Declaration, and the overall benefit or detriment which would result to the immediate vicinity and the Community generally. The ARC shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The ARC's approval or disapproval shall be based solely on the considerations set forth in this Section 7.1, and the ARC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. The ARC may consider the impact of views from other Residences or Lots and reasonable privacy right claims as factors in reviewing, approving or disapproving any proposed landscaping, construction or other Improvement. However, Declarant does not warrant any protected views within the Development and no Dwelling Unit or Lot is guaranteed the existence or unobstructed continuation of any particular view.

(h) Variances. The ARC may recommend and the Board may authorize variances from compliance with any of the architectural provisions of this Declaration, including without limitation restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by a majority of the ARC, and shall become effective upon recordation. After Declarant has lost the right to appoint a majority of the members of the ARC, the Board must approve any variance recommended by the ARC before any such variance shall become effective. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of his Dwelling Unit.

(i) Appeals. For so long as Declarant has the right to appoint and remove a majority of the members of the ARC, decisions of the ARC shall be final, and there shall be no appeal to the Board. When Declarant is no longer entitled to appoint and remove a majority of the members of the ARC the Board may, at its discretion, adopt policies and procedures for the appeal of ARC decisions for reconsideration by the Board. The Board shall have no obligation to adopt or implement any such appeal procedures, and in the absence of Board adoption of appeal procedures, all decisions of the ARC shall be final.

#### ARTICLE VIII

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#### **EASEMENTS AND OTHER AREAS**

**Section 8.1. Emergency Easement Rights.** The Declarant hereby grants a blanket easement to the Association, its directors, officers, agents and employees, to any manager employed by or on behalf of the Association, and to all police, fire, ambulance personnel and all similar persons, to enter upon the Property in the exercise of the functions provided for by this Declaration, Articles of Incorporation, By-Laws and rules of the Association, and in the event of emergencies and in the performance of governmental functions.

**Section 8.2. General Easements.** The Declarant hereby reserves unto itself and its assigns, any governmental or municipal agency, and any public or private utility, a general easement upon all Lots for the installation, maintenance, repair, and use of any drainage, utility, and sewer lines or infrastructure so as to permit the installation, maintenance, repair, and use of all electrical, telephone, water, gas, sanitary and storm sewer and other utility services, including all necessary lines, pipes, wires, cables, ducts, antenna, and other facilities to serve any Dwelling Unit constructed on the Property. This general easement shall be on all areas of a Lot not occupied by a Dwelling Unit, with the exception of areas covered by chimneys or patios. This general easement shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably or adversely affects any Dwelling Unit or portion hereof located upon such Lot, or (ii) unreasonably restricts the right of ingress and egress to such Lot.

**Section 8.3. Limitation on General Easement Rights.** When not an emergency situation or a governmental function, the rights accompanying the easements provided for in Section 8.1 of this Article shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to, any Owner or tenant directly affected.

**Section 8.4. Encroachments.** If any improvement on the Property now or hereafter encroaches on any other portion of the Property by reason of (a) the original construction thereof by the Declarant or its assigns, which shall include, but not be limited to, any party wall or driveway which encroaches over a Lot's boundary line and any drainage of stormwater from roofs and gutters, (b) deviations within normal construction tolerances in the maintenance, repair, replacement or reconstruction of any improvement, or (c) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The owner of the encroaching improvement shall also have an easement for the limited purpose of maintenance of the encroaching improvement. This easement does not relieve any Owner or any other person from liability for such Owner's or other person's negligence or willful misconduct.

**Section 8.5. Ingress Egress Easement.** The Declarant and its agents and employees, and its agents and employees, shall have a right of ingress and egress, as required for construction on and development of the Property and otherwise over (i) Common Areas and (ii) portions of any Lots not occupied by a Dwelling Unit; provided, however, that any person or entity exercising such easement rights upon a Lot shall promptly repair any resulting damage so that the Lot is restored to the condition in which it existed immediately prior to the exercise of such easement rights.

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**Section 8.6. Drainage, Utility and Sewer Easements (DU & SE).** Any Drainage, Utility and Sewer Easement (DU & SE) shown on any Plat are created to provide (i) paths and courses for area and local storm drainage, either over land or in adequate underground conduit, to serve the Property and adjoining ground and/or other drainage infrastructure systems and (ii) for the use by public and private utilities and local governments and their agencies having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve the Property and adjoining lands, for the purpose of the installation and maintenance of sanitary and storm sewers and (iii) utility easements for the use of the Declarant, the Association, the Owners, and any municipal or private utility companies for the installation and maintenance of mains, ducts, poles, lines, wires and other utility facilities and infrastructure.

**Section 8.7. Reservation of Right to Grant Future Easements.** There is reserved to the Declarant a right to grant non-exclusive easements over any Lot or Common Area for the purposes of installing, repairing and/or maintaining utility lines of any sort, including but not limited to storm drains and drainage swales, sanitary sewers, gas lines, electric lines and cables, water lines, telephone lines, telecommunication lines and cables, and the like, and for any purpose necessary for the Declarant or its assigns to obtain the release of any bonds posted with a municipality, governmental agency or regulatory agency, and non-exclusive easements over the Common Area to any municipal agency or private entity for any other purpose consistent with the "open space" designation thereof. This right to grant easements shall automatically expire as to any Lot or Common Area seven (7) years from the date of submission of such Lot or Common Area to this Declaration.

**Section 8.8. Bonds and/or Dedication Requirements.** There is reserved to the Declarant an easement and the right to grant and reserve easements or to vacate or terminate easements across all Lots and Common Area as may be required by any governmental agency or authority or utility in connection with the release of improvement bonds or the acceptance of public streets for state maintenance with respect to the Property.

**Section 8.9. Easements for Corrective Work.** There is reserved to the Declarant a non-exclusive easement over all Lots and the Common Area for the purposes of (i) correcting, repairing or maintaining any drainage, drainage infrastructure, utility infrastructure, grading or regrading, maintenance, landscaping, (ii) mowing, (iii) erecting street intersection signs, directional signs, temporary promotional signs, entrance features, lights and wall features, and (iv) executing any of the powers, rights, or duties granted to or imposed on the Association herein. This easement shall automatically expire as to any Lot seven (7) years from the date of submission of such Lot to this Declaration.

**Section 8.10. Open Space.** The Open Space portions of the Common Area are not dedicated to the public and are not for use by the general public; instead, the Open Space portions of the Common Area are to be used exclusively by Owners and their family members, guests, invitees, and lessees.

**Section 8.11. Parking Areas.** Parking Areas are not dedicated to the public and are not to be used by the general public; instead, Parking Areas are to be used exclusively by

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Owners and their family members, guests, invitees, and lessees for the parking of motor vehicles.

Section 8.12. Sidewalks. That portion of the Common Area occupied by Sidewalks is hereby reserved for use by not only the Owners and their family members, guests, invitees, and lessees, but the general public, as well, for pedestrian purposes in the manner in which sidewalks are typically used.

Section 8.13. Private Streets. The surface of that portion of the Common Area occupied by Private Streets is reserved not only for the use for Owners and their family members, guests and invitees, but also for the use by the general public, for vehicular ingress and egress in the manner in which streets are customarily used.

#### **ARTICLE IX PARKING**

Parking of any type of vehicle in any Common Area is prohibited in areas other than areas specifically identified as parking areas, adjacent to Private Streets within Common Areas. The Board of Directors may promulgate such rules and regulations as it deems appropriate to regulate the use of any Common Areas to permit temporary parking for purposes of loading and unloading passengers and materials. Those rules and regulations may include the towing of any vehicles parked in violation of this Declaration, with no notice of towing required and at the vehicle owner's sole expense. Temporary parking of vehicles on adjacent public rights-of-way will be subject to applicable limitations and fees imposed by the Local Governing Authorities.

#### **ARTICLE X PARTY WALLS**

Section 10.1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of Indiana law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 10.2. Sharing of Repair and Maintenance and Destruction by Fire or Other Casual. If any such party wall is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners, its agents, family, household or guests (including ordinary wear and tear and deterioration from lapse of time), then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the structural components of such wall, sharing equally the cost thereof, and each individual Owner shall proceed forthwith to rebuild or repair the non-structural components of such wall in proportion to their respective uses

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of the party wall. Any and all such reconstruction and/or repairs shall be completed immediately to the extent that the failure to commence and/or complete such reconstruction and/or repairs would result in an immediate risk to human health and/or safety. All other reconstruction and/or repairs shall be completed within three (3) months following the casualty or other event that damaged or destroyed such party wall, unless a longer period of time is approved of by the Association. If the damage is of such a nature that it has resulted, or will (if left uncorrected) result in damage or destruction of such party wall, the reconstruction and/or repairs will be completed within a reasonable time, not exceeding six (6) months following the initial discovery of the condition. Any and all such reconstruction and/or repair shall be made in compliance with all requirements of Local Governing Authorities and otherwise in compliance with all applicable laws, to the same or better condition as existed prior to such damage or destruction.

**Section 10.3. Repairs for Damage Caused by One Owner.** If any such party wall is damaged or destroyed through the act of one or more adjoining Owners, or their respective agents, families, households or guests (collectively the "Offending Parties"), whether or not such act is negligent or otherwise culpable, so as to deprive another adjoining Owner of the full use and enjoyment of the wall, then the Owner(s) of the Dwelling Unit(s) from whence the Offending Parties committed the act that caused the damage or destruction, shall forthwith proceed to rebuild and repair the same, in the manner required under Section 10.2, above, without cost to the adjoining Owner.

**Section 10.4. Other Changes.** In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild its Dwelling Unit in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner, whose consent shall not be unreasonably withheld. If the adjoining Owner has not responded in writing to the requesting Owner within twenty-one (21) days of its receipt of any such written request, given by registered or certified mail, return receipt requested, such consent of the adjoining Owner shall be deemed received.

**Section 10.5. Plans and Specifications.** Any reconstruction or repair must either be in accordance with the original development plan for the Dwelling Units or according to plans and specifications approved by the Architectural Review Committee.

**Section 10.6. Right to Contribution Runs with the Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**Section 10.7. Dispute.** In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors, who shall decide the dispute.

#### ARTICLE XI POWERS AND DUTIES OF THE ASSOCIATION

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**Section 11.1. Discretionary Powers, and Duties.** The Association shall have the following powers and duties which may be exercised in its discretion:

- (a) to enforce any covenants or restrictions which are imposed by the terms of this Declaration or which may be imposed on any part of the Property. Nothing contained herein shall be deemed to prevent the Owner of any Lot from enforcing any building restriction in its own name. The right of enforcement shall not serve to prevent such changes, releases or modifications of the restriction or reservations placed upon any part of the Property by any party having the right to make such changes, releases or modifications in the deeds, contracts, declarations or plats in which such restrictions and reservations are set forth; and the right of enforcement shall not have the effect of preventing the assignment of those rights by the proper parties wherever and whenever such right of assignment exists. Neither the Association nor the Board of Directors shall have a duty to enforce the covenants by an action at law or in equity if, in its or their opinion, such an enforcement is not in the Association's best interest. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as herein provided for; provided, however, that the foregoing authorization to use the general fund for such enforcement proceedings shall not preclude the Association from collecting such costs from the offending Owner;
- (b) to provide such light as the Association may deem advisable on streets and the Common Area and to maintain any and all improvements, Structures or facilities which may exist or be erected from time to time on the Common Area;
- (c) to use the Common Area and any improvements, Structures or facilities erected thereon, subject to the general rules and regulations established and prescribed by the Association and subject to the establishment of charges for their use;
- (d) to mow and re-sow or re-seed or re-sod lawn areas and fertilize lawn areas within the Common Areas;
- (e) to care for, spray, trim, protect, plant, replant and prune trees, shrubs and other landscaping, maintenance and upkeep of the Common Area and to pick up and remove from the Common Area all loose material, rubbish, filth and accumulation of debris; and to do any other thing necessary or desirable in the judgment of the Association to keep the Common Area in neat appearance and in good order, including, but not limited to, cleaning the private streets and maintaining the street lights located in the Common Areas;
- (f) to exercise all rights, responsibilities and control over any easements which the Association may from time to time acquire, including but not limited to those easements specifically reserved to the Association in the Article VIII herein;
- (g) to create, grant and convey easements and licenses upon, across, over and under all Common Area, including but not limited to easements for the installation, replacement, repair and maintenance of utility lines serving the Property;

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(h) to employ counsel and institute and prosecute such suits as the Association may deem necessary or advisable, and to defend suits brought against the Association;

(i) to retain as an independent contractor or employee a manager of the Association and such other employees or independent contractors as the Board deems necessary, and to prescribe the duties of employees and scope of services of independent contractors;

(j) to enter on any Lot to perform emergency repairs or to do other work reasonably necessary for the proper maintenance or protection of the Property, including without limitation (i) maintenance and repairs of all storm water drainage infrastructure, including without limitation retaining walls, and (ii) all utility repairs, and erosion control repairs.

(k) to enter (or have the Association's agents or employees enter) on any Lot to repair, maintain or restore the Lot, all improvements thereon, and the exterior of the Dwelling Unit and any other improvements located thereon if such is not performed by the Owner of the Lot, and to assess the Owner of the Lot the costs thereof, such assessment to be a lien upon the Lot equal in priority to the lien provided for in Article V herein; provided, however, that the Board of Directors shall only exercise this right after giving the Owner written notice of its intent at least fourteen (14) days prior to such entry;

(l) to re-subdivide and/or adjust the boundary lines of the Common Area but only to the extent such re-subdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Property;

(m) to adopt, publish and enforce rules and regulations governing the use of the Common Area and facilities and with respect to such other areas of responsibility assigned to it by this Declaration, except where expressly reserved herein to the Members. Such rules and regulations may grant to the Board of Directors the power to suspend a Member's voting rights and the Member's right to use non-essential services for non-payment of assessments and to assess charges against Members for violations of the provisions of the Declaration or rules and regulations; and

(n) to declare the office of a member of the Board of Directors vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

Section 11.2. Mandatory Powers and Duties. The Association shall exercise the following powers, rights and duties:

(a) to accept title to the Common Area and to hold and administer the Common Area for the benefit and enjoyment of the Owners and occupiers of Lots, and to cause the

Common Area and facilities to be maintained in accordance with the standards adopted by the Board of Directors;

(b) to transfer part of the Common Area to or at the direction of the Declarant, for the purpose of adjusting boundary lines or otherwise in connection with the orderly subdivision or development of the Property, but only to the extent such re-subdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Property;

(c) upon the termination of the Development Period, to obtain and maintain without interruption liability coverage for any claim against a director or officer for the exercise of its duties and fidelity coverage against dishonest acts on the part of directors, officers, trustees, managers, employees or agents responsible for handling funds collected and held for the benefit of the Association. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in place. The fidelity bond coverage shall be in an amount as may be determined to be reasonably prudent by the Board of Directors;

(d) to obtain and maintain without interruption a comprehensive coverage of public liability and hazard insurance covering the Common Area, private streets and access easements (AE) existing on the Property or shown on any Plat, and other easements of which the Association is a beneficiary, if available at reasonable cost. Such insurance policy shall contain a severability of interest clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage shall include all coverage in kinds and amounts commonly obtained with regard to projects similar in construction, location and use as determined by the Board of Directors. Further, the public liability insurance must provide coverage of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence;

(e) to provide for the maintenance and repair of any and all (i) Common Areas and improvements which may exist or be erected from time to time on the Common Area, including but not limited to street lights (including the payment of utility costs therefore), recreational facilities, entrance features, entrance ways, entrance areas, stormwater management facilities, including sand filters, retaining walls and sound walls, (ii) easement areas of which the Association is the beneficiary and for which it has the maintenance responsibility, (iii) any private streets or access easements (AE) existing on the Property or shown on any Plat; (iv) facilities, including but not limited to fences and signs authorized by the Association and erected on any easements granted to the Association, and (v) street lights that may be constructed within the rights-of-way of any public streets within or adjacent to the Property, including those, if any, required to be maintained by Local Governing Authorities (including the payment of utility costs therefore);

(f) to arrange for plowing and/or removal of snow from (i) private streets located within Common Areas, (ii) community walkways located within Common

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Areas, and (iii) driveways located upon Lots. It shall be each Owner's responsibility, however, to remove snow from the walkway extending from the community walkways to the front door of the Owner's Dwelling Unit.

(g) to mow, trim, and fertilize grass located on each Lot; provided, however, that the Association shall not be required to maintain, replace, irrigate, or fertilize any flowers, plants, trees, shrubs, or any landscaping other than grass;

(h) to maintain, replace, irrigate, and fertilize the flowers, plants, trees and

(i) to paint all hardi-plank siding and wood exterior trim, but shall not be responsible for any other maintenance of the exterior of a Dwelling Unit;

(j) to pay all proper bills, taxes, charges and fees on a timely basis; and

(k) to maintain its corporate status.

Section 11.3. Board Authority to Act. Unless otherwise specifically provided in the Association's documents, all rights, powers, easements, obligations and duties of the Association may be performed by the Board of Directors. Notwithstanding anything to the contrary contained herein, any rules or regulations which are promulgated by the Board may be repealed or amended by a majority vote of the Members cast, in person or by proxy, at a meeting convened for such purpose in accordance with the By-Laws.

Section 11.4. Compensation. No director or officer of the Association shall receive compensation for services as such director or officer except to the extent expressly authorized by a majority vote of the Class A Members.

Section 11.5 Non-liability of Directors, Officers and Board Members. The directors and officers of the Association and members of the Architectural Review Board shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association or members of the Architectural Review Board, except for their own individual willful misconduct or gross negligence. It is intended that the directors and officers of the Association and members of the Architectural Review Board shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

Section 11.6. Indemnity of Directors and Officers and Members of the Architectural Review Board. The Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the "Indemnitee") made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was a director or officer of the Association or member of the Architectural Review Board, against all costs and expenses, including attorneys fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal thereof, except in relation to matters as to which it shall be adjudged

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in such action, suit or proceeding that such Indemnitee is guilty of gross negligence or willful misconduct in the performance of his or her duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or for any judgment rendered in any action, suit or proceeding, unless it shall be adjudged in such action, suit or proceeding that such Indemnitee was guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer or member of the Architectural Review Board shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such director, officer or member of the Architectural Review Board relied on the books and records of the Association or statements or advice made by or prepared by any managing agent of the Association or any director or officer of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of gross negligence or willful misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by an Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification or reimbursement as provided in this Section.

## ARTICLE XII GENERAL PROVISIONS

**Section 12.1. Enforcement and Declarant's Exemption.** The Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration or other Association documents unless such right is specifically limited. Failure by the Association or by any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration shall not constitute a waiver of the right of the Association or an Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association or any Owner pursuant to any term, provision, covenant or condition of the Declaration shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by this Declaration or at law or in equity.

Notwithstanding anything in this Declaration to the contrary, (i) the Declarant reserves a right to carry on construction, development, and sales activities, to place equipment, machinery, supplies and signs, construct and maintain models or other structures, and park vehicles of prospective or actual purchasers, lessees, or employees and personnel of the Declarant, on any part of the Property owned by the Declarant, or the Association and (ii) none of the terms, conditions, provisions, and restrictions set forth in this Declaration shall be construed, in any manner, to limit any activity of the Declarant in the construction, development, and sales activities pertaining to the Property.

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**Section 12.2. Severability; Headings; Conflict.** Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect. Titles of paragraphs are for convenience only and are not intended to limit or expand the covenants, rights or obligations expressed therein. In the case of any conflict between the Articles of Incorporation and this Declaration, the Declaration shall control; in the case of any conflict between this Declaration and the By-Laws, this Declaration shall control.

**Section 12.3. Duration.** The covenants and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, unless such right is specifically limited, for a term of twenty (20) years from the date this Declaration is recorded, after which time the covenants and restrictions of this Declaration shall be automatically extended for successive periods of twenty (20) years each, unless terminated by a written and recorded instrument approved of in advance by the affirmative and unanimous vote of all Members of the Association.

**Section 12.4. Amendment of Declaration.**

(a) **Generally.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

(ii) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

(iii) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws of the Association.

(iv) **Adoption.** Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners; provided, however, that during the Development Period, any amendment to this Declaration shall require the prior written approval of Declarant. In the event any Lot is subject to a first mortgage, the mortgagee thereunder shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the mortgagee has given prior written notice of its mortgage interest to the Association.

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(v) Special Amendments. No amendment to this Declaration shall be adopted which changes the applicable share of an Owner's liability for assessments, or the method of determining the same, without, in each and any of such circumstances, the unanimous approval of all Owners and all mortgagees whose mortgage interests have been made known to the Association.

(vi) Recording. Each amendment to this Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Vanderburgh County, Indiana, and such amendment shall not become effective until so recorded.

(b) Amendments by Declarant Alone.

(i) General Amendments. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have and hereby reserves the right and power acting alone, and without the consent or approval of any of the Owners, the Association, Board of Directors, any mortgagees or any other person, except as provided below, to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots, (c) to bring this Declaration into compliance with any statutory requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) functions similar to those performed by such agencies or entities, (e) to annex additional real estate to the Community, (f) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by, and granted by each Owner to the Declarant to vote in favor of, make, or consent to any amendments described in this subsection B on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this subsection 12.4 shall terminate upon the completion of the Development Period.

(ii) Technology/Communication Amendments. The Declarant shall have the right and power acting alone and without the consent or approval of any

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## Declaration of Covenants, Conditions and Restrictions

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of the Owners, the Association, Board of Directors, any mortgagees or any other person to amend, restate or supplement this Declaration at any time and from time to time in order to subject the Community to certain easements and access restrictions to facilitate obtaining enhanced technological capabilities and to provide for the preservation and enhancement of the amenities in the Community including, but not limited to, the technological infrastructure, and communication and utility services to and within the Community

(c) Protection of Declarant. Until the expiration of the Development Period, or until the Applicable Date, whichever occurs first, the prior written approval of Declarant, as Declarant of the Development, will be required before any amendment which would impair or diminish the rights of Declarant to complete the Community or sell or lease Lots therein in accordance with this Declaration shall become effective. Notwithstanding any other provisions of the Restrictions, until the expiration of the Development Period, the Association shall not take any action to significantly reduce the Association maintenance or other services without the prior written approval of the Declarant.

Section 12.7. Waiver. The Declarant, as the present most interested party in maintaining the high quality of development which by these covenants is sought to be assured for the Property, hereby expressly reserves unto itself (so long as these restrictions are in effect), the unqualified right to waive or alter from time to time such of the herein contained restrictions as it may deem best, as to any one or more of the Lots, which waiver or alteration shall be evidenced by the mutual written consent of the Declarant and the then Owner of the Lot as to which some or all of said restrictions are to be waived or altered; such written consent to be duly acknowledged and recorded in the Office of the Recorder of Vanderburgh County, Indiana.

Section 12.8. Casualty Insurance. Notwithstanding anything to the contrary contained in this Declaration, each and every Owner shall maintain a casualty insurance policy affording fire and extended coverage insurance insuring the Dwelling Unit in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Dwelling Unit, including, without limitations any Party Walls. Each Owner of each Lot and/or Dwelling Unit, (regardless of whether or not its ownership is encumbered or is to be encumbered by a mortgage, deed of trust or similar indenture) will furnish to the Association, at or prior to the closing of its acquisition of that Lot or Dwelling Unit, a certificate of insurance, in form and content acceptable to the Association, evidencing the insurance coverage described herein. Each such Owner shall, prior to the expiration of the term of any such insurance policy, procure and deliver to the Association a renewal or replacement policy in form and content satisfactory to the Association. If any such Owner fails to provide evidence of such coverage procure such coverage at the expense of the applicable Owner, and the cost of procuring such insurance will be assessed to that Owner as a Special Assessment and shall be immediately due and payable upon demand.

Section 12.9. Withdrawable Real Estate.

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(a) The Declarant shall have the unilateral right, without the consent of the Class A Members or any Mortgagee, to execute and record an amendment to this Declaration withdrawing any portion of the Property on which Dwelling Units have not been constructed; provided, however, that not more than five (5) years have lapsed since the date of the recordation of this Declaration.

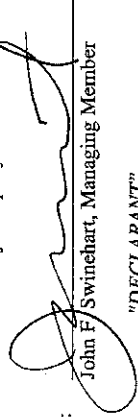
(b) Upon the dedication or the conveyance to any public entity or authority of any portion of the Property for public street purposes, this Declaration shall no longer be applicable to the land so dedicated or conveyed.

Section 12.10. **Management Contracts.** For such time as the Declarant has Class B membership status, the Declarant shall have the right to enter into professional management contracts on behalf of the Association for the management of the Property for terms not to exceed one (1) year; provided, however, that the Association shall have the right to terminate such contracts, with or without cause, upon thirty (30) days' written notice to the other party and without payment of a termination fee.

Section 12.11. **Dissolution.** The Association may be dissolved with the assent given in writing and signed by at least two-thirds (2/3) of each class of Members and in accordance with Article 13 of the Act. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association, both real and personal, shall be offered to an appropriate public agency to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the Association. In the event that such offer of dedication is refused, such assets shall be then offered to be granted, conveyed or assigned to any non-profit corporation, trust or other organization devoted to similar purposes and in accordance with Indiana law. Any such dedication or transfer of the Common Area shall not be in conflict with then-governing zoning ordinances or the designation of the Common Area as "open space".

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants, Conditions and Restrictions for the Monon & Main to be executed as of the date written above.

MONON & MAIN, LLC, an Indiana limited liability company

By:   
John F. Swinehart, Managing Member

"DECLARANT"

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

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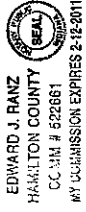


Declaration of Covenants, Conditions and Restrictions

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Before me, a Notary Public in and for said County and State, personally appeared John F. Swinehart, Managing Member of Monon & Main, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restriction for the Monon & Main on behalf of said company.

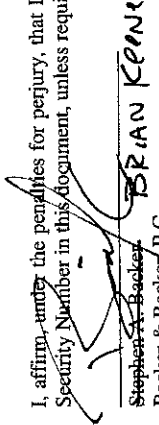
Witness my hand and Notarial Seal this 28 day of September, 2006.



*Edward J. Ranz*  
Edward J. Ranz, Notary Public

My Commission Expires: 2-12-2011  
My County of Residence: Ham. Ind.

I, affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

  
~~Stephen A. Backer~~  
~~Backer & Backer P.C.~~

**BRIAN KENIK**  
8710 North Meridian Street  
Indianapolis, Indiana 46260

This instrument was prepared by Stephen A. Backer, Esq., Backer & Backer, P.C., 8710 North Meridian Street, Indianapolis, Indiana 46260.

*Exhibit A*

## LEGAL DESCRIPTION

PERIMETER DESCRIPTION OF WEST TRACT WHICH INCLUDES BLOCK #3, #4, #5, #6, #7, #8, #9, #10 AND #11

A PART OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 18 NORTH, RANGE 3 EAST DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 18 NORTH, RANGE 3 EAST (AS ESTABLISHED BY A SURVEY RECORDED AS INSTRUMENT #200600014480) THENCE SOUTH 89 DEGREES 50 MINUTES 08 SECONDS WEST (ASSUMED BEARING) 212.83 FEET ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER; THENCE NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST 35.00 FEET PARALLEL WITH THE EAST LINE OF THE WEST HALF OF SAID NORTHEAST QUARTER TO THE NORTH RIGHT OF WAY LINE OF MAIN STREET (131ST STREET) AS ESTABLISHED BY A DEDICATION AND DEED OF PUBLIC RIGHT OF WAY RECORDED AS INSTRUMENT #200500022613 AND THE POINT OF BEGINNING OF THE DESCRIPTION FOR THE TRACT OF REAL ESTATE HEREIN DESCRIBED (THE FOLLOWING 3 COURSES ARE ALONG SAID NORTH RIGHT OF WAY LINE); (1) THENCE NORTH 89 DEGREES 50 MINUTES 08 SECONDS EAST PARALLEL WITH THE SOUTH LINE OF SAID QUARTER SECTION 135.78 FEET TO A POINT ON A NONTANGENT CURVE HAVING A RADIUS OF 70.00 FEET, THE RADIUS POINT OF WHICH BEARS SOUTH 60 DEGREES 09 MINUTES 52 SECONDS EAST; (2) THENCE NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 146.61 FEET TO A POINT BEARING NORTH 59 DEGREES 50 MINUTES 08 SECONDS EAST FROM THE RADIUS POINT; (3) THENCE PARALLEL WITH THE SOUTH LINE OF SAID QUARTER SECTION NORTH 89 DEGREES 50 MINUTES 08 SECONDS EAST TO THE WEST RIGHT OF WAY LINE OF 3RD AVENUE NORTHWEST AS ESTABLISHED BY A DEDICATION AND DEED OF PUBLIC RIGHT OF WAY RECORDED AS INSTRUMENT #200500022613 (THE FOLLOWING 3 COURSES ARE ALONG SAID WEST RIGHT OF WAY LINE); (1) THENCE NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST 46.61 FEET; (2) THENCE NORTH 12 DEGREES 27 MINUTES 46 SECONDS WEST 180.72 FEET; (3) THENCE NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST 45.78 FEET TO A POINT, SAID POINT BEING NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST 304.00 FEET FROM THE SOUTH LINE OF SAID NORTHEAST QUARTER; THENCE SOUTH 89 DEGREES 50 MINUTES 08 SECONDS WEST PARALLEL WITH THE SOUTH LINE OF SAID NORTHEAST QUARTER 156.82 FEET TO THE WEST LINE OF THE EAST HALF OF SAID NORTHEAST QUARTER; THENCE NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST 3.00 FEET ALONG THE WEST LINE OF SAID EAST HALF; THENCE SOUTH 89 DEGREES 50 MINUTES 08 SECONDS WEST 212.83 FEET PARALLEL WITH THE SOUTH LINE OF SAID NORTHEAST QUARTER; THENCE SOUTH 00 DEGREES 47 MINUTES 02 SECONDS WEST PARALLEL WITH THE EAST LINE OF THE WEST HALF OF SAID NORTHEAST QUARTER 272.00 FEET TO THE POINT OF BEGINNING, CONTAINING 2.356 ACRES, MORE OR LESS.

PERIMETER DESCRIPTION OF EAST TRACT WHICH INCLUDES BLOCK #1, #2, #12, #13, #14, #15, #16, #17 AND #18

A PART OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 18 NORTH, RANGE 3 EAST DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 18 NORTH, RANGE 3 EAST (AS ESTABLISHED BY A SURVEY RECORDED AS INSTRUMENT 200600014480) THENCE NORTH 89 DEGREES 50 MINUTES 08 SECONDS EAST (ASSUMED BEARING) 452.50 FEET ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER; THENCE NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST 35.00' PARALLEL WITH THE WEST LINE OF THE EAST HALF OF SAID NORTHEAST QUARTER TO THE NORTH RIGHT OF WAY LINE OF MAIN STREET (131ST STREET) AS ESTABLISHED BY A DEDICATION AND DEED OF PUBLIC RIGHT OF WAY RECORDED AS INSTRUMENT 200500022613 AND THE POINT OF BEGINNING OF THE DESCRIPTION FOR THE TRACT OF REAL ESTATE HEREIN DESCRIBED; THENCE SOUTH 89 DEGREES 50 MINUTES 08 SECONDS WEST PARALLEL WITH THE SOUTH LINE OF SAID NORTHEAST QUARTER AND ALONG THE NORTH RIGHT OF WAY LINE TO THE EAST RIGHT OF WAY LINE OF 3RD AVENUE NORTHWEST AS ESTABLISHED BY A DEDICATION AND DEED OF PUBLIC RIGHT OF WAY RECORDED AS INSTRUMENT 200500022613 (THE FOLLOWING 3 COURSES ARE ALONG SAID EAST RIGHT OF WAY LINE); (1) THENCE NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST 50.99 FEET; (2) THENCE NORTH 12 DEGREES 27 MINUTES 46 SECONDS WEST 180.72 FEET; (3) THENCE NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST 41.40' TO A POINT, SAID POINT BEING NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST 304.00' FROM THE SOUTH LINE OF SAID NORTHEAST QUARTER; THENCE NORTH 89 DEGREES 50 MINUTES 08 EAST 251.68 FEET PARALLEL WITH THE SOUTH LINE OF SAID NORTHEAST QUARTER TO A POINT, SAID POINT BEING NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST (PARALLEL WITH THE WEST LINE OF SAID EAST HALF) FROM THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 47 MINUTES 02 SECONDS WEST 269.00 FEET TO THE POINT OF BEGINNING, CONTAINING 1.422 ACRES, MORE OR LESS.

Exhibit B

Sponsor: Councilman Rattermann

ORDINANCE NO. Z-462-04

AN ORDINANCE OF THE COMMON COUNCIL OF THE  
CITY OF CARMEL, INDIANA  
ESTABLISHING THE  
MONON & MAIN  
PLANNED UNIT DEVELOPMENT DISTRICT

WHEREAS, Section 316.4 of the Carmel/Clay Zoning Ordinance Z-289 (the "Carmel/Clay Zoning Ordinance"), provides for the establishment of a Planned Unit Development District in accordance with the requirements of I.C. § 36-7-4-1500 et seq.;

WHEREAS, the Carmel/Clay Plan Commission (the "Commission") has given a favorable recommendation to the ordinance set forth herein (the "Monon & Main Ordinance") which establishes the Monon & Main Planned Unit Development District (the "District");

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Carmel, Indiana (the "Council"), that (i) pursuant to IC §36-7-4-1500 et seq., it adopts this Monon & Main Ordinance, as an amendment to the Carmel/Clay Zoning Ordinance and it shall be in full force and effect from and after its passage, (ii) all prior commitments shall be null and void and replaced and superseded by this Monon & Main Ordinance, and (iii) this Monon & Main Ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

Section 1    Applicability of Ordinance

- 1.1.    The Official Zoning Map of the City of Carmel and Clay Township, a part of the Carmel/Clay Zoning Ordinance, is hereby changed to designate the land described in Exhibit "A" (the "Real Estate"), as a Planned Unit Development District to be known as Monon & Main.
- 1.2.    Development in the District shall be governed entirely by (i) the provisions of this Monon & Main Ordinance and its exhibits, and (ii) those provisions of the Carmel/Clay Zoning Ordinance specifically referenced in this Monon & Main Ordinance. In the event of a conflict between this Monon & Main Ordinance and the Carmel/Clay Zoning Ordinance or the Sign Ordinance, the provisions of this Monon & Main Ordinance shall apply.
- 1.3.    Any capitalized term not defined herein shall have the meaning as set forth in the Carmel/Clay Zoning Ordinance in effect on the date of the enactment of this Monon & Main Ordinance.

**Section 2** Permitted Uses and Development Requirements for Primary Area. Main Street west of Range Line Road is a relatively intact example of street front retail. The emphasis is on encouraging new construction and renovations that conform to the desired character and prohibiting changes that do not conform to the existing character. The Primary Area will enhance the pedestrian commercial activity in the Old Town District. All new construction of and alterations and additions to buildings shall occur according to the following guidelines:

- 2.1. Use. The B3 Zoning Classification shall apply to the Primary Area and the permitted uses for the Primary Area are set forth in what is attached hereto and incorporated herein by reference as Exhibit "B" (hereafter "Permitted Primary Area Uses"). The Permitted Primary Area Uses shall be subject to the following:
- A. No drive-through or drive-up facilities are allowed for any use, including automotive, banking, or food sales.
  - B. Residential uses, including Attached Dwellings and Live/Work Dwellings, shall be permitted.

2.2. Building mass.

- A. New buildings and renovations shall follow the general massing of a "Main Street" commercial block, i.e., a rectangular building with a flat or slightly sloped roof, oriented perpendicular to the street.
- B. Building Height shall not exceed forty five (45) feet in height.
- C. The first Floor and all other Floors shall have a coordinated composition, which will usually be indicated by the alignment of upper floor windows and other features with openings and features of the first Floor.

2.3. Materials.

- A. The first Floor and upper Floors may be composed of different materials. The Façade of the upper Floors on any building that faces a public street may be constructed of wood siding, Hardi-Plank, brick, stucco, or other masonry units, and trimmed in stone, contrasting brick, wood, or pre-cast concrete. Any of the foregoing materials may be painted.
- B. The first Floor of a new or renovated building shall incorporate architectural elements consistent with the theme of promoting first Floor storefronts and said storefront architectural elements may be inserted into a masonry, wood, stone or concrete panel frame which is coordinated with the upper Floor. Storefronts shall be a lightweight material including, but not limited to, aluminum, glass, wood, tile, and panelized composites.
- C. The materials in the rear of the building shall be coordinated with the front Façade, although they may be different.

- D. On the front Façade, at least fifty percent (50%) of the total area of the first Floor (up to the line of the second Floor) shall be transparent vision glass.
- E. Front and side Façades of buildings located on corner lots shall be of the same materials and similarly detailed.
- F. Exterior walks, steps, ramps and paving shall be masonry or stone pavers, or poured or pre-cast concrete.

#### 2.4. Architecture.

- A. Building Renderings. Attached hereto and incorporated herein, by reference as Exhibit "C" are building renderings and elevations for the buildings to be constructed in the Primary Area (hereafter "Building Renderings for Primary Area").
- B. Color Palette. Attached hereto and incorporated herein as Exhibit "K" is a color palette (hereafter "Color Palette") depicting the range of acceptable colors of the primary building materials for the buildings to be constructed in the Primary Area and Secondary Area. The final color schemes shall be approved by the Director pursuant to the Final Development Plan approval process.

#### 2.5. Windows, Doors.

- A. A separate entrance facing a public street shall be provided to the upper Floors of a building if the use differs from the one on the ground Floor.
- B. Each Floor shall have windows.

2.6. Roof. Roofs shall have a pitch of less than three to twelve (3:12) and shall not be a substantially visible part of the building.

2.7. Alterations and Additions. Existing buildings may be substantially modified to conform to these guidelines, except for designated historic structures.

#### 2.8. Details.

- A. Cornices and other details of existing buildings may not be removed, unless the building containing the Cornices and other details is completely removed in its entirety as part of the Development of the District.
- B. The Façade should have a flat front, with relief provided by minor bays, windows and window trim, storefronts, recessed doors, and features such as special brick coursing, Pilasters and lintels.

- C. All new buildings shall have an articulated Cornice at the top of the Façade wall.

#### 2.9. Setbacks.

- A. Front Setback. The buildings shall be set back no more than eight (8) feet from the front property line to allow for entrances and/or patio areas.
- B. Side Setback. There are no minimum side setbacks; however, mid-block pedestrian access to rear parking shall be a minimum of six (6) feet wide.

#### 2.10. Entrances.

- A. The principal entrance to all retail areas shall face the public street.
- B. Additional entrances may face the side of the building.
- C. No rear entrances are allowed except for residential or office uses, emergency exits, employees, loading and trash removal.

- 2.11. Storefronts. Storefronts may be internally illuminated with spots or other incandescent lighting, so as to display prominently and attractively the business or its products. Exterior lighting may be affixed to the building.

#### 2.12. Permanent Signs, Awnings and Murals.

- A. Maximum sign area. First Floor occupants shall be allowed a total of one and a half (1-1/2) square feet of sign for each linear foot of street frontage, except that no single sign may exceed thirty-two (32) square feet in area.
- B. Freestanding permanent signs are prohibited.
- C. Building signs shall fit within the horizontal and vertical elements of the building and may not obscure details of the building.
- D. Signs may be perpendicular or flat-mounted, including separately mounted letters. Perpendicular signs may not extend more than five (5) feet from the face of the building.
- E. No sign shall extend above the Cornice line of the building.
- F. Allowable signs may also be painted in graphics in storefront or upper Floor windows. Signs may also be imprinted on awnings. Signs may also be painted on the sides of buildings (see *Subsection 11(f)* below). All such signs will be included in the calculations for maximum sign area.



- G. Retractable or fixed fabric awnings are allowed, but these shall fit within the storefront glass area and may not obscure details of the building. Awnings may only be supported with building-mounted hardware.
- H. Individual tenants should strive for a unique graphic image, rather than be required to conform to a single graphic style for the whole building.
- I. Portable signs or displays of merchandise within the street right-of-way, sidewalk or the front setback of the building shall not be allowed.
- J. Graphics painted on the sides of buildings that are essentially commercial in character or describe activities in the adjacent building shall be considered "signs". Graphics painted on the sides of buildings are otherwise permitted but shall be reviewed for conformance with this regulation.

#### 2.13. Parking and Loading Requirements.

- A. Parking lots shall be located in the rear of the building only.
- B. Any Townhome located in the Primary Area shall contain a minimum of a two (2) car garage. Any Live/Work Dwelling located in a Primary Area shall contain a minimum of a two (2) car garage. Additional parking for the Live/Work Dwellings shall be provided for by inclusion of twenty four (24) on-street parking spaces, as is depicted on the Development Plan.
- C. On-street parking may be used to fulfill parking requirements.
- D. Parking requirements may be reduced if businesses with substantially different peak hour requirements agree to share parking. A petition shall be filed with the application indicating the terms of agreement of parties to a shared parking arrangement.
- E. While existing curb cuts may be maintained, no new curb cuts are allowed on Main Street, and no parking lots or loading areas may front on Main Street.
- F. Screened loading and trash areas shall be provided for all businesses at the rear of the building.

Section 3 Permitted Uses and Development Requirements for Secondary Area. This Secondary Area will balance the pedestrian commercial activity in the Old Town District with multi-family residences. All new construction, alterations and additions to buildings located in the Secondary Area shall occur according to the following guidelines:

- 3.1. Use. Permitted Uses in the Secondary Area include:
  - A. Multi-family residential uses, including Attached Dwellings

- B. Accessory Uses, including Home Occupation
- 3.2. Maximum Building Height: The maximum Building Height shall be three (3) Floors.
- 3.3. Minimum Set Backs: The Minimum Set Back from the north, west and east perimeter boundary lines of the Secondary Area shall be five (5) feet. There shall be no Minimum Set Back from the south boundary line of the Secondary Area.
- 3.4. Architecture
- A. Building rendering and elevations: Attached hereto and incorporated herein by reference as "Exhibit "D" are a rendering and elevations, depicting the building materials and architectural elements of the buildings which shall be constructed in the Secondary Area (hereafter "Building Renderings for Secondary Area").
- B. Community mail box structures: Attached hereto and incorporated herein by reference as Exhibit "E" is a rendering of the community mail box structures for the Secondary Area (hereafter "Secondary Area Community Mail Box Structures").
- 3.5. Parking. Notwithstanding the provisions of Section 2.12, each Townhome shall contain a minimum of a two (2) car garage. There shall be additional parking spaces provided on the site, as depicted on the Development Plan.

Section 4 Accessory Buildings. All Accessory Structures and Accessory Uses shall be permitted except that any detached accessory building shown in any Development Plan shall have on all sides the same architectural features or shall be architecturally compatible with the principal building(s) with which it is associated.

Section 5 Communications Equipment. Cell towers shall not be permitted in the District. Home satellite dishes shall be permitted in the District.

Section 6 Planting. The planting of the Real Estate into smaller tracts shall be permitted, so long as the proposed plat complies with the requirements set forth herein, and the creation of a new property line within the Real Estate shall not impose or establish new development standards beyond those specified herein for the entirety of the Real Estate. However, the Development of any parcel shall conform to all Preliminary Development Plans and Final Development Plans which are approved or amended per the terms of Section 13 below, and all other applicable requirements contained in this Monon and Main Planned Unit Development District Ordinance.

Section 7 Landscaping. Landscaping shall be required in accordance with the Landscape Plan for the Primary Area and Secondary Area. All areas of the site not to be covered by buildings, hardscape materials or other improvements as shown on the Development Plan shall be planted with trees, shrubs, hedges, ground covers, and/or grasses, unless such area consists of

attractive vegetation to be retained, as depicted on the Landscape Plan for the Primary Area and Secondary Area, which is attached hereto and incorporated herein by reference as Exhibit "F".

7.1 Planting Standards. Landscaping shall be integrated with other functional and ornamental site design elements, where appropriate, such as hardscape materials, paths, sidewalks, or any water features; and planted at a ratio of six (6) shrubs per unit and (1) one tree per unit. Deciduous trees planted to satisfy the landscaping requirements of this Ordinance shall have at least a two and one-half (2-1/2) inch caliper and seven (7) feet in height at the time of planting unless otherwise specified herein or otherwise indicated on the Landscape Plan. Evergreen trees shall be a minimum of six (6) feet in height at the time of planting. Shrubs shall be two (2) feet in height at the time of planting. All trees, shrubs and ground covers shall be planted according to accepted horticultural standards. Landscaping materials shall be appropriate to local growing and climatic conditions. Plant suitability, maintenance and compatibility with site construction features are critical factors that should be considered. Plantings should be designed with repetition, structured patterns, and complementary textures and colors, and should reinforce the overall character of the area.

7.2 Maintenance. It shall be the responsibility of the owners and their agents to insure proper maintenance of project landscaping approved in accordance with this Monon & Main Ordinance. This is to include, but is not limited to, irrigation and mulching of planting areas, replacing dead, diseased, or overgrown plantings with identical varieties or a suitable substitute, and keeping the area free of refuse, debris, rank vegetation and weeds.

7.3 Tree Conservation. Because the Developer intends to preserve the established trees located along the North and West perimeters of the Real Estate, those areas located along the North and West perimeters of the Real Estate are designated as "Tree Conservation Areas" pursuant to the Landscape Plan. The Developer shall implement reasonable efforts in an attempt to preserve those established trees, including efforts such as fencing, trimming and/or other acceptable horticultural practices and measures designed to preserve said trees. While the Developer shall implement reasonable efforts to preserve said trees, said trees may be removed by the Developer pursuant to the Developer's reasonable discretion and Developer may also remove said trees under any of the following circumstances:

1. As is necessary to clear underbrush and dead trees;
2. As is necessary for the installation of access easements, rights-of-way, streets, paths, sidewalks, and utilities and drainage improvements and infrastructure; and
3. As necessary for public health and safety.

7.4 **Landscaping Plans.** Landscaping for the District shall be in accordance to: (i) the Landscape Plan for the Primary Area and Secondary Area, which is attached hereto and incorporated herein by reference as Exhibit "F".

#### **Section 8** Lighting

8.1. **Front lighting for Primary Area and Secondary Area Buildings.** Each building shall have one (1) light fixture mounted to the front of the unit above or near the side of the primary residential entryway. The light shall be as depicted on Exhibit "G-1."

8.2. **Rear lighting for Primary Area and Secondary Area Buildings.** Each Townhome shall have one (1) exterior grade light fixture mounted above the overhead garage door. The lights shall be as depicted on Exhibit "G-2". Each Townhome shall have one (1) exterior grade light fixture mounted on the rear of the unit designed to provide light to the terrace area.

8.3. **Site Lighting:** The site shall include small pole mounted lighting in locations as depicted on what is attached hereto and incorporated herein by reference as Exhibit "G-3". The light shall be as depicted on Exhibit "G-4".

**Section 9** **Project Marketing Signs.** Marketing Signs for the sale of Townhome units shall be allowed in designated areas as depicted on the Site Plan Marketing Sign Locations, which is attached hereto and incorporated herein by reference as Exhibit "H-1". While Marketing Signs may be moved in conjunction with project phasing, no more than three (3) locations may be utilized at any given time. Marketing Signs shall be substantially similar to that as depicted on what is attached hereto and incorporated herein by reference as Exhibit "H-2".

#### **Section 10** Right of Way Dedication and Roadway Improvement Statement

**Section 10.1** **Main Street:** Within the project area as depicted on the Conceptual Plan in Exhibit "T", thirty-five feet (35') half-right-of-way will be dedicated to the City; since buildings are located on the right-of-way line, the Developer shall install front improvements within the right-of-way subject to this Monon & Main PUD Ordinance; such improvements will include sidewalks as depicted on the Conceptual Plan in Exhibit "T".

**Section 10.2** **3<sup>rd</sup> Avenue Northwest:** Within the project area as depicted on the Conceptual Plan in Exhibit "T", the right-of-way will include the planned on-street parking spaces and street improvements, which will include on-street parking and curb.

**Section 10.3** **1<sup>st</sup> Street Northwest:** Within the project area as depicted on the Conceptual Plan in Exhibit "T", improvements will occur within the existing right-of-way and will include on-street parking, curb and driveways as shown.

**Section 11** **Mechanical Equipment.** Any mechanical equipment visible from an adjoining public street shall be screened with suitable landscaping or fencing in general architectural compatibility with the building(s) with which it is associated.

Section 12 Homeowners Association and Declaration of Covenants. The Developer shall prepare and record a Declaration of Covenants which shall also contain various provisions regarding the Real Estate as determined by the Developer, including, without limitation, provisions for mandatory assessments and maintenance of common areas. The Declaration of Covenants will also provide for the establishment of a Homeowners Association in which membership shall be mandatory.

Section 13 Approval Process:

13.1 Approval of the Development Plan.

- A. Exhibit "I", which is attached hereto and incorporated herein by reference, shall serve as the Conceptual Plan (the "CP"). The CP was assigned Docket No. 04070036 ADLS/DP and the CP has been reviewed and approved by the Plan Commission. The CP constitutes the Development Plan and primary plat for the Real Estate. The architecture, design, lighting and landscaping for the Real Estate and the improvements thereon, considered in connection with the Monon & Main Ordinance, do not require any further (i) ADLS' approval or (ii) Development Plan/primary plat approval other than Final Development Plan approval per the procedure set forth below in this Section 13. If there is a Substantial Alteration in the approved ADLS and Development Plan/primary plat, review and approval of the amended plans shall be made by the Commission, or a Committee thereof, pursuant to the Commission's rules of procedure. Minor Alterations may be approved by the Director.
- B. The Director shall have the sole and exclusive authority to approve without conditions, approve with conditions, or disapprove the Final Development Plans/Secondary Plans (collectively, the "FDP") for the District; provided, however, that the Director shall not unreasonably withhold or delay the Director's approval of the FDP that is in substantial conformance with the CP and is in conformance with the Development Requirements and Development Standards of this Monon & Main Ordinance. If the Director disapproves any FDP, the Director shall set forth in writing the basis for the disapproval and schedule the request for approval of the FDP for a hearing before the full Plan Commission.
- C. An amendment to the FDP, which is not determined by the Director to be a Substantial Alteration or Material Alteration from the approved CP, may be reviewed and approved solely by the Director. However, in the event the Director determines that there has been a Substantial Alteration or Material Alteration between the approved CP and any proposed FDP, the Director may, at the Director's discretion, refer the amended FDP to

the Commission, or a Committee thereof, for review and approval by the Commission and/or a Committee thereof.

- D. The FDP shall be a specific plan for the development of all or a portion of the Real Estate that is submitted for approval to the Director, which shall include reasonable detail regarding the facility and structures to be constructed, as well as drainage, erosion control, utilities, and building information.

#### Section 14 Rules of Construction:

14.1 General Rules of Construction. The following general rules of construction and definitions shall apply to the regulations of this Ordinance:

- A. The singular number includes the plural and the plural the singular, unless the context clearly indicates the contrary.
- B. Words used in the present tense include the past and future tenses, and the future the present.
- C. The word "shall" is a mandatory requirement. The word "may" is a permissive requirement. *The word "should" is a preferred requirement.*

#### Section 15 Definitions

- 1. Accessory Structure. A structure subordinate to a building or use located on the Real Estate which is not used for permanent human occupancy.
- 2. Accessory Use. A use subordinate to the main use, located on the Real Estate or in the same building as the main use, and incidental to the main use.
- 3. Attached Dwelling. A Dwelling, including but not limited to, a Townhouse, duplex, triplex, or quadriplex dwellings, developed side by side for sale as condominiums or townhomes pursuant to a horizontal property regime, or as fee simple dwellings where land is sold with the dwelling.
- 4. Building Height. The vertical distance from the highest grade relative to the Street frontage to the cornice line or to the roof edge line. The vertical distance from the cornice line or the roof edge to the parapet of roof ridge (including gables), and the height of towers, steeples, cupolas and other architectural roof embellishments are not included in calculating building height.
- 5. City. The City of Carmel, Indiana.
- 6. Commission. The Carmel/Clay Plan Commission.

7. Corncice. The top part of an enbature, usually molded and projecting.
8. Council. The City Council of the City of Carmel, Indiana.
9. County. Hamilton County, Indiana.
10. Declaration of Covenants. A Declaration of Covenants, Conditions and Restrictions for the Real Estate which shall be recorded in the office of the Recorder of Hamilton County, Indiana, and which may, from time to time, be amended.
11. Plan, Conceptual. A general plan for the development of the Real Estate that is submitted for approval showing proposed facilities, buildings, and structures. This plan generally shows landscape areas, parking areas, site access, drainage features, and building locations. The Conceptual Plan is attached hereto and incorporated herein by reference as Exhibit "C".
12. Development Plan, Final. A specific plan for the development of the Real Estate that is submitted for approval showing proposed facilities, buildings, and structures. This plan review includes general landscaping, parking, drainage, erosion control, signage, lighting and building information for the site.
13. Development Requirements. Development standards and any requirements specified in this Monon & Main Ordinance which must be satisfied in connection with the approval of a Final Development Plan.
14. Developer. A person engaged in development of one or more phases of the Development.
15. Development. The Real Estate constituting the District as it may be developed and improved in accordance with this Ordinance and the Development Requirements contained herein.
16. Development Plan. Also referred to as the Conceptual Plan, which is the plan for the development of the District approved by the Commission, a copy of which is attached hereto as Exhibit "T", as the same may be modified from time to time pursuant to Section 13. Also referred to as Preliminary Development Plan.
17. Director. Director, or Administrator, of the Department of Community Services for the City of Carmel, Indiana. "Director" and "Administrator" shall include his/her authorized representatives.
18. District. Approximately 4.45 acres of land described in Exhibit "A" attached hereto and incorporated herein.

19. Dwelling. A room or combination of rooms which may be designed for year-round habitation, containing a bathroom and kitchen facilities, which may be designed for and/or used as a permanent residence by at least one person. See also "Attached Dwelling" and "Live/Work Dwelling."
20. Facade. A building face or wall.
21. Floor. See definition of Story.
22. Material Alteration: Any change to an approved plan of any type that involves the substitution of one material, species, element, etc. for another.
23. Minor Alteration: Any change to an approved plan of any type that involves the revision of less than ten percent (10%) of the plan's total area or approved materials.
24. Landscape Plan. The general design for landscaping in the District depicted on the Development Plan or on a plan or drawing submitted to the Department.
25. Landscaping. Trees, shrubs, hedges, flowers ground covers grasses, other plant materials and associated structures and improvements.
26. Live/Work Dwelling. A type of Attached Dwelling in which the uses permitted in the Primary Area are permitted in the Live/Work Dwelling pursuant to Section 2 of this Ordinance. The first floor, only, of any Live/Work Dwelling may be utilized for the non-residential uses pursuant to Section 2 of this Ordinance.
27. Marketing Sign. A temporary sign which advertises the sale, rental or development of the premises upon which it is located.
28. Mixed Use. The combination of both commercial and residential uses within a single building of two or more stories.
29. Modification. A change to the Development Requirements approved pursuant to Section 13.
30. Open Space. A land surface within the Development intended to enhance the use and enjoyment of residents of the Development, where designated, the community at large. Grass and landscaped areas, hardscape materials, paths and sidewalks may be included in the required area calculations.
31. Owners' Association. An Indiana nonprofit corporation established for the promotion of the health, safety and welfare of the residents of Moron & Main, and to manage, maintain, and repair the common areas within the Real Estate and any improvements located thereon.
32. Plaster. A column partially embedded in a wall.



33. Primary Area: That part of the District more particularly delineated in green on the Primary Area and Secondary Area Map attached hereto and incorporated herein as Exhibit "J". The line delineating the Primary Area boundaries may be adjusted by ten (10) feet to the north or south.
34. Real Estate: The Real Estate shall mean and refer to all of the Real Estate described in Exhibit "A".
35. Right-of-Way: An area of land permanently dedicated to provide light, air and access.
36. Secondary Area: That part of the District more particularly delineated in yellow and located north of the Primary Area as more particularly delineated on the Primary Area and Secondary Area Map attached hereto and incorporated herein as Exhibit "J". The line delineating the Secondary Area boundaries may be adjusted by ten (10) feet to the north or south.
37. Set Back: The least measured distance between a building or structure, excluding, however, porches, patios, and the perimeter boundary of the Real Estate. For purposes of determining Set Back, the perimeter boundary of the Real Estate (i) shall always mean and refer to the outside perimeter boundary line of the Real Estate and (ii) shall not be changed or reduced by reason of the platting or subdivision of the Real Estate into smaller parcels.
38. Sign: Any type of sign as further defined and regulated by this Ordinance and the Sign Ordinance for Carmel-Clay Township, Ordinance Z-196, as amended.
39. Story and/or Stories: A habitable level and/or levels within a building no more than 16 feet in height from floor to ceiling. A basement, although wholly or partially habitable, is not a story unless more than fifty percent (50%) of the basement elevation is above grade at the build-to line.
40. Street: The paved areas located in the District designed for vehicular traffic and labeled on the Development Plan as a street with a corresponding name.
41. Substantial Alteration: Any change to an approved plan of any type that involves the revision of ten percent (10%) or more of the plan's total area, total square footage of all buildings, or approved materials.
42. Townhome: A Dwelling of two (2) or more Dwellings arranged side by side, separated by common walls between living areas, each having more than one story.
43. Townhome Building: A structure containing Townhomes.
44. Trim: Soffits, architraves, wood reveals, and casement around doors and windows.

Section 16 Violations

16.1 All violations of this Monon & Main Ordinance shall be subject to Section 34.0 of the Carmel/Clay Zoning Ordinance.

DECEMBER, 2004, by a vote of 7 ayes and 0 nays.

COMMON COUNCIL FOR THE CITY OF CARMEL

Jane Brown  
 Presiding Officer

Ronald E. Carter  
 President Pro Tempore

Fredrick J. Grieser  
 Joseph C. Griffiths

Kevin Kirby

Betsy D. Mayo

Mark Rattermann

Richard L. Sharp

ATTEST

Diana L. Cordray  
 Diana L. Cordray, IAMC, Clerk/Treasurer

Presented by me to the Mayor of the City of Carmel, Indiana the 21<sup>st</sup> day of December, 2004, at 9:10 o'clock A.M.

Diana L. Cordray  
 Diana L. Cordray, IAMC, Clerk/Treasurer

Approved by me, Mayor of the City of Carmel, Indiana, this 21<sup>st</sup> day of December, 2004, at 9:10 o'clock A.M.

James Brainard  
James Brainard, Mayor

ATTEST  
Diana L. Cordrey  
Diana L. Cordrey, I.A.M.C., Clerk Treasurer

This Instrument prepared by: David E. Leazenby, Buckingham Companies  
333 N. Pennsylvania St., 10<sup>th</sup> Floor  
Indianapolis, IN 46204

This Instrument reviewed by: Charles D. Frankenberger & James E. Shinaver  
NELSON & FRANKENBERGER  
3021 East 98<sup>th</sup> Street, Suite 220  
Indianapolis, IN 46280

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**EXHIBIT "A"****Legal Description****DESCRIPTION OF REAL ESTATE OF FREDERICK P. HINSHAW  
AND NANCY B. HINSHAW****TRACT 1**

A part of the East Half of the Northeast Quarter of Section 25, Township 18 North, Range 3 East, described as follows: Beginning 69 rods 4 feet 6 inches West of the Southeast corner of said Quarter section, run thence North 18 rods 7 feet, thence West 10 rods, thence South 18 rods 7 feet, thence East 10 rods to the place of beginning, the same being located in the Town of Carmel, Hamilton County, Indiana, containing 1.15 acres, more or less.

Subject to the right of way for Main Street (131<sup>st</sup> Street).

Subject to all legal easements and rights of way.

**TRACT 2**

Part of the East Half of the Northeast Quarter of Section Twenty-Five (25), Township Eighteen (18) North, Range Three (3) East, described as follows: Begin 51 rods and 14 feet West of the Southeast corner of said Quarter Section and run North 18 rods and 7 feet, thence West 15 rods and 10 feet, thence South 18 rods and 7 feet, thence East 15 rods and 10 feet to the place of beginning, in Hamilton County, Indiana, containing 1.80 acres, more or less.

Subject to the right of way for Main Street (131<sup>st</sup> Street)

Subject to all legal easements and rights of way.

**TRACT 3**

A part of the Southwest Quarter of the Northeast Quarter of Section 25, Township 18 North, Range 3 East in Hamilton County, Indiana, more particularly described as follows: Begin at the Southeast corner of the Southwest Quarter of the Northeast Quarter of said Section 25, and run thence North on the East line of said Quarter Quarter Section 307 feet; thence West parallel with the South line of said Quarter Section 212.83 feet; thence South parallel with said East line, 307 feet to the South line of said Quarter Section; thence East on said South line 212.83 feet to the place of beginning, containing 1.50 acres, more or less.

Subject to the right of way for Main Street (131<sup>st</sup> Street)

Subject to all legal easements and rights of way.

**EXHIBIT "B"**

The following is a Schedule of Permitted Uses pertaining to the use and development of the Primary Area:

**RESIDENTIAL**

Multiple Family Dwelling  
Home Occupation  
Boarding or Lodging House  
Nursing/Retirement/Convalescent Facility Live/Work Unit

**OFFICE**

Clinical or Medical Health Center Research Laboratory/Facility  
General Offices  
Professional Offices

**INSTITUTIONAL**

Church/Temple/Place of Worship  
Hospital  
Library  
Post Office  
Public Service Facility

**EDUCATIONAL**

School, Trade or Business  
College or University  
Day Nursery/Day Care Kindergarten/Preschool

**RETAIL & SERVICE**

General Retail Sales  
General Service  
Automobile Service Station  
Automobile/Truck Repair (indoor)  
Dry Cleaning Establishment (w/ on-site plant)  
Dry Cleaning Establishment (w/out on-site plant)  
Equipment Sales/Repair (indoor)  
Financial Institution  
ATM  
Funeral Home/Mortuary/Crematory  
Recreational Vehicle/Mobile Home Sales  
Roadside Sales Stand  
Self-Service Laundry  
Veterinary Hospital w/out commercial kennel  
Wholesale Sales

**CULTURAL/ENTERTAINMENT**

Art Gallery  
Art & Music Center  
Carnivals, Fairs, Circuses, etc.  
Hotel  
Hotel (full service)  
Indoor Theater  
Catering Establishment  
Restaurant, w/out drive-thru food sales  
Meeting or Party Hall  
Tavern/Night Club

**INDUSTRIAL**

Storage and/or Sale of Petroleum Products  
Printing/Publishing Establishment

**AGRICULTURAL USES**

Plant Nursery  
General Agriculture

**RECREATIONAL**

Commercial Recreational Facility, Indoor  
Commercial Recreational Facility, Outdoor  
Country Club  
Golf Course  
Private Club or Lodge  
Private Recreational Facility  
Park, Public  
Shooting Gallery

**MISCELLANEOUS**

Artificial Lake or Pond (non-platted)  
Cemetery  
Commercial Parking Lot

**TRANSPORTATION & COMMUNICATION**

Collocated Antenna  
Radio and/or Television Studio  
Radio/Television Transmission Antenna  
Radio/Television Transmission Tower  
Tower  
Motor Bus or Railroad Passenger Station

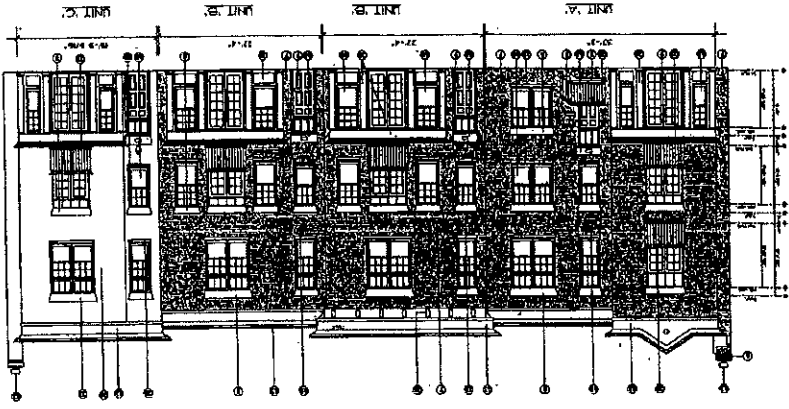
Exhibit C

1-3

Townhome /Mixed Use  
Front Elevation - Building #4

Moran & Mash - Carmel  
Conceptual District A, Main Street  
Residential /Mixed Use Product

Wesaver Design Group



1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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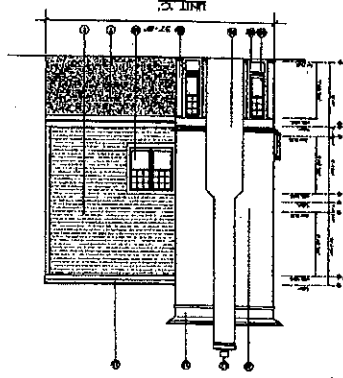
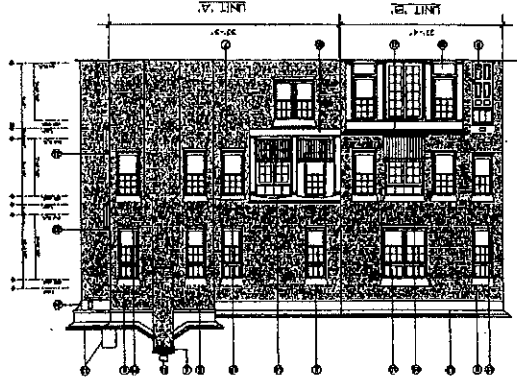
Exhibit C

2 of 3

Townhome /Mixed Use  
Side Elevations - Building #4

Monon & Main - Carmel  
Conceptual District A Main Street  
Residential/Mixed Use Product

Weaver Design Group



MATERIALS KEY

- 1. Brick - red, laid in Flemish bond
- 2. Brick - red, laid in English bond
- 3. Brick - red, laid in stretcher bond
- 4. Brick - red, laid in soldier course
- 5. Brick - red, laid in header course
- 6. Brick - red, laid in rowlock course
- 7. Brick - red, laid in blind course
- 8. Brick - red, laid in soldier course
- 9. Brick - red, laid in header course
- 10. Brick - red, laid in rowlock course
- 11. Brick - red, laid in blind course
- 12. Brick - red, laid in soldier course
- 13. Brick - red, laid in header course
- 14. Brick - red, laid in rowlock course
- 15. Brick - red, laid in blind course
- 16. Brick - red, laid in soldier course
- 17. Brick - red, laid in header course
- 18. Brick - red, laid in rowlock course
- 19. Brick - red, laid in blind course
- 20. Brick - red, laid in soldier course
- 21. Brick - red, laid in header course
- 22. Brick - red, laid in rowlock course
- 23. Brick - red, laid in blind course
- 24. Brick - red, laid in soldier course
- 25. Brick - red, laid in header course
- 26. Brick - red, laid in rowlock course
- 27. Brick - red, laid in blind course
- 28. Brick - red, laid in soldier course
- 29. Brick - red, laid in header course
- 30. Brick - red, laid in rowlock course
- 31. Brick - red, laid in blind course
- 32. Brick - red, laid in soldier course
- 33. Brick - red, laid in header course
- 34. Brick - red, laid in rowlock course
- 35. Brick - red, laid in blind course
- 36. Brick - red, laid in soldier course
- 37. Brick - red, laid in header course
- 38. Brick - red, laid in rowlock course
- 39. Brick - red, laid in blind course
- 40. Brick - red, laid in soldier course
- 41. Brick - red, laid in header course
- 42. Brick - red, laid in rowlock course
- 43. Brick - red, laid in blind course
- 44. Brick - red, laid in soldier course
- 45. Brick - red, laid in header course
- 46. Brick - red, laid in rowlock course
- 47. Brick - red, laid in blind course
- 48. Brick - red, laid in soldier course
- 49. Brick - red, laid in header course
- 50. Brick - red, laid in rowlock course
- 51. Brick - red, laid in blind course
- 52. Brick - red, laid in soldier course
- 53. Brick - red, laid in header course
- 54. Brick - red, laid in rowlock course
- 55. Brick - red, laid in blind course
- 56. Brick - red, laid in soldier course
- 57. Brick - red, laid in header course
- 58. Brick - red, laid in rowlock course
- 59. Brick - red, laid in blind course
- 60. Brick - red, laid in soldier course
- 61. Brick - red, laid in header course
- 62. Brick - red, laid in rowlock course
- 63. Brick - red, laid in blind course
- 64. Brick - red, laid in soldier course
- 65. Brick - red, laid in header course
- 66. Brick - red, laid in rowlock course
- 67. Brick - red, laid in blind course
- 68. Brick - red, laid in soldier course
- 69. Brick - red, laid in header course
- 70. Brick - red, laid in rowlock course
- 71. Brick - red, laid in blind course
- 72. Brick - red, laid in soldier course
- 73. Brick - red, laid in header course
- 74. Brick - red, laid in rowlock course
- 75. Brick - red, laid in blind course
- 76. Brick - red, laid in soldier course
- 77. Brick - red, laid in header course
- 78. Brick - red, laid in rowlock course
- 79. Brick - red, laid in blind course
- 80. Brick - red, laid in soldier course
- 81. Brick - red, laid in header course
- 82. Brick - red, laid in rowlock course
- 83. Brick - red, laid in blind course
- 84. Brick - red, laid in soldier course
- 85. Brick - red, laid in header course
- 86. Brick - red, laid in rowlock course
- 87. Brick - red, laid in blind course
- 88. Brick - red, laid in soldier course
- 89. Brick - red, laid in header course
- 90. Brick - red, laid in rowlock course
- 91. Brick - red, laid in blind course
- 92. Brick - red, laid in soldier course
- 93. Brick - red, laid in header course
- 94. Brick - red, laid in rowlock course
- 95. Brick - red, laid in blind course
- 96. Brick - red, laid in soldier course
- 97. Brick - red, laid in header course
- 98. Brick - red, laid in rowlock course
- 99. Brick - red, laid in blind course
- 100. Brick - red, laid in soldier course



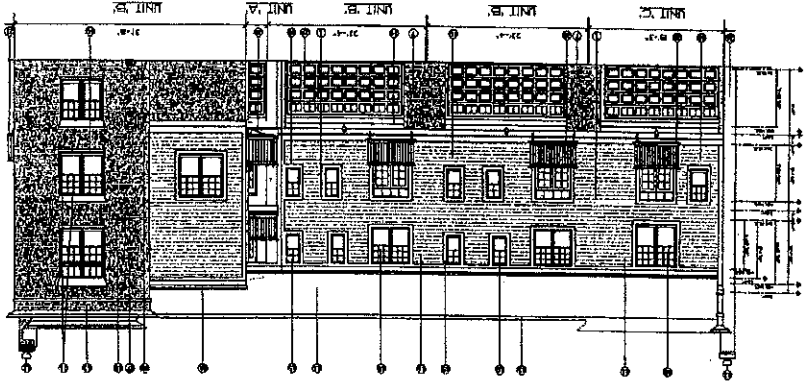
Exhibit C

3 of 3

Townhome / Mixed Use  
Rear Elevation - Building #4

Morson & Main - Carned  
Conceptual District A Main Street  
Residential/Mixed Use Product

Weaver Design Group



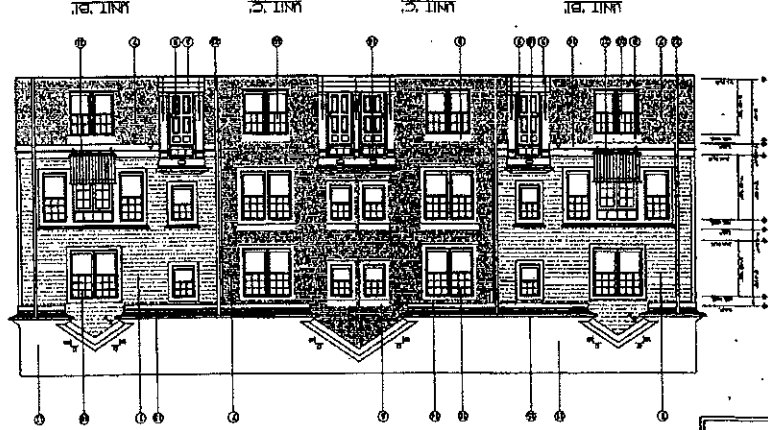
MATERIALS KEY

1	BRICK, COMMON
2	BRICK, FACE
3	BRICK, GUTTER
4	BRICK, SIDE
5	BRICK, TOP
6	BRICK, BOTTOM
7	BRICK, CORNER
8	BRICK, CHIMNEY
9	BRICK, DORMER
10	BRICK, GABLE
11	BRICK, HIPPON
12	BRICK, QUARRY
13	BRICK, RANDOM
14	BRICK, BOND
15	BRICK, PATTERN
16	BRICK, MIXED
17	BRICK, VARIETY
18	BRICK, UNIFORM
19	BRICK, NON-UNIFORM
20	BRICK, MIXED PATTERN
21	BRICK, MIXED COLOR
22	BRICK, MIXED SIZE
23	BRICK, MIXED SHAPE
24	BRICK, MIXED TEXTURE
25	BRICK, MIXED FINISH
26	BRICK, MIXED DESIGN
27	BRICK, MIXED MANUFACTURE
28	BRICK, MIXED SOURCE
29	BRICK, MIXED HISTORY
30	BRICK, MIXED CHARACTER
31	BRICK, MIXED SIGNIFICANCE
32	BRICK, MIXED VALUE
33	BRICK, MIXED QUALITY
34	BRICK, MIXED QUANTITY
35	BRICK, MIXED AVAILABILITY
36	BRICK, MIXED COST
37	BRICK, MIXED DURATION
38	BRICK, MIXED MAINTENANCE
39	BRICK, MIXED REPAIR
40	BRICK, MIXED REPLACEMENT
41	BRICK, MIXED RESTORATION
42	BRICK, MIXED PRESERVATION
43	BRICK, MIXED PROTECTION
44	BRICK, MIXED CLEANING
45	BRICK, MIXED POLISHING
46	BRICK, MIXED SEALING
47	BRICK, MIXED PAINTING
48	BRICK, MIXED STAINING
49	BRICK, MIXED DISCOLORING
50	BRICK, MIXED WEAR
51	BRICK, MIXED DAMAGE
52	BRICK, MIXED DEGRADATION
53	BRICK, MIXED EROSION
54	BRICK, MIXED CORROSION
55	BRICK, MIXED WEATHERING
56	BRICK, MIXED CLIMATIZATION
57	BRICK, MIXED ENVIRONMENTAL
58	BRICK, MIXED BIOLOGICAL
59	BRICK, MIXED CHEMICAL
60	BRICK, MIXED PHYSICAL
61	BRICK, MIXED MECHANICAL
62	BRICK, MIXED ELECTRICAL
63	BRICK, MIXED THERMAL
64	BRICK, MIXED ACOUSTICAL
65	BRICK, MIXED OPTICAL
66	BRICK, MIXED MAGNETIC
67	BRICK, MIXED RADIOACTIVE
68	BRICK, MIXED NUCLEAR
69	BRICK, MIXED SPACE
70	BRICK, MIXED TIME
71	BRICK, MIXED ENERGY
72	BRICK, MIXED MATTER
73	BRICK, MIXED FORCE
74	BRICK, MIXED MOTION
75	BRICK, MIXED CHANGE
76	BRICK, MIXED GROWTH
77	BRICK, MIXED DEVELOPMENT
78	BRICK, MIXED PROGRESS
79	BRICK, MIXED ADVANCEMENT
80	BRICK, MIXED INNOVATION
81	BRICK, MIXED CREATION
82	BRICK, MIXED IMAGINATION
83	BRICK, MIXED INSPIRATION
84	BRICK, MIXED MOTIVATION
85	BRICK, MIXED ENTHUSIASM
86	BRICK, MIXED PASSION
87	BRICK, MIXED DEDICATION
88	BRICK, MIXED COMMITMENT
89	BRICK, MIXED DETERMINATION
90	BRICK, MIXED RESOLUTION
91	BRICK, MIXED PERSEVERANCE
92	BRICK, MIXED ENDURANCE
93	BRICK, MIXED STAMINA
94	BRICK, MIXED COURAGE
95	BRICK, MIXED BRAVERY
96	BRICK, MIXED VALIANT
97	BRICK, MIXED HEROIC
98	BRICK, MIXED VALIANT
99	BRICK, MIXED HEROIC
100	BRICK, MIXED HEROIC

Exhibit D

1 of 3

Townhomes Front Elevation	Monro & Main - Canal Conceptual District B - Residential Product	Weaver Design Group
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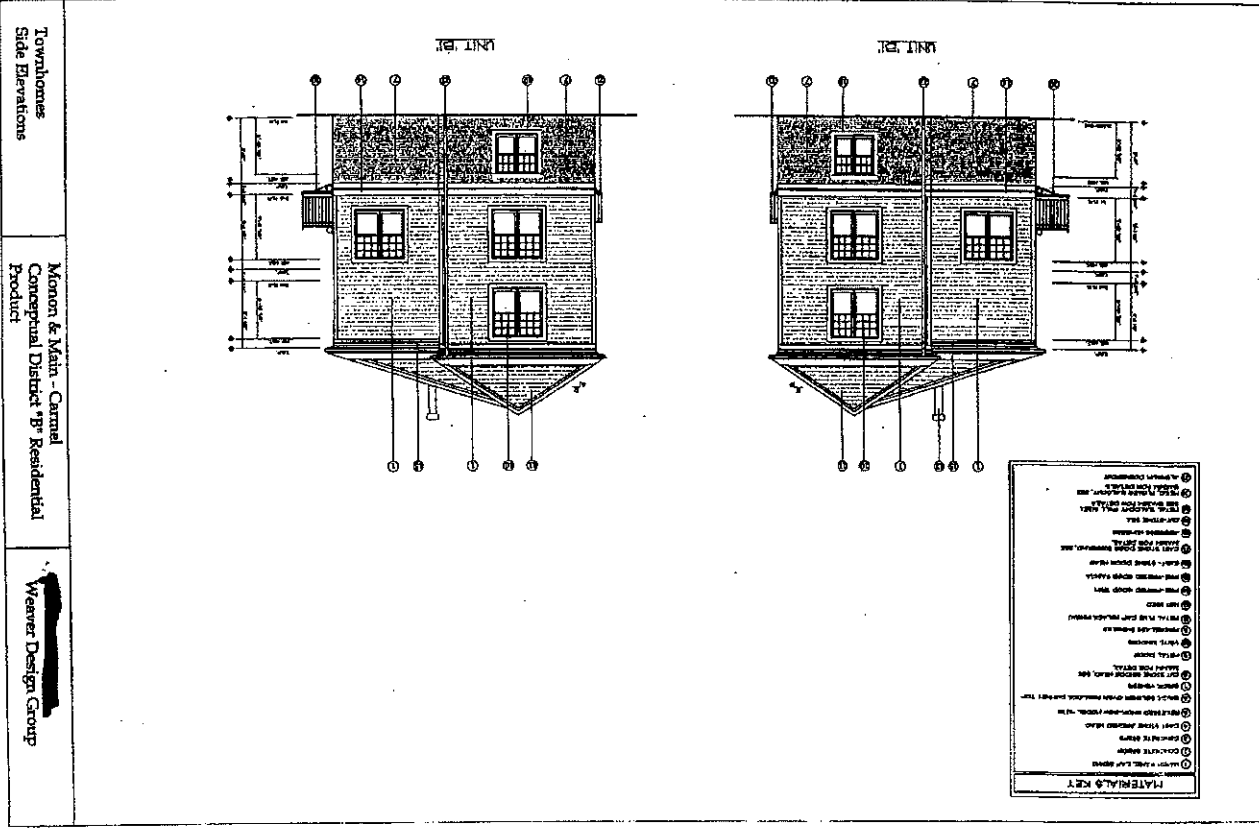


1 MATERIALS KEY

1. BRICK
2. CONCRETE
3. STONE
4. METAL
5. GLASS
6. WOOD
7. ASPHALT
8. PAINT
9. ROOFING
10. LANDSCAPE
11. FLOORING
12. INTERIORS
13. EXTERIORS
14. LIGHTING
15. SIGNAGE
16. FURNITURE
17. PLANTING
18. UTILITIES
19. MECHANICAL
20. ELECTRICAL
21. PLUMBING
22. HVAC
23. INSULATION
24. SOUND
25. VIBRATION
26. AIR QUALITY
27. WATER
28. SEWER
29. GAS
30. TELEPHONE
31. CABLE
32. INTERNET
33. MOBILE
34. WIRELESS
35. SATELLITE
36. GPS
37. SECURITY
38. ACCESS
39. EGRESS
40. EVACUATION
41. FIRE
42. SMOKE
43. HEAT
44. CO
45. RADON
46. ASBESTOS
47. LEAD
48. PCB
49. PCP
50. PCE
51. DDT
52. DDE
53. DDEP
54. DDEP
55. DDEP
56. DDEP
57. DDEP
58. DDEP
59. DDEP
60. DDEP

Exhibit D

2 of 3



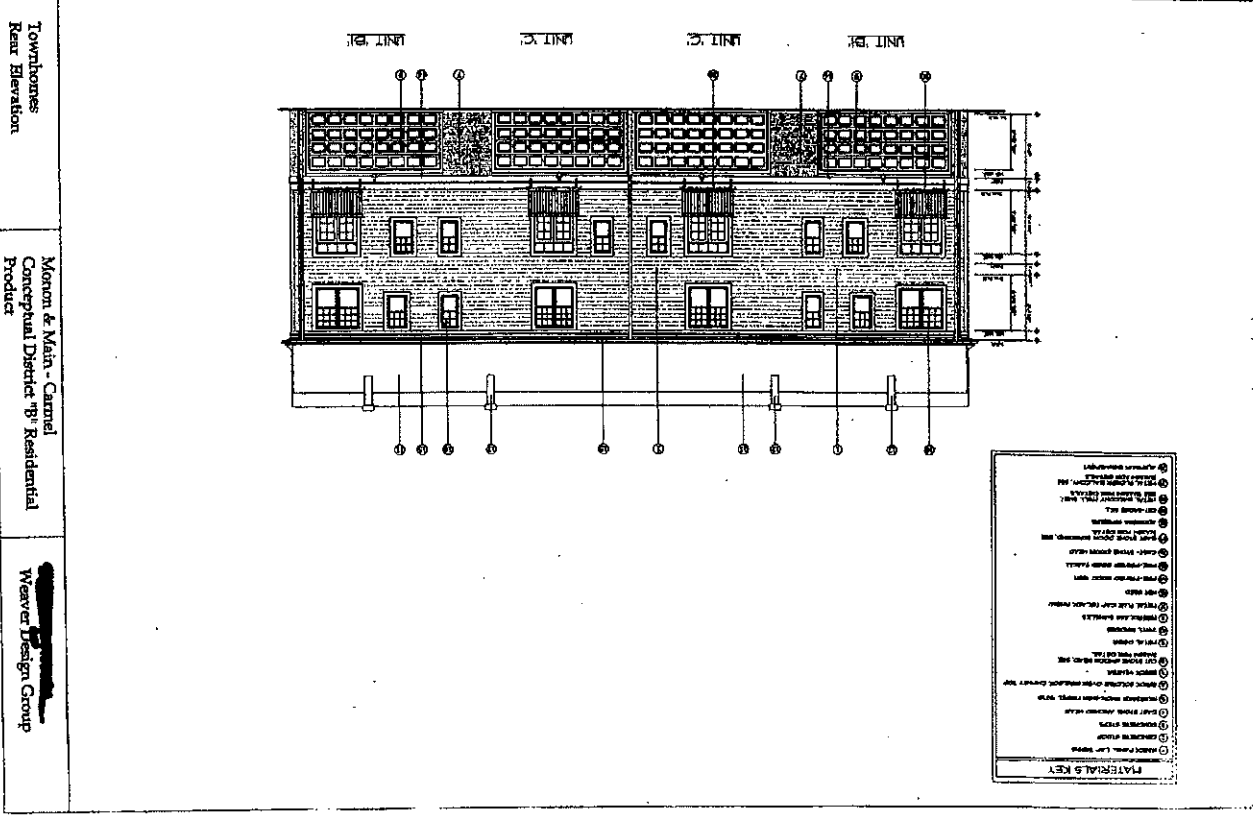
Townhomes  
Side Elevations

Monon & Main - Carmel  
Conceptual District #1 Residential  
Product

Weaver Design Group

Exhibit D

3 of 3



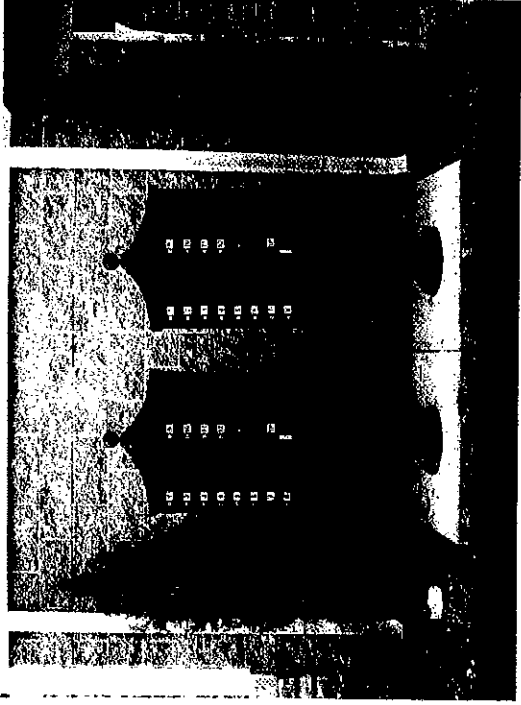
Townhomes  
Rear Elevation

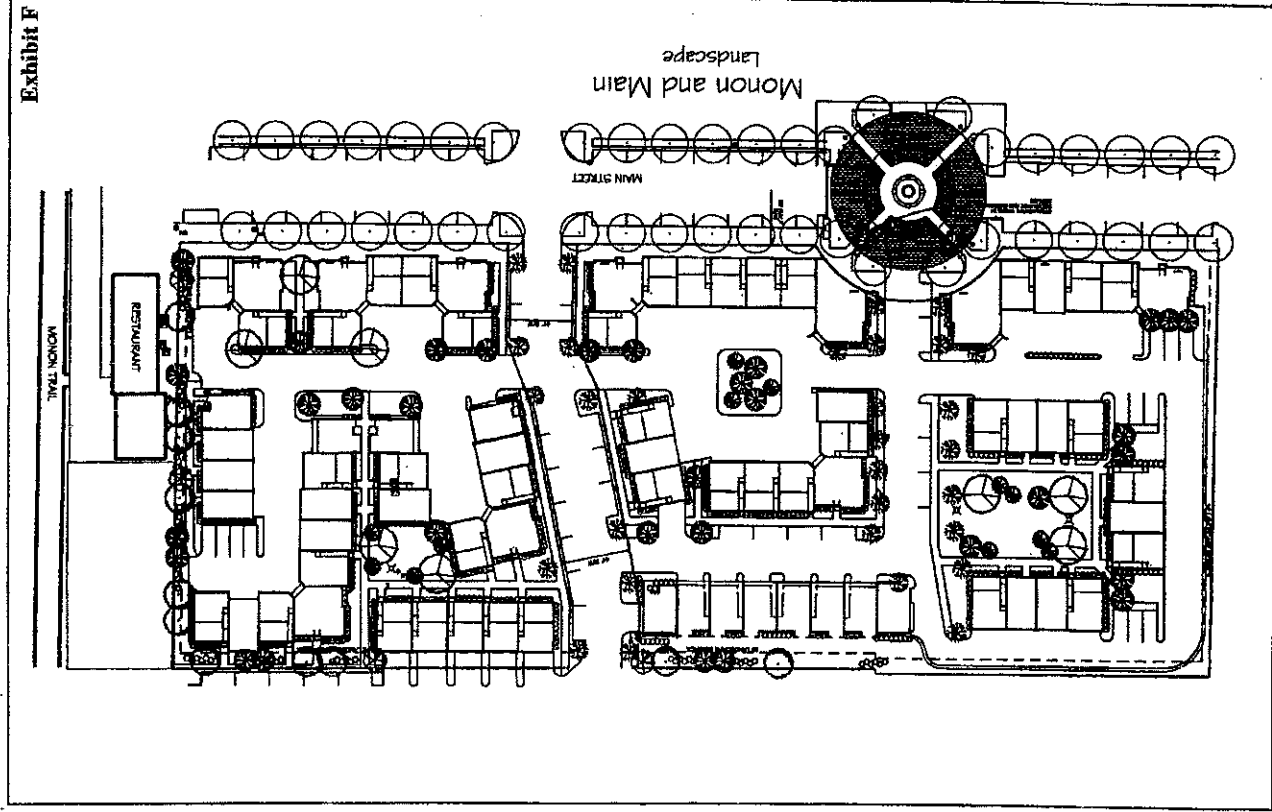
Marion & Main - Canal  
Conceptual District 'B' Residential  
Product

Weaver Design Group

**EXHIBIT E**

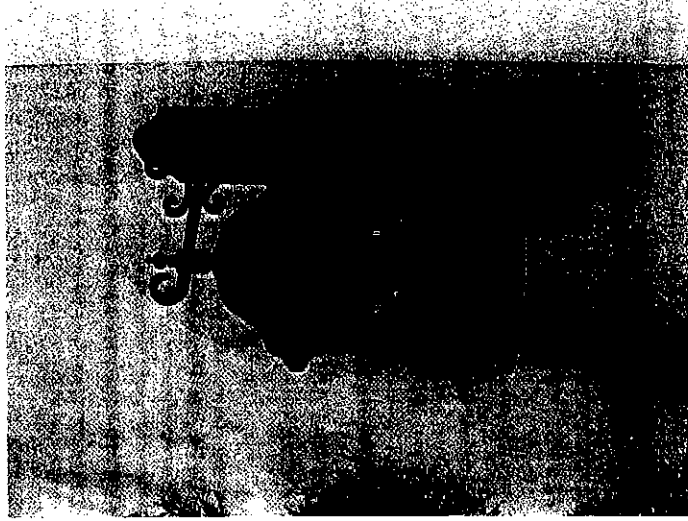
This photo is a comparative example and representative of the typical mailboxes that shall be permitted at Monon & Main subject to the requirements of this Monon & Main PUD Ordinance.





**EXHIBIT G-1**

This photo is representative of the typical, wall-mounted, front of unit light that shall be permitted at Monon & Main subject to the requirements of this Monon & Main PUD Ordinance.

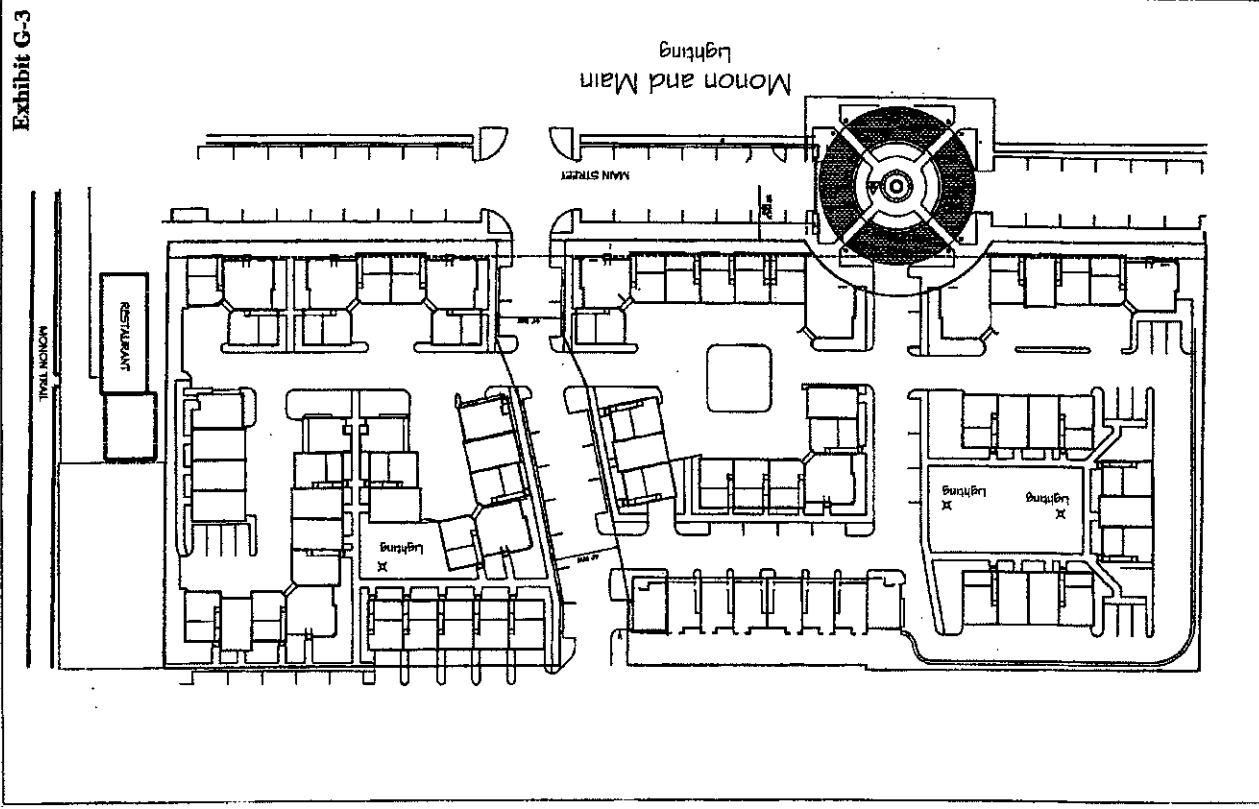


**EXHIBIT G-2**

This photo is representative of the typical wall-mounted, rear of unit light that shall be permitted at Monon & Main subject to the requirements of this Monon & Main PUD Ordinance.

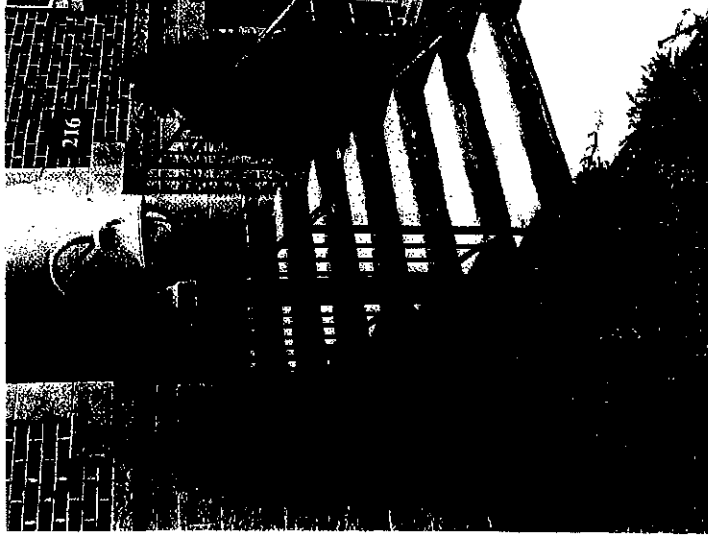


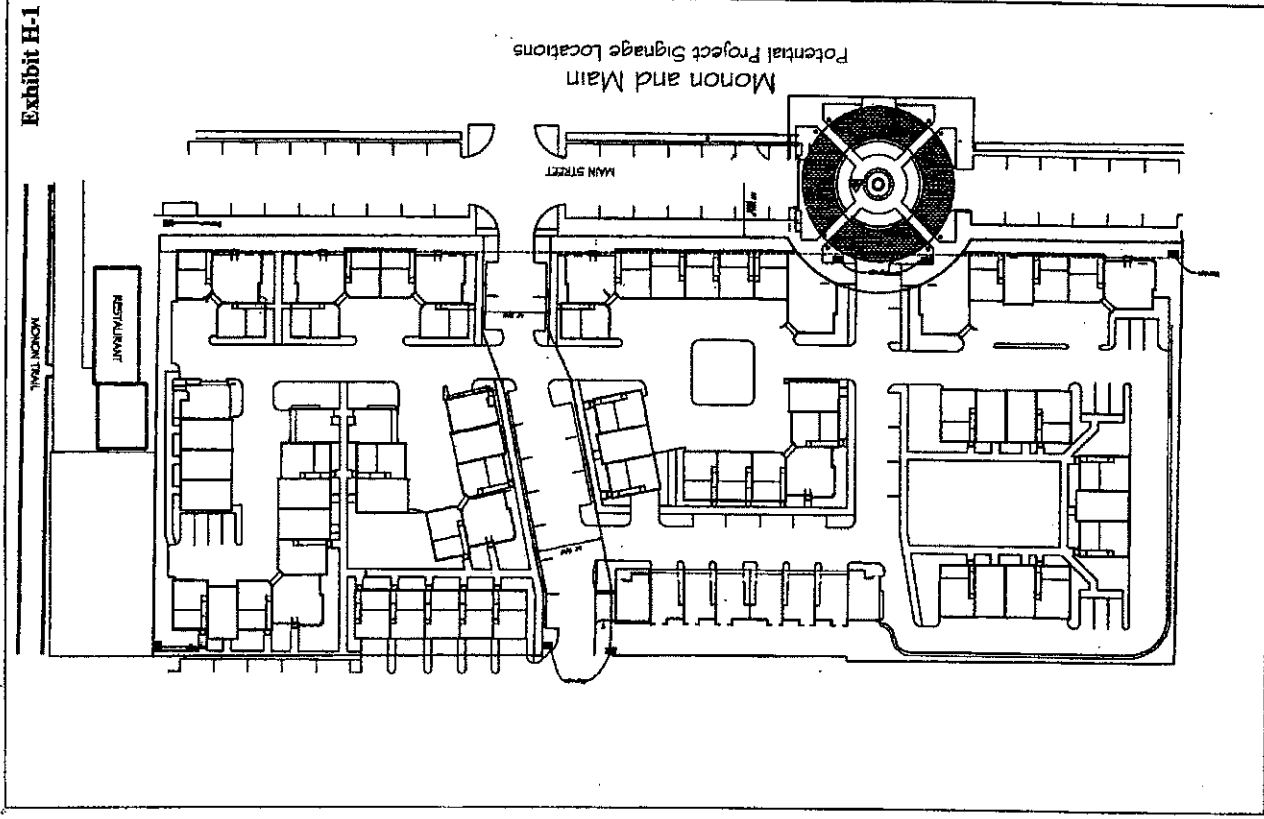




**EXHIBIT G-4**

This photo is representative of the courtyard light that shall be permitted at Monon & Main subject to the requirements of this Monon & Main PUD Ordinance.

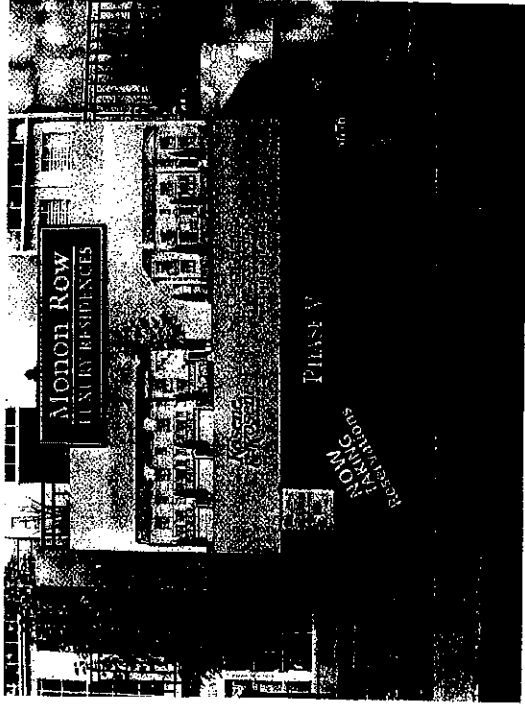


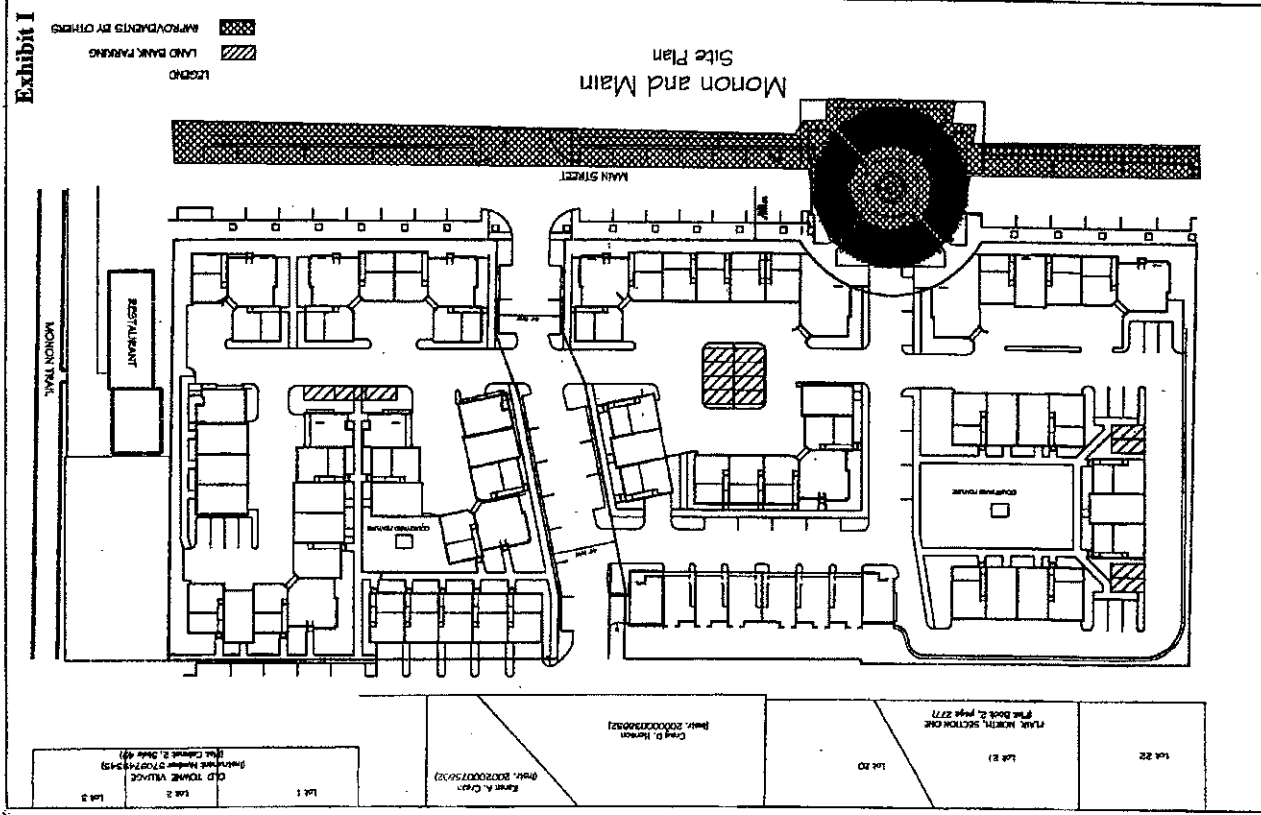




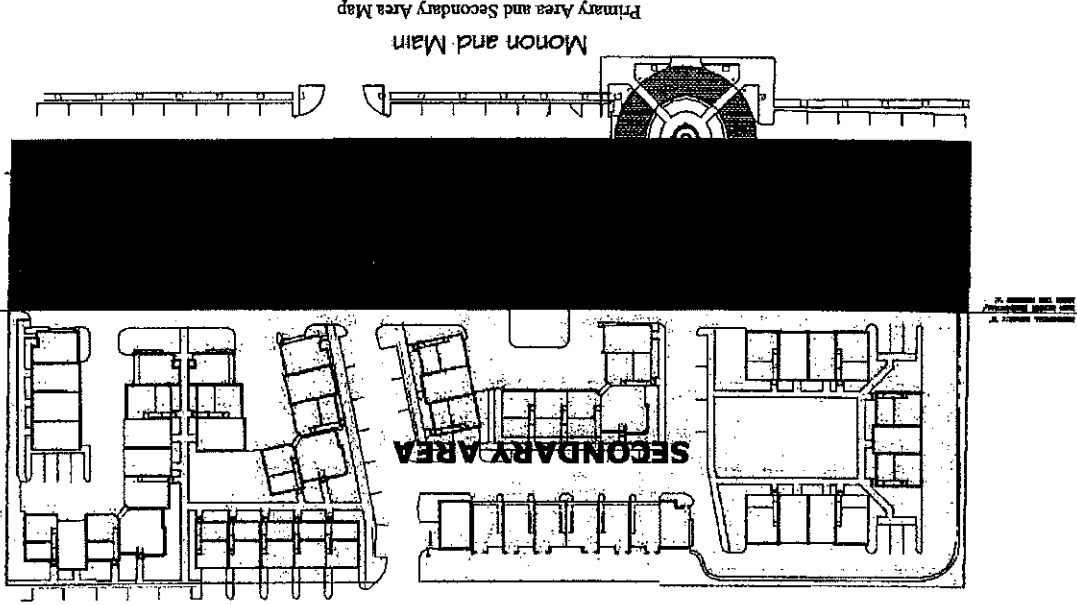
**EXHIBIT H-2**

These photos are comparative examples and representative of the typical marketing signs that shall be permitted at Monon & Main subject to the requirements of this Monon & Main PUD Ordinance.





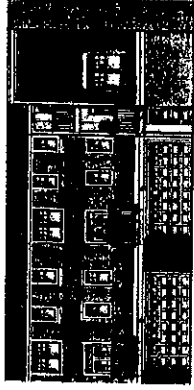
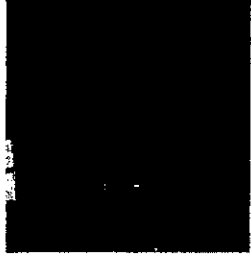
**Exhibit J**



Monon and Main  
Primary Area and Secondary Area Map

**EXHIBIT K**

These graphics are representative and depict the range of colors and pattern types that shall be permitted at Monon & Main subject to the requirements of this Monon & Main PUD Ordinance. Final color schemes shall be approved by the Director pursuant to the Final Development Plan approval process.



2007017716 AMD \$172.00  
 03/29/2007 02:40:30P 81 PGS  
 Jennifer J Hayden  
 HAMILTON County Recorder IN  
 Recorded as Presented

17803  
 17803

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
 CONDITIONS AND RESTRICTIONS FOR THE MONON & MAIN**

**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MONON & MAIN** (the "Amended Declaration") is made as of this ~~28th~~ day of March, 2007 by **MONON & MAIN, LLC**, an Indiana limited liability company (the "Declarant").

**RECITALS:**

**WHEREAS**, the Declarant desires to amend and restate the Declaration of Covenants, Conditions and Restrictions dated September 28, 2006, filed with the Hamilton County Recorder's Office on December 21, 2006 as instrument #2006075534 ("Declaration").

**WHEREAS**, the Declarant is the owner of certain real property located at Carmel, Hamilton County, Indiana, which is more specifically described in Exhibit "A", which is attached hereto and incorporated herein by reference (the "Property").

**WHEREAS**, the Declarant desires to create on the Property a residential community (the "Community") which shall have permanent open spaces and other common facilities for the benefit of the residents of the Community.

**WHEREAS**, the Declarant desires to provide for the preservation of the values of the Community and such other areas as may be subjected to this Amended Declaration, and to provide for the maintenance of the open spaces and other facilities, and, to this end, declare and publish their intent to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, it being intended that they shall run with title to the Property and shall be binding on all persons or entities having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof.

**WHEREAS**, the Declarant has deemed it desirable for the efficient preservation of the values of the Community to create an association to be known as the Monon & Main Homeowners Association, Inc., an Indiana not-for-profit corporation (the "Association") to which shall be delegated and assigned the powers of owning, maintaining and administering the common areas and facilities, administering and enforcing the covenants and restrictions made in and pursuant to this Amended Declaration and collecting and disbursing the assessments and charges hereafter created.

**NOW, THEREFORE**, the Declarant, for and in consideration of the premises and the covenants contained herein, grants, establishes and conveys to each owner of each Lot (as herein defined), mutual, non-exclusive rights, privileges and easements of enjoyment on equal terms and in common with all other owners of Lots in and to the use of any common areas and facilities; and further, the Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, reservations,



easements, charges and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their respective successors and assigns, and shall inure to the benefit of each owner thereof.

#### ARTICLE I DEFINITIONS

Section 1.1. **"Amended Declaration"** shall mean and refer to this Amended Declaration of Covenants, Conditions and Restrictions for Monon & Main, which is to be recorded in the Office of the Recorder of Hamilton County, Indiana.

Section 1.2. **"Architectural Review Committee"** or **"ARC"** means the committee appointed and acting from time to time in accordance with the provisions of Article VII below.

Section 1.3. **"Association"** shall mean and refer to the Monon & Main Homeowners Association, Inc., an Indiana not-for-profit corporation, its successors and assigns. A copy of the Association By-Laws are attached as Exhibit "C".

Section 1.4. **"Common Area"** or **"Common Areas"** shall mean and refer to all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Members, and shall include all of the Property which is shown on such Plat and/or as described herein, and which is not part of a Lot. No part of the Common Area shall be dedicated to the public. The Common Area within the Property shall be what is identified on the Plat as Common Area and shall comprise four components; namely:

- (a) private streets comprising the streets identified on the Plat, Patterson Drive, Alden Way, Newman Way, Harlin Boulevard, Elwood Avenue, Calden Boulevard, Steele Lane, Nurdyke Avenue and Florence Street (collectively, the "Private Streets");
- (b) concrete sidewalks located adjacent to the Private Streets and in areas between buildings and adjacent to buildings (the "Sidewalks");
- (c) areas specifically identified as parking areas, located adjacent to Private Streets and between buildings (the "Parking Areas"). Parking Areas are further described and defined in Article IX below; and
- (d) open space, which shall include all parts of the Common Area not occupied by the Private Streets, Sidewalks, and the Parking Areas (the "Open Space").

Section 1.5. **"Declarant"** shall mean and refer to Monon & Main, LLC, an Indiana limited liability company, and its successors or assigns.

Section 1.6. **"Development Period"** shall mean the period of time during which Declarant owns at least one (1) Lot.

Section 1.7. "Dwelling Unit" shall mean and refer to any improvement to the Property intended for any type of independent ownership for use and occupancy as a residence by a single household and shall, unless otherwise specified, mean townhomes.

Section 1.8. "Improvements" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to, buildings, walkways, sprinkler pipes, roads, driveways, fences, screening walls, block walls, retaining walls, awnings, patio covers, stairs, decks, landscaping, antennae, satellite dishes, solar equipment, hedges, windbreaks, pools, spas, recreational equipment, trampolines, entry gates, if any, planted trees and shrubs, poles, and signs.

Section 1.9. "Lot" shall mean and refer to any discrete plot of land created by and shown on a Plat upon which a Dwelling Unit is intended to be constructed in accordance with applicable zoning ordinances; provided, however, that where a Dwelling Unit (i) is separated from an adjacent Dwelling Unit by a Party Wall, or (ii) shares a Party Wall with an adjacent Dwelling Unit, the center line of such Party Wall and its vertical extensions shall constitute the common boundary line (lot line) between adjacent Lots, and the closure of the boundary lines of such adjacent Lots shall be accomplished by extending perpendicular lines from the horizontal extremities of such Party Wall to the closest boundary line or lines for such Lots as shown on any Plat or any part thereof; provided, further, that where any exterior wall of a Dwelling Unit is not a Party Wall, but extends outside the boundary lines (lot lines) of any Lot (as shown on any such Plat or part thereof) upon which such Dwelling Unit is primarily located, the boundary lines of such Lot shall be deemed extended to include all of the ground area occupied by such Dwelling Unit. It is the intent hereof that, in any and all events in which a boundary line as shown on any Plat or part thereof does not coincide with the actual location of the respective wall of the Dwelling Unit because of inexactness of construction, settling after construction, or for any other reason, this Amended Declaration and any Plat or any part thereof shall be interpreted and construed so that all ground area underlying and lying beneath a Dwelling Unit shall be and constitute part of the Lot upon which such Dwelling Unit is primarily located to the end that all of such ground area shall be subject to fee simple ownership by the Owner of such Dwelling Unit; to the extent necessary to accomplish and implement such intention, interpretation and construction, the boundary lines of the Lots shall be determined in accordance with the foregoing definitional provisions and boundary lines as so determined shall supercede the boundary lines for Lots shown on any Plat or part thereof.

Section 1.10. "Member" shall mean and refer to every person or entity who holds a membership in the Association, as more particularly set forth in Article II below.

Section 1.11. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot, including a contract seller but excluding those holding such interest in a Lot solely by virtue of a contract to purchase a Lot or as security for the performance of an obligation. If more than one (1) person or entity is the record owner of a Lot, the term Owner as used herein shall mean and refer to such owners collectively, so that there shall be only one (1) Owner of each Lot.

Section 1.12. **"Party Wall"** shall mean and refer to each wall which is built as part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between Lots. Party Walls are further described and defined in Article X below.

Section 1.13. **"Plat"** shall mean and refer to a final plat or an "as-built" subdivision plat, of all or part of the Property, recorded with the Recorder of Hamilton County, Indiana.

Section 1.14. **"Property"** shall mean and refer to that certain real property located in Hamilton County, Indiana, which is more specifically described in Exhibit A, which is attached hereto and incorporated herein by reference as the same may be duly subdivided and platted, and any additions thereto which, from time to time, may be subjected to the covenants, conditions, restrictions, reservations, easements, charges and liens of this Amended Declaration.

## ARTICLE II MEMBERSHIP

Every Owner of a Lot which is subject to this Amended Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. No Owner shall have more than one (1) membership in the Association for each Lot it owns.

## ARTICLE III VOTING RIGHTS

Section 3.1. **Classes.** The Association shall have two (2) classes of voting membership as follows:

**Class A:** Class A Members shall be all Members with the exception of the Class B Member. A Class A Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership pursuant to Article II herein.

**Class B:** The Class B Member shall be the Declarant. A Class B Member shall be entitled to five (5) votes for each Lot in which it holds the interest required for membership pursuant to Article II herein. The Declarant's Class B membership interest shall be converted to and shall become a Class A membership interest with one (1) vote for each Lot in which it holds an interest upon the happening of any of the following events, whichever occurs first (the "Applicable Date"):

(a) within four (4) months after the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) seven (7) years from the date of recordation of this Amended Declaration;

or

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(c) date upon which the written resignation of the Class B Member is delivered to the resident agent of the Association.

Section 3.2. Multiple Ownership Interests. If more than one (1) person or entity holds an ownership interest in any Lot, the vote for such Lot shall be exercised as the owners of the Lot among themselves determine and may be exercised by any one (1) of the people or entities holding such ownership interest, unless any objection or protest by any other holder of such ownership interest is made prior to the completion of a vote, in which case the vote for such membership interest shall not be counted, but the Member whose vote is in dispute shall be counted as present at the meeting for quorum purposes if the protest is lodged at such meeting. In no event shall more than one (1) vote be cast with respect to any Lot.

Section 3.3. Board of Directors. The Board of Directors shall be appointed and/or elected as prescribed by the Association's Articles and Bylaws. The Board of Directors shall manage the affairs of the Association.

#### ARTICLE IV PROPERTY RIGHTS

Section 4.1. Member's Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to:

- (a) the right of the Association to limit the number of guests of Members on the Common Area or to make any part of the Common Area available to occupants of adjacent real estate or members of the general public;
- (b) the right of the Association to adopt and enforce rules and regulations governing the use of the Common Area and the personal conduct of Owners, occupants and guests thereon, including, without limitation, the imposition of fines for the violation thereof
- (c) the right of the Association to suspend the voting rights, the right to run for office within the Association, and rights of a Member to the use of any nonessential services offered by the Association, to the extent that access and the provision of utilities to the Lot through the Common Area are not precluded, for any period during which any assessment against such Member's Lot remains unpaid or for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (d) the right of the Association at any time, or upon dissolution of the Association, and consistent with the then-existing zoning and subdivision ordinances of the City of Carmel (the "City") and/or Hamilton County, Indiana (the "County") and consistent with its designation of the Common Area as "open space", to transfer all or any part of the Common Area to an organization conceived and organized to own and maintain common open space, or, if such organization will not accept such a transfer, then to the City and/or County (herein sometimes collectively referred to as the "Local

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Governing Authority") or other appropriate governmental agency, or, if such a transfer is declined, then to another entity in accordance with the laws governing the same, for such purposes and subject to conditions as may be agreed to by the Members. Except in the case of dissolution, any such transfer shall have the assent of at least two-thirds (2/3) of each class of Members entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written notice of which having been sent to all Members not less than twenty-five (25) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting. Upon such assent and in accordance therewith, the officers of the Association shall execute the necessary documents. The re-subdivision or adjustment of the boundary lines of the Common Area and the granting of easements by the Association shall not be deemed a transfer within the meaning of this Article;

(e) the right of the Association to grant, with or without payment to the Association, licenses, rights-of-way and easements through or over any portion of the Common Area;

(f) the right of the Association to lease part or all of the Common Area per the terms and conditions of a lease acceptable to and approved and authorized by the Board of Directors of the Association and executed for and on behalf of the Association by the President of the Association; provided however that such lease(s) must:

- (i) be only to non-profit organizations;
- (ii) prohibit assignment and subleasing;
- (iii) require the prior, written approval of the Association by and through the Board of Directors of the Association of uses of the Common Area and facilities, which must be in accordance with this Amended Declaration;
- (iv) be consistent with the then-existing ordinances of the Local Governing Authority; and
- (v) be consistent with the open space designation of the Common Area;
- (g) the right of the Declarant or the Association to re-subdivide and/or adjust the boundary lines of the Common Area consistent with applicable zoning and subdivision ordinances as either deems necessary for the orderly development of the subdivision;
- (h) all rights reserved by the Declarant in Article VIII hereof and
  - (i) the right of the Declarant to erect, maintain and operate real estate sales and construction offices, displays, signs and other facilities for sales, marketing and construction purposes.

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The Association, acting through its board of directors (the "Board of Directors"), may exercise these rights without the need for any approval from any Member, unless provided otherwise in this Amended Declaration.

Section 4.2. Delegation of Use. Any Member may delegate its right of enjoyment to the Common Area and facilities to the members of its immediate household, its tenants or contract purchasers who reside on the Member's Lot. However, by accepting a deed to such Lot, every Owner covenants that should the Owner desire to rent its Lot, the rental agreement shall contain specific conditions which require the tenant to abide by all Association covenants, rules and regulations, and any Owner desiring to rent a Lot further covenants that the tenant will be provided a complete set of all Association covenants, rules and regulations.

#### ARTICLE V ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, except the Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other instrument of conveyance, is deemed to covenant and agree to pay to the Association: (i) Annual Assessments (as hereinafter defined), (ii) Special Assessments (as hereinafter defined), and any other amounts as may be provided for hereunder to be due from any Owner in connection with his, her or its ownership of a Lot in the Community. Such assessments are to be established and collected as hereinafter provided. The Association's Annual Assessments and Special Assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on each applicable Owner's Lot (excluding Lots owned by the Declarant) and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due and shall not be the personal obligation of a successor in interest unless expressly assumed by such successor. The Annual Assessments and Special Assessments, when assessed upon resolution of the Board of Directors for each year, shall become a lien on the Lot in the amount of the entire Annual Assessment or Special Assessment, but shall be payable in equal installments, collected on a monthly, bi-monthly, quarterly, semi-annual or annual basis, as determined by the Board of Directors.

Section 5.2. Purpose of Assessment. The assessments levied by the Association shall be used for the following purposes:

- (a) the improvement, maintenance, snow removal and repair of all Common Areas including the Private Streets, the Sidewalks, the Parking Areas, and the Open Space;
- (b) the maintenance, repair, irrigation, and fertilizing of all landscaping located within the Common Area including, without limitation, trees, lawns, shrubbery, and other plantings;

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- Units;
- (c) to paint and maintain the siding and exterior wood trim of the Dwelling Units;
  - (d) to fulfill the duties of the Association specified in Article XI below; and
  - (e) to carry out such other purposes as the Board of Directors may, in its sole discretion, determine to be appropriate.

**Section 5.3. Establishment of Annual Assessment.**

(a) The Association must levy in each of its fiscal years an annual assessment (the "Annual Assessment"), against each Lot. The amount of such Annual Assessment shall be established by the Board of Directors, subject to the limitations imposed by Section 5.4, below, and written notice of such shall be sent to every Owner at least thirty (30) days in advance of the commencement of each Annual Assessment period. The Annual Assessment shall become applicable as to all Lots (as shown on a recorded subdivision plat) on the first day of the month following the first conveyance of a Lot to an Owner who is not the Declarant. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year.

(b) The amount of the Annual Assessment shall be determined by the Board of Directors according to its estimate of the cost of providing services or rights of use which are common to all of the Lots.

**Section 5.4. Basis and Maximum Annual Assessment.** Until January 1 of the year immediately following conveyance of the first Lot to an Owner other than the Declarant, the maximum Annual Assessment shall be one thousand eight hundred dollars (\$1,800.00).

(a) From and after January 1 of the year immediately following the first conveyance of a Lot to an Owner other than the Declarant, the maximum Annual Assessment shall increase, effective January 1 of each year, without the need for a vote of the Members, by an amount equal to (i) the anticipated increase in costs of insurance, taxes, snow removal, recycling, trash and waste removal, water/sewer fees and lawn maintenance plus (ii) an amount equal to the amount of the prior year's Annual Assessment times ten percent (10%).

(b) The Board of Directors may determine not to increase the maximum Annual Assessment to the full extent of the automatic increase provided by subparagraph (a) of this Section, in which case the Board of Directors may determine to increase the Annual Assessment by any lesser amount.

(c) From and after January 1 of the year immediately following the first conveyance of a Lot to an Owner other than the Declarant, the maximum Annual Assessment may be increased above that established by subparagraph (a) annually, provided that, to be effective, any such change shall have the assent of more than fifty

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percent (50%) of the votes of each class of Members who are entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written notice of which (setting forth the purpose of the meeting) shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

(d) The Declarant shall pay to the Association until the Applicable Date, an amount equal to the difference, if any, between the annual expenditures of the Association made pursuant to Article V, herein and the aggregate amount of the Annual Assessments collected by the Association. Provided however, Declarant shall not be obligated to fund the Association reserves.

**Section 5.5. Special Assessments.** In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including the fixtures and personal property related thereto, or for any other specified purpose (the "Special Assessment"). Any such Special Assessment shall be levied against all of the Lots which benefit from the construction, reconstruction, repair or replacement of capital improvements giving rise to the Special Assessment, pro rata according to each Lot's benefit, as reasonably determined by the Board of Directors, which determination shall be final. The amount of the Special Assessment shall be the same for each Lot. To be effective, any such assessment shall have the assent of more than two-thirds (2/3) of the votes of each class of Members who are entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written notice of which setting forth the purpose of the meeting having been sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

**Section 5.6. Quorum for any Action Authorized Under Sections 5.4 or 5.5.** At the first calling of a meeting under Section 5.4 or Section 5.5 of this Article, the presence at the meeting of Members or proxies entitled to cast sixty percent (60%) of all the votes of each class of Members shall constitute a quorum. If the required quorum does not exist at any such meeting, another meeting may be called subject to the notice requirements set forth in Section 5.4 and Section 5.5 and to applicable law, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 5.7. One Time Assessment.** Upon the closing of the initial conveyance of a Lot to an Owner other than the Declarant, the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution towards its working capital and startup fund, in an amount equal to two (2) months Annual Assessment, and a start-up fee in the amount of fifty dollars (\$50.00), which payment shall be non-refundable and shall not be considered as an advance payment of any other assessment or other charge otherwise owed the Association with respect to such Lot. Such working capital and startup funds shall be held and used by the Association for payment of, or reimbursement to Declarant for advances made to pay expenses of the Association for the early period of the operation of



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the Association and the Property, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board of Directors.

**Section 5.8. Rate of Assessment.** The Annual Assessment shall be fixed at a uniform rate and owing for all Lots, except for Lots owned by the Declarant, and the Special Assessments shall be fixed at a uniform rate and due and owing for all Lots, except for unoccupied Lots owned by the Declarant.

**Section 5.9. Declarant Exempt.** Subject to the terms of Section 5.4 (d) herein, notwithstanding anything in this Amended Declaration to the contrary, under no circumstances shall the Declarant be liable for or obligated to pay any Annual Assessments, Special Assessments, or One-Time Assessments.

**Section 5.10. Notice of Assessment and Certificate.** Written notice of the Annual Assessments and any Special Assessments shall be sent to every Member. The due dates for payment of the Annual Assessments and any Special Assessments shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer or authorized agent of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 5.11. Remedies of the Association in the Event of Default.** If any assessment pursuant to this Amended Declaration is not paid within thirty (30) days after its due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. In addition, in its discretion, the Association may:

- (a) impose a penalty or late charge as previously established by rule;
- (b) bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. A suit to recover a money judgment for nonpayment of any assessment levied pursuant to this Amended Declaration, or any installment thereof, may be maintained without perfecting, foreclosing or waiving the lien provided for herein to secure the same;
- (c) suspend a Member's voting rights, right to hold an office within the Association, and right to use nonessential services offered by the Association to the extent that access and the provision of utilities to the Lot through the Common Area are not precluded. An Owner, whose rights have been suspended in this manner, shall have no right to any refund or suspension of his, her or its obligations to pay such assessments for the duration of such suspension or otherwise; and

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- (d) accelerate the due date of the unpaid assessment so that the entire balance shall become immediately due, payable and collectible.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or facilities, abandonment of its Lot, or the failure of the Association or the Board of Directors to perform their duties.

**Section 5.12. Subordination of the Lien to Mortgages.** The lien for the assessments provided for herein shall be subordinate to the lien of any properly recorded first mortgage encumbering a Lot. Notwithstanding anything contained in this Section 5.12 or elsewhere in this Amended Declaration, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefore. No such sale, transfer or conveyance shall relieve the Lot, or the purchaser thereof at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien for such assessments.

**Section 5.13. Exempt Property.** The following property subject to this Amended Declaration shall be exempt from the assessments created herein: (a) all property dedicated to and accepted by a local public authority; and (b) the Common Area.

**Section 5.14. Reserves for Replacements.** The Association shall establish and maintain a reserve fund for (a) the maintenance, repair and replacement of the Common Area and improvements located thereon and for (b) maintenance, repair and replacement of the exterior roof, siding, soffits, trim, exterior door paint, shutter paint, of the Dwelling Units ("Dwelling Unit Maintenance") by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board of Directors, which reserve fund shall be sufficient, in the sole opinion of the Board of Directors, to accommodate such future maintenance, repair and replacement and which shall be a component of the Annual Assessment. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by any state or by any agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacement of the Common Area and the Dwelling Unit Maintenance may be expended only for the purpose of effecting the replacement of the Common Area, major repairs to, replacement and maintenance of any improvements within the Common Area, including but not limited to sidewalks, parking areas, landscape improvements, street or common area lighting, streets or roadways developed as a part of the Property, equipment replacement, Dwelling Unit Maintenance, and for start-up expenses and operating contingencies of a nonrecurring nature relating to the Common Area. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any Member in any such reserves shall be considered an

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appurtenance of the Member's Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

## ARTICLE VI RESTRICTIVE COVENANTS

**Section 6.1. Residential Use.** The Property shall be used exclusively for residential purposes and permitted uses as defined in the City of Carmel, Indiana Zoning Ordinance No. Z-462-04 set forth on the attached Exhibit "B" ("Zoning Ordinance") and except as provided in Section 6.19 hereof. The Declarant reserves the right, pursuant to a recorded subdivision or re-subdivision plat, to alter, amend, and change any Lot line or subdivision plan or plat. No building shall be erected, altered, placed or permitted to remain on any Lot other than one Dwelling Unit and appurtenant structures, approved by the Association and appropriate Local Governing Authorities, for use solely by the occupant of the Dwelling Unit.

**Section 6.2. Architectural Review Board Approval.** No Structure (as herein defined) or addition to a Structure shall be erected, placed, painted, altered or externally modified or improved on any Lot until the plans and specifications, including design, elevation, material, shape, height, color and texture, and a site plan showing the location of all improvements with grading modifications, shall be filed with and approved in writing by the Architectural Review Board, and, if required, by appropriate Local Governing Authorities and, where required, appropriate construction permits obtained. As used herein, the term "Structure" shall include, but not be limited to, any building or portion thereof, including, without limitation, walls, decks, patios, stairs, windows, window boxes, doors, fences, play equipment, greenhouses, skylights, address markers, mail boxes, name plates, flag poles, lawn ornaments, trees, hedges, shrubbery, solar panels, satellite dishes, antennae, shutters, awnings, fences, pools, hot-tubs, pavement, walkways, driveways, garages and/or garage doors, or appurtenances to any of the aforementioned.

**Section 6.3. Laundry.** No clothing, laundry or wash shall be aired or dried on any portion of the Property within public view.

**Section 6.4. Sight Lines.** No fence, wall, tree, hedge or shrub shall be maintained in such a manner as to obstruct sight lines for vehicular traffic.

**Section 6.5. Maintenance.** Other than as specifically and expressly set forth in Section 11.1 below, an Owner shall, at all times, maintain its Dwelling Unit and all appurtenances thereto in good repair and in a state of neat appearance from all exterior vantage points. Prior to landscaping any Lot (other than flowers within approved flower beds), the Owner of such Lot must submit a written landscape plan to the Architectural Review Board for its review and approval or disapproval. The Owner shall not be permitted to remove any trees or shrubs on the Lot without the approval of the Architectural Review Board, except as may be ordered by Local Governing Authorities or by the Architectural Review Board to maintain proper sight lines. No approval for removal of any trees or shrubs will be granted by the Architectural Review Board unless appropriate provisions are made for replacing the removed trees or shrubs.

Section 6.6. Signs. The only signs permitted on the Property shall be customary home and address signs and real estate sale or lease signs and those permitted by the Zoning Ordinance which have received the prior written approval of the Architectural Review Board ("Permitted Signs"). No more than one (1) Permitted Sign shall be displayed to public view on any Lot and must be less than or equal to two (2) square feet in total surface area and may not be illuminated. All Permitted Signs advertising the property for sale or rent shall be removed within three (3) days from the date of the conveyance of the Lot or of the execution of the lease agreement, as applicable. However, those Dwelling Units in the Primary Area, as defined in the Zoning Ordinance, that front Main Street shall comply with the terms of Section 2.12 of the Zoning Ordinance.

Section 6.7. Animals. No domesticated or wild animal shall be kept or maintained on any Lot, except for common household pets such as dogs and cats which may be kept or maintained, provided that they are not kept, bred or maintained for commercial purposes and do not create a nuisance or annoyance to surrounding Lots or the neighborhood and are kept in compliance with applicable laws and ordinances of the Local Governing Authority. Pets will not be permitted outside of a Dwelling Unit unless on a leash and any Owner walking a pet within the Community or on any Common Area will immediately clean up any solid animal waste and properly dispose of the same. Law enforcement and animal control personnel shall have the right to enter the Property to enforce local animal control ordinances. Unless permitted by the Board of Directors of the Association, no Owner shall maintain more than two (2) of the same type (dog, cat, bird) of pet nor more than four (4) total pets; provided, however, that fish which are located in indoor aquariums and which pose no risk to the public health shall not be considered pets for the purpose of this restriction.

Section 6.8. Trash Storage. Trash shall be collected and stored in trash receptacles only and not solely in plastic bags. Trash and garbage receptacles shall not be permitted to remain in public view and shall remain inside of each Owner's garage except on days of trash collection, except those receptacles designed for trash accumulation located in the Common Area. No accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on the exterior of any Dwelling Unit.

Section 6.9. Antennae Systems. To the extent not inconsistent with federal law, exterior television and other antennae, including satellite dishes, are prohibited, unless approved in writing by the Architectural Review Board. The Architectural Review Board shall adopt rules for the installation of such antennae and/or satellite systems, which rules shall require that antennae and satellite dishes be placed as inconspicuously as possible and only when fully screened from public view on the rear and above the eave line of any Dwelling Unit. Satellite dishes will not exceed 18 inches in diameter. It is the intent of this provision that the Architectural Review Board shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the Architectural Review Board conflict with federal law, such rules as do not conflict with federal law shall remain in full force and effect.

**Section 6.10. Painting.** No person shall paint the exterior of any building, or portion thereof. All Dwelling Units in the Community will, at all times, be painted in a uniform color, without variation.

**Section 6.11. Finished Exteriors.** The exteriors of all Structures, including, without limitation, walls, doors, windows and roofs, shall be kept in good maintenance and repair. No Structure shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after the commencement of construction. In the event of fire, windstorm or other damage, the exterior of a Structure shall not be permitted to remain in a damaged condition for longer than three (3) months, unless expressly excepted by the Board in writing. Absent approval from the Architectural Review Board to the contrary, all maintained, repaired, or replaced roofs and other structure exterior shall be the same color and texture as the original roof and other structure exterior.

**Section 6.12. Fences.** Except for any fencing installed by the Declarant on any Lot or in any Common Areas, no fence or similar enclosure shall be erected or built on any Lot.

**Section 6.13. Vehicles.** No inoperable, junk, unregistered or unlicensed vehicle shall be kept on the Property. No portion of the Property shall be used for the repair of a vehicle.

**Section 6.14. Commercial Vehicles.** No commercial or industrial vehicle, such as but not limited to moving vans, trucks, tractors, trailers, vans, wreckers, tow trucks, hearses and buses, shall be regularly or habitually parked or parked overnight on the Property, except upon the prior written approval of the Architectural Review Board.

**Section 6.15. Recreational Vehicles.** No recreational vehicles or equipment, such as but not limited to boats, boating equipment, jet-skis, wave runners; all terrain vehicles ("ATVs"), recreation vehicles ("RVs"), travel trailers, camping vehicles or camping equipment shall be parked on the Property without the prior, written approval of the Architectural Review Board, as to location, size, screening and other relevant criteria. The Association shall not be required to provide a storage area for these vehicles.

**Section 6.16. Towing.** The Board of Directors shall have the right to tow any vehicle parked or kept in violation of the covenants contained within this Article, upon twenty-four (24) hours' notice and at the vehicle owner's sole expense.

**Section 6.17. Garage Usage.** Subject to the Zoning Covenants, any conversion of any garage that will preclude the parking of vehicles within that garage is prohibited. Owner's shall keep their garages at all times in a manner that will permit the usage of such garage for parking of passenger automobiles, vans and/or trucks.

**Section 6.18. Rental Agreements.** Any rental agreement for a Dwelling Unit must be for an initial period of at least six (6) months, must be in writing and must be subject to the rules and regulations set forth in this Amended Declaration and in the other Association documents. Every such rental agreement must include a provision stating that any failure by the tenant, its household members or guests, to comply with the terms of this Amended Declaration shall be a

default under the rental agreement, and the Owner shall be responsible for enforcing that provision.

**Section 6.19. Initial Construction and Marketing.** The Declarant, may, during its construction and/or sales period, erect, maintain and operate real estate sales and construction offices, model homes, awnings, flag poles, trap fencing, displays, signs and special lighting on any part of the Property and on or in any building or structure now or hereafter erected thereon and shall not be bound by the provisions of this Article to the extent application thereof would delay, hinder or increase the cost of construction and/or marketing of Dwelling Units for sale in the Community.

**Section 6.20. Holiday and Seasonal Decorations.** Any holiday or seasonal decorations or ornamentation that are placed on the exterior of a Dwelling Unit or Structure, or that is otherwise visible from the exterior of such Dwelling Unit or Structure, shall be first approved by the Architectural Review Board.

**Section 6.21. Window Boxes.** No window boxes containing flowers or any other vegetation shall be erected or attached to any Dwelling Unit.

**Section 6.22. Dusk to Dawn Coach Lights.** Each Owner shall maintain any and all coach lights installed as a part of the initial construction of each Dwelling Unit in good order, condition and repair, including, without limitation, any necessary repairs or maintenance as may be required for the effective operation of all "dusk to dawn" photocell switches and replacement of light bulbs so that those coach lights remain continuously operational from dusk to dawn.

**Section 6.23. General Prohibition.** All swing sets, playground equipment, hot tubs, above and below-ground pools, basketball goals, trampolines, flag poles, outbuildings, storage buildings, exterior storage structures, attached or detached kennels, dog runs, electric bug killers, awnings (except those used by Declarant) and temporary storage structures are prohibited.

**Section 6.24. Nuisance.** No noxious or offensive activity shall be carried on or permitted to be carried on upon the Property, nor shall anything be done or placed thereon which is or may become an annoyance or nuisance to the neighborhood. Nothing shall be done or kept or permitted to be done or kept by an Owner in any Dwelling Unit, or on any Lot, or on any of the Common Areas, which will cause an increase in the rate of insurance paid by the Association or any other Owner. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any part of the Common Area or any other Owner, or which would be a violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau. No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the Community or which might be a nuisance, annoyance, or inconvenience, or which might cause damage, to other Owners and occupants of Dwelling Units or neighboring property, including, without limiting the generality of the foregoing, noise by the use of any musical instrument, radio, television, loud speakers, electrical equipment, amplifiers or other

equipment or machinery. No exterior lighting on a Lot shall be directed outside the boundaries of the Lot. No outside toilets shall be permitted on any Lot (except during a period of construction and then only upon obtaining prior written consent of the Architectural Review Board), and no sanitary waste or other wastes shall be permitted to be exposed.

Section 6.25. Additional Rules and Regulations. The Association shall have the authority to adopt such rules and regulations regarding this Article as it may from time to time consider necessary or appropriate.

## ARTICLE VII ARCHITECTURAL REVIEW BOARD

### Section 7.1. Architectural Review Committee.

(a) Members of ARC. The ARC shall be comprised of not less than three (3) nor more than five (5) members, the number of which may be increased by a majority vote of the Board. The initial members of the ARC shall be representatives of Declarant until three (3) years after the first Closing of the sale of a Lot ("Third Anniversary"). After the Third Anniversary the Board may appoint and/or remove one (1) member of the ARC, and Declarant shall have the right and power at all times to appoint and remove a majority of the members of the ARC or to fill any vacancy of such majority, until the expiration of the Development Period, after which the Board shall have the power to appoint and remove all of the members of the ARC. The Declarant may voluntarily surrender the right to appoint and release members of the ARC before termination of the above referenced time period. In that event, the Declarant may require, for the duration of the period, that specified actions of the ARC be approved by the Declarant before they become effective. ARC members appointed by the Board shall be from the Membership of the Association, but ARC members appointed by Declarant need not be Members of the Association. The ARC shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed plans conform harmoniously to the exterior design and existing materials of the buildings in the Development. Board members may also serve as ARC members.

(b) Review of Plans and Specifications. The ARC shall consider and act upon any and all plans and specifications submitted for its approval under this Amended Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the ARC. No construction, alteration, removal, location, relocation, repainting, demolishing, addition, installation, modification, decoration, redecoration or reconstruction of Improvements, including landscaping, in the Community shall be commenced or maintained, until the plans and specifications therefore showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the ARC and approved in writing by the ARC; provided, however, that any Improvement may be repainted without ARC approval so long as the Improvement is repainted the identical color which it was last painted.

It shall be the responsibility of the Owner to submit the written plans and specifications (the "Applicant") to an authorized agent of the ARC. Until changed by the Board, the address for the submission of such plans and specifications shall be the principal office of the Association. The ARC shall approve plans and specifications submitted for its approval only if it deems that the installation, construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area or the Development as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Areas or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association. Declarant, and any person or entity to which Declarant may assign all or a portion of its exemption hereunder, need not seek or obtain ARC approval of any Improvements constructed on the Community by Declarant or such person or entity, as the case may be.

The ARC may condition its approval of proposals or plans and specifications for any Improvements (1) upon the Applicant's furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Development as a result of such work, (2) on such changes therein as it deems appropriate, (3) upon the Applicant's agreement to complete the proposed work within a stated period of time, or (4) all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The ARC may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee to accompany each application for approval, or stating additional factors which it will take into consideration in reviewing submissions. The ARC may provide that the amount of the fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated. All plans and specifications for any construction or other Improvement (other than walls, fences, curbs, asphalt or cement areas, landscaping and non-structural alterations, modifications or additions) shall be prepared by a designer or licensed architect and shall include a site development plan showing existing and proposed topographic elevations.

Notwithstanding the foregoing provisions of this Section, Improvements which are damaged or destroyed may be repaired, restored, replaced and/or reconstructed in conformance with previously approved plans, specifications and materials without the necessity of submitting additional plans and specifications to the Board or obtaining the Board's approval.

Until receipt by the ARC of any required plans and specifications, the ARC may postpone review of any plans submitted for approval. Decisions of the ARC and the reasons therefore shall be transmitted by the ARC to the Applicant at the address set forth in the application for approval within sixty (60) days after receipt by the ARC of all materials required by the ARC. Any application submitted pursuant to this Section 7.1 shall be deemed approved unless written disapproval or a request for additional



information or materials by the ARC shall have been transmitted to the Applicant within sixty (60) days after the date of receipt by the ARC of all required materials. The Applicant shall meet any review or permit requirements of the ARC and the appropriate governmental authorities prior to making any alterations or improvements permitted hereunder. Provided, however, regardless of how approval is obtained, the applicant shall be obligated to conform and abide by the architectural rules, standards, covenants and restrictions contained in this Amended Declaration, and as amended and adopted by the ARC, from time to time.

(c) Meetings of the ARC. The ARC shall meet from time to time as necessary to perform its duties hereunder. The Board may from time to time, by resolution unanimously adopted in writing, designate a ARC representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARC, except the granting of variances pursuant to Section 7.1 (b). In the absence of such designation, the vote or written consent of a majority of the ARC shall constitute an act of the ARC.

(d) No Waiver of Future Approvals. The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

(e) Compensation of Members. The members of the ARC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

(f) Inspection of Work. The ARC or its duly authorized representative may at any time inspect any work for which approval of plans is required under this Section 7.1 ("Work"), which right to inspect shall include the right to require any Owner to take such action as may be necessary to remedy any noncompliance with the ARC-approved plans for the work or with the requirements of this Amended Declaration ("Noncompliance").

(i) Time Limit. The ARC's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the latest to occur of the following events: (i) submittal of the plans for the Work to the ARC for its approval as provided in this Section 3; (ii) completion of the Work as provided in the ARC-approved plans; and (iii) written notice from the Owner to the ARC that the Work has been completed. This time limit for inspection and notification by the ARC shall be extended indefinitely if any of these conditions has not occurred. If the ARC fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans.

(ii) Remedy. If an Owner fails to remedy any Noncompliance within thirty (30) days from the date of notification from the ARC, the ARC shall notify the Board in writing of such failure. Upon Notice and Hearing, as provided in the Bylaws, the Board shall determine whether there is a Noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a Noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board, at its option, may Record a Notice of Noncompliance and commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the Noncompliance.

(g) Scope of Review. The ARC shall review and approve, conditionally approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations, consistency with this Amended Declaration, and the overall benefit or detriment which would result to the immediate vicinity and the Community generally. The ARC shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The ARC's approval or disapproval shall be based solely on the considerations set forth in this Section 7.1, and the ARC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. The ARC may consider the impact of views from other Residences or Lots and reasonable privacy right claims as factors in reviewing, approving or disapproving any proposed landscaping, construction or other improvement. However, Declarant does not warrant any protected views within the Development and no Dwelling Unit or Lot is guaranteed the existence or unobstructed continuation of any particular view.

(h) Variances. The ARC may recommend and the Board may authorize variances from compliance with any of the architectural provisions of this Amended Declaration, including without limitation restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by a majority of the ARC, and shall become effective upon recordation. After Declarant has lost the right to appoint a majority of the members of the ARC, the Board must approve any variance recommended by the ARC before any such variance shall become effective. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Amended Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Amended Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of his Dwelling Unit.

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(i) **Appeals.** For so long as Declarant has the right to appoint and remove a majority of the members of the ARC, decisions of the ARC shall be final, and there shall be no appeal to the Board. When Declarant is no longer entitled to appoint and remove a majority of the members of the ARC the Board may, at its discretion, adopt policies and procedures for the appeal of ARC decisions for reconsideration by the Board. The Board shall have no obligation to adopt or implement any such appeal procedures, and in the absence of Board adoption of appeal procedures, all decisions of the ARC shall be final.

#### ARTICLE VIII EASEMENTS AND OTHER AREAS

**Section 8.1. Emergency Easement Rights.** The Declarant hereby grants a blanket easement to the Association, its directors, officers, agents and employees, to any manager employed by or on behalf of the Association, and to all police, fire, ambulance personnel and all similar persons, to enter upon the Property in the exercise of the functions provided for by this Amended Declaration, Articles of Incorporation, By-Laws and rules of the Association, and in the event of emergencies and in the performance of governmental functions.

**Section 8.2. General Easements.** The Declarant hereby reserves unto itself and its assigns, any governmental or municipal agency, and any public or private utility, a general easement upon all Lots for the installation, maintenance, repair, and use of any drainage, utility, and sewer lines or infrastructure so as to permit the installation, maintenance, repair, and use of all electrical, telephone, water, gas, sanitary and storm sewer and other utility services, including all necessary lines, pipes, wires, cables, ducts, antenna, and other facilities to serve any Dwelling Unit constructed on the Property. This general easement shall be on all areas of a Lot not occupied by a Dwelling Unit, with the exception of areas covered by chimneys or patios. This general easement shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably or adversely affects any Dwelling Unit or portion hereof located upon such Lot, or (ii) unreasonably restricts the right of ingress and egress to such Lot.

**Section 8.3. Limitation on General Easement Rights.** When not an emergency situation or a governmental function, the rights accompanying the easements provided for in Section 8.1 of this Article shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to, any Owner or tenant directly affected.

**Section 8.4. Encroachments.** If any improvement on the Property now or hereafter encroaches on any other portion of the Property by reason of (a) the original construction thereof by the Declarant or its assigns, which shall include, but not be limited to, any party wall or driveway which encroaches over a Lot's boundary line and any drainage of stormwater from roofs and gutters, (b) deviations within normal construction tolerances in the maintenance, repair, replacement or reconstruction of any improvement, or (c) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The owner of the encroaching improvement shall also have an easement for the limited purpose of maintenance of the encroaching improvement. This easement does not relieve any Owner or any other person from liability for such Owner's or other person's negligence or willful misconduct.

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**Section 8.5. Ingress Egress Easement.** The Declarant and its agents and employees, and its agents and employees, shall have a right of ingress and egress, as required for construction on and development of the Property and otherwise over (i) Common Areas and (ii) portions of any Lots not occupied by a Dwelling Unit, provided, however, that any person or entity exercising such easement rights upon a Lot shall promptly repair any resulting damage so that the Lot is restored to the condition in which it existed immediately prior to the exercise of such easement rights.

**Section 8.6. Drainage, Utility and Sewer Easements (DU & SE).** Any Drainage, Utility and Sewer Easement (DU & SE) shown on any Plat are created to provide (i) paths and courses for area and local storm drainage, either over land or in adequate underground conduit, to serve the Property and adjoining ground and/or other drainage infrastructure systems and (ii) for the use by public and private utilities and local governments and their agencies having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve the Property and adjoining lands, for the purpose of the installation and maintenance of sanitary and storm sewers and (iii) utility easements for the use of the Declarant, the Association, the Owners, and any municipal or private utility companies for the installation and maintenance of mains, ducts, poles, lines, wires and other utility facilities and infrastructure.

**Section 8.7. Reservation of Right to Grant Future Easements.** There is reserved to the Declarant a right to grant non-exclusive easements over any Lot or Common Area for the purposes of installing, repairing and/or maintaining utility lines of any sort, including but not limited to storm drains and drainage swales, sanitary sewers, gas lines, electric lines and cables, water lines, telephone lines, telecommunication lines and cables, and the like, and for any purpose necessary for the Declarant or its assigns to obtain the release of any bonds posted with a municipality, governmental agency or regulatory agency, and non-exclusive easements over the Common Area to any municipal agency or private entity for any other purpose consistent with the "open space" designation thereof. This right to grant easements shall automatically expire as to any Lot or Common Area seven (7) years from the date of submission of such Lot or Common Area to this Amended Declaration.

**Section 8.8. Bonds and/or Dedication Requirements.** There is reserved to the Declarant an easement and the right to grant and reserve easements or to vacate or terminate easements across all Lots and Common Area as may be required by any governmental agency or authority or utility in connection with the release of improvement bonds or the acceptance of public streets for state maintenance with respect to the Property.

**Section 8.9. Easements for Corrective Work.** There is reserved to the Declarant a nonexclusive easement over all Lots and the Common Area for the purposes of (i) correcting, repairing or maintaining any drainage, drainage infrastructure, utility infrastructure, grading or regrading, maintenance, landscaping, (ii) mowing, (iii) erecting street intersection signs, directional signs, temporary promotional signs, entrance features, lights and wall features, and (iv) executing any of the powers, rights, or duties granted to or imposed on the Association

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herein. This easement shall automatically expire as to any Lot seven (7) years from the date of submission of such Lot to this Amended Declaration.

Section 8.10. Open Space. The Open Space portions of the Common Area are not dedicated to the public and are not for use by the general public; instead, the Open Space portions of the Common Area are to be used exclusively by Owners and their family members, guests, invitees, and lessees.

Section 8.11. Parking Areas. Parking Areas are not dedicated to the public and are not to be used by the general public; instead, Parking Areas are to be used exclusively by Owners and their family members, guests, invitees, and lessees for the parking of motor vehicles.

Section 8.12. Sidewalks. That portion of the Common Area occupied by Sidewalks is hereby reserved for use by not only the Owners and their family members, guests, invitees, and lessees, but the general public, as well, for pedestrian purposes in the manner in which sidewalks are typically used.

Section 8.13. Private Streets. The surface of that portion of the Common Area occupied by Private Streets is reserved not only for the use for Owners and their family members, guests and invitees, but also for the use by the general public, for vehicular ingress and egress in the manner in which streets are customarily used.

#### ARTICLE IX PARKING

Parking of any type of vehicle in any Common Area is prohibited in areas other than areas specifically identified as parking areas, adjacent to Private Streets within Common Areas. The Board of Directors may promulgate such rules and regulations as it deems appropriate to regulate the use of any Common Areas to permit temporary parking for purposes of loading and unloading passengers and materials. Those rules and regulations may include the towing of any vehicles parked in violation of this Amended Declaration, with no notice of towing required and at the vehicle owner's sole expense. Temporary parking of vehicles on adjacent public rights-of-way will be subject to applicable limitations and fees imposed by the Local Governing Authorities.

#### ARTICLE X PARTY WALLS

Section 10.1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of Indiana law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 10.2. Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty.** If any such party wall is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners, its agents, family, household or guests (including ordinary wear and tear and deterioration from lapse of time), then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the structural components of such wall, sharing equally the cost thereof, and each individual Owner shall proceed forthwith to rebuild or repair the non-structural components of such wall in proportion to their respective uses of the party wall. Any and all such reconstruction and/or repairs shall be completed immediately to the extent that the failure to commence and/or complete such reconstruction and/or repairs would result in an immediate risk to human health and/or safety. All other reconstruction and/or repairs shall be completed within three (3) months following the casualty or other event that damaged or destroyed such party wall, unless a longer period of time is approved of by the Association. If the damage is of such a nature that it has resulted, or will (if left uncorrected) result in damage or destruction of such party wall, the reconstruction and/or repairs will be completed within a reasonable time, not exceeding six (6) months following the initial discovery of the condition. Any and all such reconstruction and/or repair shall be made in compliance with all requirements of Local Governing Authorities and otherwise in compliance with all applicable laws, to the same or better condition as existed prior to such damage or destruction.

**Section 10.3. Repairs for Damage Caused by One Owner.** If any such party wall is damaged or destroyed through the act of one or more adjoining Owners, or their respective agents, families, households or guests (collectively the "Offending Parties"), whether or not such act is negligent or otherwise culpable, so as to deprive another adjoining Owner of the full use and enjoyment of the wall, then the Owner(s) of the Dwelling Unit(s) from whence the Offending Parties committed the act that caused the damage or destruction, shall forthwith proceed to rebuild and repair the same, in the manner required under Section 10.2, above, without cost to the adjoining Owner.

**Section 10.4. Other Changes.** In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild its Dwelling Unit in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner, whose consent shall not be unreasonably withheld. If the adjoining Owner has not responded in writing to the requesting Owner within twenty-one (21) days of its receipt of any such written request, given by registered or certified mail, return receipt requested, such consent of the adjoining Owner shall be deemed received.

**Section 10.5. Plans and Specifications.** Any reconstruction or repair must either be in accordance with the original development plan for the Dwelling Units or according to plans and specifications approved by the Architectural Review Committee.

**Section 10.6. Right to Contribution Runs with the Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

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**Section 10.7. Dispute.** In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors, who shall decide the dispute.

#### ARTICLE XI POWERS AND DUTIES OF THE ASSOCIATION

**Section 11.1. Discretionary Powers and Duties.** The Association shall have the following powers and duties which may be exercised in its discretion:

- (a) to enforce any covenants or restrictions which are imposed by the terms of this Amended Declaration or which may be imposed on any part of the Property. Nothing contained herein shall be deemed to prevent the Owner of any Lot from enforcing any building restriction in its own name. The right of enforcement shall not serve to prevent such changes, releases or modifications of the restriction or reservations placed upon any part of the Property by any party having the right to make such changes, releases or modifications in the deeds, contracts, declarations or plats in which such restrictions and reservations are set forth; and the right of enforcement shall not have the effect of preventing the assignment of those rights by the proper parties wherever and whenever such right of assignment exists. Neither the Association nor the Board of Directors shall have a duty to enforce the covenants by an action at law or in equity if, in its or their opinion, such an enforcement is not in the Association's best interest. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as herein provided for; provided, however, that the foregoing authorization to use the general fund for such enforcement proceedings shall not preclude the Association from collecting such costs from the offending Owner;
- (b) to provide such light as the Association may deem advisable on streets and the Common Area and to maintain any and all improvements, Structures or facilities which may exist or be erected from time to time on the Common Area;
- (c) to use the Common Area and any improvements, Structures or facilities erected thereon, subject to the general rules and regulations established and prescribed by the Association and subject to the establishment of charges for their use;
- (d) to mow and re-sow or re-seed or re-sod lawn areas and fertilize lawn areas within the Common Areas;
- (e) to care for, spray, trim, protect, plant, replant and prune trees, shrubs and other landscaping, maintenance and upkeep of the Common Area and to pick up and remove from the Common Area all loose material, rubbish, filth and accumulation of debris; and to do any other thing necessary or desirable in the judgment of the Association to keep the Common Area in neat appearance and in good order, including, but not limited to, cleaning the private streets and maintaining the street lights located in the Common Areas;

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(f) to exercise all rights, responsibilities and control over any easements which the Association may from time to time acquire, including but not limited to those easements specifically reserved to the Association in the Article VIII herein;

(g) to create, grant and convey easements and licenses upon, across, over and under all Common Area, including but not limited to easements for the installation, replacement, repair and maintenance of utility lines serving the Property;

(h) to employ counsel and institute and prosecute such suits as the Association may deem necessary or advisable, and to defend suits brought against the Association;

(i) to retain as an independent contractor or employee a manager of the Association and such other employees or independent contractors as the Board deems necessary, and to prescribe the duties of employees and scope of services of independent contractors;

(j) to enter on any Lot to perform emergency repairs or to do other work reasonably necessary for the proper maintenance or protection of the Property, including without limitation (i) maintenance and repairs of all storm water drainage infrastructure, including without limitation retaining walls, and (ii) all utility repairs, and erosion control repairs.

(k) to enter (or have the Association's agents or employees enter) on any Lot to repair, maintain or restore the Lot, all improvements thereon, and the exterior of the Dwelling Unit and any other improvements located thereon if such is not performed by the Owner of the Lot, and to assess the Owner of the Lot the costs thereof, such assessment to be a lien upon the Lot equal in priority to the lien provided for in Article V herein; provided, however, that the Board of Directors shall only exercise this right after giving the Owner written notice of its intent at least fourteen (14) days prior to such entry.

(l) to re-subdivide and/or adjust the boundary lines of the Common Area but only to the extent such re-subdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Property;

(m) to adopt, publish and enforce rules and regulations governing the use of the Common Area and facilities and with respect to such other areas of responsibility assigned to it by this Amended Declaration, except where expressly reserved herein to the Members. Such rules and regulations may grant to the Board of Directors the power to suspend a Member's voting rights and the Member's right to use non-essential services for non-payment of assessments and to assess charges against Members for violations of the provisions of the Amended Declaration or rules and regulations; and



(n) to declare the office of a member of the Board of Directors vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

**Section 11.2. Mandatory Powers and Duties.** The Association shall exercise the following powers, rights and duties:

(a) to accept title to the Common Area and to hold and administer the Common Area for the benefit and enjoyment of the Owners and occupiers of Lots, and to cause the Common Area and facilities to be maintained in accordance with the standards adopted by the Board of Directors;

(b) to transfer part of the Common Area to or at the direction of the Declarant, for the purpose of adjusting boundary lines or otherwise in connection with the orderly subdivision or development of the Property, but only to the extent such re-subdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Property;

(c) upon the termination of the Development Period, to obtain and maintain without interruption liability coverage for any claim against a director or officer for the exercise of its duties and fidelity coverage against dishonest acts on the part of directors, officers, trustees, managers, employees or agents responsible for handling funds collected and held for the benefit of the Association. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in place. The fidelity bond coverage shall be in an amount as may be determined to be reasonably prudent by the Board of Directors;

(d) to obtain and maintain without interruption a comprehensive coverage of public liability and hazard insurance covering the Dwelling Units as set forth below, Common Area, private streets and access easements (AE) existing on the Property or shown on any Plat, and other easements of which the Association is a beneficiary, if available at reasonable cost. Such insurance policy shall contain a severability of interest clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage shall include all coverage in kinds and amounts commonly obtained with regard to projects similar in construction, location and use as determined by the Board of Directors. Further, the public liability insurance must provide coverage of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence. The Association shall be responsible for insuring the exterior of the Dwelling Units up to the drywall in each Dwelling Unit. The Owner of a Dwelling Unit shall be responsible to insure the interior of the Dwelling Unit from and including the drywall, including but not limited to, the Owner's contents and personal property within the Dwelling Unit.

(e) to provide for the maintenance and repair of any and all (i) Common Areas and improvements which may exist or be erected from time to time on the Common Area, including but not limited to street lights (including the payment of utility

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costs therefore), recreational facilities, entrance features, entrance ways, entrance areas, stormwater management facilities, including sand filters, retaining walls and sound walls, (ii) easement areas of which the Association is the beneficiary and for which it has the maintenance responsibility, (iii) any private streets or access easements (AE) existing on the Property or shown on any Plat; (iv) facilities, including but not limited to fences and signs authorized by the Association and erected on any easements granted to the Association, and (v) street lights that may be constructed within the rights-of-way of any public streets within or adjacent to the Property, including those, if any, required to be maintained by Local Governing Authorities (including the payment of utility costs therefore);

(f) to arrange for plowing and/or removal of snow from (i) private streets located within Common Areas, (ii) community walkways located within Common Areas, and (iii) driveways located upon Lots. It shall be the Association's responsibility, however, to remove snow from the walkway extending from the community walkways to the front door of the Owner's Dwelling Unit.

(g) to mow, trim, and fertilize grass located on each Lot; provided, however, that the Association shall be required to maintain, replace, irrigate, or fertilize any flowers, plants, trees, shrubs, or any landscaping other than grass;

(h) to maintain, replace, irrigate, and fertilize the flowers, plants, trees and

(i) to paint all siding and wood exterior trim, but shall not be responsible for any other maintenance of the exterior of a Dwelling Unit, other than the Dwelling Unit Maintenance;

and  
(j) to pay all proper bills, taxes, charges and fees on a timely basis;

(k) to maintain its corporate status.

**Section 11.3. Board Authority to Act.** Unless otherwise specifically provided in the Association's documents, all rights, powers, easements, obligations and duties of the Association may be performed by the Board of Directors. Notwithstanding anything to the contrary contained herein, any rules or regulations which are promulgated by the Board may be repealed or amended by a majority vote of the Members cast, in person or by proxy, at a meeting convened for such purpose in accordance with the By-Laws.

**Section 11.4. Compensation.** No director or officer of the Association shall receive compensation for services as such director or officer except to the extent expressly authorized by a majority vote of the Class A Members.

**Section 11.5 Non-liability of Directors, Officers and Board Members.** The directors and officers of the Association and members of the Architectural Review Board shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out

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their duties and responsibilities as directors or officers of the Association or members of the Architectural Review Board, except for their own individual willful misconduct or gross negligence. It is intended that the directors and officers of the Association and members of the Architectural Review Board shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

**Section 11.6. Indemnity of Directors and Officers and Members of the Architectural Review Board.** The Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the "Indemnitee") made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was a director or officer of the Association or member of the Architectural Review Board, against all costs and expenses, including attorneys fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal thereof, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is guilty of gross negligence or willful misconduct in the performance of his or her duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or for any judgment rendered in any action, suit or proceeding, unless it shall be adjudged in such action, suit or proceeding that such Indemnitee was guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer or member of the Architectural Review Board shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such director, officer or member of the Architectural Review Board relied on the books and records of the Association or statements or advice made by or prepared by any managing agent of the Association or any director or officer of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of gross negligence or willful misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by an Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification or reimbursement as provided in this Section.

## ARTICLE XII GENERAL PROVISIONS

**Section 12.1. Enforcement and Declarant's Exemption.** The Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Amended Declaration or other Association documents unless such right is specifically limited. Failure by the Association or by any Owner to enforce any right, provision, covenant or condition which may be granted by this Amended Declaration shall not constitute a waiver of the right of the Association or an Owner to enforce such right, provision, covenant or

condition in the future. All rights, remedies and privileges granted to the Association or any Owner pursuant to any term, provision, covenant or condition of the Amended Declaration shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by this Amended Declaration or at law or in equity.

Notwithstanding anything in this Amended Declaration to the contrary, (i) the Declarant reserves a right to carry on construction, development, and sales activities, to place equipment, machinery, supplies and signs, construct and maintain models or other structures, and park vehicles of prospective or actual purchasers, lessees, or employees and personnel of the Declarant, on any part of the Property owned by the Declarant, or the Association and (ii) none of the terms, conditions, provisions, and restrictions set forth in this Amended Declaration shall be construed, in any manner, to limit any activity of the Declarant in the construction, development, and sales activities pertaining to the Property.

**Section 12.2. Severability; Headings; Conflict.** Invalidation of any one of the provisions of this Amended Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect. Titles of paragraphs are for convenience only and are not intended to limit or expand the covenants, rights or obligations expressed therein. In the case of any conflict between the Articles of Incorporation and this Amended Declaration, the Amended Declaration shall control; in the case of any conflict between this Amended Declaration and the By-Laws, this Amended Declaration shall control.

**Section 12.3. Duration.** The covenants and restrictions of this Amended Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Amended Declaration, their respective legal representatives, heirs, successors and assigns, unless such right is specifically limited, for a term of twenty (20) years from the date this Amended Declaration is recorded, after which time the covenants and restrictions of this Amended Declaration shall be automatically extended for successive periods of twenty (20) years each, unless terminated by a written and recorded instrument approved of in advance by the affirmative and unanimous vote of all Members of the Association.

**Section 12.4. Amendment of Amended Declaration.**

(a) **Generally.** Except as otherwise provided in this Amended Declaration, amendments to this Amended Declaration shall be proposed and adopted in the following manner:

- (i) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

(ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws of the Association.

(iv) Adoption. Any proposed amendment to this Amended Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners; provided, however, that during the Development Period, any amendment to this Amended Declaration shall require the prior written approval of Declarant. In the event any Lot is subject to a first mortgage, the mortgagee thereunder shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the mortgagee has given prior written notice of its mortgage interest to the Association.

(v) Special Amendments. No amendment to this Amended Declaration shall be adopted which changes the applicable share of an Owner's liability for assessments, or the method of determining the same, without, in each and any of such circumstances, the unanimous approval of all Owners and all mortgagees whose mortgage interests have been made known to the Association.

(vi) Recording. Each amendment to this Amended Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Vanderburgh County, Indiana, and such amendment shall not become effective until so recorded.

(b) Amendments by Declarant Alone.

(i) General Amendments. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have and hereby reserves the right and power acting alone, and without the consent or approval of any of the Owners, the Association, Board of Directors, any mortgagees or any other person, except as provided below, to amend or supplement this Amended Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots, (c) to bring this Amended Declaration into compliance with any statutory requirements, (d) to

comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) functions similar to those performed by such agencies or entities, (e) to annex additional real estate to the Community, (f) to correct clerical or typographical errors in this Amended Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by, and granted by each Owner to the Declarant to vote in favor of, make, or consent to any amendments described in this subsection B on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this subsection 12.4 shall terminate upon the completion of the Development Period.

(ii) Technology/Communication Amendments. The Declarant shall have the right and power acting alone and without the consent or approval of any of the Owners, the Association, Board of Directors, any mortgagees or any other person to amend, restate or supplement this Amended Declaration at any time and from time to time in order to subject the Community to certain easements and access restrictions to facilitate obtaining enhanced technological capabilities and to provide for the preservation and enhancement of the amenities in the Community including, but not limited to, the technological infrastructure, and communication and utility services to and within the Community

(c) Protection of Declarant. Until the expiration of the Development Period, or until the Applicable Date, whichever occurs first, the prior written approval of Declarant, as Declarant of the Development, will be required before any amendment which would impair or diminish the rights of Declarant to complete the Community or sell or lease Lots therein in accordance with this Amended Declaration shall become effective. Notwithstanding any other provisions of the Restrictions, until the expiration of the Development Period, the Association shall not take any action to significantly reduce the Association maintenance or other services without the prior written approval of the Declarant.

Section 12.7. Waiver. The Declarant, as the present most interested party in maintaining the high quality of development which by these covenants is sought to be assured for the Property, hereby expressly reserves unto itself (so long as these restrictions are in effect), the unqualified right to waive or alter from time to time such of the herein contained restrictions as it may deem best, as to any one or more of the Lots, which waiver or alteration shall be evidenced by the mutual written consent of the Declarant and the then Owner of the Lot as to which some or all of said restrictions are to be waived or altered; such written consent to be duly acknowledged and recorded in the Office of the Recorder of Hamilton County, Indiana.

**Section 12.8. Casualty Insurance.** Notwithstanding anything to the contrary contained in this Amended Declaration, each and every Owner shall maintain a casualty insurance policy affording fire and extended coverage insurance insuring the portion of the Dwelling Unit as defined in Section 11.2(d) herein, in an amount equal to the full replacement value of the improvements which in whole or in part, comprise that portion of the Dwelling Unit. Each Owner of each Lot and/or Dwelling Unit, (regardless of whether or not its ownership is encumbered or is to be encumbered by a mortgage, deed of trust or similar indenture) will furnish to the Association upon request, at or prior to the closing of its acquisition of that Lot or Dwelling Unit, a certificate of insurance, in form and content acceptable to the Association, evidencing the insurance coverage described herein. Each such Owner shall, prior to the expiration of the term of any such insurance policy, procure and deliver to the Association upon request, a renewal or replacement policy in form and content acceptable to the Association. If any such Owner fails to provide evidence of such coverage satisfactory to the Association, the Association will have the right, but no obligation, to procure such coverage at the expense of the applicable Owner, and the cost of procuring such insurance will be assessed to that Owner as a Special Assessment and shall be immediately due and payable upon demand.

**Section 12.9. Withdrawable Real Estate.**

(a) The Declarant shall have the unilateral right, without the consent of the Class A Members or any Mortgagee, to execute and record an amendment to this Amended Declaration withdrawing any portion of the Property on which Dwelling Units have not been constructed; provided, however, that not more than five (5) years have lapsed since the date of the recordation of this Amended Declaration.

(b) Upon the dedication or the conveyance to any public entity or authority of any portion of the Property for public street purposes, this Amended Declaration shall no longer be applicable to the land so dedicated or conveyed.

**Section 12.10. Management Contracts.** For such time as the Declarant has Class B membership status, the Declarant shall have the right to enter into professional management contracts on behalf of the Association for the management of the Property for terms not to exceed one (1) year; provided, however, that the Association shall have the right to terminate such contracts, with or without cause, upon thirty (30) days' written notice to the other party and without payment of a termination fee.

**Section 12.11. Dissolution.** The Association may be dissolved with the assent given in writing and signed by at least two-thirds (2/3) of each class of Members and in accordance with Article 13 of the Act. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association, both real and personal, shall be offered to an appropriate public agency to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the Association. In the event that such offer of dedication is refused, such assets shall be then offered to be granted, conveyed or assigned to any non-profit corporation, trust or other organization devoted to similar purposes and in accordance with Indiana law. Any such dedication or transfer of the

Amended and Restated Declaration of Covenants, Conditions and Restrictions Page 33  
Common Area shall not be in conflict with then-governing zoning ordinances or the designation of the Common Area as "open space".

IN WITNESS WHEREOF, the Declarant has caused this Amended Declaration of Covenants, Conditions and Restrictions for the Monon & Main to be executed as of the date written above.

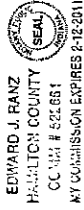
MONON & MAIN, LLC, an Indiana limited liability company

By: [Signature]  
John F. Swinchart, Managing Member  
"DECLARANT"

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared John F. Swinchart, Managing Member of Monon & Main, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Amended Declaration of Covenants, Conditions and Restriction for the Monon & Main on behalf of said company.

Witness my hand and Notarial Seal this 28 day of March, 2007.



[Signature]  
Edward J. Ranz, Notary Public

My Commission Expires: 2-12-2011  
My County of Residence: Hamilton

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I, affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Stephen A. Backer

This instrument was prepared by Stephen A. Backer, Esq., Backer & Backer, P.C., 8710 North Meridian Street, Indianapolis, Indiana 46260.

## EXHIBIT "A"

## LEGAL DESCRIPTION

PERIMETER DESCRIPTION OF WEST TRACT WHICH INCLUDES BLOCK #3, #4, #5, #6, #7, #8, #9, #10 AND #11

A PART OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 18 NORTH, RANGE 3 EAST DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 18 NORTH, RANGE 3 EAST (AS ESTABLISHED BY A SURVEY RECORDED AS INSTRUMENT #200600014480) THENCE SOUTH 89 DEGREES 50 MINUTES 08 SECONDS WEST (ASSUMED BEARING) 212.83 FEET ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER; THENCE NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST 35.00 FEET PARALLEL WITH THE EAST LINE OF THE WEST HALF OF SAID NORTHEAST QUARTER TO THE NORTH RIGHT OF WAY LINE OF MAIN STREET (131ST STREET) AS ESTABLISHED BY A DEDICATION AND DEED OF PUBLIC RIGHT OF WAY RECORDED AS INSTRUMENT #200500022613 AND THE POINT OF BEGINNING OF THE DESCRIPTION FOR THE TRACT OF REAL ESTATE HEREIN DESCRIBED (THE FOLLOWING 3 COURSES ARE ALONG SAID NORTH RIGHT OF WAY LINE); (1) THENCE NORTH 89 DEGREES 50 MINUTES 08 SECONDS EAST PARALLEL WITH THE SOUTH LINE OF SAID QUARTER SECTION 135.78 FEET TO A POINT ON A NONTANGENT CURVE HAVING A RADIUS OF 70.00 FEET, THE RADIUS POINT OF WHICH BEARS SOUTH 60 DEGREES 09 MINUTES 52 SECONDS EAST; (2) THENCE NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 146.61 FEET TO A POINT BEARING NORTH 59 DEGREES 50 MINUTES 08 SECONDS EAST FROM THE RADIUS POINT; (3) THENCE PARALLEL WITH THE SOUTH LINE OF SAID QUARTER SECTION NORTH 89 DEGREES 50 MINUTES 08 SECONDS EAST TO THE WEST RIGHT OF WAY LINE OF 3RD AVENUE NORTHWEST AS ESTABLISHED BY A DEDICATION AND DEED OF PUBLIC RIGHT OF WAY RECORDED AS INSTRUMENT #200500022613 (THE FOLLOWING 3 COURSES ARE ALONG SAID WEST RIGHT OF WAY LINE); (1) THENCE NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST 46.61 FEET; (2) THENCE NORTH 12 DEGREES 27 MINUTES 46 SECONDS WEST 180.72 FEET; (3) THENCE NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST 45.78 FEET TO A POINT; SAID POINT BEING NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST 304.00 FEET FROM THE SOUTH LINE OF SAID NORTHEAST QUARTER; THENCE SOUTH 89 DEGREES 50 MINUTES 08 SECONDS WEST PARALLEL WITH THE SOUTH HALF OF SAID NORTHEAST QUARTER 156.82 FEET TO THE WEST LINE OF THE EAST HALF OF SAID NORTHEAST QUARTER; THENCE NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST 3.00 FEET ALONG THE WEST LINE OF SAID EAST HALF; THENCE SOUTH 89 DEGREES 50 MINUTES 08 SECONDS WEST 212.83 FEET PARALLEL WITH THE SOUTH LINE OF SAID NORTHEAST QUARTER; THENCE SOUTH 00 DEGREES 47 MINUTES 02 SECONDS WEST PARALLEL WITH THE EAST LINE OF THE WEST HALF OF SAID NORTHEAST QUARTER 272.00 FEET TO THE POINT OF BEGINNING. CONTAINING 2.356 ACRES, MORE OR LESS.

PERIMETER DESCRIPTION OF EAST TRACT WHICH INCLUDES BLOCK #1, #2, #12, #13, #14, #15, #16, #17 AND #18

A PART OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 18 NORTH, RANGE 3 EAST DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 18 NORTH, RANGE 3 EAST (AS ESTABLISHED BY A SURVEY RECORDED AS INSTRUMENT 200600014480) THENCE NORTH 89 DEGREES 50 MINUTES 08 SECONDS EAST (ASSUMED BEARING) 452.50 FEET ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER; THENCE NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST 35.00' PARALLEL WITH THE WEST LINE OF THE EAST HALF OF SAID NORTHEAST QUARTER TO THE NORTH RIGHT OF WAY LINE OF MAIN STREET (131ST STREET) AS ESTABLISHED BY A DEDICATION AND DEED OF PUBLIC RIGHT OF WAY RECORDED AS INSTRUMENT 20050002613 AND THE POINT OF BEGINNING OF THE DESCRIPTION FOR THE TRACT OF REAL ESTATE HEREIN DESCRIBED; THENCE SOUTH 89 DEGREES 50 MINUTES 08 SECONDS WEST PARALLEL WITH THE SOUTH LINE OF SAID NORTHEAST QUARTER AND ALONG THE NORTH RIGHT OF WAY LINE TO THE EAST RIGHT OF WAY LINE OF 3RD AVENUE NORTHWEST AS ESTABLISHED BY A DEDICATION AND DEED OF PUBLIC RIGHT OF WAY RECORDED AS INSTRUMENT 20050002613 (THE FOLLOWING 3 COURSES ARE ALONG SAID EAST RIGHT OF WAY LINE); (1) THENCE NORTH 00 DEGREES 47 MINUTES 02 SECOND EAST 50.99 FEET; (2) THENCE NORTH 00 DEGREES 47 MINUTES 46 SECONDS WEST 180.72 FEET; (3) THENCE NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST 41.40' TO A POINT, SAID POINT BEING NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST 304.00' FROM THE SOUTH LINE OF SAID NORTHEAST QUARTER; THENCE NORTH 89 DEGREES 50 MINUTES 08 EAST 251.68 FEET PARALLEL WITH THE SOUTH LINE OF SAID NORTHEAST QUARTER TO A POINT, SAID POINT BEING NORTH 00 DEGREES 47 MINUTES 02 SECONDS EAST (PARALLEL WITH THE WEST LINE OF SAID EAST HALF) FROM THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 47 MINUTES 02 SECONDS WEST 269.00 FEET TO THE POINT OF BEGINNING, CONTAINING 1.422 ACRES, MORE OR LESS.

EXHIBIT "B"

Sponsor: Councilman Rattermann

ORDINANCE NO. Z-462-04

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF CARMEL, INDIANA ESTABLISHING THE MONON & MAIN PLANNED UNIT DEVELOPMENT DISTRICT

WHEREAS, Section 31.6.4 of the Carmel/Clay Zoning Ordinance Z-289 (the "Carmel/Clay Zoning Ordinance"), provides for the establishment of a Planned Unit Development District in accordance with the requirements of I.C. § 36-7-4-1500 et seq.;

WHEREAS, the Carmel/Clay Plan Commission (the "Commission") has given a favorable recommendation to the ordinance set forth herein (the "Monon & Main Ordinance") which establishes the Monon & Main Planned Unit Development District (the "District").

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Carmel, Indiana (the "Council"), that (i) pursuant to IC §36-7-4-1500 et seq., it adopts this Monon & Main Ordinance, as an amendment to the Carmel/Clay Zoning Ordinance and it shall be in full force and effect from and after its passage, (ii) all prior commitments shall be null and void and replaced and superseded by this Monon & Main Ordinance, and (iii) this Monon & Main Ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

Section 1 Applicability of Ordinance

- 1.1. The Official Zoning Map of the City of Carmel and Clay Township, a part of the Carmel/Clay Zoning Ordinance, is hereby changed to designate the land described in Exhibit "A" (the "Real Estate"), as a Planned Unit Development District to be known as Monon & Main.
- 1.2. Development in the District shall be governed entirely by (i) the provisions of this Monon & Main Ordinance and its exhibits, and (ii) those provisions of the Carmel/Clay Zoning Ordinance specifically referenced in this Monon & Main Ordinance. In the event of a conflict between this Monon & Main Ordinance and the Carmel/Clay Zoning Ordinance or the Sign Ordinance, the provisions of this Monon & Main Ordinance shall apply.
- 1.3. Any capitalized term not defined herein shall have the meaning as set forth in the Carmel/Clay Zoning Ordinance in effect on the date of the enactment of this Monon & Main Ordinance.

**Section 2. Permitted Uses and Development Requirements for Primary Area.** Main Street west of Range Line Road is a relatively intact example of street front retail. The emphasis is on encouraging new construction and renovations that conform to the desired character and prohibiting changes that do not conform to the existing character. The Primary Area will enhance the pedestrian commercial activity in the Old Town District. All new construction of and alterations and additions to buildings shall occur according to the following guidelines:

- 2.1. Use. The B3 Zoning Classification shall apply to the Primary Area and the permitted uses for the Primary Area are set forth in what is attached hereto and incorporated herein by reference as Exhibit "B" (hereafter "Permitted Primary Area Uses"). The Permitted Primary Area Uses shall be subject to the following:
- A. No drive-through or drive-up facilities are allowed for any use, including automotive, banking, or food sales.
  - B. Residential uses, including Attached Dwellings and Live/Work Dwellings, shall be permitted.

2.2. Building mass.

- A. New buildings and renovations shall follow the general massing of a "Main Street" commercial block, i.e., a rectangular building with a flat or slightly sloped roof, oriented perpendicular to the street.
- B. Building Height shall not exceed forty five (45) feet in height.
- C. The first Floor and all other Floors shall have a coordinated composition, which will usually be indicated by the alignment of upper floor windows and other features with openings and features of the first Floor.

2.3. Materials.

- A. The first Floor and upper Floors may be composed of different materials. The Façade of the upper Floors on any building that faces a public street may be constructed of wood siding, Hardi-Plank, brick, stucco, or other masonry units, and trimmed in stone, contrasting brick, wood, or pre-cast concrete. Any of the foregoing materials may be painted.
- B. The first Floor of a new or renovated building shall incorporate architectural elements consistent with the theme of promoting first Floor storefronts and said storefront architectural elements may be inserted into a masonry, wood, stone or concrete panel frame which is coordinated with the upper Floor. Storefronts shall be a lightweight material including, but not limited to, aluminum, glass, wood, tile, and panelized composites.
- C. The materials in the rear of the building shall be coordinated with the front Façade, although they may be different.

- D. On the front Façade, at least fifty percent (50%) of the total area of the first Floor (up to the line of the second Floor) shall be transparent vision glass.
- E. Front and side Façades of buildings located on corner lots shall be of the same materials and similarly detailed.
- F. Exterior walks, steps, ramps and paving shall be masonry or stone pavers, or poured or pre-cast concrete.

#### 2.4. Architecture.

- A. Building Renderings. Attached hereto and incorporated herein by reference as Exhibit "C" are building renderings and elevations for the buildings to be constructed in the Primary Area (hereafter "Building Renderings for Primary Area").
- B. Color Palette. Attached hereto and incorporated herein as Exhibit "K" is a color palette (hereafter "Color Palette") depicting the range of acceptable colors of the primary building materials for the buildings to be constructed in the Primary Area and Secondary Area. The final color schemes shall be approved by the Director pursuant to the Final Development Plan approval process.

#### 2.5. Windows, Doors.

- A. A separate entrance facing a public street shall be provided to the upper Floors of a building if the use differs from the one on the ground Floor.
- B. Each Floor shall have windows.

2.6. Roof. Roofs shall have a pitch of less than three to twelve (3:12) and shall not be a substantially visible part of the building.

2.7. Alterations and Additions. Existing buildings may be substantially modified to conform to these guidelines, except for designated historic structures.

#### 2.8. Details.

- A. Cornices and other details of existing buildings may not be removed, unless the building containing the Cornices and other details is completely removed in its entirety as part of the Development of the District.
- B. The Façade should have a flat front, with relief provided by minor bays, windows and window trim, storefronts, recessed doors, and features such as special brick coursing, Plasters and lintels.

- C. All new buildings shall have an articulated Cornice at the top of the Facade wall.

#### 2.9. Setbacks.

- A. Front Setback. The buildings shall be set back no more than eight (8) feet from the front property line to allow for entrances and/or patio areas.
- B. Side Setback. There are no minimum side setbacks; however, mid-block pedestrian access to rear parking shall be a minimum of six (6) feet wide.

#### 2.10. Entrances.

- A. The principal entrances to all retail areas shall face the public street.
- B. Additional entrances may face the side of the building.
- C. No rear entrances are allowed except for residential or office uses, emergency exits, employees, loading and trash removal.

- 2.11. Storefronts. Storefronts may be internally illuminated with spots or other incandescent lighting, so as to display prominently and attractively the business or its products. Exterior lighting may be affixed to the building.

#### 2.12. Permanent Signs, Awnings and Murals.

- A. Maximum sign area: First Floor occupants shall be allowed a total of one and a half (1-1/2) square feet of sign for each linear foot of street frontage, except that no single sign may exceed thirty-two (32) square feet in area.
- B. Freestanding permanent signs are prohibited.
- C. Building signs shall fit within the horizontal and vertical elements of the building and may not obscure details of the building.
- D. Signs may be perpendicular or flat-mounted, including separately mounted letters. Perpendicular signs may not extend more than five (5) feet from the face of the building.
- E. No sign shall extend above the Cornice line of the building.
- F. Allowable signs may also be painted in graphics in storefront or upper floor windows. Signs may also be imprinted on awnings. Signs may also be painted on the sides of buildings (see *Subsection 11(f)* below). All such signs will be included in the calculations for maximum sign area.

- G. Retractable or fixed fabric awnings are allowed, but these shall fit within the storefront glass area and may not obscure details of the building. Awnings may only be supported with building-mounted hardware.
  - H. Individual tenants should strive for a unique graphic image, rather than be required to conform to a single graphic style for the whole building.
  - L. Portable signs or displays of merchandise within the street right-of-way, sidewalk or the front setback of the building shall not be allowed.
  - I. Graphics painted on the sides of buildings that are essentially commercial in character or describe activities in the adjacent building shall be considered "signs". Graphics painted on the sides of buildings are otherwise permitted but shall be reviewed for conformance with this regulation.
- 2.13. Parking and Loading Requirements.
- A. Parking lots shall be located in the rear of the building only.
  - B. Any Townhome located in the Primary Area shall contain a minimum of a two (2) car garage. Any Live/Work Dwelling located in a Primary Area shall contain a minimum of a two (2) car garage. Additional parking for the Live/Work Dwellings shall be provided for by inclusion of twenty four (24) on-street parking spaces, as is depicted on the Development Plan.
  - C. On-street parking may be used to fulfill parking requirements.
  - D. Parking requirements may be reduced if businesses with substantially different peak hour requirements agree to share parking. A petition shall be filed with the application indicating the terms of agreement of parties to a shared parking arrangement.
  - E. While existing curb cuts may be maintained, no new curb cuts are allowed on Main Street, and no parking lots or loading areas may front on Main Street.
  - F. Screened loading and trash areas shall be provided for all businesses at the rear of the building.

**Section 3 Permitted Uses and Development Requirements for Secondary Area.** This Secondary Area will balance the pedestrian commercial activity in the Old Town District with multi-family residences. All new construction, alterations and additions to buildings located in the Secondary Area shall occur according to the following guidelines:

- 3.1. Use. Permitted Uses in the Secondary Area include:
  - A. Multi-family residential uses, including Attached Dwellings



- B. Accessory Uses, including Home Occupation
- 3.2. Maximum Building Height: The maximum Building Height shall be three (3) Floors.
- 3.3. Minimum Set Backs: The Minimum Set Back from the north, west and east perimeter boundary lines of the Secondary Area shall be five (5) feet. There shall be no Minimum Set Back from the south boundary line of the Secondary Area.
- 3.4. Architecture
- A. Building rendering and elevations: Attached hereto and incorporated herein by reference as "Exhibit 'D'" are a rendering and elevations, depicting the building materials and architectural elements of the buildings which shall be constructed in the Secondary Area (hereafter "Building Renderings for Secondary Area").
- B. Community mail box structures: Attached hereto and incorporated herein by reference as Exhibit "E" is a rendering of the community mail box structures for the Secondary Area (hereafter "Secondary Area Community Mail Box Structures").
- 3.5. Parking: Notwithstanding the provisions of Section 2.12, each Townhome shall contain a minimum of a two (2) car garage. There shall be additional parking spaces provided on the site, as depicted on the Development Plan.

Section 4 Accessory Buildings. All Accessory Structures and Accessory Uses shall be permitted except that any detached accessory building shown in any Development Plan shall have on all sides the same architectural features or shall be architecturally compatible with the principal building(s) with which it is associated.

Section 5 Communications Equipment. Cell towers shall not be permitted in the District. Home satellite dishes shall be permitted in the District.

Section 6 Platting. The platting of the Real Estate into smaller tracts shall be permitted, so long as the proposed plat complies with the requirements set forth herein, and the creation of a new property line within the Real Estate shall not impose or establish new development standards beyond those specified herein for the entirety of the Real Estate. However, the Development of any parcel shall conform to all Preliminary Development Plans and Final Development Plans which are approved or amended per the terms of Section 13 below, and all other applicable requirements contained in this Monon and Main Planned Unit Development District Ordinance.

Section 7 Landscaping. Landscaping shall be required in accordance with the Landscape Plan for the Primary Area and Secondary Area. All areas of the site not to be covered by buildings, hardscape materials or other improvements as shown on the Development Plan shall be planted with trees, shrubs, hedges, ground covers, and/or grasses, unless such area consists of

attractive vegetation to be retained, as depicted on the Landscape Plan for the Primary Area and Secondary Area, which is attached hereto and incorporated herein by reference as Exhibit "P".

7.1 Planting Standards. Landscaping shall be integrated with other functional and ornamental site design elements, where appropriate, such as hardscape materials, paths, sidewalks, or any water features; and planted at a ratio of six (6) shrubs per unit and (1) one tree per unit. Deciduous trees planted to satisfy the landscaping requirements of this Ordinance shall have at least a two and one-half (2-1/2) inch caliper and seven (7) feet in height at the time of planting unless otherwise specified herein or otherwise indicated on the Landscape Plan. Evergreen trees shall be a minimum of six (6) feet in height at the time of planting. Shrubs shall be two (2) feet in height at the time of planting. All trees, shrubs and ground covers shall be planted according to accepted horticultural standards. Landscaping materials shall be appropriate to local growing and climatic conditions. Plant suitability, maintenance and compatibility with site construction features are critical factors that should be considered. Plantings should be designed with repetition, structured patterns, and complementary textures and colors, and should reinforce the overall character of the area.

7.2 Maintenance. It shall be the responsibility of the owners and their agents to insure proper maintenance of project landscaping approved in accordance with this Monon & Main Ordinance. This is to include, but is not limited to, irrigation and mulching of planting areas, replacing dead, diseased, or overgrown plantings with identical varieties or a suitable substitute, and keeping the area free of refuse, debris, rank vegetation and weeds.

7.3 Tree Conservation. Because the Developer intends to preserve the established trees located along the North and West perimeters of the Real Estate, those areas located along the North and West perimeters of the Real Estate are designated as "Tree Conservation Areas" pursuant to the Landscape Plan. The Developer shall implement reasonable efforts in an attempt to preserve those established trees, including efforts such as fencing, trimming and/or other acceptable horticultural practices and measures designed to preserve said trees. While the Developer shall implement reasonable efforts to preserve said trees, said trees may be removed by the Developer pursuant to the Developer's reasonable discretion and Developer may also remove said trees under any of the following circumstances:

1. As is necessary to clear underbrush and dead trees;
2. As is necessary for the installation of access easements, rights-of-way, streets, paths, sidewalks, and utilities and drainage improvements and infrastructure; and
3. As necessary for public health and safety.

7.4 Landscape Plans. Landscaping for the District shall be in accordance to: (1) the Landscape Plan for the Primary Area and Secondary Area, which is attached hereto and incorporated herein by reference as Exhibit "F".

Section 8      Lighting

8.1. Front Lighting for Primary Area and Secondary Area Buildings. Each building shall have one (1) light fixture mounted to the front of the unit above or near the side of the primary residential entryway. The light shall be as depicted on Exhibit "G-1."

8.2. Rear lighting for Primary Area and Secondary Area Buildings: Each Townhome shall have one (1) exterior grade light fixture mounted above the overhead garage door. The lights shall be as depicted on Exhibit "G-2". Each Townhome shall have one (1) exterior grade light fixture mounted on the rear of the unit designed to provide light to the terrace area.

8.3. Site Lighting: The site shall include small pole mounted lighting in locations as depicted on what is attached hereto and incorporated herein by reference as Exhibit "G-3". The light shall be as depicted on Exhibit "G-4".

Section 9      Project Marketing Signs. Marketing Signs for the sale of Townhome units shall be allowed in designated areas as depicted on the Site Plan Marketing Sign Locations, which is attached hereto and incorporated herein by reference as Exhibit "H-1". While Marketing Signs may be moved in conjunction with project phasing, no more than three (3) locations may be utilized at any given time. Marketing Signs shall be substantially similar to that as depicted on what is attached hereto and incorporated herein by reference as Exhibit "H-2".

Section 10    Right of Way Dedication and Roadway Improvement Statement

Section 10.1    Main Street: Within the project area as depicted on the Conceptual Plan in Exhibit "T", thirty-five feet (35') half-right-of-way will be dedicated to the City; since buildings are located on the right-of-way line, the Developer shall install front improvements within the right-of-way subject to this Monon. & Main PUD Ordinance; such improvements will include sidewalks as depicted on the Conceptual Plan in Exhibit "T".

Section 10.2    3<sup>rd</sup> Avenue Northwest: Within the project area as depicted on the Conceptual Plan in Exhibit "T", the right-of-way will include the planned on-street parking spaces and street improvements, which will include on-street parking and curb.

Section 10.3    1<sup>st</sup> Street Northwest: Within the project area as depicted on the Conceptual Plan in Exhibit "T", improvements will occur within the existing right-of-way and will include on-street parking, curb and driveways as shown.

Section 11      Mechanical Equipment. Any mechanical equipment visible from an adjoining public street shall be screened with suitable landscaping or fencing in general architectural compatibility with the building(s) with which it is associated.

Section 12 Homeowners Association and Declaration of Covenants. The Developer shall prepare and record a Declaration of Covenants which shall also contain various provisions regarding the Real Estate as determined by the Developer, including, without limitation, provisions for mandatory assessments and maintenance of common areas. The Declaration of Covenants will also provide for the establishment of a Homeowners Association in which membership shall be mandatory.

Section 13 Approval Process:

13.1 Approval of the Development Plan.

- A. Exhibit CP, which is attached hereto and incorporated herein by reference, shall serve as the Conceptual Plan (the "CP"). The CP was assigned Docket No. 04070036 ADLS/DP and the CP has been reviewed and approved by the Plan Commission. The CP constitutes the Development Plan and primary plat for the Real Estate. The architecture, design, lighting and landscaping for the Real Estate and the improvements thereon, considered in connection with the Monon & Main Ordinance, do not require any further (i) ADLS' approval or (ii) Development Plan/primary plat approval other than Final Development Plan approval per the procedure set forth below in this Section 13. If there is a Substantial Alteration in the approved ADLS and Development Plan/primary plat, review and approval of the amended plans shall be made by the Commission, or a Committee thereof, pursuant to the Commission's rules of procedure. Minor Alterations may be approved by the Director.
- B. The Director shall have the sole and exclusive authority to approve without conditions, approve with conditions, or disapprove the Final Development Plans/Secondary Plats (collectively, the "FDP") for the District; provided, however, that the Director shall not unreasonably withhold or delay the Director's approval of the FDP that is in substantial conformance with the CP and is in conformance with the Development Requirements and Development Standards of this Monon & Main Ordinance. If the Director disapproves any FDP, the Director shall set forth in writing the basis for the disapproval and schedule the request for approval of the FDP for a hearing before the full Plan Commission.
- C. An amendment to the FDP, which is not determined by the Director to be a Substantial Alteration or Material Alteration from the approved CP, may be reviewed and approved solely by the Director. However, in the event the Director determines that there has been a Substantial Alteration or Material Alteration between the approved CP and any proposed FDP, the Director may, at the Director's discretion, refer the amended FDP to

the Commission, or a Committee thereof, for review and approval by the Commission and/or a Committee thereof.

- D. The FDP shall be a specific plan for the development of all or a portion of the Real Estate that is submitted for approval to the Director, which shall include reasonable detail regarding the facility and structures to be constructed, as well as drainage, erosion control, utilities, and building information.

#### Section 14 Rules of Construction:

14.1 General Rules of Construction. The following general rules of construction and definitions shall apply to the regulations of this Ordinance:

- A. The singular number includes the plural and the plural the singular, unless the context clearly indicates the contrary.
- B. Words used in the present tense include the past and future tenses, and the future the present.
- C. The word "shall" is a mandatory requirement. The word "may" is a permissive requirement. *The word "should" is a preferred requirement.*

#### Section 15 Definitions

1. Accessory Structure. A structure subordinates to a building or use located on the Real Estate which is not used for permanent human occupancy.
2. Accessory Use. A use subordinate to the main use, located on the Real Estate or in the same building as the main use, and incidental to the main use.
3. Attached Dwelling. A Dwelling, including but not limited to, a Townhouse, duplex, triplex, or quadplex dwellings, developed side by side for sale as condominiums or townhomes pursuant to a horizontal property regime, or as fee simple dwellings where land is sold with the dwelling.
4. Building Height. The vertical distance from the highest grade relative to the Street frontage to the cornice line or to the roof edge line. The vertical distance from the cornice line or the roof edge to the parapet of roof ridge (including gables), and the height of towers, steeples, cupolas and other architectural roof embellishments are not included in calculating building height.
5. City. The City of Carmel, Indiana.
6. Commission. The Carmel/Clay Plan Commission.

7. Corries. The top part of an entablature, usually molded and projecting.
8. Council. The City Council of the City of Carmel, Indiana.
9. County. Hamilton County, Indiana.
10. Declaration of Covenants. A Declaration of Covenants, Conditions and Restrictions for the Real Estate which shall be recorded in the office of the Recorder of Hamilton County, Indiana, and which may, from time to time, be amended.
11. Plan, Conceptual. A general plan for the development of the Real Estate that is submitted for approval showing proposed facilities, buildings, and structures. This plan generally shows landscape areas, parking areas, site access, drainage features, and building locations. The Conceptual Plan is attached hereto and incorporated herein by reference as Exhibit "T".
12. Development Plan, Final. A specific plan for the development of the Real Estate that is submitted for approval showing proposed facilities, buildings, and structures. This plan review includes general landscaping, parking, drainage, erosion control, signage, lighting and building information for the site.
13. Development Requirements. Development standards and any requirements specified in this Monon & Main Ordinance which must be satisfied in connection with the approval of a Final Development Plan.
14. Developer. A person engaged in development of one or more phases of the Development.
15. Development. The Real Estate constituting the District as it may be developed and improved in accordance with this Ordinance and the Development Requirements contained herein.
16. Development Plan. Also referred to as the Conceptual Plan, which is the plan for the development of the District approved by the Commission, a copy of which is attached hereto as Exhibit "T", as the same may be modified from time to time pursuant to Section 13. Also referred to as Preliminary Development Plan.
17. Director. Director, or Administrator, of the Department of Community Services for the City of Carmel, Indiana. "Director" and "Administrator" shall include his/her authorized representatives.
18. District. Approximately 4.45 acres of land described in Exhibit "A" attached hereto and incorporated herein.

19. Dwelling. A room or combination of rooms which may be designed for year-round habitation, containing a bathroom and kitchen facilities, which may be designed for and/or used as a permanent residence by at least one person. See also "Attached Dwelling" and "Live/Work Dwelling."
20. Facade. A building face or wall.
21. Floor. See definition of Story.
22. Material Alteration: Any change to an approved plan of any type that involves the substitution of one material, species, element, etc. for another.
23. Minor Alteration: Any change to an approved plan of any type that involves the revision of less than ten percent (10%) of the plan's total area or approved materials.
24. Landscape Plan. The general design for landscaping in the District depicted on the Development Plan or on a plan or drawing submitted to the Department.
25. Landscaping. Trees, shrubs, hedges, flowers ground covers grasses, other plant materials and associated structures and improvements.
26. Live/Work Dwelling. A type of Attached Dwelling in which the uses permitted in the Primary Area are permitted in the Live/Work Dwelling pursuant to Section 2 of this Ordinance. The first floor, only, of any Live/Work Dwelling may be utilized for the non-residential uses pursuant to Section 2 of this Ordinance.
27. Marketing Sign. A temporary sign which advertises the sale, rental or development of the premises upon which it is located.
28. Mixed Use. The combination of both commercial and residential uses within a single building of two or more stories.
29. Modification. A change to the Development Requirements approved pursuant to Section 13.
30. Open Space. A land surface within the Development intended to enhance the use and enjoyment of residents of the Development, where designated, the community at large. Grass and landscaped areas, hardscape materials, paths and sidewalks may be included in the required area calculations.
31. Owners' Association. An Indiana nonprofit corporation established for the promotion of the health, safety and welfare of the residents of Monon & Main, and to manage, maintain, and repair the common areas within the Real Estate and any improvements located thereon.
32. Plaster. A column partially embedded in a wall.

33. Primary Area. That part of the District more particularly delineated in green on the Primary Area and Secondary Area Map attached hereto and incorporated herein as Exhibit "P". The line delineating the Primary Area boundaries may be adjusted by ten (10) feet to the north or south.
34. Real Estate. The Real Estate shall mean and refer to all of the Real Estate described in Exhibit "A".
35. Right-of-Way: An area of land permanently dedicated to provide light, air and access.
36. Secondary Area. That part of the District more particularly delineated in yellow and located north of the Primary Area as more particularly delineated on the Primary Area and Secondary Area Map attached hereto and incorporated herein as Exhibit "P". The line delineating the Secondary Area boundaries may be adjusted by ten (10) feet to the north or south.
37. Set Back: The least measured distance between a building or structure, excluding, however, porches, patios, and the perimeter boundary of the Real Estate. For purposes of determining Set Back, the perimeter boundary of the Real Estate (i) shall always mean and refer to the outside perimeter boundary line of the Real Estate and (ii) shall not be changed or reduced by reason of the platting or subdivision of the Real Estate into smaller parcels.
38. Sign: Any type of sign as further defined and regulated by this Ordinance and the Sign Ordinance for Carmel-Clay Township, Ordinance Z-196, as amended.
39. Story and/or Stories. A habitable level and/or levels within a building no more than 16 feet in height from floor to ceiling. A basement, although wholly or partially habitable, is not a story unless more than fifty percent (50%) of the basement elevation is above grade at the build-to line.
40. Street. The paved areas located in the District designed for vehicular traffic and labeled on the Development Plan as a street with a corresponding name.
41. Substantial Alteration: Any change to an approved plan of any type that involves the revision of ten percent (10%) or more of the plan's total area, total square footage of all buildings, or approved materials.
42. Townhome: A Dwelling of two (2) or more Dwellings arranged side by side, separated by common walls between living areas, each having more than one story.
43. Townhome Building: A structure containing Townhomes.
44. Trim: Soffits, architraves, wood reveals, and casement around doors and windows.



**Section 16 Violations**

16.1 All violations of this Monon & Main Ordinance shall be subject to Section 34.0 of the Carmel/Clay Zoning Ordinance.

D. C. ... PASSED by the Common Council of the City of Carmel, Indiana this 20<sup>th</sup> day of DECEMBER, 2004, by a vote of 7 ayes and 0 nays.

**COMMON COUNCIL FOR THE CITY OF CARMEL**

Aimee Brennan  
 Presiding Officer

Ronald E. Carter  
 President Pro Tempore

Frederick J. Gieser  
 Joseph C. Griffiths

Kevin Kirby

R. D. ...  
 Brian D. Mayo

Mark Rattermann

Richard L. Sharp

ATTEST,

Diana L. Cordray  
 Diana L. Cordray, I.A.M.C. Clerk Treasurer

Presented by me to the Mayor of the City of Carmel, Indiana the 21<sup>st</sup> day of DECEMBER, 2004, at 9:10 o'clock A.M.

Diana L. Cordray  
 Diana L. Cordray, I.A.M.C. Clerk Treasurer

Approved by me, Mayor of the City of Carmel, Indiana, this 21<sup>st</sup> day of December, 2004, at 9:10 o'clock A.M.

James Brinaard  
James Brinaard, Mayor

ATTEST:  
Diana L. Cordray  
Diana L. Cordray, IAMC, Clerk Treasurer

This Instrument prepared by: David E. Leazenby, Buckingham Companies  
333 N. Pennsylvania St., 10<sup>th</sup> Floor  
Indianapolis, IN 46204

This Instrument reviewed by: Charles D. Frankenberger & James E. Shinaver  
NELSON & FRANKENBERGER  
3021 East 98<sup>th</sup> Street, Suite 220  
Indianapolis, IN 46280

EV\matt\len\Council Draft 1 Ordinance 111504.doc

**EXHIBIT "A"****Legal Description****DESCRIPTION OF REAL ESTATE OF FREDERICK P. HINSHAW  
AND NANCY B. HINSHAW****TRACT 1**

A part of the East Half of the Northeast Quarter of Section 25, Township 18 North, Range 3 East, described as follows: Beginning 69 rods 4 feet 6 inches West of the Southeast corner of said Quarter section, run thence North 18 rods 7 feet, thence West 10 rods, thence South 18 rods 7 feet, thence East 10 rods to the place of beginning, the same being located in the Town of Carmel, Hamilton County, Indiana, containing 1.15 acres, more or less.

Subject to the right of way for Main Street (131<sup>st</sup> Street).

Subject to all legal easements and rights of way.

**TRACT 2**

Part of the East Half of the Northeast Quarter of Section Twenty-Five (25), Township Eighteen (18) North, Range Three (3) East, described as follows: Begin 51 rods and 14 feet West of the Southeast corner of said Quarter Section and run North 18 rods and 7 feet, thence West 15 rods and 10 feet, thence South 18 rods and 7 feet, thence East 15 rods and 10 feet to the place of beginning, in Hamilton County, Indiana, containing 1.80 acres, more or less.

Subject to the right of way for Main Street (131<sup>st</sup> Street)

Subject to all legal easements and rights of way.

**TRACT 3**

A part of the Southwest Quarter of the Northeast Quarter of Section 25, Township 18 North, Range 3 East in Hamilton County, Indiana, more particularly described as follows: Begin at the Southeast corner of the Southwest Quarter of the Northeast Quarter of said Section 25, and run thence North on the East line of said Quarter Quarter Section 307 feet; thence West parallel with the South line of said Quarter Section 212.83 feet; thence South parallel with said East line, 307 feet to the South line of said Quarter Section; thence East on said South line 212.83 feet to the place of beginning, containing 1.50 acres, more or less.

Subject to the right of way for Main Street (131<sup>st</sup> Street)

Subject to all legal easements and rights of way.

**EXHIBIT "B"**

The following is a Schedule of Permitted Uses pertaining to the use and development of the Primary Area:

**RESIDENTIAL**

Multiple Family Dwelling  
Home Occupation  
Boarding or Lodging House  
Nursing/Retirement/Convalescent Facility Live/Work Unit

**OFFICE**

Clinical or Medical Health Center Research Laboratory/Facility  
General Offices  
Professional Offices

**INSTITUTIONAL**

Church/Temple/Place of Worship  
Hospital  
Library  
Post Office  
Public Service Facility

**EDUCATIONAL**

School, Trade or Business  
College or University  
Day Nursery/Day Care Kindergarten/Preschool

**RETAIL & SERVICE**

General Retail Sales  
General Service  
Automobile Service Station  
Automobile/Truck Repair (indoor)  
Dry Cleaning Establishment (w/ on-site plant)  
Dry Cleaning Establishment (w/out on-site plant)  
Equipment Sales/Repair (indoor)  
Financial Institution  
ATM  
Funeral Home/Mortuary/Crematory  
Recreational Vehicle/Mobile Home Sales  
Roadside Sales Stand  
Self-Service Laundry  
Veterinary Hospital w/out commercial kennel  
Wholesale Sales

**CULTURAL/ENTERTAINMENT**

Art Gallery  
Art & Music Center  
Carnivals, Fairs, Circuses, etc.  
Hotel  
Hotel (full service)  
Indoor Theater  
Catering Establishment  
Restaurant, w/out drive-thru food sales  
Meeting or Party Hall  
Tavern/Night Club

**INDUSTRIAL**

Storage and/or Sale of Petroleum Products  
Printing/Publishing Establishment

**AGRICULTURAL USES**

Plant Nursery  
General Agriculture

**RECREATIONAL**

Commercial Recreational Facility, Indoor  
Commercial Recreational Facility, Outdoor  
Country Club  
Golf Course  
Private Club or Lodge  
Private Recreational Facility  
Park, Public  
Shooting Gallery

**MISCELLANEOUS**

Artificial Lake or Pond (non-platted)  
Cemetery  
Commercial Parking Lot

**TRANSPORTATION & COMMUNICATION**

Collocated Antenna  
Radio and/or Television Studio  
Radio/Television Transmission Antenna  
Radio/Television Transmission Tower  
Tower  
Motor Bus or Railroad Passenger Station

Exhibit C

1 of 5

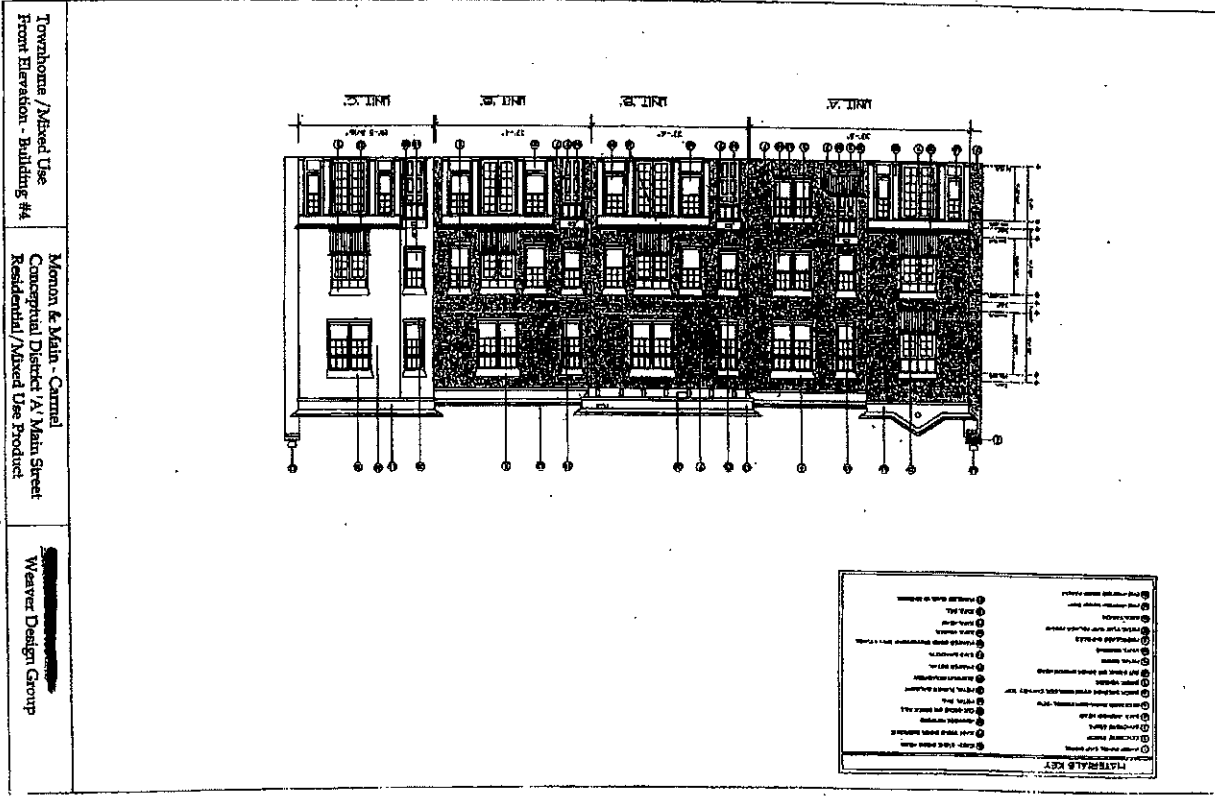


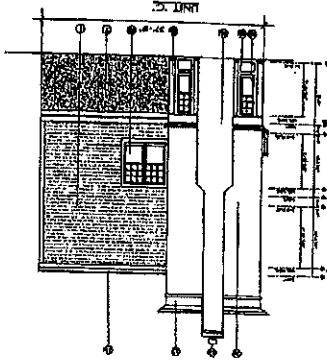
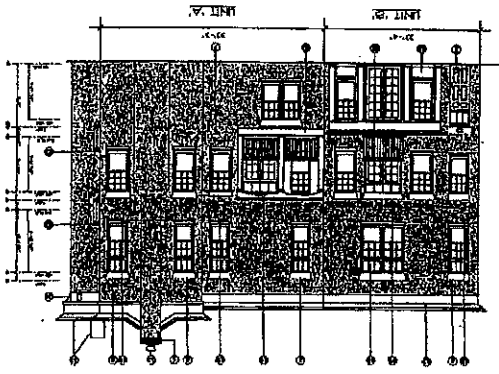
Exhibit C

2 of 3

Townhome / Mixed Use  
Side Elevations - Building #4

Monon & Main - Carmel  
Conceptual District / A Main Street  
Residential / Mixed Use Product

Weaver Design Group



**PATRIAL & KEY**

- 1. 1st Floor
- 2. 2nd Floor
- 3. 3rd Floor
- 4. 4th Floor
- 5. 5th Floor
- 6. 6th Floor
- 7. 7th Floor
- 8. 8th Floor
- 9. 9th Floor
- 10. 10th Floor
- 11. 11th Floor
- 12. 12th Floor
- 13. 13th Floor
- 14. 14th Floor
- 15. 15th Floor
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- 24. 24th Floor
- 25. 25th Floor
- 26. 26th Floor
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- 28. 28th Floor
- 29. 29th Floor
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- 31. 31st Floor
- 32. 32nd Floor
- 33. 33rd Floor
- 34. 34th Floor
- 35. 35th Floor
- 36. 36th Floor
- 37. 37th Floor
- 38. 38th Floor
- 39. 39th Floor
- 40. 40th Floor
- 41. 41st Floor
- 42. 42nd Floor
- 43. 43rd Floor
- 44. 44th Floor
- 45. 45th Floor
- 46. 46th Floor
- 47. 47th Floor
- 48. 48th Floor
- 49. 49th Floor
- 50. 50th Floor





Exhibit D

1 of 3

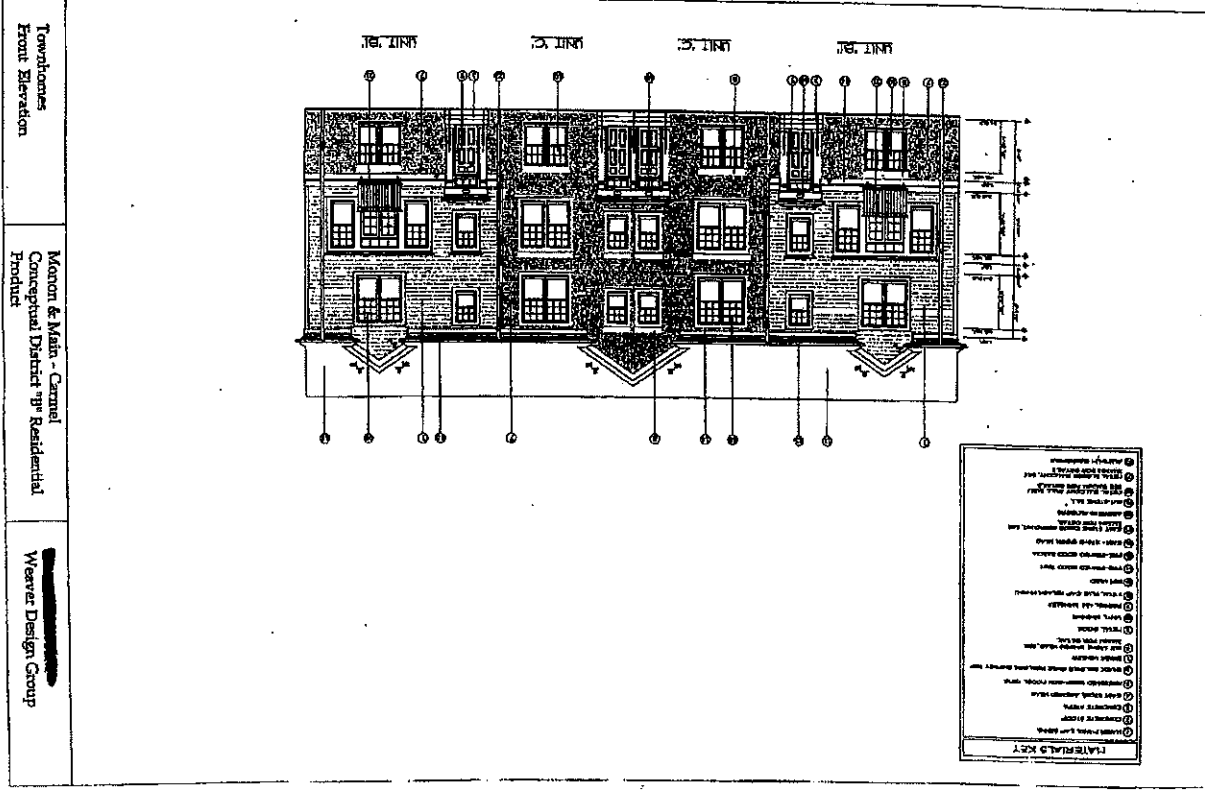
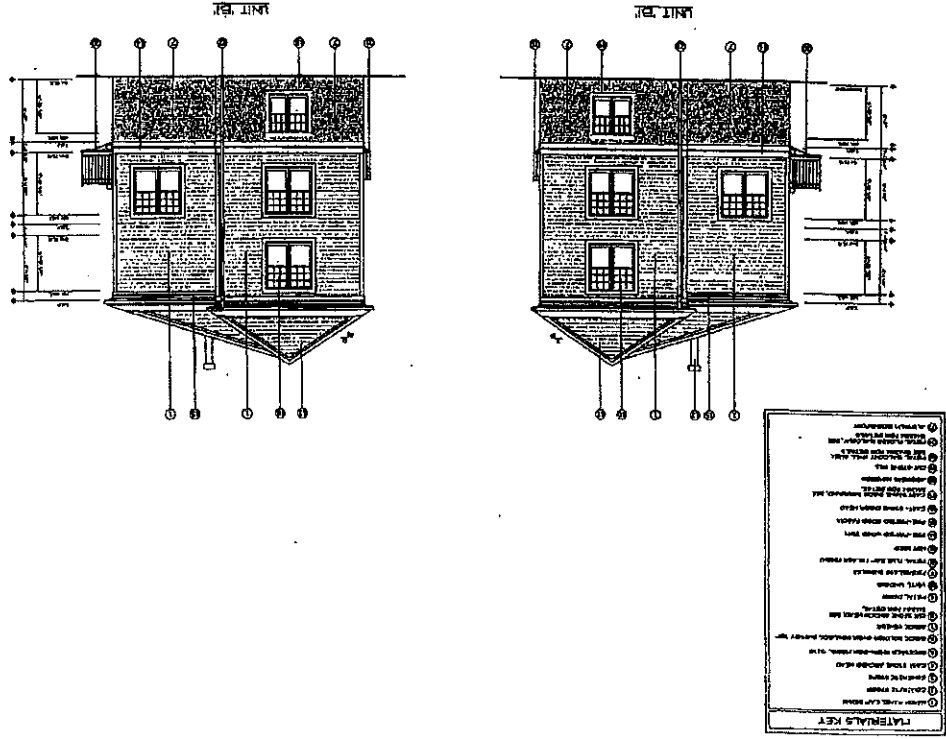


Exhibit D

2 of 3

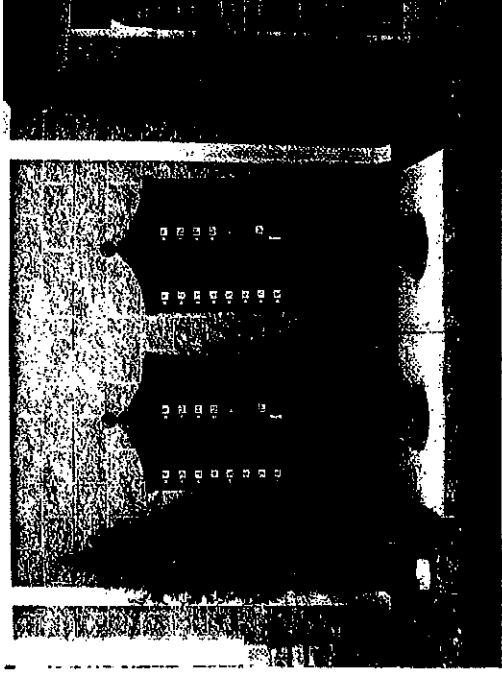
Townhouses Side Elevations	Mason & Main - Carmel Conceptual District "P" Residential Product	Weaver Design Group
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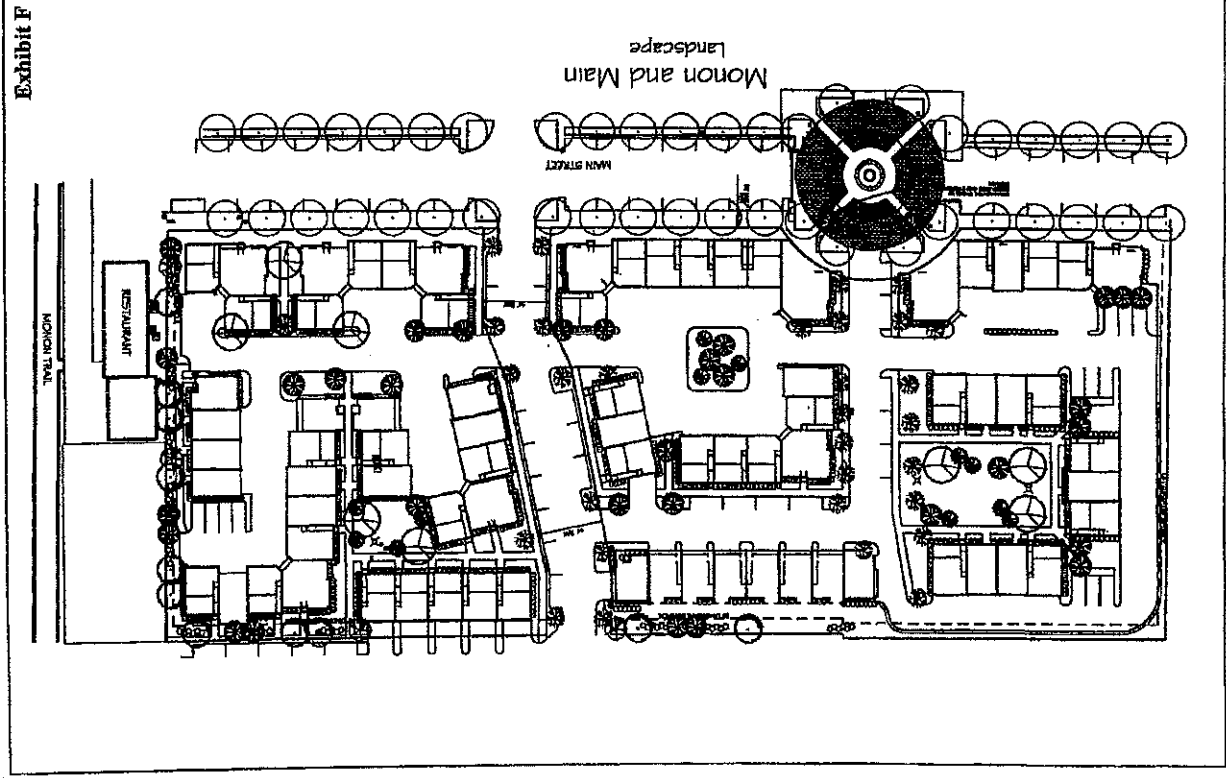




**EXHIBIT E**

This photo is a comparative example and representative of the typical mailboxes that shall be permitted at Monon & Main subject to the requirements of this Monon & Main PUD Ordinance.





**EXHIBIT G-1**

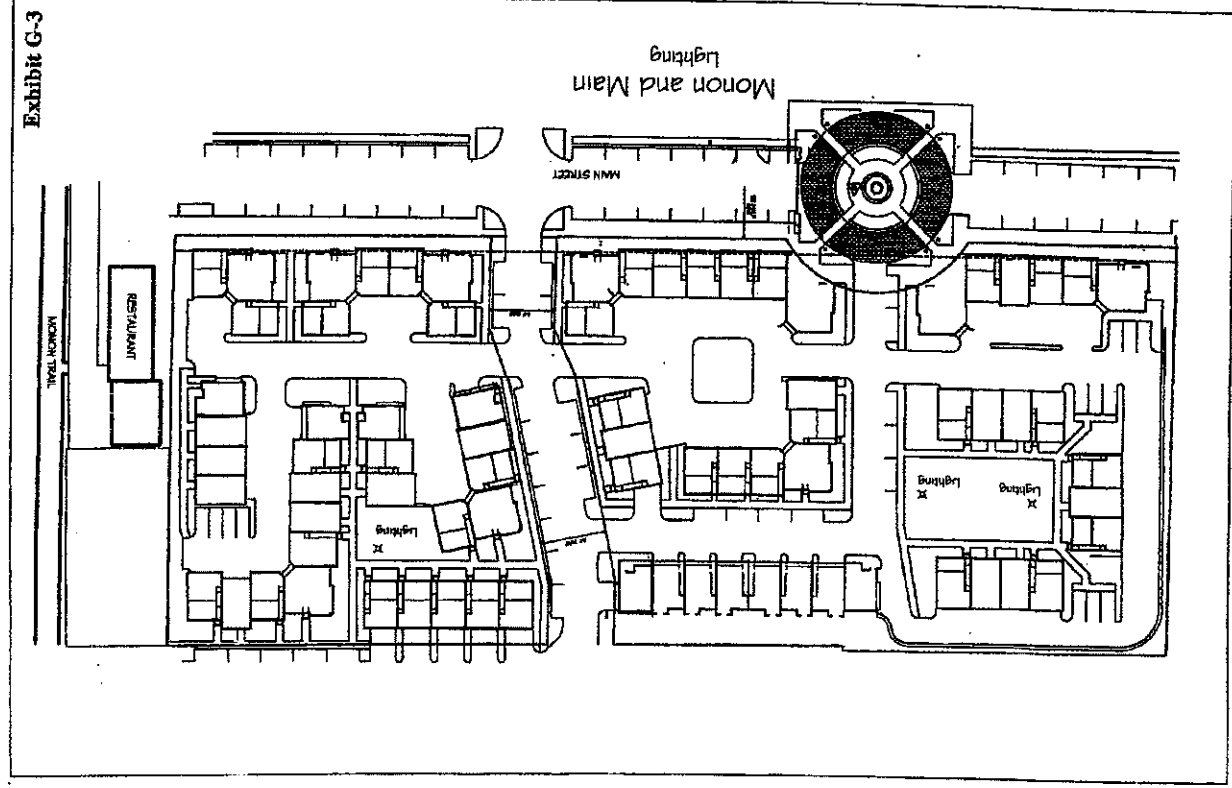
This photo is representative of the typical wall-mounted, front of unit light that shall be permitted at Monon & Main subject to the requirements of this Monon & Main PUD Ordinance.



**EXHIBIT G-2**

This photo is representative of the typical wall-mounted, rear of unit light that shall be permitted at Monon & Main subject to the requirements of this Monon & Main PUD Ordinance.







**EXHIBIT G-4**

This photo is representative of the courtyard light that shall be permitted at Monon & Main subject to the requirements of this Monon & Main PUD Ordinance.

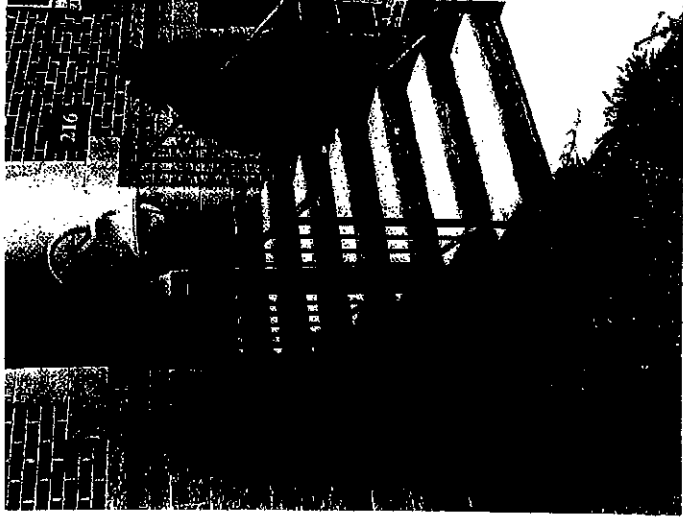
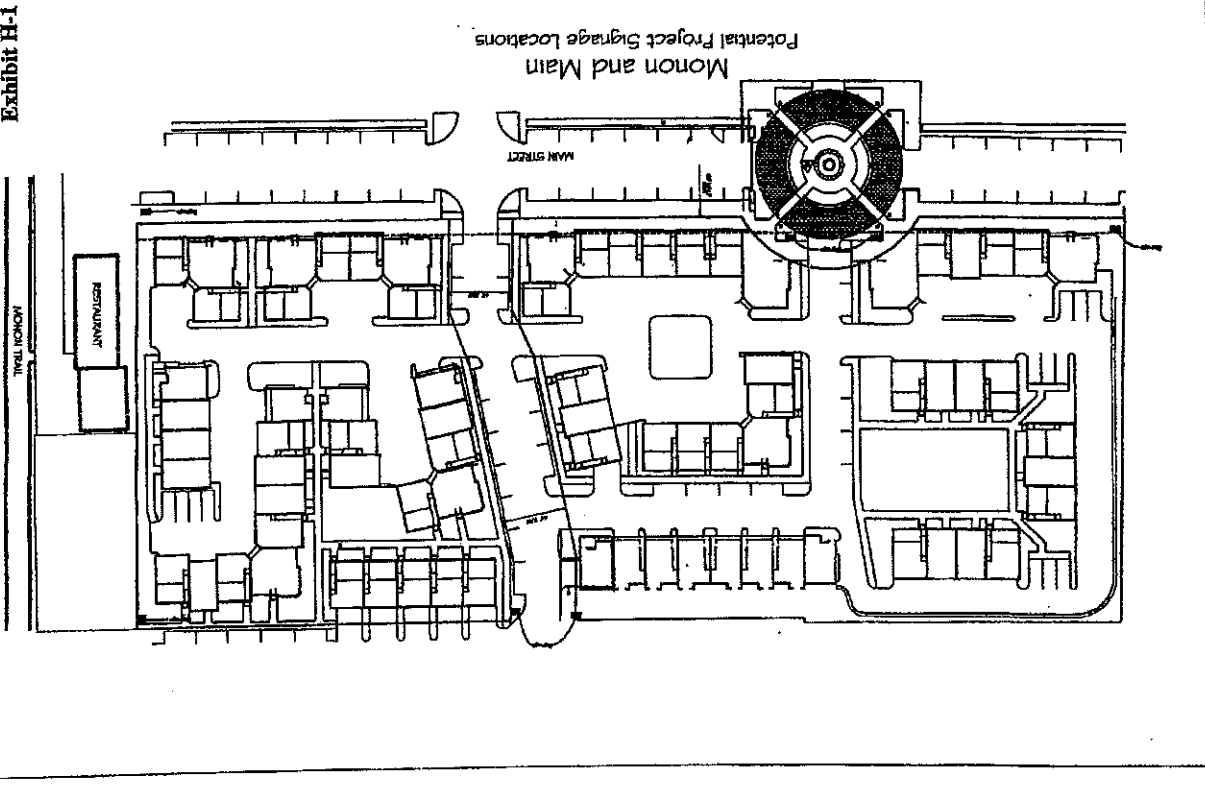


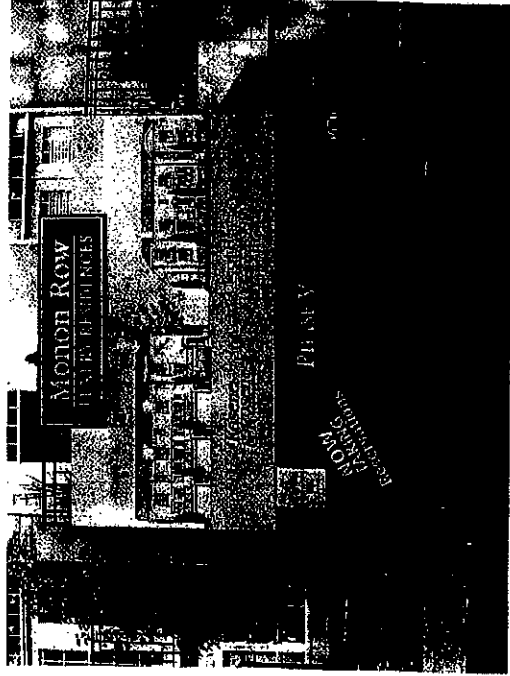
Exhibit H-1

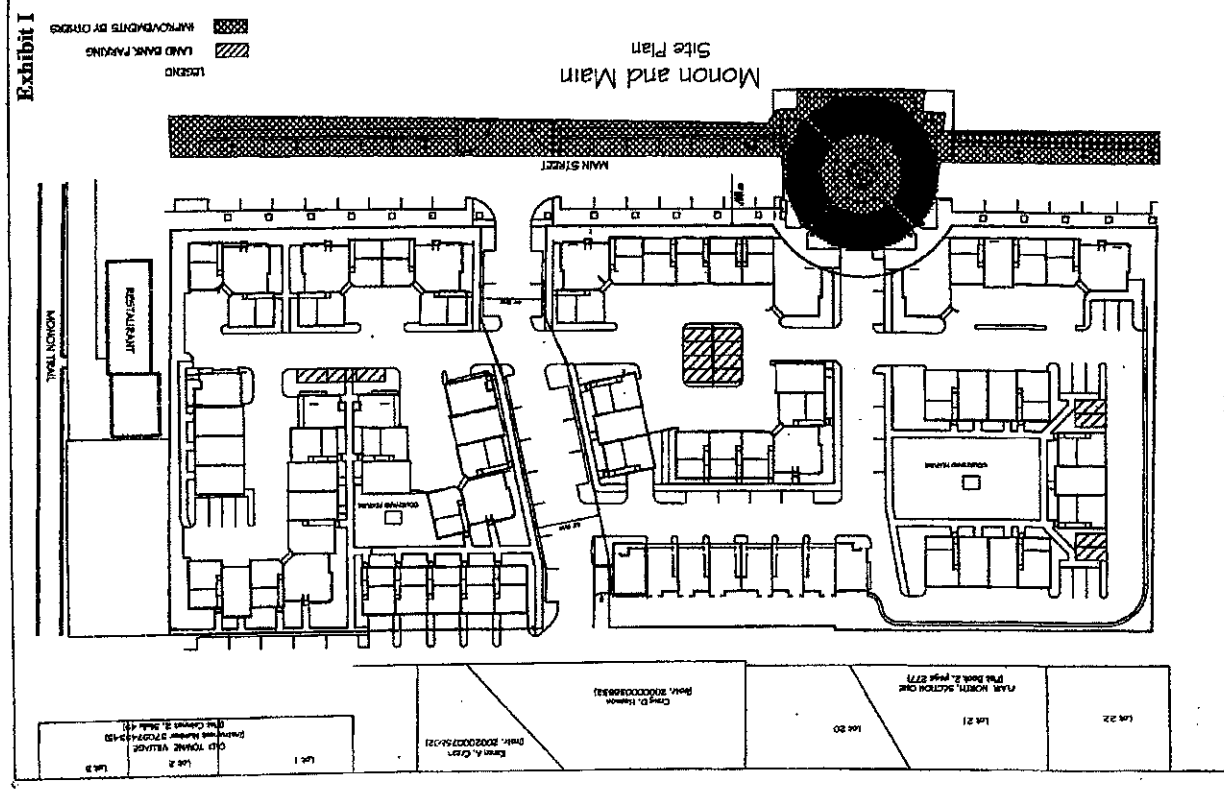




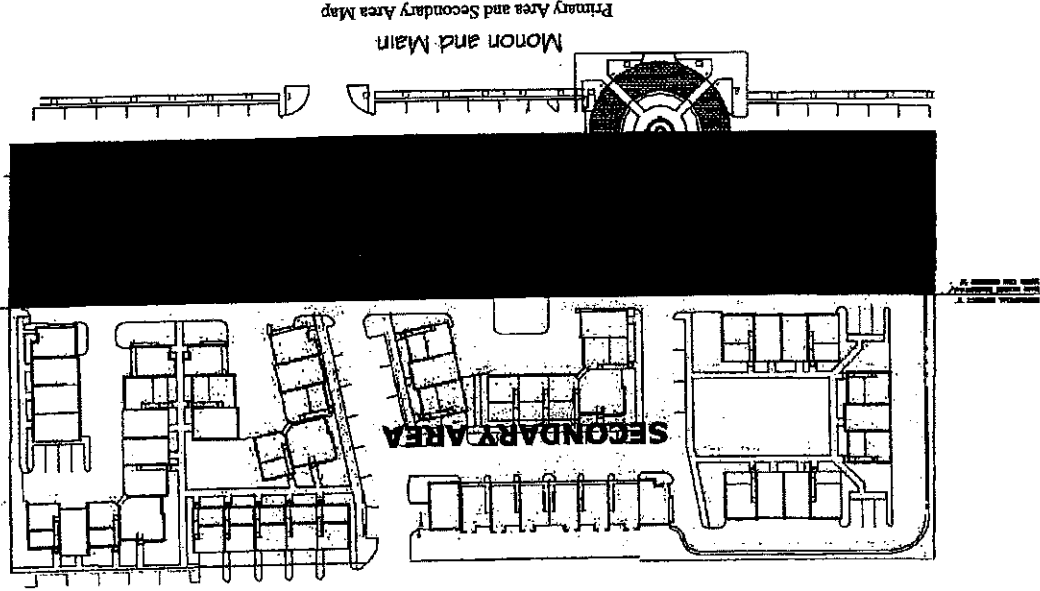
**EXHIBIT H-2**

These photos are comparative examples and representative of the typical marketing signs that shall be permitted at Monon & Main subject to the requirements of this Monon & Main PUD Ordinance.



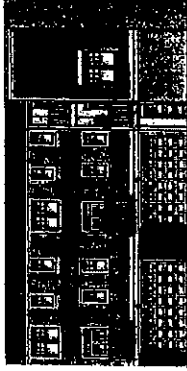
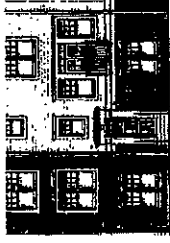
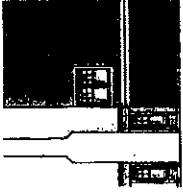
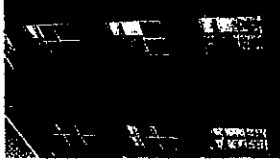
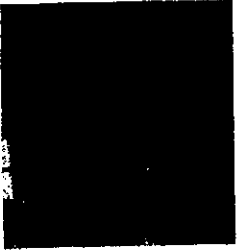


**Exhibit J**



**EXHIBIT K**

These graphics are representative and depict the range of colors and pattern types that shall be permitted at Monon & Main subject to the requirements of this Monon & Main PUD Ordinance. Final color schemes shall be approved by the Director pursuant to the Final Development Plan approval process.



## EXHIBIT "C"

**BY-LAWS OF  
MONON & MAIN  
HOMEOWNERS' ASSOCIATION, INC.****ARTICLE I  
General**

**Section 1.** The name of the corporation is Monon & Main Homeowners' Association, Inc. (hereinafter referred to as the "Association").

**Section 2.** The principal office of the Association shall be located at 8383 Craig Street, Suite 100, Indianapolis IN 46250, until and unless changed in accordance with law by the Board of Directors.

**Section 3.** The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**ARTICLE II  
Definitions**

**Section 1.** "Amended Declaration" means the Amended Declaration of Covenants, Conditions and Restrictions for Monon & Main which was recorded in the office of the Recorder of Hamilton County, Indiana, on \_\_\_\_\_ as Instrument Number which superseded the Declaration of Covenants, Conditions and Restrictions for Monon & Main that was recorded in the office of the Recorder of Hamilton County, Indiana on December 21, 2006, as Instrument Number 2006075534.

**Section 2.** "Declarant" shall mean Monon & Main, LLC, an Indiana limited liability company and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Developer under the Amended Declaration, including, without limitation, any mortgagee acquiring title to any portion of the Property (as such term is defined in the Amended Declaration) pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Developer.

**Section 3.** "Association" shall mean and refer to this corporation, which is also referred to as the "Association" in the Amended Declaration and the "Corporation" in the Articles of Incorporation of this the Association.

**Section 4.** "Applicable Date" shall mean and refer to the date the Class B membership terminates as specified in Section 5.01 (b) of the Articles of Incorporation of this Association.

**Section 5.** All of the terms as defined and used in the Amended Declaration shall have the same meanings in these By-Laws and reference is specifically made to Article II of the Amended Declaration containing definitions of terms.

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**ARTICLE III**  
**Membership and Voting Rights**

**Section 1. Membership, Transfer, Voting Rights.** Reference is hereby made to Article II of the Amended Declaration and Article V of the Articles of Incorporation which sets forth terms, provisions and conditions governing and relating to membership in the Association, transfer of membership and voting rights of classes of Members, all of which terms, provisions and conditions are incorporated herein by reference.

**Section 2. Quorum.** Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total number of votes entitled to be cast (Class A and Class B votes combined) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 3. Proxies.** Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting of the Members of the Association. Cumulative voting shall not be permitted.

**Section 4. Majority Required.** A majority of the votes of Members present (in person or by proxy) at a meeting at which a quorum is present shall be sufficient for the transaction of all business of the Association except on matters where a greater vote is required by the Amended Declaration, the Articles of Incorporation, the By-Laws or by statute.

**Section 5. Meetings.** Meetings of the Members of the Association shall be in accordance with the following provisions:

A. Place. Meetings of the Members shall be held at such place in Hamilton County, Indiana, as may be designated by the Board of Directors of the Association.

B. Annual Meetings. The first annual meeting of the Members shall be held within six (6) months after the close of the first fiscal year of the Association, the exact date to be decided by the Board of Directors. At such first annual meeting of the Members, the Members may designate a regular day or date for successive annual meetings, which date shall be not more than six (6) months after the close of each fiscal year of the Association. If the Members fail to designate such a regular day or date, the Board of Directors may continue to designate the day or date of the next annual meeting until such a designation is

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made by the Members. If any designated day or date falls upon a legal holiday, the actual date of the meeting shall be the next business day succeeding such designated day or date.

**C. Special Meetings.** Special meetings of the Members shall be called by the President of the Association, by resolution of the Board of Directors of the Association or upon a written petition signed by Members of the Association who are entitled to vote sixty percent (60%) of all votes of the membership. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

**D. Notice of Meetings.** Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class (Class A and Class B votes combined) of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**E. Order of Business.** The order of business at all meetings of the members shall, to the extent applicable, be as follows:

1. Roll call.
2. Proof of notice of meeting or waiver of notice.
3. Reading of minutes of preceding meeting.
4. Reports of officers.
5. Reports of committees.
6. Election of director.
7. Unfinished business.
8. New business.

**F. Voting by Co-Owners and Entities.** The vote appurtenant to any Lot in which more than one person owns an interest may be exercised by any of such persons present at any meeting, unless the Association is advised (by objection or protest at the meeting or written notice prior thereto) by any other person owning an interest in such Lot that the Owners of the Lot are unable to agree upon the manner in which the vote appurtenant to such Lot shall be cast at such meeting or on any particular question to come before such meeting. In such event, the vote appurtenant to the Lot shall not be counted at the meeting or on the particular question noted, as the case may be. In the event any Lot is owned by a corporation, then the vote appurtenant to such Lot shall be cast by a person designated in a certified resolution signed by the president or any vice president of such corporation and attested by

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the secretary or an assistant secretary of such corporation and filed with the Secretary of the Association prior to the meeting. The vote appurtenant to any Lot owned by a trust or partnership may be exercised by any trustee or partner thereof, as the case may be, and unless any objection or protest by any other such trustee or partner is noted at such meeting or in writing prior thereto, the Chairman of such meeting shall have no duty to inquire as to the authority of the person casting such vote or votes.

G. Suspension of Voting Rights. No Class A Member shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due to the Association shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors.

#### **ARTICLE IV Nomination and Election of Directors**

**Section 1. Nomination.** The Initial Board of Directors, named in Section 6.02 of the Articles of Incorporation of this Association, shall serve as the Board of Directors of the Corporation until the Applicable Date and, in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, every such vacancy shall be filled by an individual appointed by Declarant. Any such individual appointed by Declarant shall thereafter be deemed a member of the Initial Board. After the Applicable Date, nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting of the members of the Association. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors at each annual meeting of the Members and shall serve until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made only from among Members of the Association, or persons deemed to be Members eligible to serve as directors thereof or otherwise eligible to serve on the Board of Directors in accordance with the Amended Declaration and the Articles of Incorporation of the Association.

**Section 2. Election.** After the Applicable Date, election to the Board of Directors shall be by secret written ballot at the annual meeting of the Members of the Association. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Amended Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

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**ARTICLE V**  
**Board of Directors**

**Section 1. Number and Qualification.** Until the Applicable Date, the affairs of the Association shall be governed by the Initial Board of Directors and shall consist of not fewer than three (3) members nor more than five (5) members. After the Applicable Date, the affairs of the Association shall be governed by a Board of Directors composed of five (5) persons.

**Section 2. Additional Qualifications.** Where an Owner consists of more than one person, or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner or partner, officer or trustee, as the case may be, of the partnership, corporation, trust or other entity, Owner shall be eligible to serve on the Board of Directors of the Association, except that no Lot may be represented on the Board of Directors by more than one person at a time.

**Section 3. Initial Board of Directors.** The Initial Board of Directors named in the Articles of Incorporation (the "Initial Board") shall maintain, manage and administer the affairs and the property of the Association until the Applicable Date.

**Section 4. Term of Office Generally.** At such first annual meeting of the Members of the Association, the Members required by the Amended Declaration, other provisions of these By-Laws, the Articles of Incorporation, or statute.

**Section 5. Duties.** The Board of Directors shall have the following duties:

- A. To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by members holding twenty-five percent (25%) of the total votes of the membership entitled to vote;
- B. To supervise all officers, agents and employees of the Association;
- C. To establish the annual assessment period and fix the amount of the annual assessment against each member for each Lot owned, all in accordance with the terms of the Amended Declaration and these By-Laws;
- D. To fix the amount of any special assessment against each member for each Lot owned, all in accordance with the terms of the Amended Declaration and these By-Laws;
- E. To send written notice of each assessment to each Owner in accordance with the Amended Declaration;

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F. To foreclose the Association's lien for assessments against any property for which assessments are not paid within thirty (30) days after the due date thereof or to bring an action at law against the Owner or other person personally obligated to pay the same;

G. To issue, or to cause an appropriate officer to issue, upon demand by any person or entity, a certificate setting forth whether or not any assessment has been paid;

H. To procure and maintain the insurance coverages required by the Amended Declaration and such other insurance coverages as the Board of Directors, in its sole discretion, deems necessary or advisable;

I. To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate, and at least as required by the Amended Declaration; and,

J. To cause all of the Common Areas and all easements hereunder, but not limited to Lake Easements, Landscape Easements, Drainage Easements, and Utility Easements, if any, to be maintained to the extent of the Association's responsibilities therefore as provided in the Amended Declaration.

**Section 6. Vacancies.** Until the Applicable Date any vacancy in the Board of Directors shall be filled by the Declarant. Thereafter, any vacancy in the Board of Directors shall be filled by vote of the majority of remaining Directors, even though they may constitute less than a quorum. Each person so elected shall be a director for the unexpired term of his predecessor, or until his successor is elected.

**Section 7. Compensation.** No Director shall receive compensation for any service he may render to the Association as such director. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties, and any Director may be paid and compensated for services to the Association in a capacity other than as a director.

**Section 8. Removal of Directors.** After the Applicable Date, any Director may be removed with or without cause by a majority vote of the members of the Association. Prior to the Applicable Date, any Director may be removed, with or without cause by the Declarant.

**Section 9. Regular Meetings .** Regular meetings of the Board of Directors shall be held at such regular intervals, without notice, at such place and hour as may be determined from time to time by resolution of the Board of Directors. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

**Section 10. Special Meetings.** Special meetings of the Board of Directors may be called by the President on three (3) days notice to each Director, given personally, by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of

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the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two-thirds (2/3) of the directors.

**Section 11. Waiver of Notice.** Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent of the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be deemed a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the board, no notice shall be required and any business may be transacted at such meeting.

**Section 12. Quorum.** At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which quorum is present shall be the acts of the Board of Directors except as otherwise provided in or required by the Amended Declaration, Articles of Incorporation, these By-Laws or statute. If, at any meeting of the Board of Directors, there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**Section 13. Action Taken Without a Meeting.** The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### ARTICLE VI Officers and their Duties

**Section 1. Enumeration of Offices.** The officers of the Association shall be a President and a Secretary, both of whom shall be members of the Board of Directors, and such other officers, such as a Vice-President or a Secretary, as the Board of Directors may from time to time by resolution create.

**Section 2. Election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members of the Association.

**Section 3. Term.** The officers of the Association shall be elected annually by the Board of Directors and each shall hold office for one (1) year or until his successor is elected and qualified unless he shall sooner resign, be removed or otherwise disqualified to serve.

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

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

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

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

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

A. **President.** The President shall preside at all meetings of the Board of Directors. He shall see that orders and resolutions of the Board are carried out. He shall have the power to appoint committees from among the members of the Association from time to time as he may in his discretion deem appropriate to assist in conducting the affairs of the Association. The President shall have and discharge all the general powers and duties usually vested in the office of the president or chief executive officer of an association or a stock corporation organized under the laws of the State of Indiana.

B. **Vice-President.** The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by him by the Board of Directors or as are delegated to him by the President.

C. **Secretary.** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the members; keep the corporate seal of the Association (if any is adopted) and affix it on all papers requiring said seal; serve notice of meetings of the Board of Directors and of the members; keep appropriate current records showing the members of the Association, together with their addresses, and shall perform such other duties as required by the Board of Directors.

#### ARTICLE VII Committees

The Board of Directors shall appoint the committees provided for in the Amended Declaration and the Nominating Committee referred to in Article IV of these By-Laws. In addition, the Board of Directors or the President may appoint various other committees to carry out the

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purposes of the Association. Except as otherwise expressly provided in Article IV of these By-Laws with respect to the Nominating Committee, members of such committees may, but need not, be members of the Board of Directors.

#### **ARTICLE VIII Books of Account and Fiscal Year**

**Section 1. Books of Account.** The Association shall keep detailed books of account showing all expenditures and receipt of administration which shall specify the maintenance and repair expenses of the Common Areas and Dwelling Units as provided in the Amended Declaration, and all easements including, but not limited to the Lake Easement, Landscape Easement, Drainage Easement and Utility Easement Areas and any other expenses incurred by or on behalf of the Association and the members. Such accounts, books, records, financial statements, and other papers of the Association shall be open for inspection by the members and other persons having an interest in any Lot, including any Owner, any lender and any holder, insurer or guarantor of a first mortgage on any Lot, during reasonable business hours or under other reasonable circumstances. The cost of such audits shall be a Common Expense. Any holder, insurer or guarantor of a first mortgage on a Lot shall be entitled upon written request to receive a financial statement for the immediately preceding fiscal year free of charge to the requesting party and within a reasonable time of such request. Current copies of the Amended Declaration, the Articles of Incorporation, and the By-Laws of the Association, and other rules concerning the Property, shall be available for inspection by any Owner and lender, and to holders, insurers or guarantors of any first mortgage at the principal office of the Association during normal business hours or under other reasonable circumstances, where copies of the same and of audits may be purchased at reasonable costs.

**Section 2. Fiscal Year.** The fiscal year of the Association shall commence January 1, and end the following December 31 each year; provided, however, that the fiscal year for purposes of assessments may be different than the general fiscal year of the Association.

**Section 3. Fidelity Bonds.** The Board of Directors may provide blanket fidelity bonds and may require the Managing Agent (if any), such other Directors and officers of the Association, as the Board deems necessary, to provide blanket fidelity bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board. Such fidelity bonds will name the Association as an obligee. Such bonds will not be less than the estimated maximum amount of funds in the custody of the Association at any given time during the term of each bond. Any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Such bonds shall also contain waivers of all defenses based on the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The expense of any such bonds will be a Common Expense. The bonds will provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association.

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**ARTICLE IX**  
**Contracts, Loans & Checks**

**Section 1. Authorization.** The Board of Directors may authorize any officer or officers or agent or agents of the Association to enter into any contract or execute any instrument on its behalf. Such authorization may be general or confined to specific instances. Except as provided in these By-Laws, no officer, agent or employee shall have any power to bind the Association or to render it liable for any purpose or amount unless so authorized by the Board of Directors.

**Section 2. Checks.** All checks, drafts, or other orders for payment of money by the Association shall be signed by the President, Secretary, Treasurer or such other person as the Board of Directors may from time to time designate by resolution.

**ARTICLE X**  
**Miscellaneous**

**Section 1.** These By-Laws may be amended, at a regular or special meeting of the Members of the Association, by a vote of a majority of a quorum of members present in person or by proxy. In addition, the Board of Directors of the Association shall have the right and power, without the consent of the Members, to make, alter, amend or repeal these By-Laws.

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

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02/06/2013 09:10:29A 4 PGS  
Mary L. Clark  
HAMILTON County Recorder IN  
Recorded as Presented

19.00  
①

Cross-References: 2006-075534; 2007-017716

**Amendment to the Amended and Restated Declaration of Covenants,  
Conditions and Restrictions for The Monon & Main**

This Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Monon & Main was made as of the date set forth below.

**W I T N E S S E T H:**

WHEREAS, The Monon & Main planned unit development located in Hamilton County, Indiana was established by a certain "Declaration of Covenants Conditions and Restrictions," which was recorded on December 21, 2006 as Instrument No. 2006-075534 in the Office of the Recorder of Hamilton County and was amended and restated upon the filing of a certain "Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Monon & Main" (hereafter "Declaration"), which was recorded on March 29, 2007 as Instrument No. 2007-017716 in the Office of the Recorder of Hamilton County, Indiana;

WHEREAS, BIG Monon & Main, LLC, an Indiana Limited Liability Company (hereafter "Declarant") is the Owner and Developer of unsold Lots within The Monon & Main residential community;

WHEREAS; the Declarant is the successor in interest to Monon & Main, LLC and subsequently acquired and began developing unsold and undeveloped lots within The Monon & Main development;

WHEREAS; The Monon & Main development is comprised of units used for both residential and business purposes;

WHEREAS, the Declarant desires to amend the Declaration to add language delineating the residential and business purposes of the development and include additional insurance requirements for Owners to limit any business exposures; and

WHEREAS, pursuant to Article XII, Section 12.4(b)(i) of the Declaration, the Declarant reserves the right and power acting alone, and without the consent or approval of any of the Owners, the Association, Board of Directors, any mortgagees or any other person, to amend the Declaration to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus, or organizations which perform (or may in the future perform) functions similar to those performed by such agencies or entities.

NOW, THEREFORE, the Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Monon & Main is hereby amended as follows:

1. Article I, Section 1.7 is hereby deleted in its entirety and amended to read as follows:

Section 1.7. "Dwelling Unit" shall mean and refer to any improvement to the Property intended for any type of independent ownership for use and occupancy as a residence by a single household and for any permitted uses as defined in the Zoning Ordinance, and shall, unless otherwise specified, mean townhomes.

2. There shall be a new Section 1.15 added to Article I as follows:

Section 1.15. "Business Space" shall mean and refer to those portions of each Lot used exclusively for business purposes either by the Owner of the Lot or the tenant of such Owner.

3. Article, I, Section 1.11 is hereby deleted in its entirety and amended to read as follows:

Section 1.12. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot, including a contract seller but excluding those holding such interest in a Lot solely by virtue of a contract to purchase a Lot or as security for the performance of an obligation. If more than one (1) person or entity is the record owner of a Lot, the term Owner as used herein shall mean and refer to such owners collectively, so that there shall be only one (1) Owner of each Lot.

The term Owner as used herein shall mean and refer to such a record owner who both resides in his or her Dwelling Unit and operates a business within the Business Space on his or her Lot. The term Owner as used herein shall also mean and refer to such a record owner who resides in his or her Dwelling Units but leases the Business Space on his or her Lot to a tenant.

4. Article VI, Section 4.3 is hereby deleted in its entirety and amended to read as follows:

Section 4.2. Delegation of Use. Any Member may delegate its right of enjoyment to the Common Area and facilities to the members of its immediate household, its tenants or contract purchasers who reside on the Member's Lot, or its tenants who operate a business within the Member's Business Space in the Lot. However, by accepting a deed to such Lot, every Owner covenants that should the Owner desire to rent its Lot, whether the Dwelling Unit or Business Space, the rental agreement shall contain specific conditions which require the tenant to abide by all Association covenants, rules and regulations, and any Owner desiring to rent a Lot further covenants that the tenant will be provided a complete set of all Association covenants, rules and regulations.

5. Article XI, Section 11.2(d) is hereby deleted in its entirety and amended to read as follows:

(d) to obtain and maintain without interruption a comprehensive coverage of public liability and hazard insurance covering the Dwelling Units as set forth below, Common Area,

private streets and access easements (AE) existing on the Property or shown on any Plat, and other easements of which the Association is a beneficiary, if available at a reasonable cost. Such insurance policy shall contain a severability of interest clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage shall include all coverage in kinds and amounts commonly obtained by the Board of Directors. Further, the public liability insurance must provide coverage of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence. The Association shall be responsible for insuring the exterior of the Dwelling Units up to the drywall in each Dwelling Unit. The Owner of a Dwelling Unit shall be responsible to insure the interior of the Dwelling Unit from and including the drywall, including but not limited to, the Owner's contents and personal property within the Dwelling Unit. Moreover, each and every Owner, and tenant of a Business Space, if applicable, shall name the Association as an additional insured to each of their insurance policies. Each and every Owner, and tenant of a Business Space, must have insurance with minimum coverage of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence.

6. Article XII, Section 12.8 is hereby deleted in its entirety and amended to read as follows:

Section 12.8. Casualty Insurance. Notwithstanding anything to the contrary contained in this Amended Declaration, each and every Owner shall maintain a casualty insurance policy affording fire and extended coverage insurance insuring the portion of the Dwelling Unit as defined in Section 11.2(d) herein, in an amount equal to the full replacement value of the improvements which, in whole or in part, comprise that portion of the Dwelling Unit. In addition, each and every Owner and tenant of a Business Space shall name the Association as an additional insured on their insurance policies. Each and every Owner and tenant of a Business Space shall have insurance with a minimum coverage of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence. Each Owner of each Lot and/or Dwelling Unit, (regardless of whether or not its ownership is encumbered or is to be encumbered by a mortgage, deed of trust or similar indenture) will furnish to the Association upon request, at or prior to the closing of its acquisition of that Lot or Dwelling Unit, a certificate of insurance, in form and content acceptable to the Association, evidencing the insurance coverage described herein. Each such Owner shall, prior to the expiration of the term of any such insurance policy and prior to the execution of any lease agreement for the Lot or the Business Space of a Lot, procure and deliver to the Association upon request, a renewal or replacement policy in form and content acceptable to the Association. If any such Owner fails to provide evidence of such coverage satisfactorily to the Association, the Association will have the right, but no obligation, to procure such coverage at the expense of the applicable Owner, and the cost of procuring such insurance will be assessed to that Owner as a Special Assessment and shall be immediately due and payable upon demand.

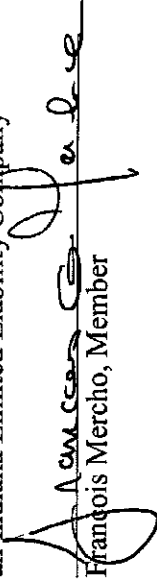
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Certification. The undersigned person hereby represents and certifies that all requirements for and conditions precedent to the Amendment of the Declaration have been fulfilled and satisfied.

[The remainder of this page left blank intentionally.]

IN WITNESS WHEREOF, I, the undersigned, do hereby execute this Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Monon & Main and certify the truth of the facts herein stated this 28<sup>th</sup> day of January, 2013.  
DECLARANT:

BIG MONON & MAIN, LLC  
an Indiana Limited Liability Company

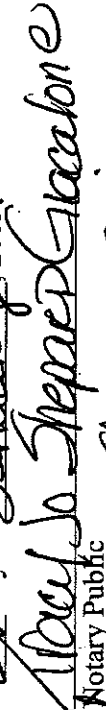

  
Francois Mercho, Member

STATE OF INDIANA )

COUNTY OF Hamilton )

Before me a Notary Public in and for said County and State, personally appeared Francois Mercho, a member of BIG Monon & Main, LLC who acknowledged execution of the foregoing Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Monon & Main, for and on behalf of said limited liability company, and who, having been duly sworn, states that the representations contained herein are true.



Notary Seal this 28<sup>th</sup> day of January 2013.  
  
Notary Public  
  
Signature

Residence County:  
Hamilton

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law."  
P. Thomas Murray, Jr.,

This instrument prepared by, and should be returned to, P. Thomas Murray, Jr.,  
Eads Murray & Pugh, P.C., Attorneys at Law, 9515 E. 59<sup>th</sup> St., Suite B, Indianapolis, IN 46216