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DECLARATION OF COVENANTS AND RESTRICTIONS

OF

EDEN GATE



CHICAGO TITLE

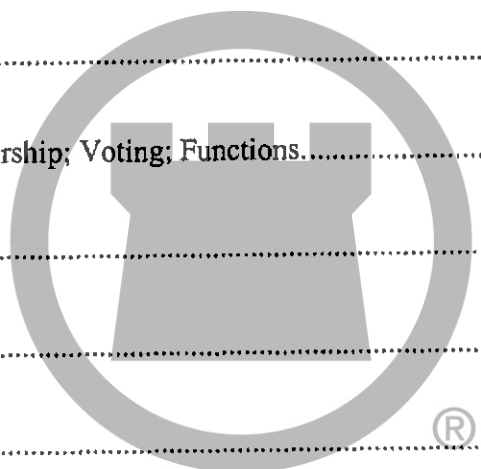
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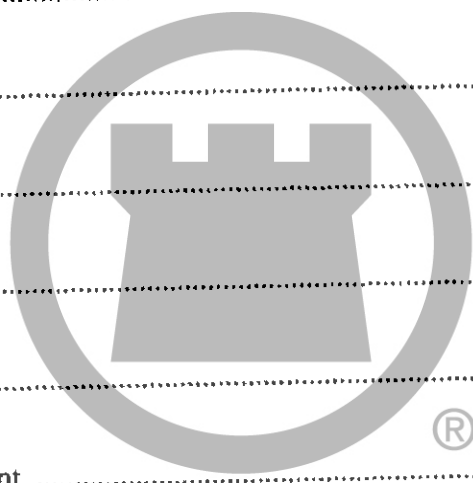
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**DECLARATION OF COVENANTS AND RESTRICTIONS OF
EDEN GATE**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS made this ___ day of _____, 2004, by HILLS EDEN GATE, LLC, an Indiana limited liability company ("Declarant").

Instrument Book Page Type
200500002175 0 0 PLAT

WITNESSETH,

WHEREAS, the following facts are true:

PC6/30/1ABCD

A. Declarant is the sole owner in fee simple title or has the exclusive right to purchase certain real estate located in Hendricks County, more particularly described in the attached Exhibit A-1, which is incorporated herein by reference (hereinafter referred to as the "Real Estate"). Declarant has the exclusive option and/or right to purchase additional adjacent real estate as more particularly described on Exhibit A-2, attached hereto and made a part hereof (the "Expansion Real Estate"). As used herein, Real Estate shall also include that portion of the Expansion Real Estate which is purchased by Declarant.

B. Declarant is the sole owner of the fee simple title to that portion of the Real Estate more particularly described in Exhibit B attached hereto and made a part hereof (hereinafter referred to as the "Tract" or "Section 1").

C. Declarant may from time to time subject part of the Real Estate to the provisions of this Declaration subject to the requirements of Paragraph 22. As used herein, Real Estate, shall include all real estate which has been subjected to the provisions of this Declaration.

D. Declarant, by execution and recording of this Declaration, is subjecting the Tract to the terms and provisions of this Declaration and assuring that all properties which are conveyed which are a part of the Tract shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the Tract and be binding upon all parties having any right, title or interest in the Tract, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

NOW, THEREFORE, Declarant hereby makes this Declaration as follows:

1. Definitions. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

(a) "Applicable Date" means the date determined pursuant to Paragraph 10 of this Declaration.

(b) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.

(c) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the Bylaws of the Corporation.

(d) "Bylaws" shall mean the Bylaws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation.

(e) "Common Area" means the area designated as Common Area upon a Plat or designated as Common Area in this Declaration and which is to be maintained and controlled by the Corporation.

(f) "Common Expense" means expenses for administration of the Corporation, expenses for the upkeep, maintenance, repair and replacement of the Common Area and of other maintenance obligations of the Corporation and all sums lawfully assessed against the Members of the Corporation.

(g) "Corporation" means the Eden Gate Homeowners Association, Inc., its successors and assigns, a not-for-profit corporation whose Members shall be Owners of Lots as more particularly described in Paragraph 9 of this Declaration.

(h) "Declarant" shall mean and refer to Hills Eden Gate, LLC, and any successors and assigns of it whom it designates in one or more written recorded instruments, to have the rights of Declarant hereunder including, but not limited to, any mortgagee acquiring title to any portion of the Tract pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

(i) "Duplex Unit" means one-half (½) of any building generally designed for residential occupancy to accommodate more than one (1) Dwelling Unit and constructed on any part of the Real Estate (including one-half (½) of the party wall separating such Duplex Unit from the adjoining, attached Duplex Unit contained within the same building), it being understood that the Lots in the Real Estate have been configured to accommodate the construction of attached Duplex Units which may be acquired, held, transferred, sold, hypothecated, leased, rented, improved, used and occupied as separate and distinct parcels of real property subject to the provisions of this Declaration.

(j) "Dwelling Unit" means one of the living units, including a Duplex Unit, located upon a Lot.

(k) "Eden Gate" means the name by which the Real Estate, which is the subject of this Declaration, shall be known.

(l) "Lot" means any plot of ground designated as such upon the Plat and upon which one (1) Dwelling Unit is constructed, may be constructed or exists thereon. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon. The Plat divides the real estate into lots numbered 1 through 54. Numbered lots 1 through 50, inclusive and 54 shall be further divided into two (2) lots to accommodate construction, development and sale of a duplex building containing two (2) Dwelling Units. Lots numbered 51, 52 and 53 shall accommodate one (1) Dwelling Unit. Each such divided lot shall constitute a "Lot" hereunder.

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- (m) "Mortgagee" means the holder of a first mortgage lien on a Lot.
- (n) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.
- (o) "Quorum" means Owners or Members constituting twenty-five percent (25%) of the aggregate of all Owners or Members in the Corporation.
- (p) "Plat" means the survey of Section 1 and the Lots, Common Areas and Easements shown thereon prepared by Stoeppelwerth & Associates, certified by David Stoeppelwerth, a registered land surveyor, under date of _____, 200__, recorded as Instrument No. _____ in the Office of the Recorder of Hendricks County, Indiana, and incorporated herein by reference and any additional plat that may be filed, upon subjecting additional portions of the Real Estate to this Declaration.
- (q) "Tract" means the real estate described in Paragraph B of the recitals above and such other portions of the Real Estate and other property which have, as of any given time, been subjected to this Declaration, either by this Declaration or a Supplemental Declaration as herein provided.

2. Declaration. Declarant hereby expressly declares that the Tract shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Description of Eden Gate. Eden Gate consists of 26 Lots numbered 1 through 11 inclusive, 28 through 32 inclusive, and 45 through 54 inclusive, together with the Common Area and Easements as designated on the Plat. The Common Area, Easements and the size of the Lots are as designated on the Plat. The legal description for each Lot in Eden Gate shall be as follows:

Lot ____ in Eden Gate, a subdivision in Hendricks County, Indiana, as per plat thereof recorded _____ as Instrument Number _____, in the Office of the Recorder of Hendricks County, Indiana.

4. Lot Boundaries. The boundaries of each Lot shall be as shown on the Plat.

5. Common Area. The Corporation shall have the obligation to provide for the maintenance, upkeep, repair and replacement of the Common Area, even if the Common Area has not been conveyed to the Corporation. Common Area shall be used only for those uses specifically delineated in this Declaration or on the Plat.

6. Ownership of Common Area. The Common Area shall be conveyed to or owned by the Corporation, and shall be held for the use and enjoyment of the Members, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to every Lot, subject to the provisions of this Declaration, including but not limited to, the following:

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(a) The right of the Corporation, upon approval by a written instrument signed by two-thirds of all Class A Members, two-thirds of all Class B Members, and by two-thirds of all first mortgagees to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such Common Area purposes and subject to such conditions as may be agreed by the Corporation. Notwithstanding the foregoing, prior to the Applicable Date, the Declarant may grant any and all easements and rights of way on, across, over, under and through the Common Area and Real Estate as may be necessary or required for the development of Eden Gate.

(b) The right of the Corporation to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Paragraph 10.

(c) The Common Area shall be conveyed to or owned by the Corporation on the Applicable Date or earlier, free and clear of liens and encumbrances, except for platted or recorded easements, agreements or conditions set forth in this Declaration and any Plat and real estate taxes not yet due and payable; provided, however, that the conveyance of the Common Area to the Corporation shall not prevent Declarant from improving the Common Area as Declarant deems appropriate at any time prior to the Applicable Date; and further provided the Corporation shall be responsible for any costs and expenses related to the Common Area, even if the Common Area or any part thereof has not been conveyed to the Corporation.

7. Delegation of Use of the Common Area. Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment, and use of the Common Area and facilities to members of his family, his tenants or contract purchasers who reside on any Lot.

8. Easements.

(a) Easements in Common Area. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in the Common Area. Such easement and right to use shall pass with title to the Lot even though not expressly mentioned in the document passing title.

An easement is also granted to the Corporation, its officers, agents and employees and to any management company selected by the Corporation to enter in or to cross over the Common Area and Lots to perform its duties; provided, however, except in the case of an emergency, reasonable notice shall be given to the Owner.

An easement is also granted to the Corporation, its officers, agents and employees and to any management company selected by the Corporation and to any third party designated by the Corporation to enter in or to cross over the Common Area and Lots (i) for snow removal; (ii) for lawn mowing and fertilization; and (iii) to undertake any and all other duties assigned to the Corporation hereunder.

All public and quasi-public vehicles, including but not limited to, police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately-owned delivery vehicles, shall have the right to enter upon the Common Area for the performance of their duties. An easement is also granted to all utilities and their agents for ingress-egress,

installation, replacement, repairing and maintaining of such utilities, including but not limited to, water, sewer, gas, telephone, and electricity on the Real Estate; provided, however, nothing herein shall permit the installation of sewer, electric lines, water lines or other utilities except as initially designed and approved by Declarant or as thereafter may be approved by the Board of Directors. By virtue of this easement, the electric and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Real Estate and to affix and maintain electric and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Dwelling Units provided such installation is first approved in writing by Declarant or the Board.

(b) Landscape Easement. Declarant hereby declares, creates, grants and reserves the Landscape Easement as shown on the Plat as a non-exclusive easement for the use of the Declarant and the Corporation for installation, maintenance and removal of trees, shrubbery, flowers and other plantings, entryway signage and additional similar landscape improvements (all of which items, as existing from time to time, shall constitute "Landscape Improvements"). Except as installed by the Declarant or the Corporation, and except for any utility facilities or drainage facilities which may be installed in any easement that may now or hereafter be declared, granted or reserved in or upon any portion of the Real Estate and designated on the Plat as a Landscape Easement, no structures or other improvements shall be installed or maintained in or upon any Landscape Easements. Notwithstanding the foregoing provisions of this Paragraph and the provisions of any Plat or other recorded instrument executed by Declarant designating a Landscape Easement, a Landscape Easement shall automatically terminate as to that portion of such easement area that is located within or upon any public right-of-way hereafter dedicated to the public upon the recording of a Plat or other instrument creating such public right-of-way. The landscaping located within the Landscape Easement shall be maintained by the Corporation and the Corporation shall have an easement of ingress and egress on and over the Lots adjacent thereto for the purpose of satisfying this maintenance obligation. The landscaping and other improvements planted or installed by the Declarant and/or the Corporation within the Landscape Easement may not be removed by any Owner, nor may any Owner add any landscaping or improvements to such easement area without the prior approval of the Architectural Review Board.

(c) Utility, Drainage and Sewer Easements. The Utility, Drainage and Sewer Easements are hereby created and reserved for the use of all public utility companies (not including transportation companies), governmental agencies and the Corporation for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services. The Utility, Drainage and Sewer Easements are hereby created and reserved for (i) the use of Declarant for access to and construction, maintenance, operation, repair and control of any retention and detention ponds and improvements comprising and/or related to the storm water drainage system, either by surface drainage or appropriate underground installations, for the Real Estate and adjoining property and (ii) the use of the Corporation for access to and maintenance, repair and replacement of such drainage system. The Owner of any Lot subject to a Utility, Drainage and Sewer Easement shall be required to keep the Easement area on his Lot free from obstructions so that the storm water drainage will be unimpeded and will not be changed or altered without the appropriate governmental and prior written approval of the Declarant. The Utility, Drainage and Sewer Easements are hereby created and reserved for the

use of Declarant and the City of Indianapolis for installation and maintenance of an underground sanitary sewer system and drainage system and drainage system. The delineation of the Utility, Drainage and Sewer Easement areas on the Plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any portion of any Lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this Paragraph.

9. Corporation; Membership; Voting; Functions.

(a) Membership in the Corporation. Declarant and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Lot ceases at which time his membership shall terminate and will be transferred to the new Owner of his Lot; provided, however, that any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a Member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Corporation.

(b) Voting Rights. The Corporation shall have two (2) classes of membership with the following voting rights:

- (i) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.
- (ii) Class B. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the Secretary of the Corporation. Each Class B Member shall be entitled to three (3) votes for each Lot of which it is the Owner on all matters requiring a vote of the Members of the Corporation. The Class B membership shall cease and terminate upon the Applicable Date, which shall be the first to occur of (i) the date upon which the written resignation of all Class B Members is delivered to the Secretary of the Corporation, (ii) the date when at least seventy-five percent (75%) of all Lots platted or planned in Eden Gate have been conveyed to Owners other than Declarant or entities designated by Declarant as Class B Members, or (iii) December 31, 2009.

(c) Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Area, to pay taxes assessed against and payable with respect to the Common Area and to pay any other necessary expenses and costs in connection with the Common Area, and to perform such other functions as may be designated for it to perform under this Declaration.

10. Board of Directors.

(a) Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, or is a person appointed by Declarant as provided in subparagraph (b) of this Paragraph 10.

(b) Initial Board of Directors. The Initial Board of Directors shall be composed of the persons designated in the Articles, to-wit: Gregg Hothem, Rob Wagoner and Steve Ranshaw (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in this Declaration, the Articles or the Bylaws (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any method shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which Members of the Corporation are entitled to vote under the Declaration, the Articles, the Bylaws or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Corporation).

(c) Additional Qualifications.

(i) Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot may be represented on the Board of Directors by more than one person at a time.

(ii) The Board of Directors shall be composed of three (3) persons.

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(d) Term of Office and Vacancy. Subject to the provisions of subparagraph (b) of this Paragraph 10, at least one (1) member of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date (which, if appropriate, may be a special meeting) one member of the Board of Directors shall be elected for a three (3) year term, one for a two (2) year term, and one for a one (1) year term so that the terms of at least one-third (1/3) of the members of the Board shall expire annually. If such election is at a special meeting, the Directors elected shall serve for the applicable period plus the time from the special meeting to the first annual meeting. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of subparagraph (b) of this Paragraph 10 as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with subparagraph (e) of this Paragraph 10, subject to the requirements of this Paragraph 10(d). The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy, subject to the requirements of this Paragraph 10(d).

(e) Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners (and subject to the requirements of this Paragraph 10) nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

(f) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, providing for the administration of the Corporation, the management, maintenance, repair, upkeep and replacement of the Common Area and certain components of the Lots as set forth in the following subparagraph (ix) and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Corporation and in accordance with paragraph 11, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out the Board's duties and the Corporation's responsibilities, which include, but are not limited to:

- (i) Protection and replacement of the Common Area;
- (ii) Maintenance, repair, upkeep and replacement of the Common Area, including but not limited to, the maintenance, repair, upkeep and replacement of the following (if any and if located within the

- Common Area): (1) signage, (2) walls, fences and gates, (3) flowers, plant material, grass and other landscaping, (4) irrigation system, (5) lighting, and (6) storm water management and detention areas and systems;
- (iii) Assessment and collection from the Owners of each Owner's respective share of the Common Expenses;
 - (iv) Preparation of the proposed annual budget, a copy of which will be delivered to each Owner at the annual meeting;
 - (v) Preparing and delivering annually to the Owners an accounting of all receipts and expenses incurred in the prior year;
 - (vi) Procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
 - (vii) Paying taxes assessed against and payable with respect to the Common Area and paying any other necessary expenses and costs in connection with the Common Area;
 - (viii) Trash removal from the Real Estate in accordance with the rules and regulations established by the Board;
 - (ix) Cutting the established lawn located on any Lot and fertilizing the lawn as frequently as deemed necessary by the Board of Directors in its sole discretion. However, the Owner of such Lot shall be solely responsible for watering and weeding the grass; edging around fences, shrubs, bushes, trees and any other improvements; leaf removal, and caring for and maintaining any landscaping (including, without limitation, shrubs, trees, bushes, flowers or plants) and provided, further, that the Owner shall be solely responsible for cutting any grass and fertilizing any lawn located inside any fenced area of the Lot. All pets must be removed from the yard by the Owner during the time such maintenance activities occur.
 - (x) Snow removal from driveways and sidewalks as and when warranted by weather conditions; provided, however, such snow removal shall not be required unless there is at least two (2) inches of snow accumulated. The Owner shall provide safe, regular and reasonable access to such area to the Corporation and its authorized representatives. All vehicles, pets, toys and other obstructions or hazards shall be removed by the Owner from the driveways and sidewalks during the time snow removal activities occur.

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(g) Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (i) To employ a Managing Agent to assist the Board in performing its duties;
- (ii) To purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
- (iii) To employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;
- (iv) To employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;
- (v) To include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
- (vi) To open and maintain a bank account or accounts in the name of the Corporation;
- (vii) To promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Area (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered or mailed to all Owners.

(h) Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$5,000.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:

- (i) Contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
- (ii) Proposed contracts and proposed expenditures which are provided for in the annual budget; and

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(iii) Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

(i) Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

(j) Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or Corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

(k) Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in actions, suits or proceedings where such Director is adjudged liable for bad faith, gross negligence or willful misconduct in the performance of his duties. The Corporation shall also reimburse any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a vote of the Owners constituting sixty percent (60%) of a Quorum that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or Corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

(l) Bond. The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Corporation, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

11. Initial Management. The Initial Board of Directors has entered or may hereafter enter into a management agreement with a professional property management agent ("Management Agent" or "Managing Agent") for a term not to exceed one (1) year with either party having the right to terminate upon ninety (90) days' notice under which Declarant (or such affiliate of Declarant as appropriate) will provide supervision, management and maintenance of the Common Area (except as such is the obligation of the individual Owners) and in general, perform all of the duties and obligations of the Corporation. Such management agreement may be renewed by the parties for additional terms of one (1) year. Such management agreement is or will be subject to termination by Declarant (or its affiliate as appropriate) at any time prior to expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties and obligations. Notwithstanding anything to the contrary contained herein, so long as a management agreement between the Corporation and Declarant (or its affiliate as appropriate) is in effect, Declarant (or its affiliate as appropriate) shall have and Declarant hereby reserves to itself (or to its affiliate as appropriate), the exclusive right to manage the Real Estate and perform all the functions of the Corporation.

12. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Real Estate or part thereof as a whole, without a breakdown for each Lot, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Real Estate or that part thereof that is assessed as a whole, which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the Real Estate or part thereof assessed as a whole. Real estate taxes assessed on the improvements on the Real Estate shall be paid by the Owner of such improvements. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Corporation and treated as a Common Expense.

13. Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities applicable to the Common Area or which are not separately metered shall be a Common Expense.

14. Maintenance, Repairs and Replacements.

(a) General. Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

Except as established as the Corporation's responsibility under paragraph 10 of this Declaration, each Owner shall be responsible for maintaining and keeping his Lot, Duplex Unit, and all other structural improvements located on his Lot in a good, clean, neat, sanitary and well maintained condition and shall do such work thereon as is required to cause such Lot and structural improvements to be so maintained.

Notwithstanding any obligation or duty of the Corporation to repair or maintain the Common Area as provided in paragraph 10, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, pet(s), tenant, invitee or other occupant or visitor of such Owner, damage shall be caused,

or if maintenance, repairs or replacements shall be required thereby, which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

So long as the Real Estate is subject to this Declaration each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Corporation, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to inspect the property and/or effect the maintenance, cleaning, repair, landscaping or other work contemplated herein.

(b) Party Walls and Roofs.

(i) General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Duplex Unit and which connects two Duplex Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Paragraph 14(b), the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

(ii) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall. The term "party wall" shall include the roof connecting the two (2) attached Duplex Units. Repair and maintenance of the roof is the responsibility of each Owner.

(iii) Destruction by Fire or Other Casualty. If any party wall or roof is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such party wall or roof, and repaired out of the proceeds of same, any Owner who has used the party wall or roof may restore it, and any other Owners who make use of the party wall or roof, shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a disproportionate contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

(iv) Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by insurance proceeds, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(v) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this paragraph 14 shall be appurtenant to the land and shall be binding upon and inure to such Owner's successors in title.

(vi) Arbitration. In the event of any dispute arising concerning a party wall or roof, or under the provisions of this Paragraph 14(b), each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor from another party, the Board of Directors of the Corporation shall select an arbitrator for the refusing party. The cost of the arbitrators shall be borne equally by the parties.

(vii) Easements for Inexactness of Construction. The boundary lines separating each Lot shall be as shown on the Plat, and it is intended that the center of the party wall separating each Duplex Unit from the adjoining Duplex Unit shall be physically located exactly on the center of the boundary line separating the two adjoining Lots upon which such Duplex Units are constructed. However, in the event that, because of inexactness of staking or construction, settling or shifting during or after construction or any other reason, the center of any such party wall shall not coincide with the center of the associated boundary line, then a permanent easement shall exist on the Lot onto which the encroaching Duplex Unit encroaches for the exclusive benefit of the Owner of the encroaching Duplex Unit for purposes of occupancy, possession, maintenance, use and enjoyment, and such easement shall run with the land and be binding upon, and inure to the benefit of, any person or entity then or thereafter acquiring or having any right, title or interest in or to the benefited or encumbered Lot or any party thereof, including, without limitation, mortgagees. The portion of the encumbered Lot subjected to such an easement shall be limited to exact area onto which the encroaching Duplex Unit encroaches upon such Lot.

(viii) Exterior Changes. No exterior changes, including but not limited to, color, style, or material, shall be made to a Duplex Unit without the prior approval of the Architectural Review Board. The Architectural Review Board shall prescribe regulations and guidelines regarding permitted colors and materials for the exterior of Duplex Units. Changes which do not comply with such regulations and guidelines shall not be approved or permitted.

15. Architectural Control.

(a) The Architectural Review Board. As a standing committee of the Corporation, there shall be, and hereby is, established an Architectural Review Board consisting of three (3) or more persons (or such lesser number as is on the Initial Board of Directors). Until the Applicable Date, the Architectural Review Board shall be the Initial Board of Directors. After the Applicable Date, the Architectural Review Board shall be appointed by the Board of Directors and may be different than or the same as the Board of Directors.

(b) Purposes. The Architectural Review Board, using the architectural guidelines adopted by the Architectural Review Board as a guide, shall regulate the external design, appearance, use, location and maintenance of the Real Estate (including the Common Area, Lots and Dwelling Units) and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures and improvements and maintain the integrity of the criteria established in such architectural guidelines; provided,

however, Declarant shall have the exclusive authority regarding architectural approval for any initial construction of a Dwelling Unit.

(c) Conditions. No improvements, alterations, excavation or changes in grade or other work which in any way alters any Lot or the exterior of any Dwelling Unit or other improvement thereon shall be made or done without the prior written approval of the Architectural Review Board. There shall be no requirement that the Architectural Review Board approve the initial construction of a Dwelling Unit on a Lot provided such construction is approved by the Declarant. No building, fence, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot or Common Area without the prior written approval of the plans by the Architectural Review Board other than the initial construction of a Dwelling Unit and other improvements provided the plans for such construction are approved by Declarant.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) have been given to it, approval will be deemed denied by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a majority vote. If construction or alteration approved by the Architectural Review Board is not completed within six (6) months of approval, approval is cancelled and Owner must submit a new application to the Architectural Review Board.

(e) Failure to Comply. If any improvement, alteration or change is made without the prior written approval or deemed approval of the Architectural Review Board (or Declarant, if initial construction), the Owner shall, upon demand of the Architectural Review Board (or Declarant as applicable), cause such construction or alteration to be removed, remodeled or restored in order to comply with the requirements of this paragraph. The Owner shall be liable for the payment of all costs of such removal or restoration, including (i) all costs and attorneys fees incurred by the Architectural Review Board or Declarant, as applicable, and (ii) a fine of up to One Thousand Dollars (\$1,000.00) if such removal and/or restoration is not completed within thirty (30) days of demand by the Architectural Review Board or Declarant, as applicable. Such costs may also be the basis for an individual Special Assessment applicable to such Owner. The Architectural Review Board and Declarant are specifically empowered to enforce the architectural provisions of this Declaration by any legal or equitable remedy. In the event that it becomes necessary to resort to litigation to determine the propriety of any construction or alteration or to remove any unapproved construction, the Architectural Review Board or the Declarant shall be entitled to recover its court costs, expenses and attorneys fees in connection therewith.

In the event that any Owner fails to comply with the architectural provisions contained herein, the Board may, in addition to all other remedies contained herein, record against the Owner's Lot or Condominium Unit a notice stating that the improvements on the Lot or Condominium Unit fail to meet the requirements of the Declaration.

(f) Applicable Standards. The Architectural Review Board or Declarant, as applicable, may impose standards for construction and alteration of Dwelling Units and other improvements which may be greater or more stringent than standards prescribed in applicable building, zoning or other local development codes. However, the approval, rejection or withholding of any approval by the Architectural Review Board or Declarant of the plans, proposals, specifications and location of all structures and every alteration of any structure shall not be construed or interpreted as a representation or determination by the Architectural Review Board, the Board or Declarant that any building, plumbing, electrical code or other applicable governmental regulation or requirement has or has not been properly met by the Owner. Each Owner shall be responsible for obtaining all necessary technical data and for making application to and obtaining approval of all appropriate governmental authorities prior to commencement of any work or construction. The Architectural Review Board or Declarant or their agents shall be entitled to enter upon any Lot during construction of a Dwelling Unit to insure compliance with approved plans and specifications. Neither the Declarant, the Architectural Review Board, the Corporation, the Board of Directors or officers thereof, nor any person acting on behalf of any of them, shall be responsible for any defect in plans or specifications nor for defects in any improvements constructed pursuant thereto.

(g) Colors. No exterior colors on any Dwelling Unit or other structure shall be permitted that in the sole judgment of the Architectural Review Board would be inharmonious or incongruous with Eden Gate. Any future exterior color changes desired by an Owner must be first approved in writing by the Architectural Review Board in accordance with this paragraph 15.

(h) Fees. The Architectural Review Board may charge reasonable fees for the processing of plans and specifications. Such fees may cover the cost of such processing, including inspection costs. Such fees shall be payable at the time of submission of the respective item for approval and shall be paid to the Corporation.

16. Assessments.

(a) Annual Accounting. Annually, after the close of each fiscal year of the Corporation, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared in accordance with generally accepted accounting principles, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

(b) Proposed Annual Budget. Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the next fiscal year estimating the total amount of the Common Expenses for the next fiscal year and shall furnish a copy of such proposed budget to each Owner at such annual meeting. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next fiscal year. At the annual meeting of the Owners, notwithstanding any other provision in this Declaration, the Articles or the Bylaws, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of those Owners present either in person or by proxy; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed

annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area and other repair and maintenance and replacement obligations of the Corporation that must be repaired and replaced on a periodic basis (the "Replacement Reserve"), which Replacement Reserve shall be used for those purposes and not for usual and ordinary repair expenses. Such Replacement Reserve for capital expenditures and replacement and repair shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Hendricks County or Marion County, Indiana selected from time to time by the Board and shall constitute at least ten percent (10%) of the Regular Assessment.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

(c) Regular Assessments. The annual budget, as adopted by the Owners, shall, based on the estimated cash requirement for the Common Expenses and contributions to the Replacement Reserve in the current fiscal year as set forth in said budget, contain a proposed assessment, against each Lot. The assessment against each Lot shall be equal to the Common Expenses and contributions to the Replacement Reserve multiplied by a percentage equal to one (1) divided by the sum of the number of Lots in the Tract. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance in equal monthly installments with the first payment due on the date such Lot is conveyed by Declarant to an Owner (prorated to the first day of the month when the next monthly payment is due). Thereafter, payment of the Regular Assessment shall be paid monthly. Until the Applicable Date, Declarant shall be exempt from paying any Regular Assessment.

Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, the Board may elect to have the Owners pay assessments quarterly, semi-annually or

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annually, in advance. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget:

- (i) If the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment, and all payments thereafter during such fiscal year, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or
- (ii) If the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his Regular Assessment annually in advance, then the adjustments set forth under (i) or (ii) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Paragraph 17 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Monthly installments, quarterly installments, semi-annual installments or annual installments of Regular Assessments (as applicable) shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

(d) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Board of Directors

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shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall be the equal obligation of all Owners and shall become a lien on each Lot (herein called "Special Assessment"). The Board shall be obligated to provide the Owners with notice of the date of the Board of Directors' meeting when the vote for any resolution for a Special Assessment is to be made. Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor. No Special Assessment shall be made prior to the Applicable Date without the approval of Declarant.

(e) Regular Assessments Prior to the Applicable Date. During the period that Declarant is selling Lots and Dwelling Units are being constructed within the Real Estate, it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Corporation to perform its duties and functions. Accordingly and notwithstanding any other provision contained in this Declaration, the Articles or the Bylaws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without any meeting or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this Paragraph 16.

Prior to the Applicable Date, the Corporation may enter into a management agreement in accordance with the provisions of Paragraph 11 of this Declaration. So long as such management agreement remains in effect, the Common Expenses or Regular Assessments shall be paid by Owners to Management Agent. Declarant shall guarantee that until the earlier of (1) the termination of said management agreement, or (2) December 31, 2004, the Regular Assessment shall not exceed Seventy-Five Dollars (\$75.00) per month (the "Guaranteed Charge"). After December 31, 2004 (assuming that said management agreement has not been terminated) and so long thereafter as said management agreement remains in effect and Management Agent continues to perform such functions, Management Agent guarantees that the yearly Regular Assessment shall not exceed the amount of the Guaranteed Charge, plus the greater of (1) an amount representing an increase thereof to reflect any increase in the Consumer Price Index (all items - all cities) published by the United States government over such index as existed in the month of December, 2004, or (2) ten percent (10%). The amount to be added to the Guaranteed Charge shall be in an amount equal to the same percentage of the Guaranteed Charge as the percentage increase in said Consumer Price Index or ten percent (10%), whichever is greater, or if Declarant so determines, a lesser amount. Such adjustments to the Guaranteed Charge shall be made annually on the first day of each fiscal year so long as said management agreement remains in effect and Management Agent continues to perform such functions. Such yearly charge shall, during such guaranteed period, entirely defray the Owner's obligation for his share of Common Expenses or shall be the Owner's entire Regular Assessment. Declarant shall not be required to pay any Regular Assessment during such guaranteed period. Declarant shall be responsible for any deficit during such guaranteed period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures would be covered through Special Assessments, or, if sufficient, the replacement reserve fund.

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Ten percent (10%) of the Regular Assessment prior to the Applicable Date shall be designated as a reserve fund for maintenance, repairs or replacement of Common Area and maintenance items relating to the Dwelling Units that must be repaired and replaced on a periodic basis (hereinafter referred to as "Capital Items").

That portion of the Regular Assessment collected by Declarant prior to the Applicable Date applicable to the replacement reserve shall be held by the Corporation and if required, applied to the replacement of Capital Items. To the extent that such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date.

Payment of the Regular Assessment prior to the Applicable Date with respect to each Lot shall commence on the date that the Lot is conveyed by Declarant to an Owner ("Commencement Date"). The first payment shall be payable on the Commencement Date. Thereafter, payment of the Regular Assessment shall be paid monthly. In addition, at the initial closing of each Dwelling Unit (other than the conveyance to Declarant), the purchaser or new Owner is required to pay a sum equal to the full Regular Assessment applicable to such Dwelling Unit for three (3) months as his initial contribution to the working capital of the Corporation. Such amounts shall be used by the Corporation for Common Expenses. This amount is not an advance payment of Regular Assessments and will not be held in any trust or reserve account.

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 11 of this Declaration and to adhere to and abide by the same.

(f) Failure of Owner to Pay Assessments. No Owner may exempt himself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expenses or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of the Owner to make timely payments of any Regular Assessment or Special Assessment when due the Board may, in its discretion, (i) impose a late charge of up to fifteen percent (15%) of the unpaid amount; (ii) accelerate the entire balance of unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary; and (iii) eliminate such Owner's right to vote during the time such amounts remain unpaid. The Board may, at its option, bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board for and on behalf of the Corporation shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys fees) and interest from the date such assessments were due until paid at the rate equal to the lesser of (i) ten percent (10%), or (ii) the highest rate allowed by applicable law.

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(g) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the Bylaws, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser thereof at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

17. Mortgages and Unpaid Assessments.

(a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee, as may be otherwise required by this Declaration, the Bylaws or otherwise, shall be required and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the Bylaws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the Bylaws which is not cured within sixty (60) days.

(b) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 16 hereof.

(c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and (2) to pay any overdue premiums on hazard

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insurance for the Common Area or to secure new hazard insurance for the Common Area on the lapse of a policy. Any mortgagee making such payment shall be owed immediate reimbursement by the Corporation.

18. Insurance.

(a) Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring all of the Common Area in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Common Area, unless the Board determines that a lesser amount of insurance is appropriate. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate. All policies on the Common Area shall be for the benefit of the Owners and their mortgagees as their interests may appear.

Exclusive authority to adjust losses under policies in force on the Real Estate obtained by the Corporation shall be vested in the Board of Directors; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in negotiations, if any, related thereto.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain the following:

- (i) a waiver of the right to subrogation by the insurer as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests;
- (ii) an endorsement that such policy shall not be terminated for nonpayment of premiums without at least thirty (30) days prior written notice to Mortgagees;
- (iii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
- (iv) that no policy may be canceled, invalidated, or suspended on account of the acts of any one or more individual Owners;
- (v) that no policy may be cancelled, invalidated, or suspended on account of the conduct of any trustee, officer, or employee of the Corporation or its duly authorized manager without prior demand in writing delivered to the Corporation to cure the defect and the allowance of a reasonable time

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thereafter within which the defect may be cured by the Corporation, its manager, any Owner, or mortgagee;

- (vi) that any "other insurance" clause in any policy exclude individual Owner's policies from consideration.

Each Owner shall be solely responsible for loss or damage to his Dwelling Unit and the contents thereof however caused and his personal property stored elsewhere on the Real Estate and the Corporation shall have no liability to the Owner for such loss or damage. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

Each Owner shall obtain fire and casualty insurance for his Dwelling Unit as necessary to provide sufficient proceeds to fully replace a Dwelling Unit damaged or destroyed as a result of fire or any other casualty, to the way such Dwelling Unit existed prior to such fire or other casualty. Each Owner shall provide the Corporation with proof of insurance. In the event an Owner does not obtain appropriate insurance (insurance sufficient to pay for the full replacement of the Dwelling Unit), the Corporation shall have the right, but not the obligation, to provide such insurance and assess the Owner for the cost. To the extent insurance proceeds are insufficient to pay for the full replacement of the Dwelling Unit after such fire or other casualty, the Owner shall nevertheless be obligated to fully replace the Dwelling Unit and to pay any cost thereof not covered by insurance proceeds.

(b) Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

(c) Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

(d) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses.

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19. Casualty and Restoration of Common Area. In the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area to as near as possible the same condition as it existed immediately prior to the damage or destruction.

20. Covenants and Restrictions. The following covenants and restrictions on the use and enjoyment of the Real Estate shall be in addition to any other covenants or restrictions contained herein, in the Plat and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- (a) Each Dwelling Unit shall be at least 1,200 square feet in size exclusive of basements, patios, porches and garages.
- (b) Each Dwelling Unit shall have, at a minimum, an attached two (2) car garage.
- (c) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family. No Lot shall be subdivided to form lots of less area.
- (d) No structure of any kind that is commonly known as "factory built," "modular," or "mobile home" type of construction shall be erected on the Tract.
- (e) Nothing shall be done or kept in any Dwelling Unit, or on any Lot, or the Common Area which will cause an increase in the rate of insurance on any Common Area or Lot. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the Common Area which will result in a cancellation of insurance on any Dwelling Unit or any part of the Common Area, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- (f) No nuisance shall be permitted on any Lot.

(g) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building, and no awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Dwelling Unit without the prior consent of the Architectural Review Board.

(h) No signs, freestanding or otherwise installed, shall be erected or displayed on any Lot or Dwelling Unit unless the placement, character, form, size, lighting, and type of placement of such sign is first approved in writing by the Architectural Review Board. All signs must also conform with governmental codes and regulations. Notwithstanding the foregoing, one (1) standard "for sale" sign may be displayed on a Lot provided that such sign is not larger than 3 feet x 3 feet.

(i) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or any of the Common Area, except that up to a total of three (3) pets, being dogs, cats or customary household pets, may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, does not create a nuisance and the owner thereof complies with all rules and regulations adopted by the Corporation regarding such pets.

(j) All garbage and trash containers, oil tanks, bottled gas tanks, swimming pool equipment, housing and sprinkler pumps and other such outdoor equipment must be placed underground, walled-in or placed in sight-screened or fenced-in areas so that such equipment shall not be readily visible from any adjacent street or other Lot. Wall air conditioning units may be permitted only upon the prior written approval of the Declarant or the Architectural Review Board. All garbage and trash containers shall be regularly removed from the Dwelling Unit, Lot and Real Estate and shall be stored in areas not visible from any street.

(k) No outdoor clothes-drying areas shall be allowed.

(l) No industry, trade, or other commercial activity designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Real Estate; provided, however, nothing in this paragraph or this Declaration shall prohibit a home office that is used by a person living in the Dwelling Unit so long as at any one time there is only one employee, client or customer of the home office business in the Dwelling Unit in addition to the persons living in such Dwelling Unit.

(m) No structure of a temporary character, trailer, boat, camper, bus or tent shall be maintained on any Lot unless stored completely enclosed within a garage with the garage door to remain closed. No garage or other building, except a permanent residence, be used on any Lot at any time as a residence or sleeping quarters either temporarily or permanently.

(n) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Area or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the

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operation, use and enjoyment of the Common Area. The Common Area shall be used and enjoyed only for the purposes for which it is designed and intended.

(o) Except for vehicles being used by Declarant or by persons providing services to the Declarant, the Corporation or an Owner, no boats, campers, trailers of any kind, buses, mobile homes, trucks (other than 3/4 ton or less pick-up trucks), motorcycles, mini bikes, mopeds, or any other vehicles of any description other than normal passenger automobiles, shall be permitted, parked or stored anywhere within the Real Estate; provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage. No repair work shall be done on the Real Estate on any vehicles, including passenger automobiles, except within an enclosed garage.

(p) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Area except with express written permission from the Board.

(q) No Owner may rent or lease his Dwelling Unit for transient or hotel purposes. Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease with a minimum term of six (6) months, which shall provide that the lease is subject to the provisions of this Declaration and any failure of the lessee to comply with the terms of this Declaration, shall be a default under the lease. A copy of any lease must be provided timely to the Corporation.

(s) There are designated on the Plat building lines. Except as required for utilities to serve the Real Estate or a Lot, no building or structure will be permitted within this no-build area.

(t) All electric, telephone, gas and other utility lines must be installed under ground unless otherwise approved in writing by the Declarant, the Board of Directors or the Architectural Review Board.

(u) All mailboxes shall be either purchased from the Declarant or be approved by the Declarant or the Architectural Review Board prior to installation.

(v) No detached structure, fence, swimming pool, deck or patio or other item described in paragraph 15 shall be maintained on any Lot except with the express permission from the Architectural Review Board; provided, however, no sheds or outbuildings shall be permitted or approved by the Architectural Review Board.

(w) All exterior lighting of a Lot shall be accomplished in accordance with a lighting plan approved in writing by the Architectural Review Board or Declarant.

(x) Swimming Pools. No above-ground swimming pools shall be constructed, erected, placed or permitted to remain upon any Lot. The definition of "above-ground swimming pools" shall not include portable wading pools used by small children not more than one foot (1') in height. In-ground swimming pools are permitted provided it is approved by the Architectural Review Board in accordance with paragraph 15. This paragraph shall not prohibit the construction, erection or replacement of a diving board, slide or other equipment appurtenant

to an otherwise conforming swimming pool, provided that such has been approved by the Architectural Review Board.

(y) Fencing. No fence or wall of any kind, specifically including the use of a hedge or other growing plants as a fence, and for any purpose, except a retaining wall, shall be erected or built on any part of any Lot between the rear of the building constructed thereon and the street in front of the building. Note that corner Lots have two front yards. Fences erected on said Lot from the rear of the building and the back property line shall not be in excess of four (4) feet in height and shall be wood, brick, decorative aluminum, PVC or stone, or other attractive material previously approved by Declarant pursuant to paragraph 15 above. Except as provided below, barbed wire, chain link or similar fences shall be prohibited, except 2"x4" green wire mesh (or similar) in conjunction with and on the inside of a split rail or other approved fence. Fences around swimming pools or other hazardous water features shall not be less than five (5) feet, provided they shall be no lower than the minimum required by law to circumscribe a pool. Wrought iron fences are allowed for this purpose. If a fence is located in an easement, it shall not be placed in a location where it hinders the use of intended easement or alters the storm water drainage. Notwithstanding the foregoing, no fencing (including invisible dog-type fencing) or walls shall be permitted on any part of the Common Area, with the exception of those installed by Declarant or any other builder, without the prior written consent of the Architectural Review Board.

Any Owner who receives approval of the Architectural Review Board to construct a fence or other improvement within an Easement constructs such fence or other improvement at such Owner's sole risk. In the event work is required in such Easement, Declarant, any third party so authorized in this Declaration and/or any authorized municipal body or utility provider may undertake such work without liability to repair or replace any damage to any fence or other improvement. Any fence or other improvement which impedes or restricts drainage may be modified or removed by the Corporation or applicable municipal entity or utility provider. The cost thereof shall be the Owner's expense and treated as an additional assessment against such Owner's Lot.

(z) Swing Sets, Basketball Hoops, Play Areas and Batting Cages. Swing sets, basketball hoops and play areas may be erected on a Lot only after the location and materials of those Structures are approved in writing by the Architectural Review Board in accordance with paragraph 15 above. No batting cages are allowed on any Lot. Swing sets and play areas must be located behind the rear wall of the Dwelling Unit and at least five (5) feet from all property lines.

(aa) Garage and Yard Sales. There shall be no more than two (2) garage or yard sales held by the Owner or residents of any Lot during any twelve (12) month period. No garage or yard sale may extend more than three (3) days.

(bb) Holiday Lights. Holiday-type lights may be erected no sooner than the 1st of December and removed no later than the following 15th of January.

(cc) Obstruction of Easement Areas. No structure, planting, or other material other than driveways or sidewalks shall be placed or permitted to remain upon any Lot which may

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damage or interfere with any easement for the installation or maintenance of utilities or which may change, obstruct, or retard direction or flow of any drainage channels in the easement area. The easement area of each Lot and all improvements in the easement area shall be maintained by the Owner of the Lot except for those improvements for which a public authority or utility company is responsible.

Other covenants and restrictions related to the Lots and any Dwelling Units may be set forth on the Plat. In the event of a conflict between the covenants and restrictions contained herein and those in the Plat, the covenants and restrictions contained herein shall control.

Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Declarant shall have, until the Applicable Date, the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Real Estate (other than individual Dwelling Units and Lots owned by persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in their sole discretion to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as they desire. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Area unless so designated by Declarant, and Declarant shall have the right to remove the same from the Real Estate at any time.

21. Amendment of Declaration.

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

- (i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered which notice shall be at least fourteen (14) days prior to the date of the meeting.
- (ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least ten percent (10%) of the votes of all Owners.
- (iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the Bylaws.
- (iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than sixty-seven percent (67%) in the aggregate of the votes of all Owners constituting a Quorum; provided, however, that prior to the Applicable Date all proposed amendments shall require the written consent of the Declarant. In the event any Lot or

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Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

- (v) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of Paragraph 18 of this Declaration with respect to casualty insurance to be maintained by the Corporation, or (3) the provisions of Paragraph 19 of this Declaration with respect to reconstruction or repair of the Common Area, or the provisions of Paragraph 19 with respect to the reconstruction or repair of a Common Area and/or a Dwelling Unit, in the event of fire or any other casualty or disaster, or (4) the provisions of Paragraph 16 of this Declaration with respect to the commencement of assessments on any Lot, or (5) the provisions of paragraph 21 of this Declaration with respect to amendments solely by Declarant, or (6) the provisions of Paragraph 10 relating to the makeup of the Board and the duties of the Board and the Corporation without, in each and any of such circumstances, or (7) the provisions of paragraph 15 of this Declaration establishing the Architectural Review Board and providing for its functions, or (8) the provisions of paragraph 22 with respect to Declarant's right to expand the Real Estate that it subject to this Declaration, the unanimous approval of all Owners, including Declarant so long as Declarant owns any Lot, and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

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

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

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amendment thereto, (e) to clarify Declarant's original intent, or (f) to expand or subject to this Declaration additional portions of the Real Estate. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph 21 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Paragraph 21 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

(c) HUD Approval. Notwithstanding anything elsewhere contained herein or in any other document, so long as there are Class B Members, HUD shall have the right to review and approve amendments or changes to the Declaration and related documents relating to the following:

- (i) Expansion of Eden Glen.
- (ii) Mergers and consolidation of any Real Estate, Common Area or the Corporation relating to Eden Gate.
- (iii) The mortgaging or dedication of the Common Area.
- (iv) The dissolution or amendment of the Declaration and related documents.

Specifically, HUD shall have the right to veto any amendments to the Declaration proposed by the Declarant so long as the Class B membership exists.

22. Expanding the Real Estate That is Subject to the Declaration. The Real Estate that is described herein as Section 1 (in paragraph B of the recitals of this Declaration) is the Real Estate being subjected to this Declaration and constitutes Section 1 of the general plan of development of the Real Estate. The balance of the Real Estate and the Expansion Real Estate (as used in this paragraph 22, "Real Estate" includes the Expansion Real Estate) is the additional real estate that Declarant has the right to subject to the terms and provisions of this Declaration. The maximum number of Lots which may be developed on the Real Estate is one hundred four (104), including the Lots in Section 1. Subject to said limit as to the maximum number of Lots to be developed on the Real Estate, and the obligations and restrictions contained in this Declaration, Eden Gate may be expanded by Declarant to include additional portions of the Real Estate in one or more additional Sections by the execution and recording of one or more amendments or supplements to this Declaration and one or more final plats; provided, however, that no single exercise of such right and option of expansion as to any part or parts of the Real Estate shall preclude Declarant from time to time further expanding Eden Gate to include other portions of the 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 Real Estate so long as such expansion is done on or before December 31, 2009. Such expansion is entirely at the discretion of Declarant and nothing contained in this original Declaration or otherwise shall require Declarant to expand Eden Gate beyond Section 1 or any other portion of the Real Estate which Declarant may voluntarily in its sole discretion, from time to time, subject to this Declaration by amendments or

BA

supplements to this Declaration as provided above. Simultaneously with the recording of the amendments or supplements to this Declaration expanding Eden Gate, Declarant shall record an additional plat encompassing the portion of the Real Estate or Expansion Real Estate to be subjected to this Declaration. To the extent allowed under applicable law, Declarant reserves the right to add additional contiguous real estate to the Real Estate, which additional real estate may, in Declarant's discretion, have the use and benefit of the Common Areas provided herein. On the filing of a supplement to this Declaration, the portion of the Real Estate or other real estate described in such amendment or supplement to this Declaration shall be governed in all respects by the provisions of this Declaration. To the extent that there are any inconsistencies or discrepancies between any Plat and this Declaration or any amendment or supplements thereto, the terms of this Declaration shall control.

23. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles, and the Bylaws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or the Real Estate as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the Tract in any manner shall be subject to the Declaration, the Articles of Incorporation, the Bylaws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

24. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation.

25. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles, the Bylaws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

26. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Lot.

27. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the Bylaws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the Bylaws, and each shall be enforced to the greatest extent permitted by law.

28. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

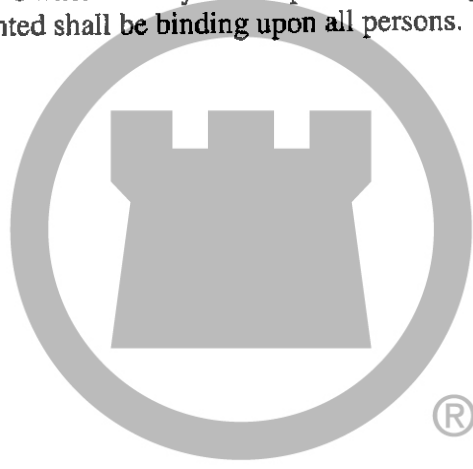
29. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs and sub-paragraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

30. The Plat. The Plat has been recorded in the Office of the Recorder of Hendricks County and, together with any other plats of the Real Estate which may be filed or recorded, is incorporated herein by reference.

31. Controlling Document. In the event there is a conflict between the provisions of this Declaration and any Plat, the terms of this Declaration, as supplemented or amended, shall be controlling.

Conflict, as used herein, shall mean a situation where the application of the language in one document contradicts the language in another document. Conflict does not occur where language in one document is simply more restrictive than language in another document.

32. No Liability. Declarant and the Board may grant, withhold or deny its permission or approval in any instance where its permission or approval is permitted or required without liability of any nature to Owner or any other person for any reason whatsoever and any permission or approval granted shall be binding upon all persons.



CHICAGO TITLE

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IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

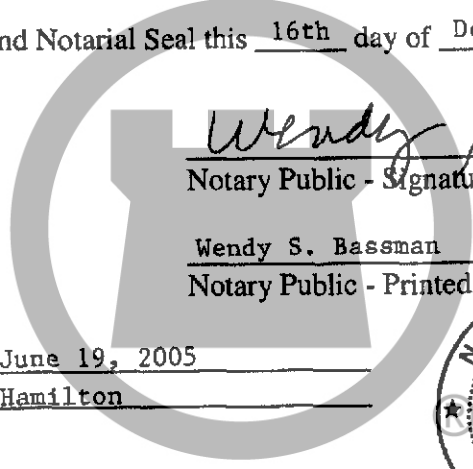
HILLS EDEN GATE, LLC

By: [Signature]
Printed: Ian Guttman
Title: Vice President

STATE OF OHIO)
) SS:
COUNTY OF Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared Ian Guttman, by me known and by me known to be the Vice President of Hills Eden Gate, LLC, who acknowledged the execution of the foregoing "Declaration of Covenants and Restrictions of Eden Gate" on behalf of said limited liability company.

Witness my hand and Notarial Seal this 16th day of December, 2004.



Wendy S. Bassman
Notary Public - Signature
Wendy S. Bassman
Notary Public - Printed

My Commission Expires: June 19, 2005
My County of Residence: Hamilton



WENDY S. BASSMAN
Notary Public - State of Ohio
My Commission Expires
June 19, 2005

CHICAGO TITLE

This instrument prepared by Tammy K. Haney, Attorney-at-Law, Bose McKinney & Evans LLP, 600 East 96th Street, Suite 500, Indianapolis, Indiana 46240.

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CONSENT OF MORTGAGEE

The undersigned, Hills Financial Group, A Limited Partnership, an Ohio limited partnership, being the holder of an existing mortgage and other security on the real estate described in the above and foregoing Declaration of Covenants and Restrictions of Eden Gate (the "Declaration") as follows:

See Exhibit A to Declaration

Hereby consents to the recording of the above and foregoing Declaration, and further agrees that its mortgage and other security with respect to the Real Estate shall be subject to the foregoing Declaration, Exhibits attached thereto and the documents incorporated therein; provided, however, except and to the extent that the mortgage and other security are modified by this Consent, such mortgage and other security shall remain in full force and effect.

EXECUTED this 16 day of December, 2004

HILLS FINANCIAL GROUP, A LIMITED PARTNERSHIP, an Ohio limited partnership

BY: Hills Developers, Inc., an Ohio Corporation, General Partner

By: [Signature]

Printed: Ian Guttman

Title: Vice President

STATE OF OHIO)

) SS:

COUNTRY OF HAMILTON)

Before me a Notary Public in and for said County and State, personally appeared Ian Guttman, Vice President of Hills Developers, Inc., an Ohio corporation, as General Partner of Hills Financial Group, A Limited Partnership, an Ohio limited partnership, on behalf of the corporation and partnership, who acknowledged the execution of the foregoing DECLARATION OF COVENANTS AND RESTRICTIONS OF EDEN GATE on behalf of said partnership.

WITNESS my hand and Notarial Seal this 16th day of December 2004

Wendy S. Bassman

Notary Public - Signature
Wendy S. Bassman, Notary Public

My Commission Expires: June 19, 2005
My County of Residence: Hamilton County, OH



WENDY S. BASSMAN
Notary Public - State of Ohio
My Commission Expires
June 19, 2005

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EXHIBIT "A-1"

The Real Estate



CHICAGO TITLE

560931.6

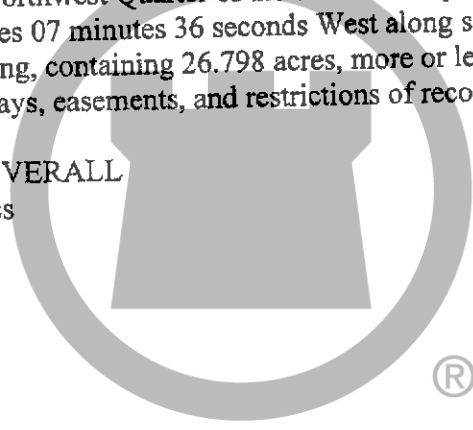
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EDEN GATE OVERALL
(SECTION ONE AND TWO)

A part of the Northwest Quarter and the Southwest Quarter of Section 6, Township 15 North, Range 2 East, and a part of the Northeast Quarter of Section 1, Township 15 North, Range 1 East, Washington Township, Hendricks County, Indiana, more particularly described as follows:

Beginning at the Southwest corner of the Northwest Quarter of said Section 6; thence North 00 degrees 55 minutes 55 seconds West along the West line of said Northwest Quarter Section a distance of 256.53 feet to the Northeast corner of the real estate described in Deed Record 185, Page 65 in the Office of the Recorder, Hendricks County, Indiana; thence South 89 degrees 56 minutes 03 seconds West along the North line of said real estate 186.93 feet to the centerline of County Road 900 East; thence North 00 degrees 04 minutes 09 seconds East along said centerline 308.02 feet; thence North 89 degrees 17 minutes 21 seconds East 756.65 feet to the West line of the real estate described in Deed Record 312, Page 390 in said Recorder's Office; thence South 00 degrees 00 minutes 04 seconds East along said West line and parallel to the East line of said Section 6 a distance of 565.05 feet to the North line of the Northwest Quarter of the Southwest Quarter of said Section 6; thence North 89 degrees 07 minutes 36 seconds East along said North line 368.72 feet to the Northeast corner of said Quarter-Quarter Section; thence South 00 degrees 08 minutes 13 seconds West along a best fit line of an existing fence 1,227.29 feet; thence South 89 degrees 59 minutes 50 seconds West 642.87 feet; thence North 00 degrees 00 minutes 10 seconds West 1,217.47 feet to the North line of the Northwest Quarter of the Southwest Quarter of said Section 6; thence South 89 degrees 07 minutes 36 seconds West along said North line 288.72 feet to the place of beginning, containing 26.798 acres, more or less. Subject to all legal highways, rights-of-ways, easements, and restrictions of record.

S/39751S2/LEGAL/OVERALL
December 17, 2004 scs



CHICAGO TITLE

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EXHIBIT "A-2"

The Expansion Real Estate



CHICAGO TITLE

560931.6

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EDEN GATE, SECTION TWO

I, the undersigned Registered Land Surveyor hereby certify that the included plat correctly represents a subdivision of part Southwest Quarter of Section 6, Township 15 North, Range 2 East, Washington Township, Hendricks County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of the Northwest Quarter of said Section 6; thence North 89 degree 07 minutes 36 seconds East along the North line of the Northwest Quarter of the Southwest Quarter of said Section 6, 288.72 feet also being the South line of Eden Gate, Section One, a subdivision in Hendricks County, Indiana, the Secondary Plat of which is recorded as Instrument number _____, in the Office of the Recorder of Hendricks County, Indiana, thence South 00 degrees 00 minutes 10 seconds East 517.47 feet along western boundary of said Eden Gate. Section One to the POINT OF BEGINNING of this description; the following seven (7) courses are along the southern boundary of said Eden Gate, Section One. (1) North 89 degrees 59 minutes 50 seconds East 220.00 feet; (2) North 00 degrees 00 minutes 10 seconds West 21.81 feet; (3) thence North 89 degrees 59 minutes 50 seconds East 120.00 feet; (4) North 00 degrees 00 minutes 10 seconds West 72.48 feet; (5) North 89 Degrees 59 Minutes 50 Seconds East 123.59 feet; (6) South 00 degrees 00 minutes 10 seconds East 21.73 feet; (7) North 89 degree 59 minutes 50 seconds East 181.17 feet; thence South 00 degrees 08 minutes 13 seconds West along a best fit line of an existing fence 772.57 feet; thence South 89 degrees 59 minutes 50 seconds West 642.87 feet; thence North 00 degrees 00 minutes 10 seconds West parallel to the West line of Southwest Quarter of said Section 6 a distance of 700.00 feet to the place of beginning, containing 10.973 acres, more or less. Subject to all legal highways, rights-of-ways, easements, and restrictions of record.

This subdivision consists of 28 lots numbered 12-27, 33-44 (all inclusive) and 1 Common Areas labeled 5. The size of lots and width of streets are shown in feet and decimal parts thereof.

Cross-Reference is hereby made to a survey plat prepared by Stoepelwerth & Associates, Inc., in accordance with Title 865, Article 1, Chapter 12 of the Indiana Administrative Code recorded as Instrument Number 2004-21047 in the Office of the Recorder of Hendricks County, Indiana.

I, the undersigned, hereby certify that I am a Registered Land Surveyor, licensed in compliance with the laws of the State of Indiana and that the within plat represents a subdivision of the lands surveyed within the cross referenced survey plat, and that to the best of my knowledge and belief there has been no change from the matters of the survey revealed by the cross-reference survey on any lines that are common with the new subdivision.

Witness my signature this _____ day of _____, 2004.

Dennis D. Olmstead

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Registered Land Surveyor
No. 900012

S/39751S2/Legal/S2-Plat
October 16, 2003
Revised: January 12, 2004 (mgf)



CHICAGO TITLE

43

EXHIBIT "B"

Section 1



CHICAGO TITLE

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EDEN GATE, SECTION ONE

I, the undersigned Registered Land Surveyor hereby certify that the included plat correctly represents a subdivision of part of the Northwest Quarter and the Southwest Quarter of Section 6, Township 15 North, Range 2 East, and a part of the Northeast Quarter of Section 1, Township 15 North, Range 1 East, Washington Township, Hendricks County, Indiana, more particularly described as follows:

Beginning at the Southwest corner of the Northwest Quarter of said Section 6; thence North 00 degrees 55 minutes 55 seconds West along the West line of said Northwest Quarter Section a distance of 256.53 feet to the Northeast corner of the real estate described in Deed Record 185, Page 65 in the Office of the Recorder, Hendricks County, Indiana; thence South 89 degrees 56 minutes 03 seconds West along the North line of said real estate 186.93 feet to the centerline of County Road 900 East; thence North 00 degrees 04 minutes 09 seconds East along said centerline 308.02 feet; thence North 89 degrees 17 minutes 21 seconds East 756.65 feet to the West line of the real estate described in Deed Record 312, Page 390 in said Recorder's Office; thence South 00 degrees 00 minutes 04 seconds East along said West line and parallel to the East line of said Section 6 a distance of 565.05 feet to the North line of the Northwest Quarter of the Southwest Quarter of said Section 6; thence North 89 degrees 07 minutes 36 seconds East along said North line 368.72 feet to the Northeast corner of said Quarter-Quarter Section; thence South 00 degrees 08 minutes 13 seconds West along a best fit line of an existing fence 454.72; thence South 89 degrees 59 minutes 50 seconds West 181.17 feet; thence north 00 degree 00 minutes 10 seconds West 21.73 feet; thence South 89 degrees 59 minutes 50 seconds West 123.59 feet; thence South 00 degrees 00 minutes 10 seconds East 72.48 feet; thence South 89 degree 59 minutes 50 seconds West 120.00 feet; thence South 00 degrees 00 minutes 10 seconds East 21.81 feet; thence South 89 degrees 59 minutes 50 seconds West 220.00 feet; thence North 00 degrees 00 minutes 10 seconds West 517.47 feet to the North line of the Northwest Quarter of the Southwest Quarter of said Section 6; thence South 89 degrees 07 minutes 36 seconds West along said North line 288.72 feet to the place of beginning, containing 15.825 acres, more or less. Subject to all legal highways, rights-of-ways, easements, and restrictions of record.

This subdivision consists of 26 lots numbered 1-11, 28-32, 45-54 (all inclusive) and 4 Common Areas labeled 1-4 (all inclusive). The size of lots and width of streets are shown in feet and decimal parts thereof.

Cross-Reference is hereby made to a survey plat prepared by Stoepelwerth & Associates, Inc., in accordance with Title 865, Article 1, Chapter 12 of the Indiana Administrative Code recorded as Instrument Number 2004-21047 in the Office of the Recorder of Hendricks County, Indiana.

I, the undersigned, hereby certify that I am a Registered Land Surveyor, licensed in compliance with the laws of the State of Indiana and that the within plat represents a subdivision of the lands surveyed within the cross referenced survey plat, and that to the

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best of my knowledge and belief there has been no change from the matters of the survey revealed by the cross-reference survey on any lines that are common with the new subdivision.

Witness my signature this _____ day of _____, 2004

Dennis D. Olmstead
Registered Land Surveyor
No. 900012

S:39751S1/LEGAL/S1-PLAT revised10-13-03
January 29, 2002
Revised: October 13, 2003
January 12, 2004 (mgf)



CHICAGO TITLE