

ALL

13900
(65)

200600065361
Filed for Record in
HAMILTON COUNTY, INDIANA
JENNIFER J HAYDEN
10-31-2006 At 10:27 am.
DEC CDV RES : 139.00

**DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
BRITTON FALLS BY DEL WEBB**

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR BRITTON FALLS BY DEL WEBB**

The Town of Fishers, Indiana

TABLE OF CONTENTS

ARTICLE I - DEFINITIONS 1

1.1 Activity Card(s) 2

1.2 Age-Qualified Occupant 2

1.3 Articles of Incorporation or Articles 2

1.4 Association 2

1.5 Benefited Assessments 2

1.6 Base Assessment 2

1.7 Board of Directors or Board 2

1.8 Builder 2

1.9 By-Laws 2

1.10 Charges 2

1.11 Common Area 2

1.12 Common Expenses 2

1.13 Community-Wide Standard 3

1.14 Declarant 3

1.15 Declarant Control Period 3

1.16 Design Guidelines 3

1.17 Development Period 3

1.18 Dwelling Unit 3

1.19 Governing Documents 4

1.20 Lot 4

1.21 Home Owner 4

1.22 Master Plan 4

1.23 Member 4

1.24 Modifications Committee or MC 4

1.25 Mortgage 4

1.26 Owner 4

1.27 Person 4

1.28 Plat 4

1.29 Public Records 4

1.30 PUD Ordinance 4

1.31 Regulated Work 4

1.32 Residence 4

1.33 Resident or Qualified Resident 5

1.34 Section Exhibit 5

1.35 Section 2A 5

1.36 Section 2B 5

1.37 Section 2C 5

1.38 Special Assessment 5

1.39 Special Declarant Rights 5

1.40 Special Services 5

1.41 Supplemental Declaration or Supplement 5

1.42 Town 5

1.43 Voting Member 5

1.44 Zoning Commitments	6
ARTICLE II - <u>PROPERTY RIGHTS</u>	6
2.1 Right to Use and Enjoy Common Area	6
2.2 Activity Cards	7
2.3 No Partition	7
2.4 Condemnation	7
2.5 Age Restriction	8
2.6 Easements, Leases, Licenses and Concessions and Rights	8
ARTICLE III - <u>MEMBERSHIP AND VOTING RIGHTS</u>	8
3.1 Function of Association	9
3.2 Membership	9
3.3 Voting	9
3.4 Attendance at Board Meetings by Owner	10
ARTICLE IV - <u>RIGHTS AND OBLIGATIONS OF THE ASSOCIATION/VARIOUS DISCLOSURES AND DISCLAIMERS</u>	10
4.1 Common Area	10
4.2 Personal Property and Real Property for Common Use	10
4.3 Rulemaking and Enforcement	10
4.4 Implied Rights; Board Authority	12
4.5 Governmental, Educational, and Religious Interests	12
4.6 Indemnification	12
4.7 Dedication of Common Area	13
4.8 Security	13
4.9 Assumption of Risk	13
4.10 Change of Use of Common Area	14
4.11 View Impairment	14
4.12 Relationship with Tax-Exempt Organizations	15
4.13 Recycling Programs	15
4.14 Wildlife Control	15
4.15 Zoning Commitments	15
4.16 Trails and Sidewalks within Public Streets	15
4.17 Legal Drains	15
4.18 Storm Water Management Ordinance	16
ARTICLE V - <u>MAINTENANCE</u>	16
5.1 Common Areas	16
5.2 Additional Obligations	16
5.3 Owner's Responsibility	17
5.4 Special Services / Bulk Service Agreement	18
5.5 Standard of Performance	18
5.6 Alterations, Additions or Improvements	19
ARTICLE VI - <u>INSURANCE AND CASUALTY LOSSES</u>	19
6.1 Association Insurance	19
6.2 Owners' Insurance	22

ARTICLE VII - <u>ANNEXATION AND WITHDRAWAL OF PROPERTY</u>	22
7.1 Annexation	23
7.2 Withdrawal of Restrictions	24
7.3 Amendment	24
ARTICLE VIII - <u>ASSESSMENTS</u>	24
8.1 Creation of Assessments	24
8.2 Declarant's Obligation for Assessments	25
8.3 Computation of Base Assessment	25
8.4 Reserve Budget and Capital Contribution	26
8.5 Special Assessments	27
8.6 Benefited Assessments	27
8.7 Creation of Lien and Personal Obligation	27
8.8 Non-Payment of Charges	28
8.9 Lien for Charges Subordinated to Mortgages	28
8.10 Date of Commencement of Assessments	28
8.11 Failure to Assess	28
8.12 Exempt Property	29
8.13 Resale Fee	29
8.14 Processing Fee	30
8.15 Initial Reserve Contribution	30
8.16 Initial Operating Contribution	30
ARTICLE IX - <u>ARCHITECTURAL STANDARDS</u>	30
9.1 General	30
9.2 Architectural and Design Review	31
9.3 Guidelines and Procedures	31
9.4 Submission of Plans and Specifications	32
9.5 No Waiver of Future Approvals	33
9.6 Variance	33
9.7 Limitation of Liability	34
9.8 Enforcement	34
ARTICLE X - <u>USE RESTRICTIONS</u>	35
10.1 Signs	35
10.2 Vehicles and Parking	35
10.3 Occupants Bound	36
10.4 Animals and Pets	36
10.5 Quiet Enjoyment	36
10.6 Unsightly or Unkempt Conditions	36
10.7 Antennae	37
10.8 Fences and Dog Runs	37
10.9 Exterior Lighting	37
10.10 Temporary Structures	37
10.11 Storage	37
10.12 Subdivision of Dwelling Unit and Time-Sharing	37
10.13 Firearms/Fireworks	38
10.14 Wetlands, Lakes, and Other Water Bodies	38
10.15 Business Use	38
10.16 Occupancy	39
10.17 Trash Containers and Collection	39

10.18 Clothes Drying Facilities	39
10.19 Snowmobiles Prohibited	39
10.20 Skiing	39
10.21 Bird and Squirrel Houses	39
10.22 Flagpoles	39
10.23 Permanent Swimming Pools	39
10.24 Irrigation/Wells	40
10.25 Drainage and Septic Systems	40
10.26 Garage Sales	40
10.27 Air Conditioning Units	40
10.28 Artificial Vegetation, Exterior Sculpture, and Similar Items	40
10.29 Notice of Zoning Commitments	40
10.30 Tree Preservation and Tree Conservation	40
10.31 Storm Water Effects	40
ARTICLE XI - EASEMENTS	41
11.1 Easements of Encroachment	41
11.2 Easements for Utilities	41
11.3 Easements to Serve Additional Property	42
11.4 Easements for Cross-Drainage	42
11.5 Right of Entry	42
11.6 Easements for Maintenance and Enforcement	42
11.7 Easements for Exterior Landscaping and Maintenance	43
11.8 Rights to Stormwater Runoff, Effluent and Water Reclamation	43
11.9 Access Easement	43
11.10 Designated Landscape Easement	43
ARTICLE XII - MORTGAGE PROVISIONS	43
12.1 Notices of Action	41
12.2 No Priority	44
12.3 Notice to Association	44
12.4 Failure of Mortgagee to Respond	44
ARTICLE XIII - SPECIAL DECLARANT RIGHTS	44
13.1 Special Declarant Rights	44
13.2 Transfer of Special Declarant Rights	45
13.3 Models, Sales Offices and Management Offices	46
13.4 Construction of Improvements/Removal of Property	46
13.5 Other Covenants Prohibited	46
13.6 Master Planned Community	46
13.7 Equal Treatment	47
13.8 Right to Use Common Area	47
13.9 Sales By Declarant	48
ARTICLE XIV - DISPUTE RESOLUTION AND LIMITATION ON LITIGATION	48
14.1 Prerequisites to Actions Against Declarant	48
14.2 Consensus for Association Litigation	48
14.3 Alternative Method for Resolving Disputes	48
14.4 Claims	49
14.5 Mandatory Procedures	49
14.6 Allocation of Costs of Resolving Claims	50

14.7 Enforcement of Resolution	50
14.8 Attorneys' Fees	51
ARTICLE XV - OTHER HOMEOWNERS ASSOCIATIONS	51
15.1 In General	51
15.2 Relationship of Association and the Local Area Association	51
ARTICLE XVI - GOLF CARTS	51
16.1 Golf Carts	51
16.2 Authorized Golf Carts	51
16.3 Operation of Golf Carts on Streets within Properties	52
16.4 Liability	52
ARTICLE XVII - GENERAL PROVISIONS	52
17.1 Term	52
17.2 Amendment	52
17.3 Severability	53
17.4 Cumulative Effect; Conflict	53
17.5 Use of the Words "Britton Falls"	53
17.6 Del Webb Marks	54
17.7 Compliance	54
17.8 Notice of Sale or Transfer of Title	54
17.9 Attorneys' Fees	54
17.10 Notices	54

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
BRITTON FALLS BY DEL WEBB**

The Town of Fishers, Indiana

This Declaration of Covenants, Conditions, Conditions and Restrictions (the "Declaration") is made this ___ day of _____, 2006, by Joseph Kent Underwood, Douglas J. Underwood, Marianne Underwood, Marianne Presser Underwood, Trustee, U/DT Dated May 5, 1994, and Pulte Homes of Indiana, LLC, an Indiana limited liability company (collectively the "Titleholders").

WITNESSETH:

WHEREAS, The Titleholders are the owners of the real estate described in what is attached hereto and incorporated herein by reference as Exhibit A (the "Real Estate");

WHEREAS, the real estate described in what is attached hereto and incorporated herein by reference as Exhibit B shall hereby be referred to as the "Additional Real Estate";

WHEREAS, the term "Properties", as used throughout this Declaration, shall mean and refer to the Real Estate, together with such portions of the Additional Real Estate which, per the terms of this Declaration, have from time to time been annexed and made subject to this Declaration;

WHEREAS, this Declaration imposes upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance thereof, this Declaration provides for the creation of the Britton Falls By Del Webb Homeowners Association, Inc., an Indiana not for profit corporation, to own, operate and maintain the Common Area, and to administer and enforce the provisions of the Governing Documents.

NOW, THEREFORE, the Titleholders hereby (i) irrevocably appoint Pulte Homes of Indiana, LLC, an Indiana limited liability company, to be the Declarant in this Declaration, to have, hold, and possess all of the rights, powers, and authority of the Declarant, as set forth in this Declaration, and (ii) declare that all of the Properties shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the Properties. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

**ARTICLE I
DEFINITIONS**

Capitalized terms, used throughout this Declaration, shall be defined as set forth below.

1.1 Activity Card(s): Those certain cards which are issued by the Association in accordance with the terms and conditions set forth in Section 2.2 and which confer upon the holder rights of access to and use of recreational facilities and other Common Areas within the Properties.

1.2 Age-Qualified Occupant: Any individual (i) who is 50 years of age or older and who owns and occupies a Dwelling Unit and was the original purchaser of the Dwelling Unit from the Declarant; or (ii) who is 55 years of age or older and who occupies a Dwelling Unit. The terms "occupy", "occupies", or "occupancy" shall mean staying overnight in a particular Dwelling Unit for at least ninety (90) days in a consecutive twelve (12) month period.

1.3 Articles of Incorporation or Articles: The Articles of Incorporation of Britton Falls Community Association, as filed with the Secretary of State of the State of Indiana, as amended from time to time.

1.4 Association: Britton Falls by Del Webb Homeowners Association, Inc., an Indiana not for profit corporation, its successors or assigns.

1.5 Benefited Assessments: Assessments levied in accordance with Section 8.6.

1.6 Base Assessment: Assessments levied on all Dwelling Units subject to assessment under Article VIII, to fund Common Expenses for the general benefit of all Dwelling Units.

1.7 Board of Directors or Board: The body responsible for administration of the Association, selected as provided in the By-Laws, and serving the same role as a board of directors under Indiana corporate law.

1.8 Builder: Any Person which purchases one or more parcels of land within the Properties for subdivision, development, construction of homes and/or resale in the ordinary course of such Person's business.

1.9 By-Laws: The By-Laws of Britton Falls by Del Webb Homeowners Association, Inc., as amended from time to time.

1.10 Charges: The Base Assessment, Benefited Assessments, any Special Assessment levied by the Association and/or any other charges or amounts which an Owner is required to pay or for which an Owner is liable under this Declaration or the By-Laws.

1.11 Common Area: Those areas (i) designated on current and future Plats as a "Block", "Common Area", "C.A.", and (ii) any other areas designated by the Declarant for the common use and enjoyment of the residents of the Properties. The Common Area shall generally include community wide recreational facilities, open space, detention areas, wetlands, and green areas. The Declarant may from time to time make additional real estate subject to this Declaration as Common Area pursuant to Article VII.

1.12 Common Expenses: Common Expenses shall comprise the expenses of administration,

including management and professional services and expenses; the costs of operation, maintenance, repair, replacement, landscaping and snow removal of the Common Area; the costs of maintenance, repair and replacement, streetlights, trails, or other improvements which are part of the Common Area; the costs of insurance, water, electricity, telephone, gas and other necessary utility expenses for the Common Area; real estate taxes and assessments levied or assessed against any portion of the Common Area; the costs of maintaining landscaping within Landscape Easements identified on any Plat; the costs of, and the expenses incurred for, the maintenance, repair and replacement of personal property acquired and used by the Association in connection with the operation of the Common Area; the costs of maintenance of the landscaping on those portions of dedicated rights of way which are adjacent to the Properties; any other expenses designated as Common Expenses by this Declaration; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners.

1.13 Community-Wide Standard: The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standards may be defined in the Design Guidelines or rules and regulations of the Board. Such standards may be specifically determined, and modified, by the Declarant at any time during the Declarant Control Period and thereafter by the Board and/or the Modifications Committee.

1.14 Declarant: Pulte Homes of Indiana, LLC, an Indiana limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the real estate described on Exhibit A or Exhibit B for the purpose of development and/or sale and who is also designated as the Declarant in an instrument executed by the immediately preceding Declarant and recorded with the Public Records.

1.15 Declarant Control Period: The period commencing upon the recording of this Declaration and ending upon the first to occur of:

(a) The end of the Development Period;

(b) The expiration of thirty (30) years from the date of recording of this Declaration;

or,

(c) The date designated in written notice from the Declarant to each of the Owners as being the end of the Declarant Control Period.

1.16 Design Guidelines: The written design and construction guidelines and application and review procedures applicable to the Properties promulgated and administered pursuant to Article IX.

1.17 Development Period: The period of time commencing upon the recording of this Declaration and ending at such time as Declarant no longer holds or controls title to any portion of the real estate which is legally described in Exhibit A and Exhibit B hereto, as Exhibit A and/or Exhibit B may be amended from time to time.

1.18 Dwelling Unit: A Residence and the Lot on which the Residence is constructed.

1.19 Governing Documents: A collective term including the Declaration, the By-Laws, the Articles, the Design Guidelines, and rules or regulations adopted by the Board, as any such documents may be amended from time to time.

1.20 Lot: Any parcel of real estate designated on a Plat and intended as a building pad for the construction of a Residence.

1.21 Home Owner: An Owner other than the Declarant or a Builder.

1.22 Master Plan: Declarant's conceptual land use plan for the development of Britton Falls, as it may be amended from time to time, which plan shall include the Real Estate and may include a portion or all of the Additional Real Estate. Inclusion of any real estate within the Master Plan shall not, under any circumstances, obligate Declarant to subject such real estate to this Declaration as part of the Properties, nor shall the exclusion of any real estate from the Master Plan bar its later inclusion therein.

1.23 Member: A Person entitled to membership in the Association pursuant to Section 3.2.

1.24 Modifications Committee or MC: The committee established by the Board pursuant to Section 9.2(b) to review applications for modifications to Dwelling Units.

1.25 Mortgage: A first mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Dwelling Unit. A "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

1.26 Owner: One (1) or more Persons, which may include the Declarant or a Builder, who hold the record title to a Dwelling Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

1.27 Person: A natural person, corporation, partnership, limited liability company, trustee, or any other legal entity.

1.28 Plat: A plat of subdivision for a portion of the Properties, which is recorded in the Public Records.

1.29 Public Records: The Office of the County Recorder of Hamilton County, Indiana.

1.30 PUD Ordinance: The Britton Falls PUD Ordinance, Number 022105A, enacted by the Town Council of the Town of Fishers, Indiana, on the 20th day of March, 2006, and pertaining to the use and development of the Real Estate.

1.31 Regulated Work: As defined in Section 9.1.

1.32 Residence: Any structure to be constructed on a Lot and intended exclusively for

occupancy by a single family together with all appurtenances thereto, including private garage and recreational facilities usual and incidental to the use of a single-family residential lot.

1.33 Resident or Qualified Resident: Any of the following Persons occupying a Dwelling Unit:

(a) Any Age-Qualified Occupant;

(b) Any Person 19 years of age or older occupying a Dwelling Unit with an Age-Qualified Occupant; and

(c) Any Person nineteen (19) years of age or older who occupied a Dwelling Unit with an Age-Qualified Occupant and who continues, without interruption, to occupy the same Dwelling Unit after termination of the Age-Qualified Occupant's occupancy thereof.

The term "occupy" or "occupancy" shall have the same meaning as set forth in Section 1.2 above. An individual who occupies a Dwelling Unit but does not satisfy the criteria of (a), (b) or (c) above shall not be deemed to be a Resident and shall not be entitled to any rights or privileges granted to a Resident hereunder.

1.34 Section Exhibit: The drawing of the Real Estate which is attached hereto and incorporated herein by reference as Exhibit C and which visually depicts Section 2A, Section 2B, and Section 2C on the Real Estate.

1.35 Section 2A: The area identified as 2A on the Section Exhibit.

1.36 Section 2B: The area identified as 2B on the Section Exhibit.

1.37 Section 2C: The area identified as 2C on the Section Exhibit.

1.38 Special Assessment: Assessments levied in accordance with Section 8.5.

1.39 Special Declarant Rights: As defined in Article XIII.

1.40 Special Services: As defined in Section 5.3.

1.41 Supplemental Declaration or Supplement: An amendment to this Declaration filed in the Public Records, pursuant to Article VII, which subjects all or part of the Additional Real Estate to this Declaration as part of the Properties and/or imposes, expressly or by reference, additional covenants, conditions, restrictions, easements or obligations on the real estate described in such instrument.

1.42. Town: The Town of Fishers, Indiana or its successors.

1.43 Voting Member: As defined in Section 3.3.

1.44 Zoning Commitments: The Commitments concerning the use and development of the Properties which were extended in connection with the PUD Ordinance, and which are attached as Exhibit F to the PUD Ordinance.

ARTICLE II **PROPERTY RIGHTS**

2.1 Right to Use and Enjoy Common Area: Each Resident shall have the non-exclusive right and easement to use and enjoy the Common Area. Such rights and easements shall run with the land, be appurtenant to and pass with title to every Dwelling Unit, subject to and governed by the following:

(a) This Declaration, as supplemented and amended from time to time, the By-Laws, and any other applicable covenants;

(b) Any restrictions or limitations contained in any deed conveying Common Area to the Association;

(c) Rules and regulations adopted as more fully provided in Section 4.3;

(d) The right of the Board to suspend the right of an Owner or Resident to use recreational facilities pursuant to Section 4.3;

(e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area;

(f) The right of the Board to impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(g) The right of the Board to permit use of any Common Area;

(h) The right of the Board to create, enter into agreements with, and grant easements to tax-exempt organizations under Section 4.12;

(i) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for Association obligations;

(j) The right of the Association to rent, lease, or make available, with or without charge, for any purpose, any portion of any clubhouse and other recreational facilities within the Common Area;

(k) The requirement that access to and use of recreational facilities within the Properties shall be subject to the presentation of an Activity Card issued by the Association

for such purpose; and

(l) The rights of the Declarant hereunder.

A Common Area shall be conveyed to the Association, free of liens, within one hundred eighty (180) days after the recordation of a Plat in which such Common Area exists.

2.2 Activity Cards:

(a) Issuance by the Board. One (1) Activity Card shall be allocated to each Qualified Resident of a Dwelling Unit, up to a maximum of two (2) Activity Cards per Dwelling Unit. No Activity Cards shall be allocated to any Dwelling Unit which is not occupied by a Qualified Resident. The Board shall determine entitlement to Activity Cards on an annual basis. Activity Cards shall be renewed annually, without charge, provided that the Dwelling Unit continues to be occupied by a Qualified Resident and all applicable assessments and other charges pertaining to the Dwelling Unit have been paid. The Board may establish policies, limits, and charges with regard to the issuance of additional cards and guest privilege cards. The Board may issue Activity Cards to persons who have signed binding contracts to purchase a Dwelling Unit, subject to such policies as the Board may determine from time to time.

(b) Assignment of Rights. The right to an Activity Card is based upon occupancy of a Dwelling Unit. Any Owner who leases or otherwise transfers occupancy of his or her Dwelling Unit shall be deemed to have assigned his or her rights to an Activity Card to the Qualified Residents of such Dwelling Unit. Any Owner who leases or otherwise transfers the right to occupy his or her Dwelling Unit shall provide the Association with immediate written notice thereof and shall surrender to the Association his or her previously issued Activity Card. Activity Cards shall be surrendered by any holder who ceases to occupy a Dwelling Unit, or at any time upon written notification from the Association that the holder no longer is entitled to hold an Activity Card.

(c) Issuance to the Declarant. During the Development Period, the Association shall provide the Declarant, free of charge, with as many Activity Cards as the Declarant, in its sole discretion, deems necessary for the purpose of marketing the Properties or the Development Area or for use by its employees. The Declarant may transfer the Activity Cards to prospective purchasers of Dwelling Units subject to such terms and conditions as it, in its sole discretion, may determine. Activity Cards provided to the Declarant shall entitle the bearer to use all Common Areas, subject to the payment of admission fees or other use fees charged to Qualified Residents holding Activity Cards.

2.3 No Partition: Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real estate, which may or may not be subject to this Declaration.

2.4 Condemnation: In the case of a taking or condemnation by competent authority of any part of the Common Area owned by the Association, the proceeds awarded in such condemnation shall be paid first to satisfy any indebtedness secured by a mortgage or other lien encumbering such

portion of the Common Area, and the balance shall be paid to the Association. The proceeds, if any, paid to the Association, together with any reserve being held for such part of the Common Area, shall be used first to restore or replace any improvements taken or condemned, and the balance, if any, shall, in the discretion of the Board, either (i) be distributed to the Owners who have the right to use such Common Area and their respective Mortgagees, as their interests may appear, in equal shares, or (ii) be used for the mutual benefit of such Owners, as determined by the Board in its reasonable discretion; provided, however, that during the Development Period any such action shall be consented to by the Declarant.

2.5 Age Restriction: Britton Falls is intended to provide housing primarily for persons 55 years of age or older, subject to the rights reserved to Declarant in Section 13.9. The Properties shall be operated as an age restricted community in compliance with all applicable state and federal laws. No person under 19 years of age shall stay overnight in any Dwelling Unit for more than ninety (90) days in any consecutive twelve (12) month period. Subject to Section 13.9, each Dwelling Unit, if occupied, shall be occupied by at least one (1) individual 55 years of age or older; provided, however, that once a Dwelling Unit is occupied by an Age-Qualified Occupant, other Qualified Residents of that Dwelling Unit may continue to occupy the Dwelling Unit, regardless of the termination of the Age-Qualified Occupant's occupancy. Notwithstanding the above, at all times, at least eighty percent (80%) of the Dwelling Units within the Properties shall be occupied by at least one (1) individual 55 years of age or older. The Board shall establish, and may amend or revise, policies and procedures, from time to time, as necessary to maintain its status as an age restricted community under state or federal law. The provisions of this Section may be enforced by the Association by an action in law or in equity, including, without limitation, an injunction requiring specific performance hereunder.

2.6 Easements, Leases, Licenses and Concessions and Rights: The Board shall have the right and power, from time to time, (a) to lease or grant easements, licenses, concessions or other rights with regard to any portions or all of the Common Area, for such uses and purposes as the Board deems to be in the best interests of the Owners including, without limitation, the right to grant easements relating to installation and operation of utilities, communication systems, satellite or cable television systems, and similar and related purposes and/or (b) with the agreement of the beneficiary or grantee of the easement, and any Owner whose Dwelling Unit is benefitted thereby, cancel, alter or modify any easement which affects any Common Area, as the Board in its discretion shall determine. Any and all proceeds from leases, easements, licenses, concessions or other rights received by the Association with respect to the Common Area shall be used to pay the Common Expenses. Each Person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to a Dwelling Unit, shall be deemed to grant a power coupled with an interest to the Board, as attorney-in-fact, to exercise the powers as provided for in this Section. Any instrument executed pursuant to the power granted herein shall be executed by the President and attested to by the Secretary of the Association (or other appropriate officer) and duly recorded in the Public Records.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

3.1 Function of Association: The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area; the primary entity responsible for compliance with and enforcement of the Governing Documents; and, to the extent provided for in Article IX, shall be responsible for administering, monitoring compliance with, and enforcing the Design Guidelines. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Indiana.

3.2 Membership: Every Owner shall be a "Member" of the Association and shall hold one (1) membership for each Dwelling Unit owned. If a Dwelling Unit is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation, such reasonable fees as may be established in Section 2.1, and the restrictions on voting set forth in Section 3.3 and in the By-Laws. All such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner, which is not a natural person, may be exercised by any officer, director, partner, manager or trustee, or by any other individual having apparent authority or designated from time to time by the Owner in a written instrument provided to the Secretary of the Association. The Declarant shall be a Member of the Association during the Development Period.

3.3 Voting:

(a) One (1) individual shall be designated by each Owner to be the "Voting Member" with respect to each Dwelling Unit owned by the Owner. If no designation is made and more than one (1) person seeks to be the Voting Member for a Dwelling Unit, the Board may either recognize one (1) individual as the Voting Member or suspend the vote for the Dwelling Unit until the issue has been resolved. During the Declarant Control Period, all of the voting rights of the Owners at any meeting of the Members of the Association or otherwise shall be vested exclusively in the Declarant, and Owners other than the Declarant shall have no voting rights. After the end of the Declarant Control Period, all of the voting rights at any meeting of the Members of the Association or otherwise shall be vested in the Voting Members and each Voting Member shall have one (1) vote for each Dwelling Unit which the Voting Member represents. After the end of the Declarant Control Period, any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the By-Laws) upon an affirmative vote of a majority of the votes represented at the meeting by the Voting Members present at such meeting, except as otherwise provided in this Declaration, or in the By-Laws. Voting Members may vote directly or by proxy as provided in the By-Laws. The Board shall determine whether votes shall be cast in person or by mail from time to time.

(b) Certain Special Declarant Rights, including the right to approve, or withhold approval of, certain actions proposed under this Declaration, the By-Laws and the Articles during the Development Period and the right and power, during the Declarant Control Period, to appoint all members of the Board, are specified in the relevant sections of this Declaration, the By-Laws and the Articles.

3.4 Attendance at Board Meetings by Owners: Members may attend meetings of the Board to the extent permitted by the Board in its discretion. Also, the Board shall hold informational meetings from time to time, but not less frequently than once each year, to which all Members shall be invited and at which the Board shall report to the Members on what the Board has worked and accomplished since the preceding meeting, and shall open the meeting for questions and comments from the Members.

ARTICLE IV
RIGHTS AND OBLIGATIONS OF THE
ASSOCIATION/VARIOUS DISCLOSURES AND DISCLAIMERS

4.1 Common Area: The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, all improvements, furnishings, equipment, and other personal property of the Association used in connection with the Common Area), and shall keep the Common Area in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the By-Laws and consistent with the Community-Wide Standard. Prior to the end of the Declarant Control Period, the Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration. At all times following the Development Control Period, the Board shall retain and employ professional management to assist in carrying out the Association's responsibilities under this Declaration.

4.2 Personal Property and Real Property for Common Use: The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, personal property and leasehold and other property interests, regardless of whether such real estate is Common Area. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions of record or as set forth in the deed or other instrument transferring such property to the Association. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

4.3 Rulemaking and Enforcement:

(a) Rulemaking. The Association, through the Board, may make, modify, amend, cancel, limit, create exceptions to and enforce reasonable rules governing the use of the Properties, consistent with the rights and duties established by the Governing Documents, including, without limitation, rules limiting the use of the Common Area by visitors, including visiting children. Such rules shall be binding upon all Owners, Residents, guests, invitees, and licensees, if any, until and unless overruled, canceled, or modified in a regular or special meeting of the Association by the vote of a majority of the total vote in the Association.

(b) Enforcement. The Board, or the covenants compliance committee, if any, established

pursuant to the By-Laws, may impose sanctions for violations of the Governing Documents, after notice and a hearing in accordance with the procedures set forth in the By-Laws. The Board shall establish a range of penalties for violations of the Governing Documents, with violations of the Declaration, unsafe conduct, and harassment or intentionally malicious conduct treated more severely than other violations. Such sanctions may include, without limitation:

- (i) suspending an Owner's right to vote;
- (ii) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Dwelling Unit;
- (iii) suspending any services provided by the Association to an Owner or the Owner's Dwelling Unit if the Owner is delinquent in paying any assessment or other Charge owed to the Association; and
- (iv) levying Benefited Assessments to cover costs incurred in bringing a Dwelling Unit into compliance in accordance with Section 8.6(b).

In addition, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, requiring immediate abatement of violating activity) or by suit at law or in equity to enjoin any violation or to recover monetary damages, or both, without the necessity of compliance with the procedures set forth in the By-Laws.

All remedies set forth in the Governing Documents are to be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (i) the Association's position is not strong enough to justify taking any or further action;
- (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (iv) that it is not in the Association's best interests, based upon hardship, expense, or

other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce applicable state and local laws and ordinances and governmental bodies may enforce their respective laws and ordinances within the Properties for the benefit of the Association and its Members.

4.4 Implied Rights; Board Authority: The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Governmental, Educational, and Religious Interests: During the Development Period, the Declarant may designate sites within the Properties for government, education or religious activities and interests, including without limitation, fire, police, and utility facilities, schools and educational facilities, houses of worship, parks and other public facilities. The sites may include Common Area in which case the Association shall take whatever action is required with respect to such site to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

4.6 Indemnification: The Association shall indemnify every officer, director, and committee member and the Association's managing agent and its employees and agents against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which it, he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and/or Indiana law.

The officers, directors, committee members and managing agent shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and hold each such officer, director, committee member and managing agent harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, committee member and managing agent may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is available at a reasonable cost. Decisions whether to institute litigation are no different from other decisions directors make. There is no independent legal obligation to bring a civil action against another party,

and no provision of the Governing Documents shall be construed to impose a duty upon the Board to sue under any circumstances. In deciding whether to bring a civil action against another party, a director is protected by the business judgment rule as explained in the By-Laws.

4.7 Dedication of Common Area: The Association may dedicate portions of the Common Area to Hamilton County, Indiana, or to any other local, state, or federal governmental or quasi-governmental entity.

4.8 Security: It is the goal of all Owners, including Declarant, to have a safe and healthy environment. However, no written or oral representations regarding the safe and secure nature of Britton Falls shall be construed in whole or in part as guarantees thereof, it being recognized that circumstances which are beyond the control of the Declarant, the Association, or the managing agent may arise. The Association may maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be; provided, however, that the Association shall not be obligated to maintain or support such activities.

The Association, the managing agent, and/or the Declarant shall not in any way be considered insurers or guarantors of security within the Properties. None of the foregoing shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, entry gate, patrol, burglar alarm system or other security system or measures, including any mechanism or system for limiting access to the Properties, can not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform all Residents, tenants, guests, and invitees of the Owner's Dwelling Units that the Association, its Board of Directors and committees, the Declarant, and the managing agent are not insurers or guarantors of security within the Properties. Each Owner and all Residents, tenants, guests, and invitees of the Owner's Dwelling Unit assume all risks for loss or damage to persons, to Dwelling Units, and to the contents of Dwelling Units and further acknowledge that the Association, its Board and committees, the managing agent, and the Declarant have made no representations or warranties, nor has any Owner, or any Resident, tenant, guest, or invitee of any Dwelling Unit relied upon any representations or warranties, expressed or implied, relative to any entry gate, patrolling of the Properties, any fire protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the Properties.

4.9 Assumption of Risk: The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to promote the health, safety and welfare of the Owners and Residents. Notwithstanding anything contained in the Governing Documents or any other document binding the Association, none of the Association, the Board, the managing agent, or the Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or Resident of any Dwelling Unit or any tenant, guest or invitee of any Owner or Resident or for any property of any such Persons. Each Owner and Resident of a Dwelling Unit and each tenant, guest and invitee of any Owner or Resident shall assume all risks

associated with the use and enjoyment of the Properties, including all recreational facilities.

The Association, the Board, the managing agent, or the Declarant shall not be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Properties. Each Owner and Resident of a Dwelling Unit and each tenant, guest, and invitee of any Owner or Resident shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub-stations and further acknowledges that the Association, the Board, the managing agent, and, the Declarant have made no representations or warranties, nor has any Owner or Resident, or any tenant, guest, or invitee of any Owner or Resident relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility substations.

No provision of the Governing Documents shall be interpreted as creating a duty of the Association, the Board, the managing agent, or the Declarant to protect or further the health, safety or welfare of any individuals, even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Dwelling Unit) and each other Person having an interest in or lien upon, or making any use of, any portion of the Properties (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands and causes of action against the Association, the managing agent, and the Declarant, their directors, officers, committee members, employees, agents, contractors, subcontractors, successors and assigns arising from or connected with any matter for which the liability has been disclaimed.

4.10 Change of Use of Common Area: During the Declarant Control Period, without the approval or consent of the Members, and thereafter, pursuant to action of the Members taken at a duly called meeting of the Members, the Board shall have the power and right to change the use of portions of the Common Area. Any such change shall be pursuant to Board resolution stating that: (a) the present use or service is no longer in the best interest of the Owners, (b) the new use is for the benefit of the Owners, (c) the new use is consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Area, and (d) the new use is consistent with the then effective Master Plan.

Notwithstanding the above, if after the Declarant Control Period, the Board adopts a resolution which states that the change in use will not have an adverse effect on the Association and the Owners, the Board may give notice of the change to all Owners. The notice shall give the Owners a right to object within thirty (30) days after the notice. If less than ten (10) percent of the Members who will be affected by the change submit written objections within thirty (30) days of the notice date, the change shall be deemed approved, and a meeting shall not be necessary.

4.11 View Impairment: Neither the Declarant nor the Association guarantees or represents that any view from any Dwelling Unit will be preserved without impairment. Neither the Declarant nor the Association shall have the obligation to relocate, prune, or thin trees or other landscaping except as set forth in Article V. The owner of any real estate which is not part of the Properties shall

have the right to make alterations, additions or improvements to such owner's real estate in its sole and absolute discretion, including, without limitation, to add trees and other landscaping to the open space from time to time subject to applicable law. **Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.**

4.12 Relationship with Tax-Exempt Organizations: The Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to non-profit, tax-exempt organizations for the benefit of the Properties, the Association, its Members and Residents. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense of the Association and included as a line item in the Association's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity, which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as but not limited to entities, which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

4.13 Recycling Programs: The Board may establish a recycling program and recycling center within the Properties, and in such event all Residents shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is designed to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

4.14 Wildlife Control: Declarant and the Association reserve the right to undertake such measures as may be appropriate to control wildlife within the Properties including, but not limited to, the taking of deer and large birds so long as such measures are consistent with all applicable legal requirements. Without limiting the foregoing, Declarant or the Association may, in their discretion, establish regular control programs such as, for example, the use of dogs to prevent non-migratory geese and other species from nesting within and/or causing damage to the Properties or otherwise becoming a nuisance.

4.15. Zoning Commitments. The Zoning Commitments identify and refer to (i) "Preservation Areas" in which trees, underbrush, and small trees are to be preserved and (ii) "Conservation Areas" in which trees are to be conserved, all in the manner specified in the Zoning Commitments. The Association and all owners shall preserve trees, small trees, and/or underbrush within the Preservation Areas, and shall conserve healthy trees within the Conservation Areas, all in the manner specified in and per the terms of the Zoning Commitments.

4.16. Trails and Sidewalks within Public Streets. Trails and sidewalks shall be installed within public streets and rights-of-way located throughout the real estate, and such sidewalks and trails which are located within public streets and public rights-of-way are available and open for use not only to Owners and Residents of the properties, but also to the general public as well.

4.17. Legal Drains. Legal Drains exist throughout the property including, without limitation,

relocated A.J. Meyers Legal Drain, generally located adjacent to Atlantic Road. Notice is hereby given that, by law, all such Legal Drains impose use restrictions within and around their areas, and all Owners must comply with such use restrictions.

4.18 Storm Water Management Ordinance. Notice is hereby given that all Owners are bound by the Town's Storm Water Management Ordinance 081505, as amended from time to time (the "Storm Water Ordinance") which, in part, prohibits structures and landscaping within certain distances from the top of bank of drainage easements and detention/retention areas.

ARTICLE V **MAINTENANCE**

5.1 Common Areas: The Association shall maintain and keep in good repair the Common Areas, which shall include, but need not be limited to:

(a) all Common Areas and all improvements located thereon including, without limitation, all buildings, clubhouses, trails, water features, lighting, and landscaping;

(b) all perimeter walls or fences constructed by the Declarant, regardless of whether such wall or fence is located on the Common Area, or on a Dwelling Unit;

(c) if, and to the extent, required under applicable Town ordinances, landscaping, street lights and signage within public rights-of-way abutting the Properties;

(d) landscaping and other flora within any public and private utility easements and scenic easements within the Common Area, subject to the terms of any easement agreement relating thereto);

(e) any additional property included within the Common Area as may be required under the terms of this Declaration, any Supplemental Declaration, any Plat, or any contract or agreement for maintenance thereof entered into by, or which is binding upon, the Association;

(f) any property or facility owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members and identified by written notice from the Declarant to the Association until the Declarant revokes such privilege by written notice to the Association; and

(g) the maintenance, repair, replacement, and cleaning of all storm water quality management facilities, including catch basins, which are located within the Properties in any drainage easements or storm water detention or retention basins, and which are not maintained, repaired, and/or cleaned by the Town.

5.2. Additional Obligations. With respect to all Dwelling Units, the Association shall further undertake the following maintenance obligations which may not be reduced in any manner but which may be supplemented from time to time (i) per the amendment procedures specified in Section 17.2,

for Dwelling Units in Section 2A, Section 2B, and/or Section 2C, or (ii) as specified in the Design Guidelines:

(a) grass cutting, lawn fertilizing, and mulching of all landscape beds once a year; provided, however, that the Association shall not be required to maintain or fertilize any flowers, plants, trees, or shrubs; and

(b) removal of snow, which has accumulated beyond two (2) inches in depth on driveways, front walkways, and front porches of a Dwelling Unit; however, it shall be the Owner's responsibility to remove snow from all other impervious areas within the Lot(s). Further, the Association shall not apply any de-icing agents, such as salt, to any areas within a Lot including, without limitation, sidewalks and walkways, and each Owner shall be responsible for any damage caused by such Owner's application of any de-icing agents.

The Association shall also have the right and power, but not the obligation, to take such actions and adopt such rules as may be necessary for control, relocation and management of wildlife, snakes, rodents, and pests, within the Common Area.

The Association may also maintain other property, which it does not own, including, without limitation, property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and if otherwise permitted by applicable law. Except as hereinafter provided in this Section, the costs of maintenance, repairs and replacement of the Common Area shall be Common Expenses

If during the Development Period the Association fails to properly perform its maintenance responsibilities hereunder, the Declarant may, upon not less than ten (10) days notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, the Association shall reimburse Declarant for all costs incurred.

5.3 Owner's Responsibility: Each Owner shall maintain his or her Dwelling Unit and all other improvements comprising the Dwelling Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association hereunder or pursuant to a Supplemental Declaration. Without limiting the foregoing, the Board may require an Owner to water portions of the Owner's Dwelling Unit, at the Owner's expense.

Each Owner shall also be responsible for maintaining the interior surface of any perimeter wall or fence located on such Owner's Dwelling Unit, unless such maintenance is made the responsibility of the Association pursuant to the terms of this Declaration, a Supplemental Declaration or additional covenants applicable to such Dwelling Unit. Each Owner shall also be responsible for maintaining, repairing and replacing water and sanitary sewer lines (but not the storm sewer lines) within the boundaries of the Owner's Lot, and shall further be responsible for repairing any surface damaged by the application of de-icing agents.

In addition to any other enforcement rights, if an Owner fails to perform properly his or her

maintenance responsibility, the Association shall have the right to come upon such Owner's Dwelling Unit and perform such maintenance responsibilities and assess all costs incurred as a Benefitted Assessment in accordance with Section 8.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.4 Special Services / Bulk Service Agreement:

(a) To the extent provided for in a Supplemental Declaration or by action of the Board, from time to time, the Association may furnish "Special Services", as described in this Section 5.4 below, to a Dwelling Unit or a group or groups of Dwelling Units. The cost of furnishing a Special Service shall be assessed to the benefitted owner as a Benefitted Assessment under Section 8.6; however, at least once during each year, each Owner shall be given the right to choose not to receive any Special Service which would otherwise be furnished to the Owner's Dwelling Unit, in which case the Owner shall not be charged for the Special Service and the Owner shall be responsible for furnishing the Special Service to the Owner's Dwelling Unit at the Owner's sole cost and expense. The Association may also, by Board action, discontinue providing a Special Service. If the Association is required to furnish a Special Service to a Dwelling Unit, but if a portion of the Dwelling Unit with respect to which the Special Service is to be furnished is obstructed with temporary or permanent improvements, personal property or other obstructions which make it difficult or impractical for the Association's agent or contractor to furnish the Special Service, the Association shall not be required to furnish the Special Service and, in such case, the Owner shall be responsible for furnishing the Special Service to such portion of the Dwelling Unit at the Owner's sole cost and expense, so that the appearance of such portion of the Dwelling Unit is similar to that of those portions where the Special Services are furnished by the Association.

(b) The Association may negotiate and enter into agreements with scavenger service providers, satellite or cable television providers or other providers of services to some or all of the Dwelling Units, with the provider either billing each Owner of a Dwelling Unit directly or billing the Association. If the Association is billed for any such service, any such amounts shall be charged to the Dwelling Units which benefit from the service, in equal shares or such other reasonable basis as the Board may determine.

5.5 Standard of Performance: Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, as determined by the Board.

Without limiting the foregoing, the Board may establish standards for maintenance of portions of the Properties which are higher than those generally required under the Community Wide Standard.

Notwithstanding anything to the contrary contained herein, none of the Association, nor any Owner, nor the managing agent shall be liable for property damage or personal injury occurring on,

or arising out of, the condition of property which it does not own unless, and only to the extent that, it has been negligent in the performance of its maintenance responsibilities.

5.6 Alterations, Additions, or Improvements: Alterations, additions or improvements to the Common Area may be made only pursuant to action of the Board. The cost of any such alterations, additions or improvements to Common Area shall be charged to all Owners of Dwelling Units in equal amounts for each Dwelling Unit. However, any proposed alteration, addition or improvement to Common Area which would result in a charge to a Dwelling Unit of more than ten percent (10%) of the annual Base Assessment then payable by Owners of Dwelling Units who will be assessed to pay the cost of such alteration, addition or improvement, shall not be authorized unless such proposed alteration, addition or improvement and the cost thereof is approved by the affirmative vote of at least two-thirds (2/3) of the votes cast by Voting Members who represent the Dwelling Units which would be assessed to pay the cost of the proposed alteration, addition or improvement at a duly called meeting of the Association members. The cost of an alteration, addition or improvement made pursuant to this Section shall be paid either from reserves or by way of a special assessment, all as more fully provided in Article VIII hereof.

ARTICLE VI INSURANCE AND CASUALTY LOSSES

6.1 Association Insurance:

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements within the Common Area to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on all Common Areas, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employer's liability insurance, if and to the extent required by law;

(iv) Directors' and officers' liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6) of the total annual assessments then in effect, plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of individuals serving without compensation; and

(vi) Such additional insurance as the Board, in its business judgment, determines advisable.

Premiums for all insurance on the Common Area shall be Common Expenses and shall be included in the Base Assessment.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one (1) or more qualified individuals, at least one (1) of whom must be familiar with insurable replacement costs in the metropolitan Indianapolis area. All Association policies shall provide for a certificate of insurance to be furnished, upon request, to each Member insured, to the Association, and to each Mortgagee.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a). In the event of an insured loss, the deductible shall be treated as a Common Expense. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one (1) or more Owners or Residents, or their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible as a Benefitted Assessment against such Owner(s) and their Dwelling Units pursuant to Section 8.6.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Indiana which satisfies the requirements of the Fannie Mae, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Association and its Members.

(iii) not be brought into contribution with insurance purchased by Owners, Residents, or their Mortgagees individually;

- (iv) contain an inflation guard endorsement;
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause;
- (vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area or membership in the Association;
- (vii) provide a waiver of subrogation under the policy against each Owner and each Resident;
- (viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one (1) or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and
- (ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one (1) or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies, which list the Owners as additional insureds and provide:

- (i) a waiver of subrogation as to any claims against the directors, committee members, officers, employees, and the Association's manager, the Owners, Residents and their respective tenants, servants, agents, and guests;
 - (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
 - (iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
 - (iv) an endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
 - (v) a cross liability provision; and
 - (vi) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.
- (c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly

authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless (i) at least eighty percent (80%) of the total vote in the Association, and (ii) the Declarant, during the Development Period, decide within sixty (60) days after the loss not to repair or reconstruct. However, if either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such funds or information are available, not to exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be distributed among all Owners, if such proceeds are for Common Area.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2 Owners' Insurance: By virtue of taking title to a Dwelling Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Dwelling Unit, less a reasonable deductible, unless the Association voluntarily carries such insurance.

Each Owner further covenants and agrees that if the Owner is required to carry property insurance for his or her Dwelling Unit, in the event of damage to or destruction of structures on or comprising his Dwelling Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX, regardless of whether the insurance proceeds are sufficient to pay the cost of such work. Alternatively, the Owner shall clear the Dwelling Unit and maintain the Dwelling Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

ARTICLE VII
ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1 Annexation: During the Development Period, the Declarant may unilaterally subject to the provisions of this Declaration as part of the Properties any or all portion or portions of the Additional Real Estate, as amended from time to time. The Declarant reserves the right, but shall not be obligated, to amend Exhibit B to add thereto other real estate which is adjacent to the Additional Real Estate or separated from the Additional Real Estate by a dedicated right of way, or other real estate which is dedicated to or owned by a governmental entity. Any portion of the Additional Real Estate, which is not made part of the Properties, may be developed and used for any purposes not prohibited by law, including, without limitation, a commercial development or as a residential development, which is not part of the Properties.

Declarant may transfer or assign this right to annex the Additional Real Estate, provided that the transferee or assignee is the developer of at least a portion of the real estate described in Exhibit A or Exhibit B and that such transfer is memorialized in a written instrument executed by Declarant and filed in the Public Records. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any or all portion or portions of the Additional Real Estate, or any other real estate in the vicinity of Properties, owned by Declarant or an affiliate of the Declarant in any manner whatsoever.

Annexation shall be accomplished by filing in the Public Records a Supplemental Declaration describing the real estate being annexed, which Supplemental Declaration may be part of a Plat. Such Supplemental Declaration shall not require the consent of the Members, but shall require the consent of the owner of such real estate being annexed, if other than Declarant. Any such annexation shall be effective upon the filing in the Public Records of such Supplemental Declaration, unless otherwise provided therein. Each Dwelling Unit subject to this Declaration, whether initially described on Exhibit A or annexed and added to Exhibit A pursuant to a Supplemental Declaration, shall have an equal, pro rata share of liability for Base Assessments, levied with respect to the Dwelling Unit.

Upon recording of any such instrument on or before the expiration of the Development Period, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Properties and the Owners of any Dwelling Units within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of Owners of Dwelling Units within the property. No single exercise of Declarant's right and option to add and expand the Properties as to any part or parts of the Additional Real Estate, shall preclude Declarant from thereafter from time to time further expanding and adding to the Properties to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished on or before the expiration of the Development Period. Such expansion of the Property is entirely at the sole discretion of the Declarant and nothing contained in this Declaration or otherwise shall require the expansion of the Properties beyond the Real Estate, or to any portions of the Additional Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration.

As further specified in Article XV, any Supplemental Declaration may contain covenants, conditions, restrictions and easements which apply only to the real estate being annexed and/or may create exceptions to, or otherwise modify, the terms of this Declaration as they may apply to the real estate being annexed, in order to reflect the different or unique character and/or intended use of such real estate.

After the Development Period, the Association may add real estate to the Properties pursuant to action approved by a vote of a majority of the votes represented by Voting Members present at a duly called annual or special meeting of Members.

7.2 Withdrawal of Restrictions: The Declarant reserves the unilateral right, during the Development Period, to amend this Declaration to withdraw any portion of the Properties from the coverage of this Declaration, whether originally described on Exhibit A or added thereto by a Supplemental Declaration; provided, however, that no property which includes a Dwelling Unit shall be withdrawn after the Dwelling Unit has been conveyed by Declarant to any Person other than an affiliate of the Declarant or a Builder. Such amendment shall not require the consent of any Person other than the Owner of the real estate to be withdrawn, if not the Declarant. If the real estate is Common Area, the Association shall consent to such withdrawal upon the request of the Declarant.

7.3 Amendment: This Article shall not be amended during the Development Period without the prior written consent of Declarant.

ARTICLE VIII **ASSESSMENTS**

8.1 Creation of Assessments: The Association may levy assessments against each Dwelling Unit for Association expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Dwelling Units; (b) Special Assessments; and (c) Benefited Assessments. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

Assessments shall be paid in such manner and by such dates as the Board may establish from time to time. Unless the Board otherwise provides, the Base Assessment for a Dwelling Unit, for the entire upcoming year, shall be due and payable in monthly installments, on the first (1st) day of each calendar month; provided, that, upon the first conveyance of a Dwelling Unit to a purchaser for value, the pro rata portion of such assessments shall be due and payable upon conveyance of the Dwelling Unit. If any Owner is delinquent in paying any assessments or other charges levied on his or her Dwelling Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, upon request by an Owner, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid and any delinquent amount. Such certificate shall be conclusive evidence

of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Dwelling Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

8.2 Declarant's Obligation for Assessments: During the Declarant Control Period, Declarant may annually elect either to pay assessments on all of its Dwelling Units that remain unsold throughout the entire fiscal year or to pay the shortage for such fiscal year. For purposes hereof, the "shortage" shall be the difference between:

(a) the amount of all income and revenue of any kind received by the Association, including but not limited to, assessments collected on all other Dwelling Units, use fees, advances made by Declarant, and income from all other sources; and

(b) the amount of all actual expenditures incurred by the Association during the fiscal year, including any reserve contributions for such year, but excluding all non-cash expenses such as depreciation or amortization, all expenditures and reserve contributions for making additional capital improvements or purchasing additional capital assets, and all expenditures made from reserve funds.

Calculation of the shortage shall be performed on a cash basis of accounting. Unless the Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. If the Declarant elects, or is deemed to elect, to pay the shortage for a particular fiscal year and there is no shortage for such fiscal year, then the Declarant shall not be obligated to any amounts to the Association under this Section 8.2 with respect to such fiscal year.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses. The payment of assessments or the shortage may be reduced or abated by the agreed value of any such services or materials provided in accordance with any such contract or agreement with the Association.

After termination of the Declarant Control Period, the Declarant shall pay assessments on its unsold Dwelling Units in the same manner as any other Owner.

8.3 Computation of Base Assessment: The initial Base Assessment, for and commencing during the calendar year in which the first Dwelling Unit is conveyed to an owner other than the

Declarant, shall be (i) one hundred eighty-seven dollars (\$187) per month for Dwelling Units located in Section 2A (ii) one hundred seventy-nine dollars (\$179) per month for Dwelling Units located in Section 2B, and (iii) one hundred seventy-four dollars (\$174) per month for Dwelling Units located in Section 2C. Thereafter, not less than sixty (60) days before the beginning of each fiscal year thereafter, the Board shall prepare a budget covering the Common Expenses estimated to be incurred during the coming year. The budget shall constitute the basis for the Base Assessment, and the foregoing initial Base Assessment shall increase as determined by the budget. The budget shall include a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.4, but shall not include expenses incurred during the Declarant Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs.

The Base Assessment shall be levied equally against all Dwelling Units subject to assessment and shall be set at a level, which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including contributions to reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Dwelling Units subject to assessment on the first day of the fiscal year for which the budget is prepared and the number of Dwelling Units reasonably anticipated to become subject to assessment during the fiscal year.

After the Declarant Control Period, a budget and a proposed assessment may be disapproved at a meeting of the Members upon the vote of Voting Members representing at least a majority of the total Association vote and, if during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget and proposed assessment except on petition of the Voting Members as provided for special meetings in the By-Laws, which petition must be presented to the Board within thirty (30) days after notice of the proposed assessments. Notice of proposed assessments shall be posted in a prominent place within the Properties and included in the Association's newsletter, if any. If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

The Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of amounts (in addition to any amounts paid by Declarant under Section 8.2), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such payments shall be disclosed as a line item in the Common Expense budget. The payment of such amounts in any year shall not obligate the Declarant to continue such payments in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

8.4 Reserve Budget and Capital Contribution: The Board shall annually prepare reserve budgets which take into account the number and nature of replaceable assets within the Common Area, the expected life of each asset, and the expected repair or replacement cost. Such reserve budgets may also anticipate making additional capital improvements and purchasing additional capital assets. The Board shall include in Base Assessments, reserve contributions in amounts

sufficient to meet these projected needs. So long as the Board exercises business judgment in determining an adequate amount of reserves, the amount of the reserve fund shall be considered adequate.

The Board may adopt resolutions regarding the expenditure of reserve funds, including policies designating the nature of assets for which reserve funds may be expended. During the Development Period, neither the Association nor the Board shall adopt, modify, limit or expand such policies without the Declarant's prior written consent.

8.5 Special Assessments: In addition to other authorized assessments, subject as provided below, the Board may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, including unbudgeted capital expenditures. Any such Special Assessment may be levied against all Dwelling Units. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Such Special Assessments shall become effective unless (a) disapproved, after the Development Period, at a meeting of the Owners by the vote of Voting Members representing at least two-thirds (2/3) of the total votes allocated to Dwelling Units which will be subject to such Special Assessment, or (b) disapproved, during the Development Period, by the Declarant.

There shall be no obligation to call a meeting for the purpose of considering Special Assessments except on petition of the Voting Members or Owners as provided for special meetings in the By-Laws, which petition must be presented to the Board within thirty (30) days after notice of the Special Assessment. Notice of Special Assessment shall be provided as set forth in Section 8.3. A Special Assessment may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.6 Benefited Assessments: The Board may levy "Benefited Assessments" against particular Dwelling Units for expenses incurred or to be incurred by the Association, as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items or Special Services to the Dwelling Unit or Residents thereof, which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing a Dwelling Unit or Dwelling Units into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Residents of the Dwelling Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Dwelling Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Benefited Assessment under this subsection (b).

8.7 Creation of Lien and Personal Obligation: The Declarant for each Dwelling Unit hereby covenants, and each Owner of a Dwelling Unit by acceptance of a deed therefor (whether or not it shall be so expressed in any such deed or other conveyance) shall be and is deemed to covenant and

hereby agrees to pay to the Association all Charges made with respect to the Owner or the Owner's Dwelling Unit. Each Charge, together with interest thereon, late charges, and reasonable costs of collection (including attorney's fees), if any, as hereinafter provided, shall be a continuing lien upon the Dwelling Unit against which such Charge is made and also shall be the personal obligation of the Owner of the Dwelling Unit at the time when the Charge becomes due. The lien or personal obligation created under this Section 8.7 shall be in favor of and shall be enforceable by the Association and may be foreclosed in the same manner as mortgages may be judicially foreclosed in the State of Indiana.

8.8 Non-Payment of Charges: Any Charge, which is not paid to the Association when due shall be deemed delinquent. Any Charge which is delinquent for thirty (30) days or more shall bear interest at eighteen percent (18%) or less, if required by law, per annum from the due date to the date when paid, and the Association may (i) bring an action against the Owner personally obligated to pay the Charge to recover the Charge (together with interest, late fees, costs and reasonable attorney's fees for any such action, which shall be added to the amount of the Charge and included in any judgment rendered in such action), and (ii) enforce and foreclose any lien which it has or which may exist for its benefit.

8.9 Lien for Charges Subordinated to Mortgages: The lien for a Charge, provided for in Section 8.7, shall be subordinate to a Mortgage on the Dwelling Unit which was recorded prior to the date that the lien for any such Charge attached. Except as hereinafter provided, the lien for Charges provided for in Section 8.7 shall not remain affected by any sale or transfer of a Dwelling Unit. Where title to a Dwelling Unit is transferred pursuant to a decree of foreclosure of the Mortgage or by deed or assignment in lieu of foreclosure of the Mortgage, such transfer of title shall extinguish the lien for unpaid Charges, which became due prior to the date of the transfer of title. However, the transferee of the Dwelling Unit shall remain personally liable for his share of the Charges with respect to which a lien against his Dwelling Unit has been extinguished pursuant to the preceding sentence.

8.10 Date of Commencement of Assessments: The obligation to pay assessments shall commence as to each Dwelling Unit on the first day of the month following: (a) the month in which the Dwelling Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to Article VIII, whichever is later. The first annual Base Assessment levied on each Dwelling Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Dwelling Unit. The annual Base Assessment shall be due and payable in monthly installments, unless otherwise determined by the Board, in the Board's sole discretion.

8.11 Failure to Assess: Failure of the Board to fix assessment amounts or rates or to post, deliver or mail each Owner an assessment notice shall not be deemed to be a waiver, modification, or release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Benefited Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.12 Exempt Property: Any property dedicated to and accepted by any governmental authority or public utility shall be exempted from the payment of Base Assessments, Benefitted Assessments, and Special Assessments. In addition, the Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for Section 501(c) status under the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

8.13 Resale Fee: On the terms and conditions which follow, a Resale Fee shall be due and owing:

(a) Authority. As an additional funding source, and in addition to the administrative or transfer fee collected to cover administrative costs of membership transfer, the Association shall collect a Resale Fee upon each transfer of title to a Dwelling Unit, other than exempt transfers as set forth herein. The Resale Fee shall be charged to the grantor of the Dwelling Unit, shall be payable by grantor or grantee as their contract provides to the Association at the closing of the transfer, and shall be secured by the Association's lien for Charges. Each Owner transferring a Dwelling Unit shall notify the Association's secretary or designee at least seven days prior to the scheduled closing. Such notice shall include the name of the buyer, the date of title transfer, and other information the Association may reasonably require.

(b) Fee Limit. The fee shall equal 1/3 of one percent (1/3%) of the Gross Selling Price of the Dwelling Unit, with all improvements, upgrades and premiums included, and shall be due upon the transfer of title to the Dwelling Unit. For purposes hereof, the "Gross Selling Price" shall be the total cost to the purchaser of the Dwelling Unit.

(c) Purpose. Resale Fees shall be used for any purposes which the Association Board deems beneficial to meet the general operating needs of the Association. By way of example and not limitation, Resale Fees may be used to assist the Association or one or more tax-exempt entities in funding operating and maintenance costs for recreational facilities, common areas open space preservation, and all other funding needs for operating the Association. Resale Fees shall be non-refundable and shall not be considered an advance payment of any Charge.

(d) Exempt Transfers. Notwithstanding the above, no Resale Fee shall be levied upon transfer of title to property:

(i) by or to the Declarant;

(ii) by a Builder or developer holding title solely for purposes of development and resale;

(iii) by a co-owner to any Person who was a co-owner immediately prior to such transfer;

(iv) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;

(v) to an entity wholly owned by the grantor or to a family trust created by the grantor for the direct benefit of the grantor and his or her spouse and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the Resale Fee shall become due; or

(vi) to an institutional lender as security for the performance of an obligation pursuant to a Mortgage.

8.14 Processing Fee: As an additional funding source to cover administrative costs of membership transfer, the Association shall collect a "Processing Fee" of fifty dollars (\$50.00) upon each transfer of title to a Dwelling Unit, including transfers by the Declarant and/or a Builder to a purchaser intending to occupy the Dwelling Unit as a single-family residence and all transfers thereafter, and excluding only the transfers described above in Section 8.13 (d)(iii), 8.13 (d)(iv), 8.13(d)(v), and 8.13 (d)(vi). The Processing Fee shall be paid by the purchaser at the closing of the transfer of title and shall be secured by the Association's lien for assessments. The Processing Fee shall be non-refundable and shall not be considered as an advance payment of any Charge.

8.15 Initial Reserve Contribution As an initial contribution to the Reserve Budget identified in Section 8.4 above, the Association shall collect an "initial reserve contribution fee", upon each transfer of title to a Dwelling Unit by the Declarant and/or a Builder to a purchaser intending to occupy the Dwelling Unit as a single-family residence. The Initial Reserve Contribution Fee shall be paid by the Purchaser at closing of the transfer of title, shall be in the amount of two hundred forty-five dollars (\$245.00), and shall be secured by the Association's lien for assessments. The Initial Reserve Contribution shall be non-refundable and shall not be considered as an advance payment of any Charge.

8.16 Initial Operating Contribution. Upon each transfer of title to a Dwelling unit by the Declarant and/or a Builder to a purchaser intending to occupy the Dwelling Unit as a single-family residence, the Association shall collect, as a contribution to its working capital and start-up fund, an amount of one hundred dollars (\$100.00) against such Dwelling Unit. This payment shall be non-refundable, shall not be considered as an advance payment of any Charge, shall be paid by the Purchaser at the closing of each such transfer of title, and shall be secured by the Association's lien for Assessments. Such working capital and start-up fund 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 its early period of operation, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.

ARTICLE IX

ARCHITECTURAL STANDARDS

9.1 General: For purposes hereof "Regulated Work" shall consist of and include excavating,

filling, grading, installation or alteration of landscaping, construction of a building, driveway, walkway, fence, porch, patio, deck, balcony, sign or other advertising or promotional devices or any other temporary or permanent improvement to any portion of the Properties or any modification, alteration, major repair, renovation, addition or removal of or to any of the foregoing which is visible from outside of a Dwelling Unit. Regulated Work shall not include repainting the exterior of a structure in accordance with the originally approved color scheme or rebuilding of a damaged Dwelling Unit in accordance with originally approved plans and specifications. Regulated Work shall also not include work done by the Declarant during the Development Period.

During the Development Period, this Article may not be amended without the Declarant's written consent.

9.2 Architectural and Design Review: Responsibility for administration of the Design Guidelines, as defined below, and review of all applications to do Regulated Work under this Article shall be as described in subsections (a) and (b) below. The Reviewing Entity (defined below), may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of any such persons employed by the Association in the Association's annual operating budget as a Common Expense.

(a) Declarant Control. During the Development Period, the Declarant shall have exclusive right and power to review and approve or disapprove any and all proposed Regulated Work. The Declarant may (but shall not be obligated to), in its sole discretion, delegate all or a portion of its reserved rights under this Article to the MC (defined below) to review modifications to existing structures. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (i) the right of Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) the right of Declarant to veto any decision which it determines, in its sole discretion, to be inappropriate or inadvisable for any reason. Until the end of the Development Period, the jurisdiction of the MC shall be limited to such matters as are specifically delegated to it. In acting pursuant to this subparagraph the Declarant shall be acting solely in its interests and shall owe no duty to the Association or any Owner or Resident.

(b) Modifications Committee. The Board of Directors shall establish a modifications committee, which may consist of Residents (the "Modifications Committee" or "MC"). Until the end of the Development Period, the MC shall only have such rights and powers to review and approve or disapprove modifications or alterations to be made to existing structures as may be delegated to it by the Declarant. The MC shall assume exclusive jurisdiction over all Regulated Work at the end of the Development Period. During the Development Period, the Declarant shall have the right to veto any action taken by the MC, which the Declarant determines, in its sole discretion, to be inconsistent with the Design Guidelines.

(c) For purposes of this Declaration, the term "Reviewing Entity" shall mean the Declarant or the MC, as applicable.

9.3 Guidelines and Procedures: During the Development Period, the Declarant, and after the end of the Development Period, the MC, may prepare and may amend Design Guidelines which shall apply to all Regulated Work within the Properties. Any amendments to the Design Guidelines shall apply to Regulated Work commenced after the date of such amendment only and shall not apply to require modifications to or removal of Regulated Work previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the Design Guidelines may be amended to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions, which vary from one (1) portion of the Properties to another depending upon the location, unique characteristics, intended use, the Master Plan, and any other applicable zoning ordinances. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Reviewing Entity and compliance with the Design Guidelines does not guarantee approval of any application.

The Association shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Guidelines. In the Declarant's discretion, such Design Guidelines may be recorded in the Public Records, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

All Regulated Work shall be done in strict compliance with the Design Guidelines in effect at the time the plans for the Regulated Work are submitted to and approved by the Declarant or the MC, as applicable, unless a variance has been granted in writing pursuant to Section 9.6. So long as the Reviewing Entity has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of or compliance with the Design Guidelines and this Declaration shall be final.

9.4 Submission of Plans and Specifications:

(a) Prior to commencing any Regulated Work, an Owner shall submit an application for approval of the proposed Regulated Work to the appropriate Reviewing Entity. Such application shall be in the form required by the Reviewing Entity and shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefor and other features of proposed construction, as applicable. The Design Guidelines shall set forth the procedure and any additional information for submission of the Plans. Before the Owner may begin the proposed Regulated Work, the application must be approved by the Reviewing Entity in accordance with the procedures described below.

(b) In reviewing each submission, the Reviewing Entity may consider whatever factors it

deems relevant. The Declarant or the MC, as applicable, may require relocation of native plants within the construction site or the installation of an irrigation system for the landscaping including the natural plant life on the Dwelling Unit as a condition of approval of any submission.

The Reviewing Entity shall, within the period specified in the Design Guidelines, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by the Reviewing Entity to be inconsistent or not in conformity with this Declaration and/or the Design Guidelines; and the reasons for such finding. In the event the Reviewing Entity fails to advise the submitting party by written notice within the period specified in the Design Guidelines of either the approval or disapproval, approval shall be deemed to have been denied. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice or confirmed facsimile and simultaneous mailing thereof shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

(c) If construction does not commence on a project for which Plans have been approved within one hundred twenty (120) days of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the Reviewing Entity for reconsideration. If construction is not completed on a project for which plans have been approved within the period set forth in the Design Guidelines or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article and subject to the enforcement provisions of this Article.

(d) If landscaping is not installed, or not to be installed by the Declarant or Builder, each Owner of a Dwelling Unit shall, within a period of two hundred ten (210) days from the conveyance of the Dwelling Unit to the Owner by the Declarant or a Builder, install full landscaping in the Owner's yard in accordance with plans approved by the Reviewing Entity and meeting the minimum requirements set forth in the Design Guidelines.

9.5 No Waiver of Future Approvals: Each Owner acknowledges that the persons reviewing applications will change from time to time and that opinions on aesthetic matters, as well as the interpretation, application and enforcement of the Design Guidelines, may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.6 Variance: The Reviewing Entity may authorize, in writing, variances from its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate, such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations, and (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties. Inability to obtain, or the terms of, any governmental approval, or the terms of

any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, during the Development Period, the MC may not authorize variances without the written consent of the Declarant.

9.7 Limitation of Liability: The standards and procedures established by this Article IX are intended as a mechanism for maintaining and enhancing the over all aesthetics of the Properties; they do not create any duty to any Person. Review and approval of any application pursuant to this Article IX is made on the basis of aesthetic considerations only, and the Reviewing Entity shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning ordinances, the PUD Ordinance, the Zoning Commitments, and/or other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in the Properties; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Dwelling Unit. In all matters, the Declarant, the Board, the MC, and the members of each shall be defended and indemnified by the Association as provided in Section 4.6.

9.8 Enforcement: Any construction, alteration or other work done in violation of this Article or the Design Guidelines shall be deemed to be non-conforming. Upon written request from the Declarant, the MC, or the Board, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the requester or restore the property, Dwelling Unit and/or Dwelling Units to substantially the same condition as existed prior to the non-conforming work. Should an Owner fail to remove and restore as required, the Declarant, the Association or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All such costs, together with the interest at the rate established by the Board (not to exceed the maximum rate then allowed by law), may be assessed against the benefitted Dwelling Unit and collected as a Benefitted Assessment unless otherwise prohibited in this Declaration.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Dwelling Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work by the deadline set forth in the approval, the Declarant or the Association shall be authorized, after notice to the Owner of the Dwelling Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Dwelling Unit and remove or complete any incomplete work and to assess all costs incurred against the Dwelling Unit and the Owner thereof as a Benefitted Assessment unless otherwise prohibited in

this Declaration.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article IX and the Design Guidelines may be excluded from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, none of the Declarant, the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

The Association shall be primarily responsible for enforcement of this Article IX. If, however, in the discretion of the Declarant, the Association fails to take appropriate enforcement action, as authorized herein, within a reasonable time period, the Declarant may, during the Development Period, but shall not be obligated to, exercise enforcement rights in the same manner as set forth above. In addition to the foregoing, the Association and the Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Reviewing Entity.

ARTICLE X **USE RESTRICTIONS**

The Properties shall be used only for residential, recreational, and related purposes, which may include, without limitation, offices for any managing agent or agents retained by the Association or business offices for the Declarant or the Association consistent with this Declaration and any Supplemental Declaration.

10.1 **Signs:** No sign shall be erected within the Properties without the written consent of the Board, except those required by law, including posters, circulars and billboards; provided, one (1) "for sale" (but not "for rent" or "for lease") sign of a design prescribed by Declarant or, after the end of the Development Period, the MC may be displayed on a Dwelling Unit being offered for sale if approved pursuant to Article IX. If permission is granted to any Person to erect a sign within the Properties, the Declarant or MC, as applicable, shall have the right to restrict the size, color, lettering, and placement of such sign. The Declarant shall have the right to erect signs as they, in their discretion, deem appropriate, including, without limitation, "for sale", entry and directional signs.

10.2 **Vehicles and Parking:** No commercial vehicle, recreational vehicle, motorcycles, snow mobile, motorcycle or other motorized vehicle and no boat, trailer, hitch or other similar personal property shall at any time be parked or stored on any portion of the Properties other than on a driveway or in a garage. Unless otherwise specifically permitted by the Board or pursuant to rules and regulations adopted by the Board, driveways on the Properties may only be used to park commercial vehicles, recreational vehicles, snow mobiles, boats, trailers, or other similar vehicles for not more than twenty-four (24) hours total during any seven (7) day period at a time and to park operable automobiles.

10.3 Occupants Bound: All provisions of the Governing Documents shall also apply to all Residents, guests, and invitees of any Dwelling Unit. Every Owner shall cause all Residents, guests and invitees of his or her Dwelling Unit to comply with the foregoing, and every Owner shall be responsible for all violations and losses to the Common Area caused by such Residents, guests and invitees notwithstanding the fact that such Residents, guests and invitees of a Dwelling Unit are fully liable and may be sanctioned for any violation.

10.4 Animals and Pets: No animals of any kind, including livestock and poultry, shall be raised, bred, or kept on any portion of the Properties, except that for each Dwelling Unit there shall be permitted up to a total of three (3) dogs or three (3) cats or a combination of dogs and cats not to exceed three (3) in total, no more than two (2) birds, and a reasonable number, as determined by the Board, of other usual and common household pets, subject to compliance with applicable local codes. In no event, however, shall monkeys, snakes, pigs, exotic animals, or ferrets be permitted in any Dwelling Unit. Pets which are permitted to roam free, or which, in the sole discretion of the Association, make objectionable noise, endanger the health or constitute a nuisance or inconvenience to the Owners of other Dwelling Units or the owner of any portion of the Properties shall be removed from the Properties upon request of the Board. If the Owner fails to honor such request, the pet may be removed by the Board. The Board may adopt reasonable rules designed to minimize damage and disturbance to other Owners and Residents, including rules requiring damage deposits, waste removal, leash controls, noise controls, pet occupancy limits based on size and facilities of the Dwelling Unit and fair share use of the Common Area; provided, however, any rule prohibiting the keeping of ordinary household pets shall apply prospectively only and shall not require the removal of any pet which was being kept on the Properties in compliance with the rules in effect prior to the adoption of such rule. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of Residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No pets shall be kept, bred, or maintained for any commercial purpose.

10.5 Quiet Enjoyment: Nothing shall be done or maintained on any part of a Dwelling Unit which emits foul or obnoxious odors outside the Dwelling Unit or creates noise or other conditions which tend to unreasonably disturb the peace, quiet, safety, comfort, or serenity of the Residents and invitees of other Dwelling Units. No activity shall be carried on upon any portion of the Properties, which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the Residents and invitees of other Dwelling Units.

10.6 Unsanitary or Unkempt Conditions: All portions of a Dwelling Unit outside of enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish, debris, or composting of any kind shall be placed or permitted to accumulate upon or adjacent to any Dwelling Unit so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Properties. No other nuisance shall be permitted to exist or operate upon any Dwelling Unit so as to be offensive or detrimental to any other portion of the Properties. No activities shall be conducted upon or adjacent to any Dwelling Unit or within improvements constructed thereon which are or might be unsafe or hazardous to any Person or property. No open fires shall be lighted or permitted on the Properties, except (i) in a barbecue unit

while attended and in use for cooking purposes , (ii) within a safe and well designed interior fireplace, or (iii) outdoor fireplaces located within a patio in the rear yard of a Dwelling Unit, the design and location of which is approved by the Reviewing Entity per the terms of Article IX above. No Owner shall engage in any activity which materially disturbs or destroys the vegetation, wildlife, or air quality within the Properties or which result in unreasonable levels of sound or light pollution.

10.7 Antennae: Standard TV antennas and other over-the-air reception devices (including satellite dishes) of less than one (1) meter in diameter shall be permitted upon the Properties. Installation of standard TV antennas and over-the-air reception devices shall comply with any and all Design Guidelines, or other applicable rules and guidelines adopted pursuant to Article IX; provided, however, that such rules or regulations do not unreasonably increase the cost of installing, maintaining, or using such devices. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus (of any size) for a master antenna, cable, or other communication system for the benefit of all or any portion of the Properties, should any master system or systems require such exterior apparatus.

10.8 Fences and Dog Runs: No wall, dog run, animal pen, or fence of any kind shall be constructed on any Dwelling Unit, except as approved in accordance with Article IX.

10.9 Exterior Lighting: Except for seasonal holiday decorative lights, which may be displayed between November 15 and January 15 only, all exterior lights must be approved in accordance with Article IX of this Declaration.

10.10 Temporary Structures: Tents, shacks, or other structures of a temporary nature shall not be permitted on any Dwelling Unit, except as approved in accordance with Article IX or as may be authorized by the Declarant during initial construction within the Properties. Temporary structures used during the construction or repair of a Dwelling Unit or other improvements shall be removed immediately after the completion of construction or repair.

10.11 Storage: Storage of furniture, fixtures, appliances, machinery, equipment or other goods and chattels not in active use on the Common Area, or on any portion of a Dwelling Unit which is visible from outside the Dwelling Unit shall not be permitted, except as approved in accordance with Article IX. Detached storage buildings and detached sheds are prohibited.

10.12 Subdivision of Dwelling Unit and Time-Sharing: No Dwelling Unit shall be subdivided or its boundary lines changed except with the prior written approval of the Board; provided, however, the Declarant, its successors and assigns hereby expressly reserve the right unilaterally to subdivide, change the boundary line of, and re-plat any Dwelling Unit(s) owned by Declarant, its successors and assigns during the Development Period.

No Dwelling Unit shall be made subject to any type of timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Dwelling Unit rotates among members of the program on a fixed or floating time schedule over a period of years. However, the Declarant hereby reserves the right for itself and its assigns to operate such a program.

10.13 Firearms/Fireworks: The discharge of firearms or fireworks within the Properties is prohibited. The term "firearms" includes B-B guns, pellet guns, paintball guns, and other firearms of all types, regardless of size. Nothing herein shall be construed to prohibit the Declarant or the Association from using portions of the Common Area from time to time to put on a fireworks show.

10.14 Wetlands, Lakes, and Other Water Bodies: The lakes, ponds, streams and other water bodies within the Properties are primarily aesthetic and intended for limited uses such as recreational fishing pursuant to rules and regulations established by the Board. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of any unauthorized use of lakes, ponds, streams or other bodies of water within or adjacent to the Properties. Certain areas within the Properties may be designated as wetlands mitigation and preservation areas and are restricted as to uses by special covenants approved by the U.S. Army Corps of Engineers (the "COE"). Pursuant to such special covenants, re-grading, filling and other improvements may not be permitted. Residents are advised, however, that the COE's preferred method of managing the wetlands preservation areas to maintain their function and value is to engage in annual controlled burning to replicate natural conditions. Declarant, the Association and other entities engaged in managing the preservation areas may initiate such controlled burns and in so doing shall not be liable for any alleged damages due to smoke and particulates. It is anticipated that such burning would only be evident within the Properties for a few days per year.

10.15 Business Use: No business or trade, garage sale, moving sale, rummage sale, or similar activity shall be conducted in or from any Dwelling Unit, except that an Owner or Resident may conduct ancillary business activities within the Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Dwelling Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board. "Business and trade" shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the family of the producer of such goods or services and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Dwelling Units which it owns within the Properties, including the operation of a timeshare or similar program.

The leasing of a Dwelling Unit shall not be considered a business or trade within the meaning of this subsection. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Dwelling Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

Dwelling Units may be leased only in their entirety. No fraction or portion may be leased. There shall be no subleasing of Dwelling Units or assignment of leases unless prior written approval is obtained from the Board. All leases shall be in writing.

No transient tenants may be accommodated in a Dwelling Unit, and all leases shall be for an initial term of no less than thirty (30) days, except with the prior written consent of the Board.

Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Dwelling Unit Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of the Governing Documents. The Board may adopt reasonable rules regulating leasing and subleasing.

10.16 Occupancy: Dwelling Units shall not be occupied by more than two (2) persons per bedroom in the Dwelling Unit.

10.17 Trash Containers and Collection: No garbage or trash shall be placed or kept on any Dwelling Unit, except in covered containers of a type, size and style which are approved in accordance with Article IX or as required by the applicable governing jurisdiction and, if applicable, the private collection contractor. In no event shall such containers be maintained so as to be visible from outside the Dwelling Unit unless they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Dwelling Units and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Dwelling Unit.

10.18 Clothes Drying Facilities: Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Dwelling Unit and no clothes, sheets, blankets or laundry of any kind shall be hung outside on any portion of the Properties.

10.19 Snowmobiles Prohibited: The operation of snowmobiles or similar mechanized snow vehicles within the Properties is prohibited.

10.20 Skiing: Cross-country skiing within the Properties is prohibited.

10.21 Bird and Squirrel Houses: No Dwelling Unit shall be allowed to have more than one (1) bird, squirrel or similar house, and such house shall be mounted on a single pole so that the total height of the pole and house does not exceed the height of the eave of the residence on that Dwelling Unit. With exception of foregoing, feeding of wildlife by Residents is prohibited.

10.22 Flagpoles: No Dwelling Unit shall be allowed to have a freestanding flagpole of any type. Flags on Dwelling Units must be flown only on poles mounted to the side of the residence by a bracket.

10.23 Permanent Swimming Pools: The installation of a permanent swimming pool within any Dwelling Unit is prohibited. The foregoing does not apply to indoor or outdoor jacuzzis and hot-tubs included within a deck, screened from view from neighboring Dwelling Units and installed with

the prior approval of the Declarant or MC, as applicable.

10.24 Irrigation/Wells: No sprinkler or irrigation system of any type which would draw water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within the Properties shall be installed, constructed or operated within the Properties. All sprinkler and irrigation systems shall be subject to approval in accordance with Article IX of this Declaration. Private wells are prohibited on the Properties. The provisions of this Section 10.24 shall not apply to wells or irrigation systems installed by Declarant or the Town.

10.25 Drainage and Septic Systems: Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across the Properties for the purpose of altering drainage and water flow; provided, such easement right shall not be exercised in such a manner as to unreasonably interfere with the use of any Dwelling Unit without the affected Owner's consent. Septic systems are prohibited on the Properties.

10.26 Garage Sales. Garage Sales by individual Owners are prohibited; however, community garage sales, involving more than one (1) Owner, are permitted, so long as they are first approved by the Board of directors which, in its sole discretion, may deny a request for a Garage sale, or may impose conditions upon the occurrence of a Garage Sale.

10.27 Air Conditioning Units: Except as may be permitted by the Board or its designee, no window air conditioning units or window fans may be installed in any Unit.

10.28 Artificial Vegetation, Exterior Sculpture, and Similar Items: No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains, flags, and similar items must be approved in accordance with Article IX of this Declaration.

10.29 Notice of Zoning Commitments: Notice is hereby given that the Zoning Commitments were extended in connection with enactment of the PUD Ordinance and, by their terms, apply to the use and development of the Property.

10.30 Tree Preservation and Tree Conservation: The Zoning Commitments identify and refer to (i) "Preservation Area" in which trees, underbrush, and small trees are to be preserved and (ii) "Conservation Areas" in which trees are to be conserved, all in the manner specified in the Zoning Commitments. The Association and all owners shall preserve trees, small trees, and/or underbrush within the Preservation Areas, and shall conserve healthy trees within the Conservation Areas, all in the manner specified in and per the terms of the Zoning Commitments.

10.31 Storm Water Effects: The development of the Properties has been planned with several stormwater detention basins that are generally designated for open space and recreational uses. Portions of the Common Area and adjacent areas may be within the regulated flood plain as determined in accordance with Federal Emergency Management Agency guidelines. During and

after storm events, certain portions of the Common Area such as detention basins and walking trails may be inundated and unavailable for recreational use.

ARTICLE XI EASEMENTS

11.1 Easements of Encroachment: The Declarant reserves to itself and grants to the Association and to each Dwelling Unit reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Dwelling Unit and any adjacent Common Area and between adjacent Dwelling Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2 Easements for Utilities:

(a) There are hereby reserved to the Declarant during the Development Period, and granted to the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary to install, replace, repair, and maintain cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity. The Declarant and/or the Association may assign these rights to any local utility supplier, cable company, security company, or other company providing a service or utility to the Properties subject to the limitations herein.

This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any structures on any Dwelling Unit, and any damage to a Dwelling Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Dwelling Unit and, except in an emergency, entry onto any Dwelling Unit shall be made only after reasonable notice to the Owner or Resident.

Declarant specifically grants to the local utility suppliers easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the structures on any Dwelling Unit, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board or Declarant.

(b) There is hereby reserved to the Declarant during the Development Period, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole

discretion of Declarant, in connection with the orderly development of the Properties.

11.3 Easements to Serve Additional Property: During the Development Period, the Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Real Estate, whether or not such real estate is made part of the Properties. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such real estate. Declarant further agrees that if the easement is exercised for permanent access to such real estate and such real estate or any portion thereof benefiting from such easement is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such real estate.

11.4 Easements for Cross-Drainage: The Declarant hereby reserves for itself and grants to the Association that an easement across every Dwelling Unit, and all Common Area for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall alter the natural drainage on any Dwelling Unit to increase materially the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner(s) of the affected property, the Board, and, during the Development Period, the Declarant.

11.5 Right of Entry: The Declarant hereby grants to the Association an easement of access and right, but not the obligation, to enter all portions of the Properties, including each Dwelling Unit, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents of the Association, its Board, officers, or committees, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry into a structure on a Dwelling Unit shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement includes the right to enter any Dwelling Unit to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but does not authorize entry into any structure on a Dwelling Unit without permission of the Owner, except by emergency personnel acting in their official capacities.

11.6 Easements for Maintenance and Enforcement: The Declarant hereby grants to the Association and its authorized agents, a perpetual easement and right to enter all portions of the Properties, including each Dwelling Unit to (a) perform its maintenance responsibilities under Article V, and (b) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry into a structure on a Dwelling Unit shall be only during reasonable hours and after notice to and permission from the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

The Declarant grants to the Association an easement and the right to enter a Dwelling Unit to

abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Benefitted Assessment.

11.7 Easements for Exterior Landscaping and Maintenance: The Declarant hereby grants to the authorized agents of the Association the right to enter upon those portions of the Dwelling Unit outside of the home thereon to furnish services required or permitted to be furnished by the Association under this Declaration or under any Supplemental Declaration. Any damage caused by the exercise of this Easement shall be repaired by the Association at its expense.

11.8 Rights to Stormwater Runoff, Effluent and Water Reclamation: Declarant hereby reserves for itself and its designees all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each Owner agrees, by acceptance of a deed to a Dwelling Unit, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent. This Section 11.8 may not be amended without the consent of the Declarant or its successor, and the rights created in this Section shall survive termination of this Declaration.

11.9 Access Easement: Each Owner of a Dwelling Unit shall have a non-exclusive perpetual easement for ingress to and egress from his Dwelling Unit to public ways over and across the roads, driveways, walkways, and trails located on the Common Areas, which easement shall run with the land, be appurtenant to and pass with title to every Lot. The Town or any other governmental authority which has jurisdiction over the Properties shall have a non-exclusive easement of access over roads, driveways, walkways, and trails located on the Common Areas for police, fire, ambulance, waste removal, or for the purpose of furnishing municipal or emergency services to the Properties. The Association, its employees, agents and contractors, shall have the right of ingress to, egress from, and parking on the Common Area, and the right to store equipment on the Community Area, for the purpose of furnishing any maintenance, repairs or replacements to portions of the Properties provided for herein. The Owner from time to time of unadded area shall have a non-exclusive perpetual easement of access over roads and driveways from time to time located on the Common Area.

11.10 Designated Landscape Easement: Areas identified on a plat as a "Landscape Easement", or an "LE," whether located in a Common Area or on a Lot, indicate a strip of ground set aside for green space and landscaping, in which the Declarant has installed or will install landscaping. The Association, as part of the Common Expenses, shall maintain, irrigate, fertilize, and replace all landscaping within any Landscape Easement.

ARTICLE XII **MORTGAGE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Dwelling Units in the Properties. The provisions of this Article XII apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.1 Notices of Action: An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Dwelling Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Dwelling Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Dwelling Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or By-Laws relating to such Dwelling Unit or the Owner or Resident which is not cured within sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action, which would require the consent of a specified percentage of Eligible Holders.

12.2 No Priority: No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Dwelling Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.3 Notice to Association: Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Dwelling Unit.

12.4 Failure of Mortgagee to Respond: Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE XIII **SPECIAL DECLARANT RIGHTS**

13.1 Special Declarant Rights: The Declarant reserves the following rights and powers ("Special Declarant Rights"):

(a) The rights and powers designated herein as being rights and powers of the Declarant to be exercised, during the Development Period, including, without limitation, the following:

(i) To complete any improvements indicated on Plats, development plans filed with the Declaration, or the Master Plan;

(ii) To add or withdraw real property from the terms of this Declaration as provided in Article VII;

(iii) To maintain sales offices, management offices, and advertising signs, as set forth in this Section 13.3;

(iv) To use easements through the Common Area for the purpose of making improvements within the Real Estate and the Additional Real Estate, as set forth in Section 13.4;

(v) To use the Common Area for special events as set forth in Section 13.8 without the payment of any fee or charge;

(vi) To exercise architectural controls, as set forth in Article IX; and

(vii) To furnish maintenance services, including, without limitation, watering of grass and other landscaping on portions of the Properties at Declarant's expense.

(b) The rights and powers designated herein as being rights and powers of the Declarant to be exercised during the Declarant Control Period including, without limitation, the right and power to appoint and remove any director or officer of the Association as provided in the By-Laws.

(c) Anything in this Declaration or the By-Laws to the contrary notwithstanding, the provisions set forth in this Article shall govern. Except as otherwise provided in this Article, the rights reserved to the Declarant in this Article shall terminate at such time as the Development Period terminates.

13.2 Transfer of Special Declarant Rights:

(a) Assignment. The Declarant may assign any Special Declarant Rights, or other special rights and obligations of the Declarant set forth in this Declaration or the By-Laws to any affiliate of the Declarant or a Builder, or Declarant may allow any affiliate of the Declarant or a Builder to exercise such rights on behalf of the Declarant. The method of exercising such rights shall be subject to the agreement of the parties thereto, which shall not require recordation in the Public Records.

(b) Transfer. Any or all of the Special Declarant Rights, or any of the other special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the

Public Records.

13.3 Models, Sales Offices and Management Offices: Notwithstanding anything to the contrary in this Declaration, during the Development Period and for the period of twelve (12) months thereafter, the Declarant and Builders authorized by Declarant may maintain and carry on upon any Dwelling Unit owned by Declarant or a Builder or any portion of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Dwelling Units or other real estate, including, but not limited to, business offices, signs, model units or homes, marketing trails, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities. Except as provided below, the Declarant's or Builder's right to use the Common Area for purposes stated in this paragraph shall not be exclusive and shall not unreasonably interfere with use of such Common Area by Owners. Without limiting the foregoing, Declarant shall have the right and power, within its sole discretion, to (i) construct such temporary or permanent improvements, or to do such acts or other things in, on, or to the Properties as the Declarant may, from time to time, determine to be necessary or advisable, (ii) construct and maintain model homes, sales or leasing offices, parking areas, advertising signs, lighting and banners, or other promotional facilities at such locations and in such forms as the Declarant may deem advisable and to use such model homes (including model homes which are sold by and leased back to the Declarant), sales or leasing offices or other facilities for the purpose of selling or leasing Dwelling Units on the Properties or at other properties in the general location of the Properties which are being offered for sale by the Declarant or any of its affiliates, without the payment of any fee or charge whatsoever to the Association. Declarant, its agents, prospective purchasers and tenants, shall have the right of ingress, egress and parking in and through, and the right to use and enjoy the Common Area, at any and all reasonable times without fee or charge. The Declarant shall have the right and power to lease any Dwelling Unit owned by it to any person or entity, which it deems appropriate in its sole discretion and it need not comply with the provisions of Section 10.15. Nothing in this Declaration shall be interpreted or applied to prohibit or interfere with the activities and facilities specified in this Section 13.3

13.4 Construction of Improvements/Removal of Property: The Declarant and its employees, agents and designees shall also have a right and easement during the Development Period over and upon all of the Common Area for the purpose of (a) making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion or (b) removing peat moss, dirt, gravel, trees, bushes, or other landscaping, and other material as the Declarant deems appropriate in its sole discretion. The Declarant shall not be obligated to pay or otherwise account to the Association for any material removed from the Common Area under 13.4(b).

13.5 Other Covenants Prohibited: During the Development Period, no Person shall record any declaration of covenants, conditions and restrictions or similar instrument affecting any portion of the Properties without Declarant's prior written consent. Any instrument recorded without such consent shall result in such instrument being void and of no force and effect unless subsequently approved in writing by the Declarant and recorded in the Public Records.

13.6 Master Planned Community: Each Owner, by accepting title to a Dwelling Unit and becoming an Owner, and each other Person, by acquiring any interest in the Properties,

acknowledges awareness that Britton Falls is a master planned community, the development of which is likely to extend over several years, and agrees not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the Properties during the Development Period, or (b) changes in any conceptual or master plan for the Properties, including, but not limited to, the Master Plan.

13.7 Equal Treatment: During the Development Period, the Association shall not, without the prior written consent of the Declarant, adopt any policy, rule or procedure that:

(a) Limits the access of the Declarant, its successors, assigns and/or affiliates or their personnel and/or guests, including visitors, to the Common Areas;

(b) Limits or prevents the Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing or using the Association or its Common Areas in promotional materials;

(c) Limits or prevents purchasers of new residential housing constructed by the Declarant, any Builder, their successors, assigns and/or affiliates in the Properties from becoming members of the Association or enjoying full use of its Common Areas, subject to the membership provisions of this Declaration and the By-Laws;

(d) Impacts the ability of the Declarant, its successors, assigns and/or affiliates, to carry out to completion its development plans and related construction activities for Britton Falls, as such plans are expressed in the Master Plan, as such may be amended and updated from time to time. Policies, rules or procedures affecting the provisions of existing easements established by the Declarant and limiting the establishment by the Declarant of easements necessary to complete the development of the Properties shall be expressly included in this provision. Easements that may be established by the Declarant shall include but shall not be limited to easements for development, construction and landscaping activities and utilities; or

(e) Impacts the ability of the Declarant, its successors, assigns and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

The Association shall not exercise its authority over the Common Areas to interfere with the rights of the Declarant set forth in this Declaration or to impede access to any portion of the Properties or the Development Area over the streets and other Common Areas.

13.8 Right to Use Common Area: During the Development Period, the Declarant shall have the right to use all Common Area, including recreational facilities, for up to twelve (12) days each year to sponsor special events for charitable, philanthropic, political, or marketing purposes as determined by the Declarant in its sole discretion. Any event described in this Section 13.8 shall be subject to the following conditions:

(a) the availability of the facilities at the time a request is submitted to the Association;

(b) the Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event; and

(c) the Declarant shall return the facilities and personal property owned by the Association and used in conjunction with the special event to the Association in the same condition as existed prior to the special events.

The Declarant shall have the right to assign the rights contained in this Section 13.8 to charitable organizations or foundations selected by the Declarant. The Declarant's right to use the Common Area for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

13.9 Sales By Declarant: Notwithstanding the restriction set forth in Section 2.5, Declarant reserves the right to sell Dwelling Units to Persons between the ages of 50 and 55, inclusive years of age; provided, such sales shall not affect Britton Falls 's compliance with all applicable state and federal laws under which the Properties may be developed and operated as an age-restricted community.

ARTICLE XIV **DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

14.1 Prerequisites to Actions Against Declarant: Prior to any Owner or the Association filing a civil action, undertaking any action in accordance with Section 14.4, or retaining an expert for any such action against Declarant or any Builder or subcontractor of any portion of the Properties, the Owner or the Board, as appropriate, shall notify and meet with the Members to discuss the alleged problem or deficiency. Moreover, prior to taking any action, the potential adverse party shall be notified of the alleged problem or deficiency and provided reasonable opportunity to cure the problem.

14.2 Consensus for Association Litigation: Except as provided in this Section after the Declarant Control Period, the Association shall not commence a judicial or administrative proceeding without first providing at least twenty-one (21) days written notice to its Members of a special meeting to consider such proposed action. Taking such action shall require the vote of Owners of seventy-five percent (75%) of the total number of Dwelling Units in the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the Governing Documents (including, without limitation, the collection of assessments and the foreclosure of liens); (b) counterclaims brought by the Association in proceedings instituted against it; or (c) actions to protect the health, safety, and welfare of the Members. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

14.3 Alternative Method for Resolving Disputes: Declarant, the Association, and their

respective officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances, or disputes described in Section 14.2 ("Claims") shall be resolved using the procedures set forth in Section 14.4 and 14.5 in lieu of filing suit in any court.

14.4 Claims: Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 14.5.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not constitute a Claim and shall not be subject to the provisions of Section 14.5:

(a) any suit by the Association against any Bound Party to enforce the provisions of Article VIII;

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article VII and Article XIII;

(c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(d) any suit by an Owner concerning the aesthetic judgment of the Modifications Committee, the Association, or Declarant pursuant to their authority and powers under Article VII;

(e) any suit in which any indispensable party is not a Bound Party; and

(f) any suit as to which any applicable statute of limitations would expire within ninety (90) days of giving the Notice required by Section 14.5(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 14.5.

14.5 Mandatory Procedures:

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the

"Notice"), stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (iii) Claimant's proposed remedy; and
- (iv) that Claimant will meet with Respondent to discuss good faith ways to resolve the Claim.

(b) Negotiation and Mediation. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of an independent agency providing dispute resolution services in the Indianapolis, Indiana area.

If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a written notice of termination of the mediation proceedings. The notice of termination of mediation shall set forth that the Parties are at an impasse and the date that mediation was terminated.

14.6 Allocation of Costs of Resolving Claims: Each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

14.7 Enforcement of Resolution: After resolution of any Claim through negotiation or mediation, if any Party fails to abide by the terms of any agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 14.5. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one (1) non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement,

including, without limitation, attorneys' fees and court costs.

14.8 Attorneys' Fees: In the event of an action instituted to enforce any of the provisions contained in the Governing Documents, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Benefited Assessment with respect to the Dwelling Unit(s) involved in the action.

ARTICLE XV **OTHER HOMEOWNERS ASSOCIATIONS**

15.1 In General: Declarant may determine, in its sole discretion, that it is necessary or appropriate to have part or all of the Additional Real Estate administered by a homeowners association which is separate and apart from the Association hereunder. For example, the Declarant may record a part or all of the declaration with respect to a part or all of the Additional Real Estate, which will provide for the creation of a not-for-profit corporation to administer and maintain such portions of the Additional Real Estate. An example of a situation where the Declarant may create a separate homeowners association to administer a portion of the Additional Real Estate is where the Residences, which are made part of the Additional Real Estate, will require services which are quantitatively or qualitatively different than those which will be furnished by the Association under this Declaration with respect to the Residences located within the Real Estate. For purposes hereof, any separate declaration which is recorded against a portion of the Additional Real Estate, shall be referred to herein as a "Local Area Declaration," and the association which administers the real estate which is subject to the Local Area Declaration, shall be referred to herein as a "Local Area Association".

15.2 Relationship of the Association and the Local Area Associations: It is intended that each Local Area Association shall operate independent of the Association hereunder. Thus, to the extent that a Local Area Association is granted the power and authority to maintain Dwelling Units or portions of the Properties, which serve Dwelling Units, the Association hereunder shall not be obligated to maintain such areas or furnish such services. However, nothing herein shall be deemed to restrict or limit the right of the Declarant or the MC to approve Regulated Work as provided in Article IX.

ARTICLE XVI **GOLF CARTS**

16.1 Golf Carts. Golf carts may be used and stored on the Properties, subject to the restrictions on the use, storage, and operation which follow in this Article XVI.

16.2 Authorized Golf Carts. The only golf carts that shall be permitted to be operated within the Properties shall be electric powered golf carts purchased and maintained by Owners and approved for use by the Declarant until the end of the Development Period, and thereafter by the Association. All golf carts powered by a source other than electricity are prohibited. All golf carts

must be maintained in a first class condition.

16.3 Operation of Golf Carts on Streets within the Properties. Owners of Dwelling Units may maintain golf carts at their Dwelling Unit and operate such vehicles on streets within the Properties to the full extent permitted by law, subject to rule and regulations established by Declarant until the end of the Development Period, and thereafter by the Association as amended from time to time. All golf carts must have working headlights, taillights, brake lights, turn signals, and can only be operated by persons over the age of sixteen (16) who have a valid automobile driver's license. The operation of golf carts within the Properties is a privilege and not a right that can be suspended at any time by the Association. All golf carts shall be stored inside when not in use. Outside storage of golf carts is prohibited.

16.4 Liability. Each owner of a golf cart accepts and assumes all responsibility for liability connected with the operation of the golf cart, and expressly indemnifies and agrees to hold harmless the Declarant and the Association, and their partners, members, officers, directors, employees, affiliates, representatives and agents, from any and all damages, whether direct or consequential, arising from or related to the use and operation of the golf cart.

ARTICLE XVII **GENERAL PROVISIONS**

17.1 Term: Unless otherwise provided by Indiana law, in which case such law shall control, this Declaration shall run with the land and have perpetual duration. This Declaration may be terminated only by an instrument signed by Owners of at least ninety percent (90%) of the total Dwelling Units within the Properties and, during the Development Period, also by the Declarant, which instrument is recorded in the Public Records. Nothing in this Section 16.1 shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

17.2 Amendment: After the expiration of the Development Period, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of sixty-seven percent (67%) of the total vote in the Association; provided, however, that (i) only the affirmative vote or written consent, or any combination thereof, of sixty-seven percent (67%) of the total votes within Section 2(A) shall be required to increase the Association's lot maintenance obligations (as specified in Section 5.2) and the corresponding Base Assessment for Dwelling Units in Section 2A, (ii) only the affirmative vote or written consent, or any combination thereof, of sixty-seven percent (67%) of the total votes within Section 2B shall be required to increase the Association's lot maintenance obligations (as specified in Section 5.2) and the corresponding Base Assessment for Dwelling Units in Section 2B, and (iii) only the affirmative vote or written consent, or any combination thereof, of sixty-seven percent (67%) of the total votes within Section 2(C) shall be required to increase the Association's lot maintenance obligations (as specified in Section 5.2) and the corresponding Base Assessment for Lots in Section 2C.

During the Development Period, the Declarant may, without notice to and without the consent of any Owners, Mortgagees, or the Association, unilaterally amend this Declaration in any

manner including, by way of example only and not by way of limitation, amendments (i) to bring any provision into compliance with any applicable governmental statutes, this PUD Ordinance, the Zoning Commitments, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Dwelling Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Fannie Mae or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Dwelling Units; (iv) to enable any reputable private insurance company to insure mortgage loans on the Dwelling Units; (v) to satisfy the requirements of any local, state or federal governmental agency for the development, marketing, and sale of Dwelling Units (vi) to correct errors, or resolve inconsistencies or ambiguities in this Declaration or any Exhibit hereto or any Supplemental Declaration; (vii) to amend Exhibit B to include additional real estate.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Amendments to this Declaration shall be prepared, executed, recorded and certified by the President of the Association.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant during the Development Period.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one (1) year of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

17.3 Severability: Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

17.4 Cumulative Effect; Conflict: The provisions of this Declaration shall be cumulative with any additional covenants and restrictions provided for in any Supplemental Declaration, and the Association may, but shall not be required to, enforce such additional covenants and restrictions. Nothing herein shall preclude any Supplemental Declaration or other recorded covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions, which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

17.5 Use of the Words "Britton Falls": No Person shall use the words "Britton Falls" or any derivative in any printed or promotional material without the Declarant's prior written consent.

However, Owners may use the terms "Britton Falls " in printed or promotional matter where such term is used solely to specify that particular property is located within Britton Falls and the Association shall be entitled to use the words "Britton Falls " in its name.

17.6 Pulte Homes Marks: Any use by the Association of names, marks or symbols of Pulte Homes, Inc. or any of its affiliates (collectively "Pulte Homes Marks") shall inure to the benefit of Pulte Homes, Inc. and shall be subject to the periodic approval of Pulte Homes, Inc. for quality control. The Association shall enter into license agreements with Pulte Homes, Inc., terminable with or without cause and in a form specified by the Pulte Homes, Inc. in its sole discretion, with respect to permissive use of certain Pulte Homes Marks. The Association shall not use any Pulte Homes Mark without the prior written consent of Pulte Homes, Inc.

17.7 Compliance: Every Owner and Resident of any Dwelling Unit shall comply with this Declaration, the By-Laws, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Owner(s), subject, however, to the provisions of Article XIV.

17.8 Notice of Sale or Transfer of Title: Any Owner desiring to sell or otherwise transfer title to his or her Dwelling Unit shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Dwelling Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

17.9 Attorneys' Fees: In the event of an action instituted to enforce any of the provisions contained in the Governing Documents, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Benefitted Assessment with respect to the Dwelling Unit(s) involved in the action.

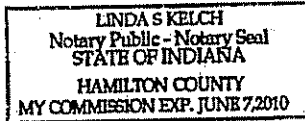
17.10 Notices: Any notice required to be sent to any Owner under the provisions of this Declaration or the By-Laws shall be deemed to have been properly sent if (i) mailed, postage prepared, to his or its last known address as it appears on the records of the Association at the time of such mailing, (ii) transmitted by facsimile or e-mail to his or its facsimile number or e-mail address as either appears on the records of the Association at the time of such transmittal, or (iii) when personally delivered to his or its Dwelling Unit. The date of mailing, or the date of transmission if the notice is sent by facsimile or e-mail, shall be deemed the date of service.

DECLARANT:

PULTE HOMES OF INDIANA, LLC
An Indiana limited liability company

By: [Signature]
David Compton,
Vice President of Land Acquisition

STATE OF INDIANA)
) SS:
COUNTY OF Hamilton)



Before me the undersigned, a Notary Public in and for said County and State, personally appeared *David Compton*, as Vice President of Land Acquisition for Pulte Homes, LLC, and having been duly sworn, acknowledged execution of the foregoing Declaration of Covenants, Conditions, and Restrictions for Britton Falls by Del Webb.

Witness my hand and Notarial Seal this 31st day of October, 2006.

My Commission Expires:
June 7, 2010

[Signature]
Linda S Kelch, Notary Public

TITLEHOLDERS:

Date: 10/30/06

[Signature]
Douglas J. Underwood

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

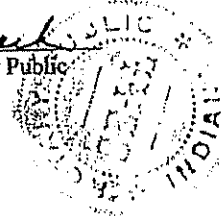
Before me the undersigned, a Notary Public in and for said County and State, personally appeared *Douglas J. Underwood*, and having been duly sworn, acknowledged execution of the foregoing Declaration of Covenants, Conditions, and Restrictions for Britton Falls Del Webb.

Witness my hand and Notarial Seal this 30th day of October, 2006.

My Commission Expires:

Aug 24, 2014

[Signature]
N. Jeanne Clark, Notary Public



Date: 10/30/06

Joseph Kent Underwood
Joseph Kent Underwood

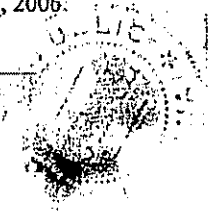
STATE OF INDIANA)
COUNTY OF Hamilton) SS:

Before me the undersigned, a Notary Public in and for said County and State, personally appeared *Joseph Kent Underwood*, and having been duly sworn, acknowledged execution of the foregoing Declaration of Covenants, Conditions, and Restrictions for Britton Falls by Del Webb.

Witness my hand and Notarial Seal this 30th day of October, 2006.

My Commission Expires:
Aug 24, 2014

N Jeanne Clark
N Jeanne Clark, Notary Public



Date: Oct. 20/2006

Marianne Underwood
Marianne Underwood,

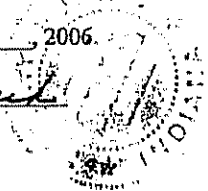
STATE OF INDIANA)
COUNTY OF Hamilton) SS:

Before me the undersigned, a Notary Public in and for said County and State, personally appeared *Marianne Underwood*, and having been duly sworn, acknowledged execution of the foregoing Declaration of Covenants, Conditions, and Restrictions for Britton Falls by Del Webb.

Witness my hand and Notarial Seal this 30th day of October, 2006.

My Commission Expires:
Aug 24, 2014

N Jeanne Clark
N Jeanne Clark, Notary Public



Date: Oct 20/2006

Marianne Presser Underwood
Marianne Presser Underwood
Trustee, U/D/T Dated May 5, 1994

STATE OF INDIANA)
) SS:
COUNTY OF Hamilton)

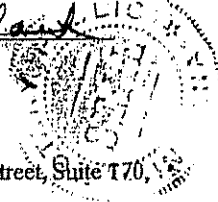
Before me the undersigned, a Notary Public in and for said County and State, personally appeared *Marianne Presser Underwood Trustee, U/D/T Dated May 5, 1994*, and having been duly sworn, acknowledged execution of the foregoing Declaration of Covenants, Conditions, and Restrictions for Britton Falls by Del Webb.

Witness my hand and Notarial Seal this 30th day of October, 2006.

My Commission Expires:

Aug 24, 2014

N. Jeanne Clark Notary Public



Prepared By: Charles D. Frankenberger, Nelson & Frankenberger, 3105 East 98th Street, Suite T70, Indianapolis, Indiana 46280 (317) 844-0106.

"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."
(name) Jennifer C. Hassan

EXHIBIT A

"Real Estate"

That part of Section 29, Township 18 North, Range 6 East, Fall Creek Township, Hamilton County, Indiana, more particularly described as follows:

COMMENCING at the Southwest corner of the Southwest one-quarter of said Section 29; thence North 00°16'20" West 274.81 feet along the West line of the Southwest one-quarter of said Section 29 to the TRUE PLACE OF BEGINNING; thence continuing North 00°16'20" West 2394.61 feet along said West line to the Northwest corner of the Southwest one-quarter of said Section 29; thence North 00°13'55" West 301.12 feet along the West line of the Northwest one-quarter of said Section 29; thence North 89°25'42" East 1320.03 feet; thence South 00°10'26" East 301.13 feet to a point on the North line of the Southwest one-quarter of said Section 29; thence North 89°25'42" East 1319.73 feet along the North line of said Southwest one-quarter to the Northeast corner of the Southwest one-quarter of said Section 29; thence North 89°25'42" East 663.48 feet along the North line of the Southeast one-quarter; thence North 00°10'51" West 1328.39 feet; thence North 89°32'55" East 662.11 feet; thence North 00°14'22" West 969.36 feet along the West line of the East one-half of the Northeast one-quarter of said Section 29 to Thorpe Creek; thence northeasterly and easterly along said Thorpe Creek by the next sixteen (16) courses; 1) North 48°41'52" East 8.93 feet; 2) North 53°03'19" East 109.41 feet; 3) North 55°37'16" East 197.66 feet; 4) North 59°00'44" East 119.63 feet; 5) North 36°59'13" East 30.24 feet; 6) North 59°35'57" East 94.58 feet; 7) North 76°25'13" East 34.93 feet; 8) North 85°27'58" East 94.15 feet; 9) North 88°35'56" East 150.53 feet; 10) North 81°57'44" East 24.69 feet; 11) South 82°40'18" East 64.66 feet; 12) North 84°37'59" East 42.04 feet; 13) South 67°13'58" East 48.12 feet; 14) North 87°00'13" East 31.00 feet; 15) North 75°05'52" East 34.88 feet; 16) North 41°06'27" East 47.99 feet to a point on the North line of the Northeast one-quarter of said Section 29; thence North 89°40'11" East 311.06 feet along the North line of the Northeast one-quarter of said Section 29 to the Northeast corner of the Northeast one-quarter of said Section 29; thence South 00°21'26" East 2648.39 feet along the East line of the Northeast one-quarter of said Section 29 feet to the Northeast corner of the Southeast one-quarter of said Section 29; thence South 00°23'10" East 183.00 feet along the East line of the Southeast one-quarter of said Section 29; thence South 90°00'00" West 1200.00 feet; thence South 39°18'54" West 200.00 feet; thence South 18°10'29" West 199.96 feet; thence South 08°22'28" East 434.78 feet; thence South 07°10'01" East 174.16 feet; thence South 01°06'00" West 81.22 feet; thence South 14°47'52" West 253.93 feet; thence South 21°08'12" West 429.02 feet; thence South 01°33'02" West 137.89 feet; thence South 18°27'56" East 165.76 feet; thence South 45°48'07" East 47.07 feet; thence South 00°54'01" East 504.86 feet to a point on the South line of the Southeast one-quarter of said Section 29; thence South 89°05'59" West 1214.73 feet along the South line of the Southeast one-quarter of said Section 29 to the Southeast corner of the Southwest one-quarter corner of said Section 29; thence North 00°07'20" West 288.16 feet along the West line of the Southeast one-quarter of said Section 29; thence South 89°25'42" West 2633.19 feet to the place of beginning. Parcel contains 335.30 acres.

EXHIBIT B

"Additional Real Estate"

That part of the Southeast one-quarter of Section 29, Township 18 North, Range 6 East, Fall Creek Township, Hamilton County, Indiana, more particularly described as follows:

BEGINNING at the Southeast corner of said Southeast one-quarter; thence South 89°05'59" West 1451.63 feet along the South line of said Southeast one-quarter; thence North 00°54'01" West 504.86 feet; thence North 45°48'07" West 47.07 feet; thence North 18°27'56" West 165.76 feet; thence North 01°33'02" East 137.89 feet; thence North 21°08'12" East 429.02 feet; thence North 14°47'52" East 253.93 feet; thence North 01°06'00" East 81.22 feet; thence North 07°10'01" West 174.16 feet; thence North 08°22'28" West 434.78 feet; thence North 18°10'29" East 199.96 feet; thence North 39°18'54" East 200.00 feet; thence North 90°00'00" East 1200.00 feet to a point on the East line of the Southeast one-quarter of said Section 29; thence South 00°23'10" East 2484.46 feet along said East line to the place of beginning. Parcel contains 80.44 acres more or less.