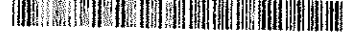


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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
THE RETREAT ON THE MONON**

Hamilton County, Indiana

DEED CROSS-REFERENCE: 2011-001397

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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
THE RETREAT ON THE MONON**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RETREAT ON THE MONON (the "Neighborhood Declaration") is made as of _____, 2016 by PULTE HOMES OF INDIANA, LLC, an Indiana limited liability company (the "Declarant").

RECITALS:

- A. Declarant is the owner of certain real property located in Hamilton County, Indiana, which is more specifically described on Exhibit A attached hereto and incorporated herein by reference (the "**Neighborhood Property**"); and
- B. Declarant desires to create on the Neighborhood Property a residential neighborhood (the "**Neighborhood**") which shall have permanent open spaces and other common facilities for the benefit of the residents of the Neighborhood; and
- D. Declarant desires to provide for the preservation of the values of the Neighborhood and such other areas as may be subjected to this Neighborhood Declaration, to provide for the maintenance of the open spaces and other facilities, and to add additional real estate to the terms of the Neighborhood Declaration, at Declarant's option and, to this end, declare and publish its intent to subject the Neighborhood Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, it being intended that they shall run with title to the Neighborhood Property and shall be binding on all persons or entities having or acquiring any right, title or interest in the Neighborhood Property or any part thereof and shall inure to the benefit of each owner thereof; and
- E. Declarant has deemed it desirable for the efficient preservation of the values of the Neighborhood to create an association to be known as The Retreat on the Monon Homeowners Neighborhood Association, Inc., an Indiana nonprofit corporation (the "**Neighborhood Association**"), to which shall be delegated and assigned the powers of owning, maintaining and administering the common areas and facilities located within the Neighborhood Property, administering and enforcing the covenants and restrictions made in and pursuant to this Neighborhood Declaration with respect to the Neighborhood Property, collecting and disbursing the assessments and charges hereafter created with respect to the Neighborhood Property, and promoting the recreation, health, safety and welfare of the owners of the Neighborhood Property and all parts thereof.

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

reservations, easements, assessments, all of which are for the purpose of protecting the value and desirability of, and shall run with, the Neighborhood Property and be binding on all parties having any right, title or interest in the Neighborhood Property or any part thereof, their respective successors and assigns, and shall inure to the benefit of Declarant and its successors in title to the Neighborhood Property or any part or parts thereof.

ARTICLE I

DEFINITIONS

Section 1.1. "**Additional Neighborhood Property**" shall have the meaning ascribed thereto in Section 3.2 of this Neighborhood Declaration.

Section 1.2. "**Architectural Committee**" means and refers to the committee which shall be appointed by the Association's board of directors to approve original construction within the Neighborhood.

Section 1.3. "**Articles**" shall mean and refer to the Articles of Incorporation of the Neighborhood Association, as the same may be amended from time to time.

Section 1.4. "**Authority Transfer Date**" shall have the meaning ascribed thereto in Section 3.1 of this Neighborhood Declaration.

Section 1.5. "**Board of Directors**" shall mean an elected body having its normal meaning under Indiana corporate law.

Section 1.6. "**Bylaws**" shall mean and refer to the Code of Bylaws of the Neighborhood Association, as the same may be amended from time to time.

Section 1.7. "**City**" shall mean the City of Westfield, Indiana.

Section 1.8. "**Common Area**" or "**Common Areas**" shall mean and refer to all real property (including the improvements thereto) owned by the Neighborhood Association for the common use and enjoyment of the Members. Common Areas includes "Common Area Facilities", which consist of private or public utility facilities, if any, constructed by Declarant on the Real Estate for the benefit of the Owners, which may include irrigation systems. Common Areas includes curbs, even when placed behind the right of way line. Sanitary sewer facilities located within the Common Areas and not dedicated or conveyed to public entities or public or private utilities, or sanitary sewer facilities, laterals or lateral stubs owned or to be owned by the Neighborhood Association that serve one or more Dwelling Units by connecting such Dwelling Units to a sanitary sewer system, shall also be considered "Common Area Facilities". All of the Neighborhood Property which is not included in any particular Lot or within any publicly dedicated right-of-way, as shown on current or future approved plats of the Neighborhood Property and/or as described herein, shall be considered to be a part of the Common Area, including all private drives and streets.

Section 1.9. "**Common Expenses**" shall mean and refer to expenses of administration of the Neighborhood Association and expenses for the upkeep, maintenance, repair and

replacement of Common Areas and Common Area Facilities, and all sums lawfully assessed against the Owners by the Neighborhood Association, and all sums, costs and expenses declared by this Neighborhood Declaration to be Common Expenses.

Section 1.10. "**County**" shall mean the County of Hamilton, Indiana.

Section 1.11. "**Declarant**" shall mean and refer to Pulte Homes of Indiana, LLC, an Indiana limited liability company, and any successors or assigns to whom Pulte Homes of Indiana, LLC, an Indiana limited liability company, assigns any or all of its rights as Declarant pursuant to this Neighborhood Declaration by assignment recorded in the Office of the Recorder of Hamilton County, Indiana.

Section 1.12. "**Development Period**" means the period of time commencing with the recording of this Neighborhood Declaration in the Office of the Recorder of Hamilton County, Indiana and ending upon the earlier of (i) when Declarant, or an affiliate or subsidiary of Declarant, has completed the development and sale of, and no longer owns, any Lot in the Neighborhood, or (ii) the date on which Declarant records the Class B Termination (as defined in Section 3.1 of this Neighborhood Declaration). The Development Period shall recommence as to the Additional Neighborhood Property each time the Declarant acquires any part (or all) of the Additional Neighborhood Property.

Section 1.13. "**Dwelling Unit**" shall mean and refer to any improvement to the Neighborhood Property intended for any type of independent ownership for use and occupancy as a residence by a single household and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) a townhouse.

Section 1.14. "**Federal Agencies**" shall mean (by way of illustration but not limitation) the Federal Housing Authority, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency.

Section 1.15. "**Local Governing Authority**" shall mean the City and/or the County, individually or collectively.

Section 1.16. "**Lot**" shall mean and refer to any plot of land created by and shown on a lawfully recorded subdivision plat of the Neighborhood Property upon which a single Dwelling Unit could be constructed in accordance with applicable zoning ordinances, with the exception of the Common Area and streets dedicated to public use. Each Lot shall include such property to the centerline of any party wall separating Dwelling Units in the same Structure (as herein defined).

Section 1.17. "**Maintenance Costs**" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement, of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the

underlying land, leasehold, easement or right-of-way, and any other expense related to continuous maintenance, operation or improvement of the facility.

Section 1.18. "**Member**" means and refers to all persons who are members of the Neighborhood Association as provided in this Neighborhood Declaration, and the Articles of Incorporation and Bylaws of the Neighborhood Association.

Section 1.19. "**Monon Trail**" means the parcel of real property containing a rail-trail for public use which is operated by the City or another governmental entity. The Monon Trail is not included as part of the Common Areas nor is it governed by the provision of this Declaration except as specifically provided herein. No Owner or occupant nor the Association or Declarant shall have any rights in or to (other than rights available to all public users of the Monon Trail), or obligation with respect thereto, the Monon Trail except as expressly and specifically provided herein.

Section 1.20. "**Mortgagee**" shall mean and refer to any person or entity holding a first mortgage on any Lot or the Common Area who has notified the Neighborhood Association of this fact in writing. An "**Eligible Mortgagee**" shall be a Mortgagee who has given notice to the Neighborhood Association of its interest and requested all rights afforded Eligible Mortgagees under Article IX.

Section 1.21. "**Neighborhood**" means the Retreat on the Monon comprising the Neighborhood Property, which is committed by this Neighborhood Declaration to the provisions hereof and any Additional Neighborhood Property which may hereafter be declared to be subject to this Neighborhood Declaration and all improvements made to such land, including Dwelling Units, Neighborhood Common Areas, if any, and Lots.

Section 1.22. "**Neighborhood Association**" shall mean and refer to The Retreat on the Monon Homeowners Association, Inc., an Indiana nonprofit corporation, and its successors and assigns.

Section 1.23. "**Neighborhood Declaration**" shall mean and refer to this Neighborhood Declaration of Covenants, Conditions and Restrictions for The Retreat on the Monon, which is to be recorded in the Office of the Recorder of Hamilton County, Indiana.

Section 1.24. "**Neighborhood Property**" shall mean that certain real property located in Hamilton County, Indiana, which is more specifically described on Exhibit A attached hereto and incorporated herein by reference, as the same may be duly subdivided and platted, and any additions thereto which, from time to time, may be subjected to the covenants, conditions, restrictions, reservations, easements, charges and liens of this Neighborhood Declaration.

Section 1.25. "**Owner**" shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot, including a contract seller but excluding those holding such interest in a Lot solely by virtue of a contract to purchase a Lot or as security for the performance of an obligation. If more than one (1) person or entity is the record owner of a Lot, the term Owner as used herein shall mean and refer to such owners collectively, so that there shall be only one (1) Owner of each Lot.

Section 1.26. "**Permitted Signs**" shall mean (i) professionally constructed signs which advertise a dwelling on a Lot for sale, which are non-illuminated and less than or equal to six (6) square feet in size; and (ii) temporary construction and wooden home signage.

Section 1.27. "**Person**" shall mean an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

Section 1.28. "**Recorder's Office**" shall mean the Office of the Recorder of Hamilton County, Indiana.

Section 1.29. "**Regular Assessments**" shall mean and refer to assessments levied against all Lots to fund Common Expenses.

Section 1.30. "**Restrictions**" shall mean and refer to the agreements, conditions, covenants, restrictions, easements, assessments, charges, liens, and other provisions set forth in this Neighborhood Declaration with respect to the Neighborhood Property, as the same may be amended from time to time.

Section 1.31. "**Special Assessments**" shall mean and refer to assessments levied in accordance with Section 5.7 of this Neighborhood Declaration.

Section 1.32. "**Structure**" shall mean any temporary or permanent improvement or building or portion thereof, including, without limitation, walls, decks, patios, stairs, windows, doors, fences, skylights, address markers, mail boxes, name plates, trees, hedges, shrubbery, satellite dishes, pavement, walkways, driveways, garages and/or garage doors, or appurtenances to any of the aforementioned.

Section 1.33. "**Supplemental Neighborhood Declaration**" shall mean an amendment or supplement to this Neighborhood Declaration executed by or consented to by a Declarant or its successors or assigns, and recorded in the public records of Hamilton County, Indiana, which subjects Additional Neighborhood Property to this Neighborhood Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the Additional Neighborhood Property described therein. The term shall also refer to the instrument recorded by a Declarant or its successors or assigns to subject Additional Neighborhood Property to this Neighborhood Declaration.

ARTICLE II

MEMBERSHIP

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

ARTICLE III

VOTING RIGHTS

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

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

Class B: The Class B Member shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed and delivered to the resident agent of the Neighborhood Association. A Class B Member shall be entitled to five (5) votes for each Lot in which it holds the interest required for membership pursuant to Article II herein. Declarant's Class B membership interest shall be converted to and shall become a Class A membership interest with one (1) vote for each Lot in which it holds an interest upon the happening of any of the following events, whichever occurs first (the "**Authority Transfer Date**"):

- (a) when the Class B Member no longer owns any Lots;
- (b) December 31, 2040; or
- (c) when the Declarant executes and records, with the Recorder's Office, a written instrument by which the Declarant terminates the Class B membership (the "**Class B Termination**").

Section 3.2. Expansion. If Declarant exercises its rights to expand the Neighborhood Property to include additional real estate more specifically described on Exhibit B attached hereto and incorporated herein by reference to be subject to this Neighborhood Declaration (the "**Additional Neighborhood Property**"), and in the event that Declarant's Class B membership shall have ceased as provided in Section 3.1, above, Declarant's Class B membership interest shall be revived with respect to all Lots owned by Declarant, including those, if any, as to which it had previously had its Class B membership interest converted to Class A membership interests. In addition, in such event, without the requirement of further action or consent by any Member, all of Declarant's rights and privileges hereunder which it enjoyed prior to the Authority Transfer Date shall also be automatically renewed and reinstated. Any such new and/or revived Class B membership interests shall cease and be converted to Class A membership interests upon the happening of any of the following events, whichever occurs first:

- (a) when the Class B member no longer owns any Lots;

- (b) December 31, 2040; or
- (c) when the Declarant executes and records, with the Recorder's Office, a written instrument by which the Declarant terminates the Class B membership.

Section 3.3. Multiple Ownership Interests. When more than one (1) Person constitutes the Owner of a particular Lot, all of such Persons shall be Members of the Neighborhood Association, but all of such Persons, collectively, shall have only one (1) vote for such Lot. The vote for such Lot shall be exercised as such Persons constituting the Owner of the Lot determine among themselves, and may be exercised by any one (1) of the Persons holding such ownership interest, unless any objection or protest by any other holder of such ownership interest is made prior to the completion of a vote, in which case the vote cast for such Lot shall not be counted, but the Member whose vote is in dispute shall be counted as present at the meeting for quorum purposes if the protest is lodged at such meeting. In no event shall more than one (1) vote be cast with respect to any Lot.

ARTICLE IV

DECLARATION OF RESTRICTIONS AND STATEMENT OF PROPERTY RIGHTS

Section 4.1. Neighborhood Declaration. Declarant hereby expressly declares that the Neighborhood Property and any additions thereto pursuant to this Neighborhood Declaration, shall be held, transferred and occupied subject to the Restrictions. The Owners of each Lot are subject to the Restrictions, and all other Persons, whether (i) by acceptance of a deed from Declarant, or its successors or assigns, conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each Restriction. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and each other Person for itself, its heirs, personal representatives, successors and assigns, acknowledges the rights and powers of Declarant, the Committee, and the Neighborhood Association with respect to the Restrictions, and also, covenants, agrees and consents to and with Declarant, the Committee, the Neighborhood Association, and the Owners and subsequent Owners of each of the Lots affected by the Restrictions, to keep, observe, comply with and perform such Restrictions and agreements.

Section 4.2. Neighborhood Property Rights. Every Owner shall have a right and easement of use, access, and enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to:

- (a) this Neighborhood Declaration as it may be amended from time to time and to any restrictions, limitations or other matters contained in any deed conveying any part of the Neighborhood Property to the Neighborhood Association;
- (b) the right of the Neighborhood Association to adopt and enforce rules and regulations governing the use of the Common Area and the personal conduct of Owners,

occupants and guests thereon, including, without limitation, the imposition of fines for the violation thereof;

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

(d) the right of the Neighborhood Association to suspend (i) the Members' voting rights, (ii) the Members' right to run for office within the Neighborhood Association, and (iii) rights of a Member to the use of any nonessential services offered by the Neighborhood Association, provided that access and the provision of utilities to the Lot through the Common Area shall not be precluded, for (x) any period during which any assessment against such Member's Lot remains unpaid or (y) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

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

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

The Neighborhood Association, acting through its Board of Directors, may exercise these rights without the need for any approval from any Member, Mortgagee or any of the Federal Agencies, unless provided otherwise in this Neighborhood Declaration.

Section 4.3. Common Area.

(a) Ownership. Declarant may retain legal title to the Common Area during the Development Period; however, if pursuant to or this Neighborhood Declaration, Declarant elects to convey title to the Common Area to the Neighborhood Association, such conveyance shall be free and clear of all liens and other financial encumbrances and exclusive of the lien for taxes not yet due and payable. The Common Areas shall remain private, and neither Declarant's execution, or recording of an instrument portraying the Common Areas, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Common Areas. Declarant or the Neighborhood Association (if Neighborhood Association then owns legal title to the Common Areas) may, however, dedicate or transfer all or any part of the Common Areas to any public agency or utility for roadways, utility or parks purposes, or for other public purposes.

(b) Maintenance. The Neighborhood Association shall be responsible for maintaining the Common Area, including, but not limited to, maintaining, repairing and replacing the Common Area Facilities, and the Maintenance Costs thereof shall be assessed as a Regular Assessment against all Lots subject to assessment. Any maintenance, repair or replacement of the sanitary sewer facilities comprising the Common Area Facilities shall be performed in a manner consistent with the sanitary sewer utility's standards and specifications and following prior notice to and approval by the sanitary sewer utility, if and in the manner required by such sanitary sewer utility.

(c) Control. The Neighborhood Association, subject to the rights of Declarant and the Owners set forth in this Neighborhood Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon, including, but not limited to, Common Area Facilities and, except as otherwise provided herein or in a Supplemental Neighborhood Declaration, shall keep the Common Areas, including, but not limited to, the Common Area Facilities in good, clean, attractive and sanitary condition, order, and repair.

(d) No Permanent Structures. Except for underground utility facilities, and except as provided in this Neighborhood Declaration, or any Supplemental Neighborhood Declaration, no permanent Structures or improvements shall be made to or installed on the Common Area other than lighting, refuse containers, seating, walkways, paved paths, planting structures, dog walks or fencing for a dog park, grills and grilling accessories, signage approved by the Board of Directors, amenities or other features installed by Declarant or the Neighborhood Association to fulfill the requirements of a zoning commitment governed by IC 36-7-4-1015, as amended, and fountains or other non-recreational water features. The use of the Common Area shall be subject to rules and regulations adopted by the Board of Directors, this Neighborhood Declaration or any Supplemental Neighborhood Declaration.

(e) Delegation of Use. Any Member may delegate its right of enjoyment to the Common Area and facilities to the members of its immediate household, its tenants or contract purchasers who reside on the Member's Lot. However, by accepting a deed to

such Lot, each Owner, for itself individually, covenants that (i) every rental agreement with respect to the Lot shall contain specific conditions which require the tenant thereunder to abide by all Neighborhood Association covenants, rules and regulations, without exception, and (ii) each such tenant will be provided, prior to the execution of such lease, a complete set of all Neighborhood Association covenants, rules and regulations.

(f) Damage or Destruction by Owner. In the event any Common Area, including, but not limited to, any Common Area Facility, is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, members of his family, or any other Person having or gaining access to the Owner's Lot, such Owner authorizes the Neighborhood Association to repair said damaged area, and an amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner until paid in full. The Neighborhood Association shall repair said damaged area in a good and workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Neighborhood Association in the discretion of the Neighborhood Association.

(g) Density of Use. Declarant expressly disclaims any warranties or representations regarding the density of use of the Common Areas or any facilities located thereon.

Section 4.4. Monon Trail. Access to and use of the Monon Trail (as defined in Section 1.19 above) is strictly subject to the terms, conditions and rules established by the City or other owner or operator of the Monon Trail. All Persons, including the Owners, are hereby advised that Declarant and the Association do not own, operate or manage the Monon Trail, and are not responsible for the terms, conditions and rules for access to and use of the Monon Trail. All Persons, including all Owners, are hereby advised that no representations or warranties have been made by the Declarant or any other Person with regard to the creation, improvement or operation of the Monon Trail and no purported representations or warranty in such regard, whether written or oral, shall ever be effective without an amendment hereto executed or joined into by the Declarant.

ARTICLE V

ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation for Assessments. Declarant covenants and agrees, for each Lot owned by Declarant, and each Owner of a Lot covenants and agrees, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other instrument of conveyance, to pay to the Neighborhood Association: (a) Regular Assessments, (b) Special Assessments, and any other amounts as may be provided for hereunder to be due from any Owner in connection with his ownership of a Lot. Such assessments are to be established and collected as hereinafter provided. The Neighborhood Association's Regular Assessments and Special Assessments, together with interest thereon, late fees (as contemplated in Section 5.6(d), below) and costs of collection thereof, as hereinafter

provided, shall be assessed against each applicable Owner's Lot and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment became first due. The Regular Assessments and Special Assessments, when assessed upon resolution of the Board of Directors of the Neighborhood Association for each year, shall become a lien on each Lot in the amount of the entire Regular Assessment or Special Assessment, but shall be payable in equal monthly installments.

Section 5.2. Purpose of Assessment. The assessments levied by the Neighborhood Association shall be used to promote the recreation, health, safety and welfare of the residents and Owners of the Neighborhood Property, and for the improvement, maintenance and landscaping of the Common Area, including but not limited to the payment of taxes, construction of improvements and maintenance of services, facilities, sanitary sewer facilities, irrigation/sprinkler systems, trees, lawns, shrubbery and other plantings, and devoted to these purposes or related to the use and enjoyment of the Common Area or other property which the Neighborhood Association has the obligation to maintain, and for such other purposes as the Board of Directors of the Neighborhood Association may determine to be appropriate.

Section 5.3. Annual Accounting. Annually, after the close of each fiscal year of the Neighborhood Association and prior to the date of the annual meeting of the Neighborhood Association next following the end of such fiscal year, the Board of Directors of the Neighborhood Association shall cause to be prepared and furnished to each Owner a financial statement, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 5.4. Proposed Annual Budget. Annually, on or before the date of the annual or special meeting of the Neighborhood Association at which the budget is to be acted upon, the Board of Directors of the Neighborhood Association shall cause to be prepared a proposed annual budget for the next ensuing fiscal year estimating the total amount of the Common Expenses for such next ensuing fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the designated meeting of the Neighborhood Association for adoption and, if so adopted, shall be the basis for the Regular Assessments for the next ensuing fiscal year. At such annual or special meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall such meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, whether it be the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Neighborhood Association shall be established by using generally accepted accounting principles applied on a consistent basis. 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. In the event there is no annual budget approved by the Owners as herein provided for the current fiscal year, whether before or after the meeting of the Neighborhood Association at which the budget is to be acted upon, the Owners shall continue to pay Regular Assessments

based upon the last approved budget or, at the option of the Board of Directors, Regular Assessments based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 5.5. Establishment of Regular Assessment. The Neighborhood Association must levy in each of its fiscal years a Regular Assessment against each Lot. The amount of such Regular Assessment shall be established by the Board of Directors of the Neighborhood Association, subject to the limitations imposed by Section 5.6 below, and written notice of the same shall be sent to every Owner at least thirty (30) days in advance of the commencement of each Regular Assessment period. Regular Assessments against each Lot shall be paid in advance, payable in equal monthly installments. The initial Regular Assessment levied by the Neighborhood Association for each Lot shall be adjusted according to the number of months remaining in the period for which such initial assessment was levied. All payments of Regular Assessments and Special Assessments shall be non-refundable. In no event shall any Owner be due any rebate or credit from the Neighborhood Association upon resale or other transfer or conveyance for prepaid Regular Assessments or Special Assessments.

Section 5.6. Regular Assessments. Regular Assessments shall be determined as follows:

(a) Prior to January 1 of the year immediately following conveyance of the first Lot to an Owner other than Declarant, the Regular Assessment shall be established by the Board of Directors based upon the proposer's budget for the Neighborhood Association.

(b) Upon January 1 of the year immediately following the first conveyance of a Lot to an Owner other than Declarant, and upon January 1 of each year thereafter, the Regular Assessment shall increase, effective as of January 1 of each year, without the need for a vote of the Members, by an amount equal to (i) the anticipated increase in costs of insurance, taxes, snow removal, recycling, trash and waste removal and other Common Area maintenance services, plus (ii) an amount equal to the amount of the Regular Assessment for the immediately preceding year multiplied by ten percent (10%).

(c) The Board of Directors of the Neighborhood Association may determine not to increase the Regular Assessment to the full extent of the automatic increase provided in subsection (a) above, in which case the Board of Directors shall specify the amount of such lesser Regular Assessment.

(d) Upon and after January 1 of the year immediately following the first conveyance of a Lot to an Owner other than Declarant, the Regular Assessment may be increased above that established by subsection (a) above; provided, however, that any such change must have the consent of at least fifty percent (50%) of the Quorum, whether in person or by proxy, at a meeting duly called for this purpose at which a Quorum (defined in Section 5.8 below) is present, written notice of which (setting forth the purpose of the meeting) shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting unless such action is

taken at the regularly scheduled annual meeting of the Members for which no special notice shall be required.

(e) The Regular Assessment against each Lot shall be paid in monthly installments, each of which is paid in full in advance by the due dates specified by the Board of Directors, the first of which due date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. Monthly installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board of Directors or the Neighborhood Association, and neither the Board of Directors nor the Neighborhood Association shall be responsible for providing any notice or statements to Owners for the same. If an Owner fails to pay any monthly installment of any such Regular Assessment on or before the due date established by the Board of Directors, a late fee in the amount of Twenty-Five and 00/100 Dollars (\$25.00) for each monthly installment not paid will be added to the amount due, and any such installment, together with such late fee and interest at the rate of 12% per annum, will be and remain, immediately due and payable.

(f) Payment of the Regular Assessment shall be made to the Board of Directors or a managing agent, as directed by the Board of Directors.

(g) The Regular Assessment for each fiscal year of the Neighborhood Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Neighborhood Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date.

Section 5.7. Special Assessments. In addition to the Regular Assessment authorized above, the Neighborhood Association may levy, in any assessment year, a Special Assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including the fixtures and personal property related thereto, or for any other specified purpose. Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors of the Neighborhood Association 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 under the circumstances described in this Neighborhood Declaration. Except in the case of damage or destruction caused by an Owner or any of his guests, tenants, licensees, agents, members of his family, or any other Person having or gaining access to the Owner's Lot as contemplated by Article VIII, any such Special Assessment shall be levied against all of the Lots which benefit from the construction, reconstruction, repair or replacement of capital improvements giving rise to the Special Assessment, pro rata according to each Lot's benefit, as reasonably determined by the Board of Directors, which determination shall be final. In the case of damage or destruction caused by an Owner or any of his guests, tenants, licensees, agents, members of his family, or any other Person having or gaining access to the Owner's Lot as contemplated by Article VIII, the Special Assessment may be levied solely against that Owner. Notwithstanding the fact that in some instances, this Neighborhood Declaration may provide that certain items of routine and ordinary repair and maintenance should be performed by the Neighborhood Association, the Neighborhood Association shall nevertheless retain the right to assess the costs thereof to any

Owner or group of Owners as a Special Assessment. To be effective, any such Special Assessment shall have the assent of more than two-thirds (2/3) of the votes of each class of Members who are entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, and written notice setting forth the purpose of the meeting must have been sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

Section 5.8. Quorum for any Action Authorized Under Sections 5.6 or 5.7. At any meeting under Section 5.6 or Section 5.7 of this Article, the presence at the meeting of Members or proxies entitled to cast thirty percent (30%) of all the votes with respect to each class of Members shall constitute a quorum (a "Quorum"). If the required quorum does not exist at any such meeting, another meeting may be called subject to the notice requirements set forth in Section 5.6 and Section 5.7 and subject further to applicable law, and the required Quorum at any such subsequent meeting shall be one-half (1/2) of the required Quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.9. Working Capital Assessment. In addition to the Regular and Special Assessments authorized above, the Neighborhood Association shall establish and maintain a working capital fund. At the closing of each sale or other transfer of a Lot by Declarant, or any re-sale of a Lot by a Declarant, the purchaser of such Lot shall pay to the Neighborhood Association a working capital assessment in an amount equal to ten percent (10%) of the then current Regular Assessment for said Lot (a "Working Capital Assessment"), which payment shall be non-refundable and shall not be considered as an advance payment of an assessment or other charge owed to the Neighborhood Association with respect to such Lot. The Working Capital Assessment shall be used as determined by Declarant in its sole and reasonable discretion.

Section 5.10. Rate of Assessment. The Regular Assessment shall be fixed at a uniform rate for all Lots, except for unoccupied Lots owned by Declarant. Except in the case of damage or destruction caused by an Owner as contemplated by Article VIII, and except for unoccupied Lots owned by Declarant, the Special Assessments shall be fixed at a uniform rate for all Lots which benefit from the construction, reconstruction, repair or replacement of capital improvements giving rise to the Special Assessment, pro rata according to each Lot's benefit, as reasonably determined by the Board of Directors of the Neighborhood Association, which determination shall be final. Notwithstanding the foregoing or anything else contained herein, no Regular Assessments or Special Assessments or other charges shall be owed or payable by Declarant with respect to any Lot or other portion of the Neighborhood Property owned by Declarant while the same is owned by Declarant, nor shall any such assessments or charges become a lien on any such Lot or other portion of the Neighborhood Property owned by Declarant.

Section 5.11. Notice of Assessment and Certificate. Written notice of the Regular Assessments and any Special Assessments shall be sent to every Member. The due dates for payment of the Regular Assessments and any Special Assessments shall be established by the Board of Directors of the Neighborhood Association. The Neighborhood Association shall, upon written demand by a Member at any time, furnish a certificate in writing signed by an officer or

authorized agent of the Neighborhood Association setting forth whether the assessments on a specified Lot have been paid and the amounts of any outstanding assessments. A reasonable charge may be made by the Board of Directors for the issuance of these certificates, which charge shall not be in excess of the maximum amount established by law, from time to time, and be paid to the Board of Directors or their designated agent in advance by the requesting Member. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 5.12. Remedies of the Neighborhood Association in the Event of Default.

Each Owner shall be personally liable for the payment of all Regular Assessments and Special Assessments against his Lot. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several. If any assessment pursuant to this Neighborhood Declaration is not paid within thirty (30) days after its initial due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. In addition, in its discretion, the Neighborhood Association may:

(a) impose a penalty or late charge if previously established by the Neighborhood Association or as provided herein;

(b) bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. A suit to recover a money judgment for nonpayment of any assessment levied pursuant to this Neighborhood Declaration, or any installment thereof, may be maintained without perfecting, foreclosing or waiving the lien provided for herein to secure the same;

(c) suspend a Member's voting rights, right to hold an office within the Neighborhood Association, and right to use nonessential services offered by the Neighborhood Association, provided that access and the provision of utilities to the Lot through the Common Area shall not be precluded. A Member, whose rights have been suspended in this manner, shall have no right to any refund or suspension of his obligations to pay such assessments or any other assessments becoming due for the duration of such suspension or otherwise; and

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

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

In any action to foreclose the lien against a Lot pursuant to Section 5.12(a) above, the Owner and any occupant of the Lot and Dwelling Unit which are the subject of such action shall be jointly and severally liable for the payment to the Neighborhood Association of reasonable rental for such Lot and Dwelling Unit, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Neighborhood

Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board of Directors may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby being deemed to have waived) the lien securing the same. In any action to recover any Regular Assessment or Special Assessment, or any other debts, dues or charges owed the Neighborhood Association, whether by foreclosure or otherwise, the Board of Directors, for and on behalf of the Neighborhood Association, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit all of the costs and expenses incurred as a result of such action (including, but not limited to, reasonable attorneys' fees) and interest upon all amounts due at the rate of twelve percent (12%) per annum, which shall accrue from the date such assessments or other amounts become first due, until the same are paid in full.

Section 5.13. Subordination of the Lien to Mortgages. The lien for the assessments provided for herein shall be subordinate to the lien of any properly recorded first mortgage encumbering a Lot. Notwithstanding anything contained in this Section 5.13 or elsewhere in this Neighborhood Declaration, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall not extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance, and that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor; and further provided, that any Person taking title to such Lot in the foregoing manner shall have no right to use the non-essential services or amenities of the Neighborhood Property until such time as all assessments due with respect to such Lot have been paid in full. No such sale, transfer or conveyance shall relieve the Lot, or the purchaser thereof at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien for such assessments.

Section 5.14. Exempt Neighborhood Property. The following portions of the Neighborhood Property shall be exempt from the assessments created by this Neighborhood Declaration: (a) those portions of the Neighborhood Property that are dedicated to and accepted by a local public authority; and (b) the Common Area. Except as otherwise provided in Section 5.10 hereof, no developed or undeveloped Lot, land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 5.15. Replacement Reserve Fund. The Neighborhood Association shall establish and maintain a reserve fund ("**Replacement Reserve Fund**") for the maintenance, repair and replacement of the Common Area and improvements located thereon as well as any other portion of Dwelling Units that the Neighborhood Association is responsible to maintain under this Declaration by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board of Directors of the Neighborhood Association, which reserve fund shall be sufficient, in the sole opinion of the Board of Directors, to accommodate such future maintenance, repair and replacement and which shall be a component of the Regular Assessment. The Replacement Reserve Fund (i) shall be conclusively deemed to be a Common Expense of the Neighborhood Association, (ii) shall be maintained by the Neighborhood Association in a separate, interest bearing account or accounts with any banking institution, the accounts of which are insured by any state or by any agency of the United States of America as

selected by the Board of Directors, and (iii) may be expended only for the purpose of effecting the replacement of the Common Area, major repairs to, replacement and maintenance of any improvements within the Common Area, including but not limited to, sidewalks, parking areas, landscape improvements, street or common area lighting, streets or roadways developed as a part of the Neighborhood Property, equipment replacement, Common Area Facilities, any portions of the Dwelling Units for which the Neighborhood Association is responsible as provided herein, and for start-up expenses and operating contingencies of a nonrecurring nature relating to the Common Area and other obligations of the Neighborhood Association hereunder. The Neighborhood Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any Member in any such reserves shall be considered an appurtenance of the Member's Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

ARTICLE VI

ADDITIONAL RESTRICTIONS

Section 6.1. Lot Maintenance. Each Owner shall, at all times, maintain its Lot and Dwelling Unit and all appurtenances thereto free of debris or rubbish and in good repair and in a state of neat appearance from all exterior vantage points. While the Neighborhood Association will perform all routine maintenance to landscape improvements on each Lot and will provide maintenance and repair of Common Area Facilities, all as provided in Article VIII below, the Owners shall be responsible for all routine maintenance to Structures or amenities on his Lot, and all extraordinary items of maintenance to any landscape improvement on his Lot, including, without limitation, trees and shrubs, and for repair of any damage or destruction to any Structure or landscape improvement or amenity on his Lot, including, without limitation, trees and shrubs, whether or not caused by the Owner, a third party, elements of nature, or acts of God.

Section 6.2. Painting and Exterior Design. No Owner shall cause or permit any alterations or changes of the exterior design and/or color scheme of any Dwelling Unit, Structure or building including, but not limited to, the exterior paint color scheme and roof shingle color scheme and materials. No person shall paint the exterior of any building, or portion thereof, except contractors and agents employed by Declarant or the Neighborhood Association. Any and all such painting of the exterior of any building or any portion thereof shall be done by the Neighborhood Association, and the costs thereof will be assessed to the Owners either as a part of the Regular Assessments due hereunder or, if necessary, as a Special Assessment, as determined by the Board of Directors in its discretion under Article V, above. All Dwelling Units will, at all times, be painted in a uniform color, without variation. By way of example only, in the event the Board of Directors or Declarant, as applicable, deems it necessary to paint only a portion of a building (i.e., in the case of damage affecting only one Dwelling Unit), and, if matching paint cannot be located or if, when applied, the paint does not match the finish on the adjacent Dwelling Units, the Board of Directors, in its sole discretion, may cause the exterior of the entire building to be painted, with the costs thereof being assessed to the Owners of the Dwelling Units in the building, either as a part of the Regular Assessments due hereunder, or, if necessary, as a Special Assessment, as determined by the Board of Directors in its discretion.

Section 6.3. Exterior Appearance. No foil or other reflective material shall be used on any window for sunscreen, blinds, shades or other purpose nor shall any window-mounted heating or air conditioning units be permitted. Outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed, or maintained nor shall any clothing rugs, or other item be hung on any railing, fence, hedge or wall. When not in use, all garage doors shall be kept closed.

Section 6.4. Signs. No signs of any kind shall be erected within the Neighborhood, or permitted within any windows, without the written consent of the Board of Directors, except for Permitted Signs, entry and directional signs installed by Declarant, and such signs as may be required by legal proceedings. No business signs, flags, banners or similar items advertising or providing information shall be erected by any Owner. If permission is granted to any Person to erect a sign, including name and address signs, within the Property, the Board reserves the right to erect signs as they, in their sole discretion, deem appropriate. All Permitted Signs and signs approved by the Board of Directors shall be removed within three (3) business days from the date of conveyance of the Lot or the event being noted by the sign. The Declarant shall be exempt for the provisions of this Section 6.4.

Section 6.5. Parking. Vehicles shall be parked only in the garages and on the driveways serving Lots. On street parking is prohibited except for visitors, which shall not park on the street for more than 48 hours in any 72 hour period. The City has the authority to enforce the prohibition of on street parking through ticketing or towing.

Section 6.6. Animals and Pets. No animals, livestock or poultry of any kinds shall be raised, bred or kept in any portion of the Neighborhood, except that dogs, cats or other usual and common household pets not to exceed a total of three (3) may be permitted in a Lot, subject to rules and regulations adopted by the Neighborhood Association through its Board of Directors. However those pets which are permitted by any Owner or occupant to roam free, or, in the sole discretion of the Association, or Neighborhood, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the owners of any portion of the Property, shall be removed from the Property upon the request of the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs shall at all times whenever they are outside a Lot including all Common Areas, be confined on a leash held by a responsible person. No pet shall be permitted to leave its excrement on any portion of the Common Areas, and the Owner of such pet shall immediately remove the same. Failure to remove any solid animal waste shall subject the Owner to a fine the minimum of which shall be \$50.00 per occurrence as determined by the Board of Directors but in no event less than the cost of removal and any remediation. No dog houses or other structures intended to house pets shall be permitted on any Lot.

Section 6.7. Lighting. Except for seasonal holiday decorative lights, which may be displayed between not more than three weeks before the holiday or more than one week after the applicable holiday, all exterior lights must be approved in accordance with this Declaration and once installed, must not create excessive light, as determined in the sole discretion of the Board of Directors.

Section 6.8. Finished Exteriors. The exteriors of all Structures, including, without limitation, walls, doors, windows and roofs, shall be kept in good maintenance and repair by the Owners of Dwelling Units within that Structure. No Structure shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after the commencement of construction. In the event of fire, windstorm or other damage, the exterior of a Structure shall not be permitted to remain in a damaged condition for longer than three (3) months, unless expressly excepted by the Board of Directors in writing. If the Board of Directors determines that any Structure or Dwelling Unit is not in compliance with the provisions of this Section 6.3, the Neighborhood Association shall send written notice to the Owner of that Structure or Dwelling Unit identifying, with reasonable specificity, the items in need of repair or maintenance (a "**Repair Notice**"). If an Owner fails to comply with the provisions of this Section 6.3 after its receipt of such a Repair Notice, the Neighborhood Association shall be entitled to enforce the provisions of this Section 6.3 in the manner contemplated under Article VIII, below, and in any other manner permitted hereunder or by applicable law.

Section 6.9. Rental Agreements. No Dwelling Unit may be purchased for use as a rental, and no one other than an Owner and either (i) the Owner's family (persons related by blood, marriage, adoption or foster care) and (i) not more than two (2) additional unrelated adults, may occupy a Dwelling Unit for the first twelve (12) months after the purchase of a Dwelling Unit by such Owner. Any rental agreement for a Dwelling Unit must be approved by the Board of Directors and be for an initial period of at least one (1) year, in writing and subject to the Restrictions, and all other terms and conditions set forth in this Neighborhood Declaration and in the other Neighborhood Association documents including, but not limited to, the Statement of Commitments. Every such rental agreement must include a provision stating that any failure by the tenant, its household members or guests, to comply with such Restrictions or other terms and conditions as set forth above, shall be a default under the rental agreement, and the Owner shall be responsible for enforcing such provision at its sole expense; provided, however, that the Neighborhood Association shall also have the right to enforce any of such Restrictions and other terms and conditions against the Owner or any tenant, or both, in the sole discretion of the Neighborhood Association, without regard to whether Declarant or the Neighborhood Association were or are in privity with such tenant. The foregoing shall not be construed as a waiver by the Neighborhood Association of its rights hereunder to enforce these Restrictions against a tenant or any other Person in possession of the Neighborhood Property or any part thereof. Each Owner agrees to indemnify, defend and hold harmless the Neighborhood Association and the Board of Directors from and against all costs, liability, charges, expenses and claims resulting directly or indirectly from such Owner's failure to comply with the foregoing provisions. By accepting title to a Lot, each Owner acknowledges and accepts the Neighborhood Association's right to enforce the foregoing restrictions as provided hereunder.

Section 6.10. Trash Storage. Trash shall be collected and stored in sealed trash receptacles only and not solely in plastic garbage bags. Trash and garbage receptacles shall not be permitted to remain in public view and shall remain inside of each Owner's garage exempt on days of trash collections, and except for those receptacles designed for trash accumulation located in a Common Area. No accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on the exterior of any Dwelling Unit. No rubbish, garbage or other waste shall be allowed to accumulate on any Lot or Common Area. No Owner shall burn or bury any garbage or refuse on any Lot or Common Area.

Section 6.11. Garages. Garage doors shall remain closed except when entering and exiting or otherwise accessing the garage.

Section 6.12. Storage Facilities. No permanent, temporary or portable storage facilities shall be permitted on any Lot, except for portable storage facilities that are located wholly within the Owner's garage area and are removed within twenty-four (24) hours. No portable storage facility is permitted in any driveway, Common Area, or public right-of-way.

Section 6.13. Awnings. Except with respect to Lots upon which Declarant maintains a sales office or model home, or as otherwise approved by the Board of Directors, no metal, wood, fabric, fiberglass or similar type material awnings (including retractable awnings) or patio covers will be permitted anywhere on the Property.

Section 6.14. Pools and Hot Tubs. No pools shall be permitted on any Lot. Hot tubs will only be permitted upon the approval of the Board of Directors, and in all instances shall include screening

Section 6.15. Play Equipment. No children's play equipment such as playhouses, sandboxes, swing and slide sets, jungle gyms, and trampolines, shall be permitted on any Lot.

Section 6.16. Basketball Goals. No basketball goals, hoops, or backboards shall be permitted on any Lot.

Section 6.17. Business Use. No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except that an Owner or occupant resident on a Lot may conduct business activities within a Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) no sign or display is erected that would indicate from the exterior that the Dwelling Unit is being utilized in part for any purpose other than that of a residence; (c) no commodity is sold upon the premises; (d) no person is employed other than a member of the immediate family residing in the Dwelling Unit; (e) no manufacture or assembly operations are conducted; (f) the business activity conforms to all zoning requirements for the Property; (g) the business activity does not involve persons coming onto the Lot who do not reside in the Neighborhood or door-to-door solicitation of residents of the Neighborhood; and (h) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board of Directors. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, (i) the leasing of a Lot or Dwelling Unit shall not be considered a trade or business within the meaning of this Section 6.17, and (ii) no Dwelling Unit may be used for the operation of the following businesses or trades, regardless of whether licensed or otherwise: (A) a daycare or childcare business, (B) a beauty, hair, or nail salon, (C) a

spa of any kind, or (D) a retail business. This Section 6.17 shall not apply to any activity conducted by Declarant or its affiliates with respect to the sale of the Dwelling Units or the use of any Dwelling Units which Declarant owns within the Property for such activities.

Section 6.18. Landscaping of Common Areas. No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas, except with prior, express written permission from the Board of Directors

Section 6.19. Declarant's Use. Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, Declarant shall have, until the Authority Transfer Date, the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Neighborhood (other than individual Dwelling Units and Lots owned by Persons other than Declarant), as Declarant may deem advisable or necessary in its sole discretion to aid in the sale of Lots and the construction of Dwelling Units, or for the conducting of any business or activity attendant thereto, or for the construction and maintenance of Common Areas, 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 it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Areas, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Neighborhood at any time.

Section 6.20. Non-applicability to Neighborhood Association. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth in this Article VI shall not apply to or be binding upon the Association in its ownership, management, administration, operation, maintenance, repair, replacement and upkeep of the Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Association in the performance of its duties, obligations and Association in the performance of its duties, obligations and responsibilities as to the Common Areas.

Section 6.21. Personal Property Forward of the Front Foundation Line of a Dwelling Unit. No items of personal property may be permitted forward of the front foundation line of a Dwelling Unit. Notwithstanding the foregoing, exterior pots for flowers and plants not exceeding 24 inches in height shall be permitted provided that they are (1) weather resistant, (2) properly maintained, and (3) harmonious with the exterior colors and architecture of the Dwelling Unit.

Section 6.22. Additional Rules and Regulations. The Neighborhood Association shall have the authority to adopt such rules and regulations regarding this Article VI as it may from time to time consider necessary or appropriate.

ARTICLE VII

PARTY WALLS

Section 7.1. General Rules of Law to Apply. Each wall built as part of the original construction of a Dwelling Unit and situated upon the dividing line between two Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article VII,

the general rules of law regarding party walls and liability of Owners for property damage due to negligence or willful acts or omissions in connection with party walls shall apply thereto.

Section 7.2. Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty. If any party wall is damaged or destroyed by (i) fire or other casualty, or (ii) ordinary wear and tear and deterioration from lapse of time, or (iii) or by some cause other than the act of one of the adjoining Owners, its agents, family, household or guests, then both adjoining Owners shall proceed forthwith to rebuild or repair the structural components of such party wall, sharing equally the cost thereof, and each individual Owner shall proceed forthwith to rebuild or repair the non-structural components of such wall in proportion to their respective uses of the party wall. Any and all such reconstruction and/or repairs shall be completed immediately to the extent that the failure to commence and/or complete such reconstruction and/or repairs would result in an immediate risk to human health and/or safety. All other reconstruction and/or repairs shall be completed within three (3) months following the casualty or other event that damaged or destroyed such party wall, unless a longer period of time is approved in writing by the Neighborhood Association. If a party wall is in a condition that is of such a nature that it has or will (if left uncorrected) result in further damage or destruction of such party wall, the reconstruction and/or repairs shall be completed within a reasonable time, not exceeding six (6) months following the initial discovery of the condition. Any and all such reconstruction and/or repair shall be made in a good and workmanlike manner, in compliance with all requirements of Local Governing Authorities and otherwise in compliance with all applicable laws, ordinances, rules and regulations, to the same or better condition as existed prior to such condition, damage or destruction. However, in the event of substantial destruction to the party wall and the adjoining Dwelling Units (i.e. where eighty percent (80%) or more of the party wall and the adjoining Dwelling Units are destroyed by fire or otherwise), neither Owner shall be obligated to repair or restore the party wall. Each Owner shall have an easement over that part of the other Owner's Lot that is necessary or desirable in order to repair, restore or replace the party wall.

Section 7.3. Repairs for Damage Caused by One Owner. If any such party wall is damaged or destroyed through the act of one or more adjoining Owners, or their respective agents, families, households or guests (collectively the "Offending Parties"), whether or not such act is negligent or otherwise culpable, so as to deprive another adjoining Owner of the use and enjoyment of the party wall, then the Owner(s) of the Dwelling Unit(s) from whence the Offending Parties committed the act that caused the damage or destruction, shall forthwith proceed to rebuild and repair the same, in the manner required under Section 7.2 above, without cost to the adjoining Owner.

Section 7.4. Use; Other Changes. Either Owner shall have the right to use the side of the party wall facing the Owner's Dwelling Unit in any lawful manner, including attaching structural or finishing materials to it; however, in addition to meeting the other requirements of these Restrictions and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild its Dwelling Unit in any manner which involves the alteration of any party wall shall first obtain the written consent of the adjoining Owner, whose consent shall not be unreasonably withheld, conditioned or delayed. If the adjoining Owner has not responded in writing to the requesting Owner within twenty-one (21) days of its receipt of any such written request, given by registered or certified mail, return receipt requested, such consent of the adjoining Owner shall be deemed to have been given.

Section 7.5. Right to Contribution Runs with the Land; Failure to Contribute.

The right of any Owner to contribution from any other Owner under this Article VII shall be appurtenant to the land and shall pass to such Owner's successors in title. If either Owner shall neglect or refuse to pay the Owner's share under this Article VII, or all of the cost in case of the negligence or willful misconduct of such Owner, the other Owner may have the party wall repaired or restored and shall be entitled to have a mechanic's lien on the property of the Owner failing to pay for the amount of its share of the repair or replacement cost.

Section 7.6. Dispute. In the event of a dispute between or among Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Neighborhood Association, the matter shall be submitted to the Board of Directors, who shall decide the dispute and whose decision shall be final.

ARTICLE VIII

POWERS AND DUTIES OF THE ASSOCIATION

Section 8.1. Discretionary Powers and Duties. The Neighborhood Association shall have the following powers and duties which may be exercised in its discretion:

(a) to enforce any covenants or restrictions which are imposed by the terms of this Neighborhood Declaration or which may be imposed on any part of the Neighborhood Property. Nothing contained herein shall be deemed to prevent the Owner of any Lot from enforcing any building restriction in its own name. The foregoing rights of enforcement shall not prevent (i) changes, releases or modifications of the restrictions or reservations placed upon any part of the Neighborhood Property by any party having the right to make such changes, releases or modifications in the deeds, contracts, declarations or plats in which such restrictions and reservations are set forth; or (ii) the assignment of the foregoing rights by the proper parties wherever and whenever such rights of assignment exist. Neither the Neighborhood Association nor the Board of Directors shall have a duty to enforce the covenants by an action at law or in equity if either party believes such enforcement is not in the Neighborhood Association's best interest. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Neighborhood Association; provided, however, that the foregoing authorization to use the general fund for such enforcement proceedings shall not preclude the Neighborhood Association from collecting such costs from the offending Owner;

(b) subject to the limitations set forth in Section 8.3 hereof, to employ counsel and institute and prosecute such suits as the Neighborhood Association may deem necessary or advisable, and to defend suits brought against the Neighborhood Association;

(c) to retain, as an independent contractor or employee, a professional manager of the Neighborhood Association and such other employees or independent

contractors as the Board of Directors deems necessary, and to prescribe the duties of employees and scope of services of independent contractors;

(d) to enter upon any Lot to perform emergency repairs or to do other work reasonably necessary for the proper maintenance or protection of the Neighborhood Property;

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

(f) to remove a member of the Board of Directors and declare such member's office to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors, or failure to follow the Code of Ethics or Conflict of Interest Policy adopted by the Board of Directors, from time to time.

Section 8.2. Mandatory Powers and Duties. The Neighborhood Association shall exercise the following powers, rights and duties:

(a) to unconditionally accept title to the Common Area upon the transfer thereof by Declarant to the Neighborhood Association as provided hereunder, and to hold and administer the Common Area for the benefit and enjoyment of the Owners and occupants of Lots, and to cause the Common Area and facilities to be maintained in accordance with the standards adopted by the Board of Directors;

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

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

(d) to obtain and maintain without interruption a comprehensive coverage of public liability and hazard insurance covering the Common Area and easements of which

the Neighborhood Association is a beneficiary, if available at reasonable cost. Such insurance policy shall contain a severability of interest clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Neighborhood Association or other Owners. The scope of coverage shall include all coverage in kinds and amounts commonly obtained with regard to projects similar in construction, location and use as determined by the Board of Directors. Further, the public liability insurance must provide coverage of at least \$1,000,000.00 for bodily injury, including death, and property damage for any single occurrence;

(e) to maintain a casualty insurance policy affording fire and extended coverage insuring each Lot and Structures constructed thereupon including, but not limited to, the Dwelling Unit in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Dwelling Unit, including, without limitation, any party walls. Declarant shall, in addition, also procure endorsements naming the Lot Owner(s) as additional insureds under such insurance policies and requiring each such insurer to provide (i) immediate written notice to the Lot Owner(s) of any cancellation of such policy, and (ii) at least thirty (30) days' written notice to the Lot Owner(s) prior to any termination or material modification of such policy. Declarant will furnish to the purchaser of each Lot, at or prior to the closing of the acquisition of that Lot, a certificate of insurance and endorsement evidencing the insurance coverage described herein. Owners shall not do or permit any act or thing to be done in or to a Lot or Dwelling Unit which is contrary to law or which invalidates or is in conflict with Declarant's policy of insurance. An Owner who fails to comply with the provisions of this paragraph shall pay all costs, expenses, liens, penalties, or damages which may be imposed upon the Owner, Declarant or the Neighborhood Association by reason thereof. Notwithstanding the foregoing, each Owner of a Lot shall be responsible for the purchase and maintenance of its own insurance policies covering liability, loss and/or damage with respect to contents and other personal property and fixtures located within and about each Dwelling Unit.

(f) to provide for the maintenance of the Common Area including, but not limited to, Common Area Facilities, and any and all (i) improvements, Structures or facilities which may exist or be erected from time to time on the Common Area; (ii) easement areas of which the Neighborhood Association is the beneficiary and for which it has the maintenance responsibility; and (iii) facilities, including, but not limited to, fences and signs, authorized by the Neighborhood Association and erected on any easements granted to the Neighborhood Association;

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

(h) to maintain its corporate status;

(i) to maintain all private streets, open space and landscaping within the Common Area;

(j) to regularly mow, treat for weeds, re-sow, re-seed or re-sod lawn areas and fertilize lawn areas at least three (3) times each year within the Common Areas and on

each Lot and to operate and maintain in-ground irrigation/sprinkler systems in the Common Areas and in the landscaped areas of each Lot;

(k) to care for, spray, trim, protect, plant, replant and prune trees, shrubs and other landscaping, maintenance and upkeep of the Common Area and to pick up and remove from the Common Area all loose material, rubbish, filth and accumulation of debris; and to do any other thing necessary or desirable in the judgment of the Neighborhood Association to keep the Common Area in neat appearance and in good order, including, but not limited to, cleaning the private streets and maintaining any street lights located in the Common Areas;

(l) to arrange for plowing and/or removal of snow and ice on all Common Areas, streets and public walks, including front entry sidewalks to Dwelling Units, within the Neighborhood;

(m) to retain, as an independent contractor, a professional management company to manage the Neighborhood Association; and

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

Section 8.3. Limitation on Neighborhood Association Action. The Neighborhood Association shall hold a duly authorized, duly noticed special meeting of the Members of the Neighborhood Association prior to commencing or prosecuting any judicial or administrative proceeding, and no judicial or administrative proceeding shall be commenced or prosecuted by the Neighborhood Association except upon the affirmative vote of at least seventy-five percent (75%) of the votes cast at said special meeting by Members entitled to vote authorizing the commencement and prosecution of the proposed action. This Section 8.3 shall not apply to (a) actions brought by the Neighborhood Association to enforce the provisions of this Neighborhood Declaration, the Bylaws, or rules and regulations adopted by the Board of Directors (including, without limitation, any action to recover Regular Assessments or Special Assessments or other charges or fees or to foreclose a lien for such items) or (b) counterclaims brought by the Neighborhood Association in connection with proceedings instituted against it.

Section 8.4. Board of Directors Authority to Act. Unless otherwise specifically provided in the Neighborhood Association's documents, all rights, powers, easements, obligations and duties of the Neighborhood Association may be performed by the Board of Directors. Notwithstanding anything to the contrary contained herein, any rules or regulations which are promulgated by the Board of Directors may be repealed or amended by a majority vote of the Members cast, in person or by proxy, at a meeting convened for such purpose in accordance with the Bylaws.

Section 8.5. Compensation. No director or officer of the Neighborhood Association shall receive compensation for services as such director or officer except to the extent expressly authorized by a majority vote of the Class A Members.

Section 8.6. Non-liability of Directors, Officers and Board Members. The directors and officers of the Neighborhood Association and members of the Architectural Committee, and all committees thereof, shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Neighborhood Association or members of the Architectural Committee, or any committee thereof, except for their own individual willful misconduct or gross negligence. It is intended that the directors and officers of the Neighborhood Association and members of the Architectural Committee, and all committees thereof, shall have no personal liability with respect to any contract made by them in good faith on behalf of the Neighborhood Association, and the Neighborhood Association shall indemnify and hold harmless each of the directors, officers, Architectural Committee members, or committee members against any and all liability to any person, firm or corporation arising out of contracts made in good faith on behalf of the Neighborhood Association.

Section 8.7. Indemnity of Directors and Officers. Except with respect to matters (i) as to which it is adjudged in any civil action, suit, or proceeding that such person is liable for gross negligence or willful misconduct in the performance of his or her duties, or (ii) to which it is adjudged in any criminal action, suit or proceeding that such person had reasonable cause to believe that such person's conduct was unlawful or that person had no reasonable cause to believe that such person's conduct was lawful, the Neighborhood Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the "Indemnitee") made or threatened to be made a party to any action, suit or proceeding, or subject to any claim, by reason of the fact that he or she is or was a director or officer of the Neighborhood Association or member of the Board of Directors or the Committee, or any committee thereof, from and against (1) all liability, including, without limitation, the reasonable cost of settlement of, or the amount of any judgment, fine, or penalty rendered or assessed in any such claim, action, suit, or proceeding; and (2) all costs and expenses, including attorneys' fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such claim, action, suit or proceeding, or in connection with any appeal thereof. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer of the Neighborhood Association, or member of the Board of Directors or the Committee, or any committee thereof, shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such director or officer of the Neighborhood Association, or member of the Committee, or committee thereof, relied on the books and records of the Neighborhood Association or statements or advice made by or prepared by any managing agent of the Neighborhood Association or any director, officer or member of the Neighborhood Association, of any accountant, attorney or other person, firm or corporation employed by the Neighborhood Association to render advice or service, unless such director, officer or member had actual knowledge of the falsity or incorrectness thereof; nor shall a director, officer or member be deemed guilty of gross negligence or willful misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Neighborhood Association, the Board of Directors or the Committee, or of any committee thereof. The costs and expenses

incurred by an Indemnitee in defending any action, suit or proceeding may be paid by the Neighborhood Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Neighborhood Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification or reimbursement as provided in this Article VIII.

ARTICLE IX

RIGHTS OF MORTGAGEES

Unless a right is waived by the appropriate Federal Agency, all Mortgagees shall have the following rights:

Section 9.1. Veterans Administration. To the extent required by the Veteran's Administration (the "VA"), if any of the Lots are security for a loan guaranteed by the VA and if there is a Class B Member:

(a) Declarant must provide to the VA a copy of all amendments to the Neighborhood Declaration. The Neighborhood Association may not make any Material Amendment or take any Extraordinary Action (as such terms are defined in Article X) without the approval of the VA.

(b) Eligible Mortgagees shall have the following rights:

(i) the right to inspect Neighborhood Association documents and records on the same terms as the Members;

(ii) notice of any Material Amendment of the Neighborhood Association documents;

(iii) notice of any Extraordinary Action of the Neighborhood Association;

(iv) notice of any property loss, condemnation or eminent domain proceeding affecting the Common Area resulting in a loss greater than ten percent (10%) of the annual budget or affecting any Lot insured by the Neighborhood Association in which the Eligible Mortgagee has an interest;

(v) notice of any termination, lapse or material modification of an insurance policy held by the Neighborhood Association;

(vi) notice of any default by an Owner of a Lot subject to a mortgage held by the Eligible Mortgagee in paying assessments or charges to the Neighborhood Association which default remains uncured for sixty (60) consecutive days;

(vii) notice of any proposal to terminate the Neighborhood Declaration or dissolve the Neighborhood Association at least thirty (30) days before any action is taken;

(viii) the right of a majority of the Eligible Mortgagees to demand professional management; and

(ix) the right of a majority of the Eligible Mortgagees to demand an audit of the Neighborhood Association's financial records.

Section 9.2. Federal Housing Authority. To the extent required by the Federal Housing Authority (the "FHA"), if any of the Lots are security for a loan insured by the FHA and if there is a Class B Member, the following actions will require the prior approval of the FHA:

- (a) annexation of additional properties, except the land described in Article X below;
- (b) mergers, consolidations and dissolution of the Neighborhood Association;
- (c) mortgaging or conveyance of the Common Area; and
- (d) Material Amendment of this Neighborhood Declaration.

Section 9.3. Freddie Mac. Assuming that Mortgagees may securitize pools of mortgages, including mortgages on Lots and/or Dwelling Units in the Neighborhood, with the Federal Home Loan Mortgage Corporation (a/k/a "Freddie Mac"), the following requirements shall apply to all Lots and Dwelling Units in the Neighborhood:

(a) Unless at least two-thirds (2/3) of the first Mortgagees (based on one vote for each first mortgage owned) or two-thirds (2/3) of the Class A Members have given their prior written approval, the Neighborhood Association shall not take any of the following actions:

(i) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The re-subdivision and/or adjustment of boundary lines of the Common Area and the granting of easements by the Neighborhood Association shall not require the consent described in subsection (a) above;

(ii) change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner;

(iii) by act or omission, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Dwelling Units and their appurtenances, the exterior maintenance of Dwelling Units and their appurtenances, the maintenance of the Common Area, common

fences and driveways, and the upkeep of lawns and plantings in the Neighborhood Property;

(iv) fail to maintain fire and extended coverage insurance on insurable parts of the Common Area or other property owned by the Neighborhood Association on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value, based on current replacement costs, not including land value; or

(v) use hazard insurance proceeds for losses to the Common Area or other property owned by the Neighborhood Association for other than the repair, replacement or reconstruction of such property.

(b) A Mortgagee shall be given written notification from the Neighborhood Association of any default in the performance of any obligation under this Neighborhood Declaration or related Neighborhood Association documents by the Owner of a Lot that is the security for the indebtedness due the Mortgagee, which default is not cured within sixty (60) days after the Owner's receipt of notice of the default.

(c) A Mortgagee may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for such Common Area. The Mortgagee making such payments shall be owed immediate reimbursement therefor from the Neighborhood Association.

(d) The assessments imposed by the Neighborhood Association shall include an adequate reserve fund for maintenance, repairs and replacements for those parts of the Common Area which may be replaced or require maintenance on a periodic basis. Such reserves shall be payable in regular installments rather than by Special Assessment.

Section 9.4. Fannie Mae. Assuming that Mortgagees may secure funding for mortgage loans by selling mortgage loans, including mortgages on Lots and/or Dwelling Units in the Neighborhood, to the Federal National Mortgage Association (a/k/a "Fannie Mae"), the following requirements shall apply to all Lots and Dwelling Units in the Neighborhood:

(a) A Mortgagee shall be given written notification from the Neighborhood Association of the following:

(i) any condemnation or casualty loss that affects either a material portion of the Common Area or the Lot that is the security for the indebtedness due the Mortgagee;

(ii) any default in the performance of any obligation under this Neighborhood Declaration or related Neighborhood Association documents by the Owner of a Lot that is the security for the indebtedness due the Mortgagee,

which default is not cured within sixty (60) days after the Owner's receipt of notice of the default;

(iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Neighborhood Association; or

(iv) any proposed action that would require the consent of a specified percentage of Mortgagees.

(b) Provided that improvements have been constructed in the Common Area and provided that a Mortgagee gives written notice to the Neighborhood Association that it has relied on the value of the improvements in making a loan on a portion or all of the Neighborhood Property, then subject to the right of Declarant to annex additional areas as provided in Article X herein, unless at least sixty-seven percent (67%) of the Members, and Mortgagees representing at least fifty-one percent (51%) of those Lots with Mortgages have given their prior written approval, the Neighborhood Association shall not add or amend any material provision of this Neighborhood Declaration or related Neighborhood Association documents concerning the following:

(i) voting rights of any Member;

(ii) assessments, assessment liens, or subordination of such liens;

(iii) reserves for maintenance, repair and replacement of those parts of the Common Area that may be replaced or require maintenance on a periodic basis;

(iv) responsibility for maintenance and repair of the Neighborhood Property;

(v) reallocation of interests in the Common Area or rights to its use, except as provided in Article III and Article IV herein;

(vi) converting Lots into Common Area or vice versa;

(vii) annexation or withdrawal of property to or from the Neighborhood Property (other than annexation of those properties referred to in Article X);

(viii) insurance or fidelity bonds;

(ix) leasing of Dwelling Units;

(x) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey its property;

(xi) a decision by the Neighborhood Association to establish self-management when professional management has been required previously by a Mortgagee;

- (xii) restoration or repair of the Neighborhood Property after a hazard damage or partial condemnation;
- (xiii) any provisions that are for the express benefit of Mortgagees; and
- (xiv) termination of the legal status of the Neighborhood Association after substantial destruction or condemnation of the subdivision occurs.

An addition or amendment to this Neighborhood Declaration or related Neighborhood Association documents shall not be considered material if it is for the purpose of clarification or correcting errors. A Mortgagee who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days of receipt of such request shall be deemed to have approved such request.

Section 9.5. General.

- (a) **Condemnation.** In the event that there is a condemnation or destruction of the Common Area or other property owned by the Neighborhood Association, to the extent practicable, condemnation or insurance proceeds shall be used to repair or replace the condemned or destroyed property.
- (b) **Books and Records.** Mortgagees and Owners shall have the right to examine and copy at its expense the books and records of the Neighborhood Association during normal business hours and upon reasonable notice to the Neighborhood Association.
- (c) **Notice.** As set forth in this Article IX, Mortgagees shall have the right, upon request, to receive notice of (a) the decision of the Owners to abandon or terminate the Planned Unit Development (as defined by Fannie Mae); (b) any material amendment to the Neighborhood Declaration, the Bylaws or the Articles; and (c) if professional management has been required by a Mortgagee, the decision of the Neighborhood Association to terminate such professional management and assume self-management.
- (d) **Excess Proceeds.** Should there be excess insurance or condemnation proceeds after the renovation, repair or reconstruction called for herein, such excess proceeds may be distributed equally to the Owners, apportioned equally among the Lots; subject, however, to the priority of a Mortgagee with regard to the proceeds applicable to the Lot securing said Mortgagee and in accordance with Indiana law.
- (e) **Audited Financial Statement.** The Neighborhood Association must provide an audited financial statement for the preceding fiscal year to a Mortgagee upon its written request.
- (f) **Termination.** Eligible Mortgagees representing at least sixty-seven percent (67%) of the votes of the mortgaged Lots must consent to the termination of the legal status of the Neighborhood Association for reasons other than substantial destruction or condemnation of the Neighborhood Property.

(g) Damage to Common Area. The Neighborhood Association shall cause the immediate repair, reconstruction or renovation of any damage to the Common Area, including, but not limited to, any Common Area Facilities, unless a decision not to repair, reconstruct or renovate is approved by the Board of Directors and a majority of the Mortgagees.

ARTICLE X

GENERAL PROVISIONS

Section 10.1. Enforcement. The Neighborhood Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Neighborhood Declaration or other Neighborhood Association documents unless such right is specifically limited herein or therein. Failure by the Neighborhood Association or by any Owner to enforce any right, provision, covenant or condition which may be granted by this Neighborhood Declaration shall not constitute a waiver of the right of the Neighborhood Association or an Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Neighborhood Association or any Owner pursuant to any term, provision, covenant or condition of the Neighborhood Declaration shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by this Neighborhood Declaration or at law or in equity.

Section 10.2. Severability; Headings; Conflicts. Invalidation of any one of the provisions of this Neighborhood Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect. Titles of paragraphs are for convenience only and are not intended to limit or expand the covenants, rights or obligations expressed therein. In the case of any conflict between the Articles and this Neighborhood Declaration, this Neighborhood Declaration shall control; in the case of any conflict between this Neighborhood Declaration and the Bylaws, this Neighborhood Declaration shall control.

Section 10.3. Duration. The covenants and restrictions of this Neighborhood Declaration shall run with and bind the Neighborhood Property and shall inure to the benefit of and be enforceable by the Neighborhood Association or the Owner of any Lot subject to this Neighborhood Declaration, their respective legal representatives, heirs, successors and assigns, unless such right is specifically limited herein, for a term of twenty (20) years from the date this Neighborhood Declaration is recorded, after which time the covenants and restrictions of this Neighborhood Declaration shall be automatically extended for successive periods of twenty (20) years each, unless terminated by a written and recorded instrument approved in advance by the affirmative and unanimous vote of all Members of the Neighborhood Association and their respective Mortgagees.

Section 10.4. Material Amendment/Extraordinary Action.

(a) **Approval Requirements.** In accordance with Federal Agencies' requirements, material amendments ("**Material Amendments**") or extraordinary actions ("**Extraordinary Actions**"), as each such term is defined below, must be approved by Members entitled to cast at least sixty-seven percent (67%) of the votes of Members present and voting, in person or by proxy, at a meeting held in accordance with the notice and quorum requirements for Material Amendments and Extraordinary Actions contained in the Bylaws, such vote including the vote of a majority of the Class A Members present and voting, in person or by proxy, at such meeting and the vote of the Class B Member, if any.

(b) **Material Amendment.** A Material Amendment includes adding, deleting or modifying any provision regarding the following:

- (i) assessment basis or assessment liens;
- (ii) any method of imposing or determining any charges to be levied against individual Owners;
- (iii) reserves for maintenance, repair or replacement of Common Area improvements;
- (iv) maintenance obligations;
- (v) allocation of rights to use Common Areas, except as provided in Article III and Article IV herein;
- (vi) any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on Lots;
- (vii) reduction of insurance requirements;
- (viii) restoration or repair of Common Area improvements;
- (ix) the annexation or withdrawal of land to or from the Neighborhood Property other than annexation or withdrawal of those properties referred to in this Article X;
- (x) voting rights;
- (xi) restrictions affecting leasing or sale of a Lot; or
- (xii) any provision which is for the express benefit of Mortgagees.

(c) **Extraordinary Action.** Alternatively, an Extraordinary Action includes:

(i) merging or consolidating the Neighborhood Association (other than with another non-profit entity formed for purposes similar to this Neighborhood Association);

(ii) determining not to require professional management if that management has been required by the Neighborhood Association documents, a majority of eligible Mortgagees or a majority vote of the Members;

(iii) expanding the Neighborhood Association to include land not previously described as annexable which increases the overall land area of the project or number of Lots by more than ten percent (10%);

(iv) abandoning, partitioning, encumbering, mortgaging, conveying, selling or otherwise transferring the Common Area except for (i) granting easements; (ii) dedicating Common Area as required by a public authority; (iii) re-subdividing or adjusting the boundary lines of the Common Area; or (iv) transferring Common Area pursuant to a merger or consolidation with a non-profit entity formed for purposes similar to the Neighborhood Association;

(v) using insurance proceeds for purposes other than reconstruction or repair of the insured improvements; or

(vi) making capital expenditures (other than for repair or replacement of existing improvements) during any period of twelve (12) consecutive months costing more than twenty percent (20%) of the annual operating budget.

(d) **Class Amendments.** Any Material Amendment which changes the rights of any specific class of Members must be approved by Members entitled to cast at least fifty-one percent (51%) of the votes of all Members of such class present and voting, in person or by proxy, at a meeting held in accordance with the requirements contained in the Bylaws.

(e) **Material Amendment and/or Extraordinary Actions Amendments.** The following Material Amendments and Extraordinary Actions must be approved by Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members of the Neighborhood Association, including at least a majority of the total authorized votes entitled to be cast by Class A Members and the vote of the Class B Member, if any:

(i) termination of this Neighborhood Declaration;

(ii) dissolution of the Neighborhood Association, except pursuant to a consolidation or merger; and

(iii) conveyance of all Common Areas.

(f) VA Amendments. If the VA has guaranteed any loans secured by a Lot, so long as there is a Class B Member, all Material Amendments and Extraordinary Actions must have the approval of the VA.

Section 10.5. Amendment. Amendments to this Neighborhood Declaration other than Material Amendments or Extraordinary Actions shall be approved by at least sixty-seven percent (67%) of the votes entitled to be cast by all Members present and voting, in person or by proxy, at any duly called and conveyed meeting, or in writing by Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members and the vote of the Class B Member, if any.

Any amendment to this Neighborhood Declaration must be properly executed and acknowledged by the Neighborhood Association (in the manner required by law for the execution and acknowledgment of deeds) and recorded among the appropriate land records.

Section 10.6. Special Amendment. Notwithstanding anything herein to the contrary, Declarant may unilaterally amend this Neighborhood Declaration for any reason prior to the first conveyance of a Lot to an Owner other than Declarant, and after such first conveyance, may make any amendment required by any of the Federal Agencies or by the Local Governing Authorities, as a condition of the approval of this Neighborhood Declaration, by the execution and recordation of such amendment following notice to all Members.

Section 10.7. Amendment by Class A Members Only. Notwithstanding anything herein to the contrary, the Class A Members may amend this Neighborhood Declaration without the consent of the Class B Member if more than seven (7) years have passed since the date of recording of this Neighborhood Declaration in the Office of the Recorder of Hamilton County, Indiana. Any amendment pursuant this Section 10.7 shall be approved by at least seventy-five percent (75%) of the votes entitled to be cast by all Class A Members present and voting, in person or by proxy, at any duly called and conveyed meeting, or in writing by Class A Members entitled to cast at least seventy-five percent (75%) of the total authorized votes of all Members and the vote of the Class B Member, if any. Any such amendment to this Neighborhood Declaration must be properly executed and acknowledged by the Neighborhood Association (in the manner required by law for the execution and acknowledgment of deeds) and recorded in the Office of the Recorder of Hamilton County, Indiana.

Section 10.8. Waiver. Declarant hereby expressly reserves unto itself (so long as these Restrictions are in effect), the unqualified right to waive or alter from time to time such of the herein contained restrictions as it may deem best, as to any one or more of the Lots, which waiver or alteration shall be evidenced by the mutual written consent of Declarant and the then-Owner of the Lot as to which some or all of said restrictions are to be waived or altered; such written consent shall be duly acknowledged and recorded in the Recorder's Office.

Section 10.9. Annexation of Additional Neighborhood Property. Notwithstanding anything contained in this Neighborhood Declaration to the contrary, Declarant may annex any Additional Neighborhood Property without the consent of the Neighborhood Association. The Neighborhood Association may annex any Additional Neighborhood Property and provide for maintenance, preservation and architectural control of Lots and Common Area within such

Additional Neighborhood Property, and may add to its membership under the provisions of Article II herein, with the written consent of more than fifty percent (50%) of each class of Members. Any future improvements on the Additional Neighborhood Property must be consistent with or better than the initial improvements on the Neighborhood Property in terms of quality, design and construction and comparable in style, size and cost.

Section 10.10. Withdrawable Real Estate.

(a) Prior to the date which is five (5) years after the date of the recordation of this Neighborhood Declaration, Declarant shall have the unilateral right, without the consent of the Class A Members or any Mortgagee, to execute and record an amendment to this Neighborhood Declaration withdrawing any portion of the Neighborhood Property upon which Dwelling Units have not been constructed.

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

Section 10.11. Management Contracts. For such time as Declarant has Class B membership status, Declarant shall have the right to enter into professional management contracts on behalf of the Neighborhood Association for the management of the Neighborhood Property for terms not to exceed three (3) years; provided, however, that from and after the date upon which is one year after the Declarant is no longer a Class B Member, the Neighborhood Association shall have the right to terminate such contracts, with or without cause, upon sixty (60) days' written notice to the other party and without payment of a termination fee.

Section 10.12. Dissolution. Subject to the restrictions and conditions contained in Article IX and this Article X, the Neighborhood Association may be dissolved with the assent given in writing and signed by at least two-thirds (2/3) of each class of Members and in accordance with Article 13 of the Indiana Nonprofit Corporation Act of 1991. Upon dissolution of the Neighborhood Association, other than incident to a merger or consolidation, the assets of the Neighborhood Association, both real and personal, shall be offered to an appropriate public agency to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the Neighborhood Association. In the event that such offer of dedication is refused, such assets shall be then offered to be granted, conveyed or assigned to any non-profit corporation, trust or other organization devoted to similar purposes and in accordance with Indiana law. Any such dedication or transfer of the Common Area shall not be in conflict with then-governing zoning ordinances or the designation of the Common Area as "open space".

Section 10.13. 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, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Neighborhood Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by violation of any of the Restrictions by such Owner, any member of his family or their respective guests, employees, agents, invitees or tenants.

Section 10.14. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Neighborhood Declaration, the Articles, the By-Laws and the rules, regulations and guidelines as adopted by the Board of Directors and (to the extent of its jurisdiction) the Architectural Committee, or any committee thereof, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Neighborhood Declaration, the Articles, the Bylaws and rules, regulations and guidelines, 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 bind any Person having at any time any interest or estate in a Lot or Dwelling Unit or the Neighborhood Property, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Neighborhood Property in any manner shall be subject to this and guidelines applicable thereto as each may be amended or supplemented from time to time.

Section 10.15. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Neighborhood Declaration would be unlawful, void, or voidable for violation of the common law rule against perpetuities, then such provisions shall continue on for the maximum amount of time as allowed by Indiana Code 32-17-8, et seq. as amended from time to time.

Section 10.16. Association Communications. In the event there is a dispute between an Owner or an Owner's Lot or Dwelling Unit and the Association, Board of Directors shall make all communications concerning the dispute available to the Owner of such Lot. If the Association initiates communications with an Owner regarding another Owner's Lot or Dwelling Unit, the Association shall provide a copy of any such communication to the Owner whose Lot or Dwelling Unit is the subject of the communications. Notwithstanding the foregoing, the Association shall not be required to make communications between the Association and its legal counsel and other communications or attorney work product prepared in anticipation of litigation to an Owner. Communication may be electronic, via website announcement, email, text or other similar methods.

Section 10.17. Grievance Resolution. In the event the Association or a Member has a claim arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the Articles, the rights or duties of the Association Board of Directors, the maintenance of the Property, or any other claim, grievance or dispute among the parties involving the Property or the Association, the provisions of Indiana Code 32-25.5-5 shall apply, unless such claim is expressly exempt thereunder.

Section 10.18. Voting by Proxy. In the event a Member entitled to vote elects to vote by proxy, the proxy used by such Member shall include (a) the name and address of the Member giving the proxy, (b) the name of the individual empowered to exercise the Member's proxy, (c) the date on which the proxy is given, (d) the date of the meeting for which the proxy is given, (e) the Member's signature on the proxy, (f) an affirmation under the penalties of perjury that the

individual signing the proxy has the authority to grant the proxy to the individual name in the proxy to exercise the Member's proxy. Board of Directors shall maintain a copy of any such proxy with the records of the meeting to which the proxy applies. A proxy may state that the proxy is limited in its use to specific matters described in the proxy. A proxy may also state that the proxy applies to any continuation of the meeting specified in the proxy; provided, however, if the proxy states that it expires on a stated date, the stated date shall not be more than one hundred eight (180) days after the date on which the proxy is given.

Section 10.19. Meeting Minutes and Association Records. Notwithstanding anything herein to the contrary, the Association and the Board of Directors shall retain for at least two (2) years after receipt any written or electronic communications received by the Association or Board of Directors that relates to a financial transaction of the Association that is not otherwise excepted from disclosure under this Declaration or applicable law. Upon a Member's request, which may be made in person, in writing or by electronic mail, each such Member shall have the right to review and inspect the Association's financial records, including all executed contracts, invoices, bills, receipts, bank records and meeting minutes of the Board of Directors; provided, however, that the Association shall not be required to make available for such review unexecuted contracts, records regarding contract negotiations, information regarding another Member's Association account and records if such person making the request is not a named party on the account, any information that is prohibited from release under applicable law, or any records that were created more than two (2) years prior to the date of request. Any written request for any such records shall identify with reasonable particularity the information being requested. The Association may charge a reasonable fee for the copying of a record requested pursuant to this Declaration if the Member requests a written copy of the record.

EXHIBIT A

Legal Description

A part of the Southeast Quarter of Section 12, Township 18 North, Range 3 East, Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Southwest corner of the Southeast Quarter of said Section 12, Township 18 North, Range 3 East; thence North 88 degrees 22 minutes 33 seconds East (basis of bearings) on and along the South line of said Southeast Quarter 33.01 feet to a point on the East right of way line of the Monon Railroad and the Southwest corner of Valley View at Viking Meadows, Section One per the plat thereof recorded in Plat Cabinet 4, Slide 84 on file in the Office of the Recorder of Hamilton County, Indiana; thence North 00 degrees 09 minutes 41 seconds West on and along the West line of said Valley View at Viking Meadows, Section One and said East right of way line 1807.99 feet to the Northwest corner of said Valley View at Viking Meadows, Section One and the **POINT OF BEGINNING** of this description; thence North 89 degrees 50 minutes 19 seconds East on and along the North line of said Valley View at Viking Meadows, Section One 441.65 feet to a Northeast corner thereof and a point on the West line of Farr Hills per the plat thereof recorded in Plat Book 5, Pages 8-9 on file in the Office of the Recorder of Hamilton County, Indiana; thence North 00 degrees 48 minutes 40 seconds West on and along said West line and the Northerly extension thereof 821.98 feet to a point on the North line of said Southeast Quarter; thence South 87 degrees 26 minutes 20 seconds West on and along said North line 432.70 feet to a point on the East right of way line of said Monon Railroad; thence South 00 degrees 09 minutes 41 seconds East on and along said East right of way line 803.81 feet to the **POINT OF BEGINNING**, containing 8.16 acres, more or less.

EXHIBIT B

Legal Description

A part of the Southwest Quarter of Section 12, Township 18 North, Range 3 East, Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of the Southwest Quarter of said Section 12, Township 18 North, Range 3 East; thence North 87 degrees 45 minutes 58 seconds East (basis of bearings) on and along the North line of said Southwest Quarter 2274.66 feet to a Northeast corner of The Meadowlands at Viking Meadows, Section One per the plat thereof recorded as Instrument Number 2007006331 on file in the Office of the Recorder of Hamilton County, Indiana and the **POINT OF BEGINNING** of this description; thence on and along the perimeter of said The Meadowlands at Viking Meadows, Section One by the following two (2) courses: 1) South 00 degrees 00 minutes 00 seconds East 790.26 feet; thence 2) North 90 degrees 00 minutes 00 seconds East 281.45 feet to a point on the West right of way line of the Monon Railroad; thence North 00 degrees 09 minutes 41 seconds West on and along said West right of way line 801.15 feet to a point on the North line of said Southwest Quarter; thence South 87 degrees 45 minutes 58 seconds West on and along said North line 279.41 feet to the **POINT OF BEGINNING**, containing 5.12 acres, more or less.