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**NEIGHBORHOOD DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
THE TOWNHOMES AT TRADERS POINTE**

THIS NEIGHBORHOOD DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE TOWNHOMES AT TRADERS POINTE (the "Neighborhood Declaration") is made by the undersigned as of the dates corresponding to signatures below.

**RECITALS:**

A. Traders Point LLC, an Indiana limited liability company (the "Title Holder") is the owner of certain real property located in Marion County, Indiana, which is more specifically described on Exhibit A attached hereto and incorporated herein by reference (the "Neighborhood Property"); and

B. Pulte Homes of Indiana, LLC, an Indiana limited liability company ("Pulte") is the contract purchaser and developer of the Neighborhood Property; and

C. The Title Holder and Pulte desire 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. The Title Holder and Pulte desire to provide for the preservation of the values of the Neighborhood and such other areas as may be subjected to this Neighborhood Declaration, and to provide for the maintenance of the open spaces and other facilities, 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. The Title Holder and Pulte have deemed it desirable for the efficient preservation of the values of the Neighborhood to create an association to be known as Traders Pointe 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; and

NOW, THEREFORE, the Title Holder and Pulte, for and in consideration of the premises and the covenants contained herein, hereby (i) appoint Pulte to be the Declarant in this Neighborhood Declaration, to have, hold, and possess all of the rights, powers, and authority of the Declarant as set forth in this Neighborhood Declaration, (ii) grant, establish and convey 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 (iii) declare 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, charges and liens as hereinafter set forth, 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

Unless otherwise defined in this Neighborhood Declaration, all terms and words in this Neighborhood Declaration and its recorded exhibits shall have the meanings stated below unless the context clearly requires otherwise:

Section 1.1. "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 1.2. "Authority Transfer Date" shall have the meaning ascribed thereto in Section 4.1 of this Neighborhood Declaration.

Section 1.3. "Board of Directors" shall mean an elected body having its normal meaning under Indiana corporate law.

Section 1.4. "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 1.5. "City" shall mean Indianapolis, Indiana.

Section 1.6. "Committee" means and refers to the Committee described in Article VIII of this Neighborhood Declaration.

Section 1.7. "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 including, without limitation, Private Streets and all areas identified on the Plat as Common Areas. All of the Neighborhood Property which is not a public street or included in any particular Lot, 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.

Section 1.8. "Common Expenses" shall mean and refer to expenses of administration of the Neighborhood Association and expenses incurred in the fulfillment of the obligations of the Neighborhood Association as specified in Section 10.2 below and elsewhere in this Declaration, 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 1.9. "County" shall mean the County of Marion, Indiana.

Section 1.10. "Declarant" shall mean and refer to Pulte Homes of Indiana, LLC, an Indiana limited liability company, and any successors or assigns to whom the Declarant assigns any or all of its rights as Declarant pursuant to this Neighborhood Declaration by assignment recorded in the Office of the Recorder of Marion County, Indiana.

Section 1.11. "Development Period" means the period of time commencing on the date this Declaration is recorded in the Recorder's Office and ending when (i) Declarant, or an affiliate or subsidiary of Declarant, has completed the development and sale of any Lot in the Neighborhood and (ii) neither the Declarant, nor the Title Holder, nor any of their affiliates or subsidiaries still own any Lot in the Neighborhood.

Section 1.12. "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 1.13. "Federal Agencies" shall mean (byway 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 1.14. "Local Governing Authority" shall mean the City and/or the County, individually or collectively.

Section 1.15. "Lot" means one or more of the platted parcels located within the Neighborhood Property into which the Neighborhood Property has been subdivided, upon which a single Dwelling Unit has been or is intended to be constructed; provided, however, that where a Dwelling Unit (i) is separated from an adjacent Dwelling Unit by a Party Wall, or (ii) shares a Party Wall with an adjacent Dwelling Unit, the center line of such Party Wall shall constitute the segment of the common boundary line (lot line) existing between adjacent Dwelling Units; provided, further, that where any exterior wall of a Dwelling Unit is not a Party Wall, but extends outside the boundary lines (lot lines) of any Lot (as shown on any such Plat or part thereof) upon which such Dwelling Unit is primarily located, the boundary lines of such Lot shall be deemed extended to include all of the ground area occupied by such Dwelling Unit. It is the intent hereof that, in any and all events in which a boundary line as shown on any Plat or part thereof does not coincide with the actual location of the respective wall of the Dwelling Unit because of inexactness or construction, settling after construction, or for any other reason, this Declaration and any Plat or any part thereof shall be interpreted and construed so that all ground area underlying and lying beneath a Dwelling Unit shall be and constitute part of the Lot upon which such Dwelling Unit is primarily located to the end that all of such ground area shall be subject to fee simple ownership by the Owner of such Dwelling Unit. To the extent necessary to accomplish and implement such intention, interpretation and construction, the boundary lines of the Lots shall be determined in accordance with the foregoing definition provisions and boundary lines as so determined shall supercede the boundary lines for Lots shown on any Plat or part thereof. Wherever herein the term "Lot" is used, it shall be interpreted as if followed by the words "and Dwelling Unit constructed thereon," except where the context clearly requires otherwise.

Section 1.16. "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 1.17. "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 1.18. "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 XI.

Section 1.19. "Neighborhood" shall mean The Townhomes at Traders Pointe, comprising the Neighborhood Property, which is committed by this Neighborhood Declaration to the provisions hereof and all improvements made to such land, including Dwelling Units, Neighborhood Common Areas, if any, and Lots.

Section 1.20. "Neighborhood Association" shall mean and refer to The Townhomes at Traders Pointe Homeowners Association, Inc., an Indiana nonprofit corporation, and its successors and assigns.

Section 1.21. "Neighborhood Declaration" shall mean and refer to this Neighborhood Declaration of Covenants, Conditions and Restrictions for The Townhomes at Traders Pointe, which is to be recorded in the Office of the Recorder of Marion County, Indiana.

Section 1.22. "Neighborhood Property" shall mean that certain real property located in Marion 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 1.23. "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 1.24. "Permitted Signs" shall mean customary real estate sale signs which have received the prior written approval of the Committee and which are located on the inside of a window of a Dwelling Unit and not outside on a Lot or Common Area.

Section 1.25. "Person" shall mean an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

Section 1.26. "Plat" shall mean any of the subdivision Plats of the Neighborhood Property recorded with the Recorder of Marion County, Indiana.

Section 1.27. "Private Street(s)" shall mean any street within the Property which is created by the Declarant or the Neighborhood Association and which is not dedicated to the public and/or maintained by the Local Governing Authority.

Section 1.28. "Recorder's Office" shall mean the Office of the Recorder of Marion 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 6.7 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, window boxes, doors, pavement, walkways, driveways, garages and/or garage doors, or appurtenances to any of the aforementioned.

## ARTICLE II

### EASEMENTS

Section 2.1 Designated Easements. The following are easements designated or to be designated, in the Declarant's sole discretion, upon a plat:

(a) Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof, which are hereby reserved to the Declarant, the Neighborhood Association, appropriate governmental entities, public utilities, and private utilities for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities and other utility infrastructure. Purchasers of Lots in this subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof shall be built, erected or maintained on said drainage easements, except by the Declarant or its assigns. It shall be the responsibility of the Neighborhood Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Neighborhood Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Neighborhood Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

(b) Designated Landscape Easements. Any strips of grounds shown or designated on the Plat for landscaping including, but not limited to, landscape easements, are hereby reserved unto Declarant, during the Development Period, and, thereafter, unto the Neighborhood Association, for the purposes of (i) providing signs which either advertise the Neighborhood Property and the availability of Lots or identify the Neighborhood Property or, (ii) installing landscaping, mounding, and screening. Declarant reserves unto itself during the Development Period and thereafter unto the Neighborhood Association, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground. Notwithstanding anything in this Neighborhood Declaration to the contrary, no planting shall be done, and no hedges, walls, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period, and thereafter by the Neighborhood Association. Furthermore, notwithstanding anything in this Neighborhood Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) any landscape easement or landscape maintenance easement, and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Neighborhood Property, except by the Declarant during the Development Period and thereafter by the Neighborhood Association.

(c) Easement Work Notwithstanding any architectural approval under Article VIII below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Neighborhood Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever to any owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 2.1(a) above and without any obligation of replacement.

Section 2.2 General Drainage Utility Sewer and other Development Easements. The following rights reserved in this Section shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Neighborhood Association one (1) year after Declarant shall have conveyed the last Lot within the Neighborhood Property.

(a) Declarant hereby reserves unto itself during the Development Period, and thereafter unto any governmental entity and public or private utility, a general easement ("Drainage, Utility and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services (including all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) to serve any Dwelling Unit. Any Drainage, Utility, Sewer and other Development Easement shall include all areas of the Neighborhood Property outside any Dwelling Unit, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a lake(s) or pond(s) on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Neighborhood Association, of any Common Area. This easement shall be in addition to any easement defined upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

(b) Declarant reserves unto itself during the Development Period, and thereafter unto the Neighborhood Association, the right and the sign and facilities easement ("Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising the Neighborhood Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Neighborhood Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Neighborhood Association as a part of its maintenance obligations.

(c) Declarant reserves unto itself during the Development Period, and thereafter unto the Neighborhood Association, the full right, title and authority to:

- (i) Relocate, alter or otherwise change the location of any Drainage, Flowage, Utility, Sewer and Lake, Sign and Facilities Easement, or any facility at any time located therein or thereon;
- (ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Neighborhood Property, for the benefit of the Neighborhood Property or any portion thereof; and,
- (iii) Describe more specifically or to change the description of any Drainage, Flowage, Utility, Sewer, Lake, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Neighborhood Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Marion County, Indiana.

(d) The title of the Neighborhood Association as to any Neighborhood Common Area, and of any Owner of any Lot shall be subject to the rights and easements reserved herein.

### ARTICLE III

#### MEMBERSHIP

Every Owner of a Lot which is subject to this 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 IV

#### VOTING RIGHTS

Section 4.1. 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 IV 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 IV 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, 2020; 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 4.2. 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 V

#### DECLARATION OF RESTRICTIONS AND STATEMENT OF PROPERTY RIGHTS

Section 5.1. 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 5.2. 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 the Neighborhood Association to lease the Common Area; provided, however, that such lease(s) must:

(i) be only to non-profit organizations;

(ii) prohibit assignment and subleasing;

(iii) require the prior, written approval of the Neighborhood Association with respect to the lessee(s) uses of the Common Area and facilities, all of which must be in accordance with this Neighborhood Declaration;

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

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

(g) the right of 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.

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 5.3. Common Area.

(a) Ownership. Declarant may retain legal title to the Common Area during the Development Period; however, if pursuant to 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 and the Maintenance Costs thereof shall be assessed as a Regular Assessment against all Lots subject to assessment.

(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 and, except as otherwise provided in this Neighborhood Declaration, shall keep the Common Areas 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, no permanent improvements shall be made to or installed on the Common Area other than lighting, seating, signage approved by the Committee, walkways, paved paths, planting structures, 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 which are not inconsistent with the provisions of this 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 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.

(h) Signs. Declarant reserves the right and easement to place signs in the Common Area including, without limitation, signs identifying the Neighborhood, construction and development signs, and signs advertising the sale of Lots and Dwelling Units.

## ARTICLE VI

### ASSESSMENTS

Section 6.1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot (other than the Title Holder, the Declarant and their affiliates and subsidiaries with respect to unoccupied Dwelling Units and/or Lots owned by the Title Holder, the Declarant and their affiliates and subsidiaries), 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 Article VI 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 monthly installments collected on a monthly basis as determined by the Board of Directors.

Section 6.2. Purpose of Assessment. The assessments levied by the Neighborhood Association shall be used (i) to promote the recreation, health, safety and welfare of the residents and Owners of the Neighborhood Property, (ii) to fulfill all obligations of the Neighborhood Association specified in this Neighborhood Declaration including, without limitation, the obligation to maintain the insurance coverage specified in Section 10.2 below, and the obligations of Lot maintenance, snow removal, trash pickup, and exterior Dwelling Unit maintenance specified in Section 10.2 below, (iii) 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, 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 (iv) for such other purposes as the Board of Directors of

the Neighborhood Association may determine to be appropriate.

**Section 6.3. 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 prepared by a certified public accountant or firm of certified public accountants then serving the Neighborhood Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

**Section 6.4. 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 twenty percent (120%) of such last approved budget, plus the anticipated increase in costs of fulfilling the Neighborhood Association's obligations specified in this Declaration including, without limitation, those specified in Section 10.2 below, as a temporary budget.

**Section 6.5. 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 6.6 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 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 6.6. Regular Assessments.** 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 One Thousand Nine Hundred Eighty and 00/100 Dollars (\$1,980.00) annually, payable monthly, on the first day of each calendar month, in equal monthly installments of One Hundred Sixty-Five and 00/100 Dollars (\$165.00) per month. In addition, upon the employment and engagement by the Neighborhood

Association of a professional manager or management company to assist the Board of Directors in the management and administration of the Neighborhood Association, there shall immediately and automatically, without notice to or vote by membership, be added to the Regular Assessment the cost of such professional management.

(a) 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 and the fulfillment of the Neighborhood Association's other obligations specified in this Declaration including, without limitation, those specified in Section 10.2 below, plus (ii) an amount equal to the amount of the Regular Assessment for the immediately preceding year multiplied by twenty percent (20%).

(b) 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.

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

(d) The 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) will be added to the amount due, and any such installment, together with such late fee, will be and remain, immediately due and payable.

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

(f) 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 6.7. 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. 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; provided, however, that in the case of damage or destruction caused by any Owner, or any of such Owner's guests, tenants, licensees, agents, or members of such Owner's family, the Board of Directors, in their sole discretion, may levy a Special Assessment against such offending Owner or such offending Owner's Lot, which assessment shall be a lien against such offending Owner's Lot, collectible per the terms of this Article VI. 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 6.8. Quorum for any Action Authorized Under This Article VI. At the first calling of a meeting under this Article VI, the presence at the meeting of Members or proxies entitled to cast sixty percent (60%) of all the votes with respect to each class of Members shall constitute a quorum. If the required quorum does not exist at any such meeting, another meeting may be called subject to the notice requirements set forth in this Article VI 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 6.9. 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 two (2) monthly installments 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 6.10. Rate of Assessment. The Regular Assessment shall be fixed at a uniform rate for all Lots except for unoccupied Dwelling Units and/or Lots owned by Declarant, the Title Holder, and the affiliates and subsidiaries of the Declarant and the Title Holder. Except in the case of damage or destruction caused by an Owner, and except for unoccupied Dwelling Units and/or Lots owned by Declarant, the Title Holder, and the affiliates and subsidiaries of the Declarant and the Title Holder, 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 anything to the contrary in this Neighborhood Declaration, no Regular Assessments or Special Assessments or other charges shall be owed or payable by Declarant or the Title Holder and/or the affiliates and subsidiaries with respect to any unoccupied Dwelling Units and/or Lots or other portion of the Neighborhood Property while the same is owned by the Declarant, the Title Holder, or the affiliates and subsidiaries of the

Declarant and the Title Holder, nor shall any such assessments or charges become a lien on any such unoccupied Dwelling Units and/or Lots or other portion of the Neighborhood Property owned by the Declarant, the Title Holder, or the affiliates and subsidiaries of the Declarant and the Title Holder.

**Section 6.11. 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 be paid to the Board of Directors in advance by the requesting Member. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 6.12. 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 charged by the Internal Revenue Service on delinquent taxes. In addition, in its discretion, the Neighborhood Association may:

- (a) impose a penalty or late charge if previously established by the Neighborhood Association;
- (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 6.12 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 6.13. 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 Article VI 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 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 therefore. No such sale, transfer or conveyance shall relieve the Lot, or the purchaser thereof at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien for such assessments.

**Section 6.14. 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 6.10** hereof, no developed or undeveloped Lot, land or improvements devoted to dwelling use shall be exempt from said assessments.

**Section 6.15. Replacement Reserve Fund.** The Neighborhood Association shall establish and maintain a reserve fund ("Replacement Reserve Fund") for the fulfillment by the Neighborhood Association of its obligations to maintain, repair, and replace as specified in **Section 10.2** below, 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 maintenance, repair, and replacement contemplated in **Section 10.2** below for start-up expenses and operating contingencies of a nonrecurring nature relating to the Common Area. 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 VII

### COVENANTS AND RESTRICTIONS

Section 7.1 Land Use. Lots may be used only for single-family residential purposes and only one Dwelling Unit.

Section 7.2 Address Identification. The numbers representing the address of each Dwelling Unit will be of a uniform appearance and will be displayed in a uniform location and manner, as determined by the Committee.

Section 7.3 Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

Section 7.4 Drainage. The elevation of a Lot shall not be changed so as to materially affect the surface elevation or grade of surrounding Lots. Perimeter foundation drains and sump pump drains shall be connected whenever feasible into a subsurface drainage tile. Down spouts and drains shall be designed to disperse runoff for overland flow to street or swale collection systems. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

Section 7.5 Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the identification of development of The Townhomes at Traders Pointe and the sale of Lots and Dwelling Units therein, no sign other than Permitted Signs shall be allowed.

Section 7.6 Fencing. No fencing shall be allowed other than fencing installed by (i) the Declarant and (ii) fencing approved and installed by the Neighborhood Association within a Common Area.

Section 7.7 Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Violation of any ordinance governing noise, building or lot maintenance, or any other public nuisance shall be deemed to be a nuisance creating rights in every affected Owner, the Declarant, and/or the Neighborhood Association, as the case may be, to enforce the provisions hereof against the offending Owner. Barking dogs shall constitute a nuisance. In the event of successful enforcement by an Owner, the Declarant, or an Owner of the provisions thereof, the offending Owner shall be liable to the prevailing party for attorneys' fees, court costs, and all other costs and expenses of litigation and collection in connection therewith.

Section 7.8 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view except not more than 24 hours prior to its removal thereof, when it may be placed at the curb of the Lot. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

Section 7.9 Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners. Unless permitted by the Board of Directors of the Neighborhood Association, no Owner shall maintain more than

two (2) of the same type (dog, cat, bird) of pet nor more than four (4) total pets; provided, however, that fish which are located in indoor aquariums and which pose no risk to the public health shall not be considered pets for the purpose of this restriction. No dangerous or potentially dangerous pets, such as exotic animals (large wild cats, wolves, alligators, snakes which are poisonous or longer than two feet, poisonous spiders, etc.) shall be permitted to exist in a Dwelling Unit or on a Lot without the unanimous consent of the Committee and the Board of Directors; provided, however, that the decision of the Board of Directors to permit such animal or animals may be overturned by a majority vote of the Members at any meeting.

**Section 7.10 Outside Burning.** No trash, leaves, or other materials shall be burned upon a Lot unless the smoke therefrom would not blow upon any other Lot. Owners shall use appropriate incinerators and shall at all times be in compliance with all applicable legal requirements for outside burning.

**Section 7.11 Antennas and Receivers.** No antenna, satellite dish, or other device for the transmission or reception of radio, television, or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground, whether attached to a building or otherwise, on any part of the Neighborhood Property, including Lots and Dwelling Units, without the written approval of the Committee, which approval shall not be unreasonably withheld and shall encourage the placement of such devices on the rear patio or balcony of each Dwelling Unit; provided, however, that any such device may be installed and maintained on any Lot without the necessity of such written approval if: (a) it is not visible from the neighboring Lots, streets or Common Area; or (b) the Owner, prior to installation, has received the written consent of the Owners of all Lots who would have views of the device from their Lots; or (c) the device is virtually indistinguishable from structures, devices, or improvements, such as heat pumps, air-conditioning units, barbecue grills, patio furniture, and garden equipment, which are not prohibited by these covenants or Bylaws, or (d) it is a satellite dish 1 meter or less in diameter and not affixed to the roof of a residence; or (e) if prohibition of the installation, use, and maintenance of such device is specifically preempted and superseded by applicable governmental authority.

**Section 7.12 Exterior Lights.** Except for (i) lights on Lots on which there is maintained a sales office or model home by the Declarant, (ii) lights originally installed by Declarant (and replacements thereof) upon Dwelling Units and within Common Areas and (iii) lights installed by the Neighborhood Association in Common Areas, no exterior lights shall be erected or maintained anywhere within the Neighborhood Property.

**Section 7.13. Garbage and Other Refuse.** No Lot Owner in the Development shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse, including compost on his or her Lot.

**Section 7.14. Home Occupations.** No Dwelling Unit shall be used by an Owner, other than Declarant, for any purpose other than as a single-family residence, except that a home occupation, which satisfies the following definition as well as all requirements of the applicable zoning ordinance, may be permitted: any use conducted entirely within the Dwelling Unit and participated in solely by a member of the immediate family residing in said Dwelling Unit, which use is clearly incidental and secondary to the use of the Dwelling Unit for dwelling purposes and does not change the character thereof and in connection with which there is: a) no sign or display that will indicate from the exterior that the Dwelling Unit is being utilized in whole or in part for any purpose other than that of a dwelling; b) no commodity sold upon the premises; c) no person is employed other than a member of the immediate family residing in the Dwelling Unit; and d) no manufacture or assembly operations are conducted. Provided however, that in no event shall the following or similar activities be conducted or considered to be a permitted

Home Occupation: child day care, barber shop, styling salon, animal hospital, or any form of animal care or treatment such as dog trimming, or any other similar activities. The foregoing notwithstanding, the Declarant shall be permitted to operate sales trailers, model homes, and sales offices.

Section 7.15. Utility Services. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.

Section 7.16. Vehicles Parking. No trucks one (1) ton or larger in size, campers, trailer, motor homes, boats, snowmobiles, jet ski or similar vehicles shall be parked on any street in the Neighborhood Property. Any recreational vehicle or trailer, camper, snowmobile, jet ski, or boat shall not be permitted to remain on any driveway or Lot except within a closed garage and shall not be regularly parked upon unpaved areas. There shall be no outside storage of commercial trucks, trailers, boats, junk cars, or fuel tanks.

Section 7.17. Occupancy or Residential Use of Partially Completed Dwelling Unit Prohibited. No Dwelling Unit constructed on any Lot shall be occupied or used for residential purposes or human habitation until a certificate of occupancy has been issued.

Section 7.18. Street Lights. All street lights located within the right-of-way of any street shall be maintained by the Neighborhood Association.

Section 7.19. Original Improvements. As part of the original development of the Neighborhood Property, the Declarant shall (i) construct Dwelling Units and Structures, including uniform mail boxes incident thereto, as well as exterior lighting on Dwelling Units and (ii) install landscaping, and other exterior lighting and improvements on the Neighborhood Property (collectively the "Original Improvements"). With the exception of (i) exterior pots for flowers and plants and (ii) landscape ornaments not to exceed twenty four (24) inches in height, improvements, structures, and (iii) the flag of the United States of America, only the Original Improvements and the replacements thereof shall be permitted upon the Lots, and all other improvements, landscaping upon Lots and Structures are prohibited and, as such, and by way of example only and not by way of limitation, awnings, electric bug killers, outbuildings, animal quarters, childrens' play equipment, trampolines, basketball goals, swimming pools, wood stacks, and decks not part of the Original Improvements are prohibited; provided, however, that nothing herein shall prohibit (i) the reconstruction or repair of any Original Improvement damaged or destroyed by casualty, so long as such replacement and repair is consistent with the remaining Original Improvements and approved by the Committee and (ii) the repair and replacement of any landscaping by the Neighborhood Association.

Section 7.20. Neighborhood Association Maintenance. Only the Neighborhood Association shall undertake or cause to be undertaken the maintenance and repairs specified in Section 10.2 below, and Owner(s) shall be prohibited from undertaking such maintenance and repair.

Section 7.21. Owner's Insurance. The Neighborhood Association shall maintain only the insurance it is required to maintain under Section 10.2 below and the Individual Owners shall maintain all other necessary insurance including, without limitation, liability insurance and insurance covering the contents of their Dwelling Units and their personal property.

Section 7.22. Owner's Maintenance. Notwithstanding the mandatory obligations of the Neighborhood Association specified in Section 10.2 below, it shall be the obligation of each Owner, with respect to such Owner's Lot and Dwelling Unit, to (i) repair and replace any broken or damaged glass, door and window screens, and door hardware and locks, and (ii) replace any lost garage door openers, keys to Dwelling Units, and/or keys to mail boxes and (iii) replace light bulbs on exterior lighting. It

shall further be the obligation of each Owner to perform all maintenance and repairs to such Owner's Lot or Dwelling Unit which is not specified in Section 10.2 below as an obligation of the Neighborhood Association and which includes, without limitation, (i) all the maintenance, repairs, decorating and replacements within his or her Dwelling Unit including, but not limited to, all internal installation of such Dwelling Unit such as refrigerators, ranges and other appliances, lighting fixtures and plumbing, and any other portion of any other utility services located within the Dwelling Unit or upon the Lot and (ii) maintenance, upkeep, repair and replacement of any partitions, interior walls, ceiling, floor surfaces, windows, frames and doors. An Owner shall do no act nor any work that will impair the structural soundness or integrity of building or any adjoining Dwelling Unit or garage, or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Dwelling Units, garages or their Owners.

Section 7.23. Heating of Dwelling Units. For the purpose of preventing damage to and breakage of water, sewer and other utility lines and pipes in a Dwelling Unit which might result in damage to that or other Dwelling Units, all Owners shall maintain the temperature in their Dwelling Units, at all times, at least 44 degrees Fahrenheit, subject, however, to the inability to maintain such temperature due to causes beyond the Owner's reasonable control. Any damage resulting from the refusal or failure of an Owner to so maintain such minimum temperature may be repaired by the Association and (unless due to causes beyond the Owner's reasonable control) the cost thereof assessed against the Lot of the refusing or failing Owner. However, if the failure to maintain such minimum temperature is due to causes beyond the Owner's reasonable control, the cost of such repair shall be a common expense.

Section 7.24. Rental Agreements. Any rental agreement for a Dwelling Unit must be for an initial period of at least one (1) year, must be in writing and must be 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 7.25. Declarant's Use. Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, Declarant shall have, at all times during the Development Period, the right to use and maintain any Lots and Dwelling Units owned by Declarant, the Common Areas, and other portions of the Neighborhood Property (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 and trailers, sales offices and trailers, 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 Property at any time.

Section 7.26. Non-applicability to Neighborhood Association. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth herein shall not apply to or be binding upon the Neighborhood 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 Neighborhood Association in the performance of its duties, obligations and responsibilities as to the Common Areas.

Section 7.27. Additional Rules and Regulations. The Neighborhood Association shall have the authority to adopt such rules and regulations regarding this Article VII as it may from time to time consider necessary or appropriate.

## ARTICLE VIII

### ARCHITECTURAL CONTROLS

Section 8.1. Approvals. Approvals, determination, permissions, or consents required herein shall be deemed given only if they are given in writing and signed, with respect to the Declarant or the Neighborhood Association, by an officer thereof, and with respect to the Committee, by one (1) member thereof.

Section 8.2. Committee: Development Standards and Committee. A Development Standards and Architectural Control Committee (the "Committee"), composed of at least three (3) members, shall exist and shall be appointed by the Declarant. Until after the Development Period, such members shall be subject to removal by the Declarant at any time, with or without cause, and any vacancies from time to time shall be filled by appointment of the Declarant. The Declarant may, at its sole option, at any time hereafter, relinquish for a period of time to the Neighborhood Association the power to appoint and remove one or more members of the Committee; provided, however, that any such relinquishment must be in writing and shall be only on the terms and conditions expressed in such writing.

Section 8.3. Continuation of Committee. When the Declarant provides written notification to the Neighborhood Association of discontinuance of this Committee, then the Directors of the Neighborhood Association, or their designees, shall continue the actions of the Committee with like powers and duties.

Section 8.4. Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. The Committee for its permanent files shall retain one copy of submitted material. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, the requesting applicant may re-apply with changes. If however, approval has not been received by applicant in writing within thirty (30) days, then said request shall be considered DENIED.

Section 8.5. Exercise of Discretion. Declarant intends that the members of the Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Committee and in any action initiated to enforce this Neighborhood Declaration in which an abuse of discretion by the Committee is raised as defense, abuse of discretion may be established only if a reasonable person,

weighing the evidence and drawing all inferences in favor of the Committee, could only conclude that such determination constituted an abuse of discretion.

Section 8.6. Inspection. The Committee may inspect work being performed without the Owner's permission to assure compliance with these restrictions and applicable regulations.

Section 8.7. Liability of Committee, Declarant, Developer. Neither the Committee nor any agent thereof, nor the Declarant, or Neighborhood Association shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Committee, Neighborhood Association or Declarant be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Committee, Neighborhood Association and/or Declarant make no representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used. All parties should seek professional construction advise, engineering, and inspections on each Lot prior to proposing construction.

Section 8.8. Common Areas, Entrances, Street Signs, and Landscape Easements. None of the following shall be installed or constructed, except by Declarant, without prior written approval thereof by the Committee: (i) any and all landscaping, fences, structures, lighting, walking trails, sidewalks, or other improvements located in any Common Area, landscape maintenance access easement, and/or sign landscape easement, (ii) any entrance monument or signage identifying the Development or any section thereof and/or (iii) street signage.

Section 8.9. Lot Improvements. The Committee shall not approve any improvements prohibited under Section 7.20 above. All repairs to and replacements of the Original Improvements shall not be allowed until first approved by the Committee. Such approval shall be obtained only after the Owner of the Lot requesting authorization from the Committee has made written application to the Committee at least thirty (30) days prior to the proposed construction. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing (i) the location of the improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated and (ii) all easements, set backs, and rights-of-way and (iii) any landscape plans required by the Committee. Such plans and specifications shall further set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials, photographs, or information, which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of  $\frac{1}{4}'' = 1'$  and all plot plans shall be drawn by a professional to a scale of  $1'' = 30'$ , or to such other scale as the Committee shall deem appropriate.

Section 8.10. Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement with or without cause. Common grounds for denial include, but are not limited to, a lack or absence of the following:

(a) The plans, specifications, drawings or other material submitted must themselves be adequate and complete, show the proposed improvement, and not be in violation of this Neighborhood Declaration; and

(b) The design or color scheme of a proposed improvement must be in harmony with the general surroundings of the Lot or with adjacent buildings or structures.

Section 8.11. Power to Grant Variances. The Committee may allow reasonable variances or adjustments of this Neighborhood Declaration where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of this Neighborhood Declaration, no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots in the Development, and any such variance granted shall not be considered as precedent setting.

Section 8.12. Statement of Purposes and Powers. Subject to this Neighborhood Declaration and the restrictions contained herein, the Committee shall regulate the external design, appearance, use, location and maintenance of lands and improvements thereon in such a manner as to preserve and enhance values and maintain a harmonious relationship among structures and the natural vegetation and topography, and in keeping with the intent of the Declarant.

## ARTICLE IX

### PARTY WALLS

Section 9.1. 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 X, 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 9.2. 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 9.3. 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 10.2 above, without cost to the adjoining Owner.

Section 9.4. 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 9.5. Right to Contribution Runs with the Land; Failure to Contribute. The right of any Owner to contribution from any other Owner under this Article IX 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 IX, 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 9.6. 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 X

### POWERS AND DUTIES OF THE NEIGHBORHOOD ASSOCIATION

Section 10.1. 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 10.3 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 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 VI 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;

(g) at any time prior to the Transfer Authority Date, the Association may, in its sole and subjective discretion, engage or employ a professional manager or management company, possessing experience in the management of homeowners associations, to assist the Board of Directors in the management and administration of the Association. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less; and

(h) immediately after the Transfer Authority Date, the Association shall engage or employ a professional manager or management company, possessing experience in the management of homeowners associations, to assist the Board of Directors in the management and administration of the Association. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less.

Section 10.2. 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 or under the Neighborhood Declaration, 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) after the termination of the Class B membership, 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 insurance 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 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, 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 Lots and 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 which has accumulated to a depth from time to time determined by the Board of Directors, in their sole discretion, but only from the Private Streets, driveways, and walks from driveways to Dwelling Units; and

(m) repair the exterior of all Dwelling Units, which shall include, but shall not be limited to the following: the maintenance and repair of exterior surfaces of all Structures and Dwelling Units on the Neighborhood Property, including, without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance and repair of roofs, gutters, downspouts and overhangs, the maintenance and repair of exterior lighting, the maintenance and repair of exterior windows and doors, necessary painting, staining and repair of patio structures on a Lot as originally built but not of additions thereto made by an Owner. All maintenance and repair of the individual Dwelling Units and garages shall be the sole obligation of and shall be performed at the sole cost and expense of the individual Owner, except to the extent the exterior maintenance and repair is provided by the Neighborhood Association as specified above.

(n) immediately after the Transfer Authority Date, the Association shall engage or employ a professional manager or management company, possessing experience in the management of homeowners associations, to assist the Board of Directors in the management and administration of the Association. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less; and

(o) 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 10.3. 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 10.3** 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 10.4. 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 10.5. 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 10.6. 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 10.7. 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 X.

## ARTICLE XI

### RIGHTS OF MORTGAGEES

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

Section 11.1. 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 XII) 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 11.2. 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;
- (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 11.3. 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 11.4. 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 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;
- (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 11.5. 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. A Mortgagee 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 XI, 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 unless a decision not to repair, reconstruct or renovate is approved by the Board of Directors and a majority of the Mortgagees.

## ARTICLE XII GENERAL PROVISIONS

Section 12.1. 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 12.2. Declarant's Rights and Powers. The Declarant may maintain and carry on upon portions of the Common Areas such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Dwelling Units, including, but not limited to, business offices, signs, model units, and sales offices. The Declarant shall have easements for access to and use of such facilities.

(a) The Declarant shall undertake the work of developing all Lots and Dwelling Units within the Property. The completion of that work, or the sale, lease, or other disposition of Dwelling Units is essential to the establishment and welfare of the Property as an ongoing residential community. In order that such work may be completed and the Property established as a fully-occupied residential community, nothing in this Neighborhood Declaration shall be understood or construed to prevent the Declarant, or the employees, contractors or subcontractors of Declarant, from doing whatever they may determine to be reasonable, necessary or advisable for the completion of the work and the establishment of the

Neighborhood Property as a residential community.

(b) Until the end of the Development Period, the following shall apply, notwithstanding any other provisions in this Neighborhood Declaration to the contrary:

(i) The Declarant reserves the right to carry on construction, development and sales activities, place equipment, machinery, supplies and signs, construct and maintain models or other structures, and park vehicles of prospective or actual purchasers, lessees or employees and personnel of Declarant, on any part of the Neighborhood Property owned by Declarant or the Neighborhood Association.

(ii) Neither the Owners nor the Neighborhood Association shall unreasonably interfere with the completion of the contemplated improvements or sales of Lots and Dwelling Units or any other part of the Neighborhood Property. The Declarant may make any use of the unsold Lots and Dwelling Units as may reasonably be expected to facilitate completion and sales, including, but not limited to, maintenance of construction and sales offices, display of signs, leasing Dwelling Units, and showing the Dwelling Units for sale to prospective purchasers.

Section 12.3. 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 12.4. 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 12.5. 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;
  - (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 12.6. 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; provided, however, that notwithstanding anything to the contrary in the Neighborhood Declaration, an amendment to clarify a provision or to correct an error shall not be characterized as a Material Amendment or an Extraordinary Action and may be effected unilaterally by the Declarant, at any time within five (5) years after the date of this Neighborhood Declaration, without notice and without the consent, approval or authorization of the Class "A" Members, and mortgage holders and/or the Eligible Mortgagees.

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 12.7. 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 12.8. 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 12.9. 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 12.10. 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 one (1) year; provided, however, that from and after the date upon which 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 ninety (90) days' written notice to the other party and without payment of a termination fee.

Section 12.11. Dissolution. Subject to the restrictions and conditions contained in Article X and this Article XII, 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

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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 12.12. 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 12.13. 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 12.14. 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.

WITNESS the following signature:

CHICAGO TITLE  
TRADERS POINT, LLC,  
An Indiana limited liability company

By: MANN PROPERTIES, LLP,  
an Indiana limited liability partnership

By:   
J. Brian Mann, General Partner

STATE OF INDIANA )  
 ) SS:  
COUNTY OF Martin )

Before me, a Notary Public, in and for said County and State, personally appeared J. Brian Mann, General Partner of Mann Properties, LLP, an Indiana limited liability partnership, General Partner of Traders Point, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing Declaration of Covenants, Conditions, and Restrictions of Traders Pointe this 12<sup>th</sup> day of November, 2004.

My Commission Expires:  
9.3.9

Resident of Hamilton County, Indiana

Notary Public  
Notary Public  
Printed: M. R. Perry  


PULTE HOMES OF INDIANA, LLC,  
an Indiana limited liability company

By: Gregory W Huff  
Gregory Huff, Division President,  
Indiana Division

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public, in and for said County and State, personally appeared Gregory Huff, Division President, Indiana Division, of Pulte Homes of Indiana, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing Declaration of Covenants, Conditions, and Restrictions of Traders Pointe this 11<sup>th</sup> day of November.

My Commission Expires:  
9.3.9

Resident of HAMILTON County, Indiana

Notary Public  
Notary Public  
Printed: Wendie R. Perry  


This Instrument Prepared by: **Charles D. Frankenberger**, Nelson & Frankenberger, 3105 E. 98th Street, Suite 170, Indianapolis, IN 46280 - (317) 844-0106

**EXHIBIT A**

**Legal Description**

A part of the South Half of the Southwest Quarter of Section 16, Township 17 North, Range 2 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southeast Corner of the South Half of the Southwest Quarter of Section 16, Township 17 North, Range 2 East of the Second Principal Meridian in Marion County, Indiana; thence South 89 degrees 05 minutes 32 seconds West (measured bearing) 66.01 feet on the South line of said Southwest Quarter Section to the True Point of Beginning of this description; thence North 00 degrees 04 minutes 06 seconds East 107.45 feet to a capped rebar marked "Weihe Engineers 0012"; thence North 09 degrees 09 minutes 31 seconds East 101.26 feet to a capped rebar marked "Weihe Engineers 0012"; thence North 00 degrees 04 minutes 06 seconds East 345.52 feet to a capped rebar marked "Weihe Engineers 0012"; thence North 89 degrees 10 minutes 55 seconds West 1481.36 feet to a PK-Nail set in Lafayette Road (Old U.S. Route 52) and on the P.R. Line as per I.S.H.C. plans F.A. Project No. 40, Fiscal Year 1934, said PK-Nail being a point of curvature of a non-tangent curvature of a non-tangent curve concave to the Northeast having a radius of 3437.75 feet and from which point a chord bears South 25 degrees 26 minutes 12 seconds East 610.98 feet; thence along said curve 611.79 feet to a PK-Nail marking the intersection of said curve and the South line of Section 16, Township 17 North, Range 2 East; thence North 89 degrees 05 minutes 32 seconds East 1202.29 feet along said South line to the True Point of Beginning.

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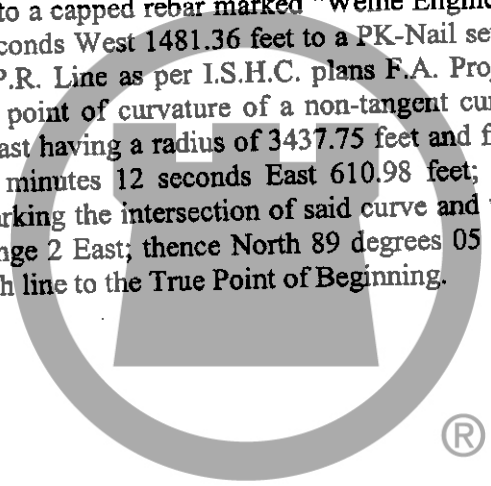


**EXHIBIT A**

**Legal Description**

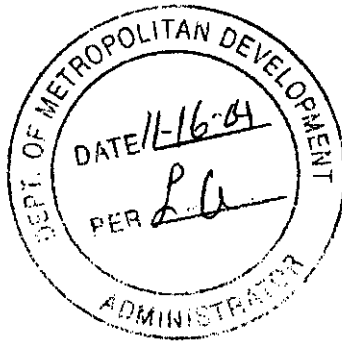
A part of the South Half of the Southwest Quarter of Section 16, Township 17 North, Range 2 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southeast Corner of the South Half of the Southwest Quarter of Section 16, Township 17 North, Range 2 East of the Second Principal Meridian in Marion County, Indiana; thence South 89 degrees 05 minutes 32 seconds West (measured bearing) 66.01 feet on the South line of said Southwest Quarter Section to the True Point of Beginning of this description; thence North 00 degrees 04 minutes 06 seconds East 107.45 feet to a capped rebar marked "Weihe Engineers 0012"; thence North 09 degrees 09 minutes 31 seconds East 101.26 feet to a capped rebar marked "Weihe Engineers 0012"; thence North 00 degrees 04 minutes 06 seconds East 345.52 feet to a capped rebar marked "Weihe Engineers 0012"; thence North 89 degrees 10 minutes 55 seconds West 1481.36 feet to a PK-Nail set in Lafayette Road (Old U.S. Route 52) and on the P.R. Line as per I.S.H.C. plans F.A. Project No. 40, Fiscal Year 1934, said PK-Nail being a point of curvature of a non-tangent curvature of a non-tangent curve concave to the Northeast having a radius of 3437.75 feet and from which point a chord bears South 25 degrees 26 minutes 12 seconds East 610.98 feet; thence along said curve 611.79 feet to a PK-Nail marking the intersection of said curve and the South line of Section 16, Township 17 North, Range 2 East; thence North 89 degrees 05 minutes 32 seconds East 1202.29 feet along said South line to the True Point of Beginning.



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APPROVED THIS 16th  
DAY OF November 2004  
PIKE TOWNSHIP ASSESSOR  
DRAFTSMAN J. M. B. G.

BILLIE J. BREAUX  
MARION COUNTY AUDITOR

006282 JUL 21 2009

SUBJECT TO FEDERAL TAX LIEN  
FOR TRANSFER

7XP  
**FILED**  
JUL 20 2009  
MARION COUNTY  
ASSESSOR

**Cross-Reference: Instrument No. 2004-215359**

**AMENDMENT TO THE NEIGHBORHOOD DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE TOWNHOUSES AT TRADERS POINTE**

This Amendment to the Neighborhood Declaration of Covenants, Conditions and Restrictions for the Townhouses at Traders Pointe was executed as of the date set forth below.

**WITNESSETH:**

WHEREAS, the Townhouses at Traders Pointe located in Marion County was established by a certain Neighborhood Declaration of Covenants, Conditions and Restrictions for the Townhouses at Traders Pointe ("Declaration"), which was recorded on October 10, 2003, as Instrument No. 2004-215359, in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, the Board of Directors of the Traders Pointe Homeowners Neighborhood Association, Inc. ("Association") recommended that the original provisions in the Declaration be amended as set forth below; and

WHEREAS, after notice was duly given, a Special Meeting of the members of the Association was held on April 7, 2009, for the stated purpose of considering and voting upon this amendment; and

WHEREAS, the amendment is considered to be a Material Amendment, as that term is defined in the Declaration, and at said meeting, the amendment was approved by at least sixty-seven percent (67%) of the Members of the Association present and voting, in person or by proxy, at such meeting; and

WHEREAS, the written approvals of the said Members are a part of the permanent records of the Association; and

WHEREAS, all terms used in this Amendment shall have the same meanings as given to such terms in the Declaration.

NOW, THEREFORE, the Declaration which is applicable to all Owners and residents within the Townhouses at Traders Pointe is hereby amended as follows:

1. Amendment. Article VII, Section 7.24 is hereby deleted and the following new Article XIII (including Sections 13.1 through 13.11) is added as a new article to the Declaration as follows:

**Article XIII**  
**Leasing Restrictions**

**Section 13.1. General Purposes of Leasing Restrictions.** The Neighborhood Association's members recognize that an owner-occupant is both psychologically and financially invested in a home to a greater extent than a renter, and thus owner-occupants maintain their property better than renters generally. The Neighborhood Association's members wish to insure that the residents within Traders Pointe share the same proprietary interest in and respect of the Lots and the Common Areas. They also want to encourage residents to not only maintain property values but also to improve them and recognize that owner occupants have more incentive to do so compared to non-owner occupants. Thus, the provisions of this Article XIII shall be applicable.

**Section 13.2. Limits on the Number of Leased Lots ("Rental Cap").** No more than fifteen (15) of the eighty-eight (88) Lots may be leased or rented to non-owner occupants at any given time, except as may be otherwise provided in this Article XIII. The Lots described in Section 13.3 below shall count towards the fifteen (15) Lot "rental cap". If at any time such number of Lots are leased or rented, an Owner who wants to rent or lease his or her Lot which is not already rented shall be placed upon a waiting list by the Board of Directors. When an existing tenant moves out, the Owner of that Lot shall immediately notify the Board of Directors or Managing Agent of such fact and that Lot cannot be re-rented until all prior Owners on the waiting list, if any, have had a chance to rent their Lots. Prior to the execution of any lease, and in addition to the requirements set forth below, the Owner must notify the Board of Directors or the Managing Agent as to that Owner's intent to lease his or her Lot. After receiving such notice, the Board of Directors or the Managing Agent shall advise the Owner if Lots may be leased or whether the maximum number of Lots within Traders Pointe is currently being leased. If the maximum number of Lots is being leased, the Board of Directors or the Managing Agent shall also notify the Owner of that Owner's position on the waiting list.

**Section 13.3. Effective Date of "Rental Cap"; Current Owners Grandfathered.** Current Owners (as of the date of recording of Article XIII) will be "grandfathered" as to the application of Section 13.2 until such time that the Lot is sold. Thus, Section 13.2 shall not apply to either the "rental cap" or the other provisions in Section 13.2 to any Lot of an Owner in Traders Pointe who, as of the date of recording of this provision, is the legal owner of record. However, such legal Owners of record shall

be subject to the remaining provisions of this Article XIII. When the legal owners of record of any of the above-described Lots sell, transfer or convey such Lot(s) to another Owner after the date of recording of this provision, such Lot(s) shall immediately become subject to Section 13.2, as well as all of the other provisions of this Article XIII.

Any Lot that falls under the exception of this Section 13.3 shall, nevertheless, be counted as one of the eight (8) maximum Lots that may be rented at any given time even though such maximum does not apply to restrict such "grandfathered" Lot.

**Section 13.4. Hardship Exceptions and Waiver.** Notwithstanding Section 13.2 above, if an Owner wishes to rent or lease his or her Lot, but the maximum number of Lots is currently being leased, the Owner may request the Board of Directors to waive the "rental cap" and approve a proposed lease if the Owner establishes to the Board's satisfaction that the "rental cap" will cause undue hardship. If a majority of the entire Board of Directors approves in writing of the Owner's request, the Board of Directors shall permit the Owner to rent or lease said Lot, subject to any further conditions or limitations imposed by the Board in the Board's discretion, but only if the Owner satisfies all other requirements of this Article XIII. Such decision shall be at the sole discretion of the Board. Examples of an undue hardship include:

- (a) death, dissolution or liquidation of an Owner;
- (b) divorce or marriage of an Owner;
- (c) necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Traders Pointe due to a change of employment or retirement of at least one (1) of such Owners;
- (d) necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners;
- (e) difficult real estate market conditions; and
- (f) other similar circumstances.

**Section 13.5. General Lease Conditions.**

- (a) All leases, including renewals, shall be in writing, and no lease shall be entered into for a term of less than one (1) year without the prior written approval of the Board of Directors.
- (b) A copy of each executed lease by an Owner which identifies the tenant (but which may have the rental amount deleted) shall be provided to the Board of Directors or the Managing Agent by the Owner within thirty (30) days after execution.

- (c) No portion of any Lot other than the entire Lot shall be leased for any period.
- (d) No subleasing shall be permitted.
- (e) All leases shall be made expressly subject and subordinate in all respects to the terms of this Declaration, the Statement of Commitments, the Bylaws, Articles of Incorporation, and any rules and regulations promulgated by the Board of Directors, as amended, to the same extent as if the tenant were an Owner and a member of the Neighborhood Association, and that any failure by the tenant, its household members or guests, to comply with the same shall be a default under the lease, and the Owner shall be responsible for enforcing such provision at its sole expense;
- (f) All leases shall provide for direct action by the Neighborhood Association and/or any Owner against the tenant with or without joinder of the Owner of such Lot (regardless of whether the Neighborhood Association was or is in privity with such tenant). If such provisions are not in the lease, they will be deemed to be in such lease.
- (g) The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease.
- (h) The Owner cannot be delinquent in the payment of any assessments or other charges to the Neighborhood Association. If at any time an Owner becomes delinquent, the Board shall have the right to revoke said Owner's right to lease the Owner's Lot, even if during the term of a lease.
- (i) In accordance with the duties of the Board of Directors<sup>®</sup> as outlined in this Declaration and the By-Laws, the Board shall have the power to promulgate such additional rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing.
- (j) All Owners who do not reside in the home shall provide the Board of Directors with the name of the tenant(s) and any other residents living in the home.

**Section 13.6. One Year Waiting Period.** In addition to all other provisions of this Article XIII, for a period of at least one (1) year after an Owner's acquisition of a Lot, said Owner cannot lease such Lot. After such time, said Lot will be eligible to be leased if all other conditions of this Article XIII are satisfied and provided further that the Owner is not delinquent in the payment of any assessments or other charges to the Neighborhood Association. Notwithstanding this Section 13.6, if an Owner wishes to lease a Lot prior to the end of the one year waiting period, the Owner may apply to the Board of Directors for a waiver. The Board may, in writing, approve an earlier lease if the Owner establishes to the Board's satisfaction that the waiting period will cause undue hardship in the manner as defined in Section 13.4 above.

**Section 13.7. Owner is Still Liable.** No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his or her responsibility to the Neighborhood Association and the other Owners for compliance with the provisions of the Declaration, the Articles of Incorporation, the By-Laws, and any rules and regulations promulgated by the Board of Directors, or from the Owner's liability to the Neighborhood Association for payments of assessments or any other charges.

**Section 13.8. Violations.** By accepting title to a Lot, each Owner acknowledges and accepts the Neighborhood Association's right to enforce the restrictions set forth in this Article XIII. Any lease or attempted lease of a Lot in violation of the provisions of this Article XIII shall be voidable at the election of the Neighborhood Association's Board of Directors or any other Owner, except that neither party to such lease may assert this provision of this Article XIII to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Neighborhood Association, or any Owner, shall have the right to exercise any and all available remedies at law or equity.

**Section 13.9. Maximum Number of Lots Owned by a Single Owner.** In order to encourage Traders Pointe being and remaining a community where the Owners reside on the property:

- (a) No Owner may own more than two (2) Lots within Traders Pointe at any time. This restriction shall not apply to any Owner who owns more than two (2) Lots which were purchased or with respect to which there was a binding purchase agreement prior to the recording of this restriction.
- (b) If any Owner is the Owner of more than one (1) Lot, such Owner or the majority of the principals of such Owner shall and must reside in Traders Pointe in at least one (1) of such Lots, unless otherwise approved in writing by the Board of Directors upon a showing by such Owner, satisfactory to the Board of Directors, of an undue hardship as defined in Section 13.4 above.

As defined in Section 1.23 of this Declaration, "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to a Lot, including a contract seller. As used in this Section 13.9 above, "Owner" also means those persons or entities who comprise less than all persons or entities who own in any form or manner the fee simple title or any part thereof to any Lot and those persons or entities who have any interest in any form or manner in the fee simple title or any part thereof to any Lot. As an example, if any person or entity owns or has any interest in the ownership of two (2) Lots, whether in his, her or its name only, as joint tenants, as life tenant or by or through any corporation, partnership, trust, limited liability company, or any other entity, that person cannot own a third Lot, whether in his, her or its name only, as joint tenants, as life tenant or by or through a corporation, partnership, trust, limited liability company, or any other entity.

**Section 13.10. Institutional Mortgagees.** The provisions of this Article XIII shall not apply to any institutional mortgagee of any Lot which comes into possession of the Lot by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, or deed in lieu of foreclosure. However, when a Lot is sold or conveyed by such an institutional mortgagee to a subsequent purchaser, that subsequent purchaser shall be bound by the provisions of this Article XIII.

**Section 13.11. Burden of Proof.** Anything to the contrary herein notwithstanding, if at any time a Lot is not occupied by one of the Owners thereof, there shall be a presumption that the Lot is being leased and subject to the provisions of this Article XIII and the Owners shall have the burden of proving to the satisfaction of the Board of Directors that the occupancy is not in violation of the terms of this Article XIII, including but not limited to the delivery to the Board of directors of a written statement of the nature and circumstances of the occupancy and any written document or memorandum that is the legal basis for the occupancy. For purposes of this Article XIII and this Section 13.11, any occupancy (including occupancy pursuant to a rent-to-buy contract or similar arrangement or pursuant to any option to purchase) by anyone other than an Owner shall be deemed to be a lease, rental or other similar arrangement, unless the Owner delivers to the Board of Directors a written purchase contract, conditional sales contract or similar contract whereby the occupant is unconditionally and presently legally obligated to purchase the Lot.

2. **Acceptance and Ratification.** The acceptance of a deed of conveyance or the act of occupancy of any one Lot or Dwelling Unit shall constitute a ratification of this Amendment, together with the Declaration, and all such provisions shall be covenants running with the land and shall bind any person having at any time having any interest or estate in a Lot or Dwelling Unit or the Townhouses of Traders Pointe as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease.

3. **Certification.** The undersigned persons hereby represent and certify that all requirements for and conditions precedent to the Amendment of the Declaration have been fulfilled and satisfied.

Executed this 17 day of June, 2009.

Traders Pointe Homeowners Neighborhood Association, Inc.

By Katie Ann Jones  
Katie Ann Jones, President

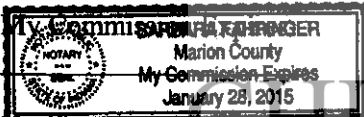
Attest:  
Christine Robinson  
Christine Robinson, Secretary

STATE OF INDIANA     )  
  ) SS:  
COUNTY OF MARION    )

Before me, a notary public, in and for said County and State, personally appeared Katie Ann Jones and Christine Robinson, the President and Secretary, respectively, of Traders Pointe Homeowners Neighborhood Association, Inc., an Indiana nonprofit corporation, who acknowledged execution of the within and foregoing for and on behalf of said corporation and its members and who, being duly sworn, stated that the certifications and representations made therein are true.

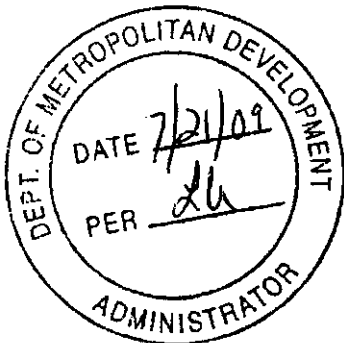
Witness my hand and notarial seal this 17<sup>th</sup> day of June, 2009.

Barbara Fahringer  
Notary Public - Signature  
Barbara Fahringer  
Printed  
Residence County: Marion



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

This instrument prepared by, and should be returned to, P. Thomas Murray, Jr., EADS MURRAY & PUGH, P.C., Attorneys at Law, 9515 E. 59<sup>th</sup> Street, Suite B, Indianapolis, IN 46216. (317) 536-2565. ★



Approved this 20 day of July 2009  
Marion County Assessor  
John R. Gage Draftsman







## **REQUIRED COVENANTS**

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### **ENFORCEMENT COVENANT**

"Metropolitan Development Commission The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority to enforce any covenants restrictions or other limitations contained herein other than those covenants, restriction or limitations that expressly run in favor of the Metropolitan Development Commission, provided that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provision of this article or any conditions attached to approval of this plat by the Plat Committee'

### **SITE DISTANCE COVENANT**

Site Obstruction No fence, wall, hedge or shrub planting that obstructs sight lines at elevations between two (2) and nine (9) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of such street lines, or in case of a rounded property corner, from the intersection of the street lines extended the same sight line limitations shall apply to any lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement of alley line No tree shall be permitted to remain within such distances of such intersections unless the foliage is maintained at a sufficient height to prevent obstruction of such sight lines'

### **STORM DRAINAGE COVENANT (DRAINAGE AND FLOOD CONTROL)**

"It shall be the responsibility of the owner of any lot or parcel of land within the area of this plat to comply at all times with the provisions of the drainage plan as approved for this plat by the Division of Compliance of the Department of Metropolitan Development of the City of Indianapolis and the requirements of all drainage permits for this plat issued by such department'

### **SANITARY SEWER COVENANT**

"It shall be the responsibility of the owner of any lot or parcel of land within the area of this plat to comply at all times with the provisions of the sanitary sewer construction approved by the Division of Compliance of the Department of Metropolitan Development and the requirements of all sanitary sewer construction permits for this plan issued by such Division Owner further covenants that no building, structure, tree or other obstruction shall be erected, maintained or allowed to continue on the portion of the owner's real estate in which the easement and right-of-way are granted without express written permission, when duly recorded, shall run with the real estate The Division of Compliance and the Department of Public Works and their agents, shall have the right to ingress and egress, for temporary periods only, over the owner's real estate adjoining such easement and right-of-way, when necessary to construct, repair or maintain sanitary sewer facilities'

### **ZONING**

This Subdivision is subject to the Statement of Commitments made in connection with Rezoning the Property to DP per ZONING ORDINANCE 2003-ZON-163 (2003-DP-023) recorded as Instrument No 2004-0058454

### **STORMWATER QUALITY BEST MANAGEMENT PRACTICE**

This Subdivision includes a Stormwater Quality Best Management Practice BMP and is subject to the requirements as outlined in the Operations and Maintenance Manual for said BMP(s) The BMP(s) must be maintained by the BMP(s) owner and is currently maintained by the developer The BMP(s) will become the responsibility of the Homeowners Association subject to all fees and other city requirements upon the activation of the Homeowners Association

**DEDICATION**

The undersigned Traders Point LLC, as Owner of the within described real estate as recorded in Instrument No 2004-0064969 in the office of the Marion County Recorder, do hereby lay off, plat and subdivide said real estate in accordance with the within plat

This subdivision shall be known and designated as Traders Pointe Townhomes

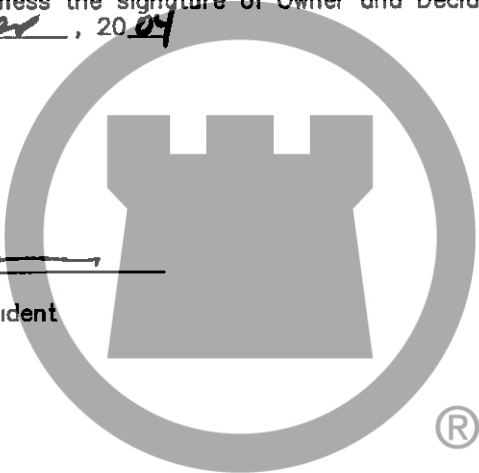
The streets and public rights-of-way shown hereon, subject to construction standards and acceptance are hereby dedicated, owned and maintained by The City of Indianapolis Marion County, Indiana, for public use

This plat is subject to the 'Declaration Of Covenants And Restrictions Of Traders Pointe Townhomes recorded as Instrument No. 2004-0215359 and any amendments thereto

In Testimony whereof, witness the signature of Owner and Declarant this 10th day of November, 2004

Owner  
Traders Point, LLC

By J. Brian Mann  
J Brian Mann, President



State of Indiana )  
County of Marion ) SS

CHICAGO TITLE

Before me, the undersigned Notary Public in and for said County and State, personally appeared J Brian Mann, President of Traders Point LLC, and acknowledged the execution of the foregoing instrument as his voluntary act and deed and affixed his signature thereto

Witness my hand and Notary Seal this 10th day of November 2004

Linda K Hartmann  
Notary Public

My Commission Expires 4/11/09  
County of Residence Marion

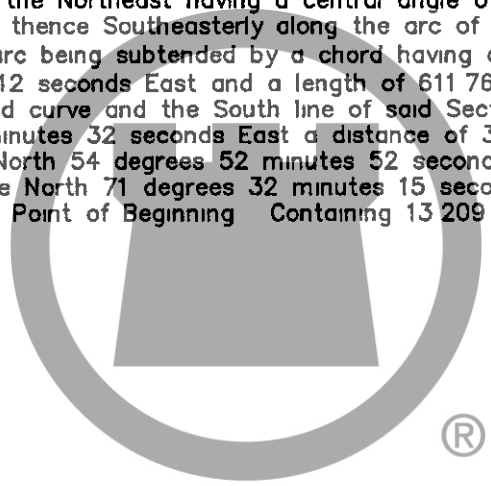
LINDA K HARTMANN  
NOTARY PUBLIC STATE OF INDIANA  
MARION COUNTY  
MY COMM. EXPIRES APR 11, 09

**LAND DESCRIPTION**

**Traders Pointe Townhomes**

Part of the South Half of the Southwest Quarter of Section 16, Township 17 North, Range 2 East, Marion County Indiana, described as follows

Commencing at a Harrison marker at the Southeast corner of the South Half of the Southwest Quarter of Section 16, Township 17 North, Range 2 East, of the Second Principal Meridian in Marion County, Indiana, thence South 89 degrees 05 minutes 32 seconds West (deed bearing) a distance of 66 01 feet along the South line of said Southwest Quarter to a Southwest corner of the Hills Building and Construction Services No 5, Inc " land tract as described in a Warranty deed recorded as Instrument number 1993-0061867 in the office of the Recorder of Marion County, Indiana (the following five courses being along the West and South lines of said land tract), 1) thence North 00 degrees 04 minutes 06 seconds East a distance of 107 43 feet, 2) thence North 09 degrees 09 minutes 31 seconds East a distance of 101 26 feet, 3) thence North 00 degrees 04 minutes 06 seconds East a distance of 150 08 feet to the Point of Beginning, 4) thence continue North 00 degrees 04 minutes 06 seconds East a distance of 195 44 feet 5) thence South 89 degrees 14 minutes 44 seconds West a distance of 1481 36 feet to a point in Lafayette Road (Old U S Route 52) being on the P R line per I S H C plans F A Project No 40 Fiscal Year 1934, said point being on a non-tangent curve concave to the Northeast having a central angle of 10 12'34" and a radius of 3,437 75 feet, thence Southeasterly along the arc of said curve a distance of 612 57 feet (said arc being subtended by a chord having a bearing of South 25 degrees 26 minutes 12 seconds East and a length of 611 76 feet) to a point at the intersection of said curve and the South line of said Section 16, thence North 89 degrees 05 minutes 32 seconds East a distance of 368 57 feet along said South line thence North 54 degrees 52 minutes 52 seconds East a distance of 287 88 feet, thence North 71 degrees 32 minutes 15 seconds East a distance of 647 58 feet to the Point of Beginning Containing 13 209 acres, more or less



**CHICAGO TITLE**

**SURVEYOR'S CERTIFICATE**

This subdivision consists of 89 Lots (numbered 101 through 189, inclusive) and Common Area Blocks A through F The locations and dimensions of the Lots, Blocks, Streets and Easements are shown in feet and decimal parts thereof

I, the undersigned, do hereby certify to the best of my knowledge and belief that this plat is in accordance with the local platting ordinance and represents a portion of the real estate as the boundaries were determined by an ALTA/ACSM Land Title Survey prepared by Weihe Engineers Inc certified by Michael L DeBoy on October 11, 1999 recorded as Instrument Number 2004-214836 in the Office of the Recorder of Marion County, Indiana



*Evan J Evans* | *Evan J Evans* 11/16/04  
Evan J Evans  
Registered Land Surveyor No 910024  
State of Indiana

**OWNER / DEVELOPER**  
Traders Point, LLC  
8653 BASH STREET  
INDIANAPOLIS INDIANA 46221  
(317) 849 0452  
PREPARED BY

Principal Meridian in Marion County, Indiana, thence South 89 degrees 05 32 seconds West (deed bearing) a distance of 66 01 feet along the South said Southwest Quarter to a Southwest corner of the Hills Building and Station Services No 5, Inc " land tract as described in a Warranty deed as Instrument number 1993-0061867 in the office of the Recorder of Marion County, Indiana (the following five courses being along the West and South said land tract), 1) thence North 00 degrees 04 minutes 06 seconds East a distance of 107 43 feet, 2) thence North 09 degrees 09 minutes 31 seconds East a distance of 101 26 feet, 3) thence North 00 degrees 04 minutes 06 seconds East a distance of 150 08 feet to the Point of Beginning, 4) thence North 00 degrees 04 minutes 06 seconds East a distance of 195 44 feet to the South 89 degrees 14 minutes 44 seconds West a distance of 1481 36 feet to a point in Lafayette Road (Old U S Route 52) being on the P R line per plans F A Project No 40 Fiscal Year 1934, said point being on a tangent curve concave to the Northeast having a central angle of 10 12'34" and a radius of 3,437 75 feet, thence Southeasterly along the arc of said curve a distance of 612 57 feet (said arc being subtended by a chord having a bearing of S 5 degrees 26 minutes 12 seconds East and a length of 611 76 feet) to a point at the intersection of said curve and the South line of said Section 16, thence North 89 degrees 05 minutes 32 seconds East a distance of 368 57 feet to the South line thence North 54 degrees 52 minutes 52 seconds East a distance of 287 88 feet, thence North 71 degrees 32 minutes 15 seconds East a distance of 647 58 feet to the Point of Beginning Containing 13 209 acres, more



**CHICAGO TITLE**  
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*Evan J. Evans*  
 Evan J Evans  
 Registered Land Surveyor No 910024  
 State of Indiana

**OWNER / DEVELOPER**

Traders Point, LLC  
 8653 BASH STREET  
 INDIANAPOLIS INDIANA 46256  
 (317) 849 0452

**PREPARED BY**

Evan J Evans  
 REGISTERED LAND SURVEYOR  
 NO 910024 STATE OF INDIANA



**MELTON-PACKARD & ASSOCIATES**  
 CIVIL ENGINEERS • LAND PLANNERS  
 8444 Castlewood Drive • Indianapolis Indiana 46250  
 PROJ 2314PTDWG - 08/17/04







## REQUIRED COVENANTS

### ENFORCEMENT COVENANT

"Metropolitan Development Commission The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority to enforce any covenants, restrictions or other limitations contained herein other than those covenants, restriction or limitations that expressly run in favor of the Metropolitan Development Commission, provided that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provision of this article or any conditions attached to approval of this plat by the Plat Committee "

### SITE DISTANCE COVENANT

"Site Obstruction No fence, wall, hedge or shrub planting that obstructs sight lines at elevations between two (2) and nine (9) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of such street lines, or in case of a rounded property corner, from the intersection of the street lines extended, the same sight line limitations shall apply to any lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line No tree shall be permitted to remain within such distances of such intersections unless the foliage is maintained at a sufficient height to prevent obstruction of such sight lines "

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This subdivision shall be known and designated as Traders Pointe Townhomes

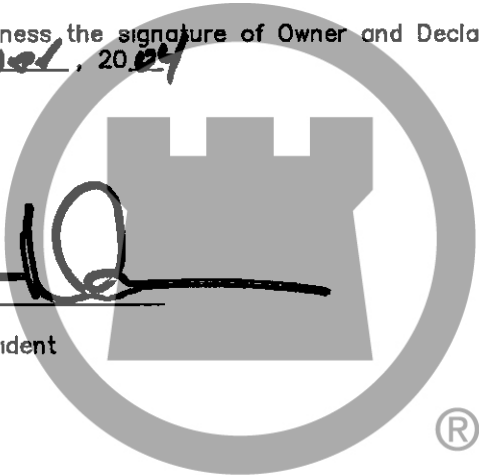
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This plat is subject to the 'Declaration Of Covenants And Restrictions Of Traders Pointe Townhomes recorded as Instrument No 2004-0215359 and any amendments thereto

In Testimony whereof, witness the signature of Owner and Declarant this 23rd day of November, 2004

Owner  
Traders Point, LLC

By J. B. Mann  
J Brian Mann, President



State of Indiana )  
                          ) SS  
County of Marion )

CHICAGO TITLE

Before me, the undersigned Notary Public in and for said County and State, personally appeared J Brian Mann, President of Traders Point LLC and acknowledged the execution of the foregoing instrument as his voluntary act and deed and affixed his signature thereto

Witness my hand and Notary Seal this 23rd day of November, 2004

Linda Hartman  
Notary Public Linda Hartman

My Commission Expires Apr 11 2009

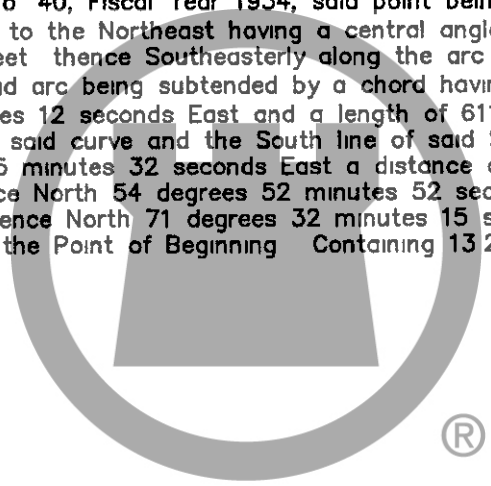
County of Residence Marion

LAND DESCRIPTION

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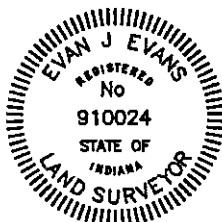


**CHICAGO TITLE**

SURVEYOR'S CERTIFICATE

This subdivision consists of 88 Lots (numbered 101 through 188, inclusive) and Common Area Blocks A through F The locations and dimensions of the Lots, Blocks, Streets and Easements are shown in feet and decimal parts thereof

I, the undersigned, do hereby certify to the best of my knowledge and belief that this plat is in accordance with the local platting ordinance and represents a portion of the real estate as the boundaries were determined by an ALTA/ACSM Land Title Survey prepared by Weihe Engineers, Inc, certified by Michael L DeBoy on October 11, 1999 recorded as Instrument Number 2004-214836 in the Office of the Recorder of Marion County Indiana



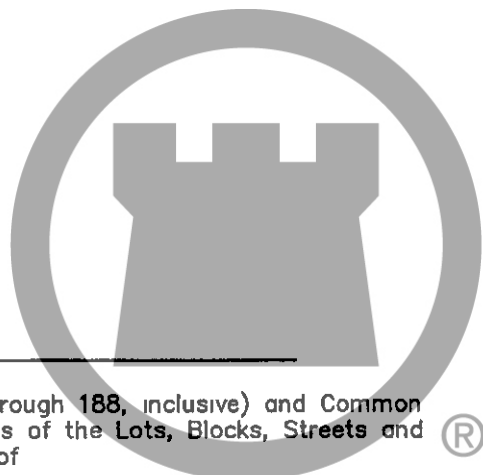
*Evan J. Evans* 11/23/04

Evan J Evans  
Registered Land Surveyor No 910024  
State of Indiana

OWNER / DEVELOPER

Traders Point, LLC  
8653 BASH STREET  
INDIANAPOLIS INDIANA  
(317) 849 0452

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FOR'S CERTIFICATE

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 diana

**PLATTING TITLE**



*Evan J Evans* 11/23/04  
 Evan J Evans  
 Registered Land Surveyor No 910024  
 State of Indiana

OWNER / DEVELOPER  
 Traders Point, LLC  
 8653 BASH STREET  
 INDIANAPOLIS INDIANA 46256  
 (317) 849 0452  
PREPARED BY  
 Evan J Evans  
 REGISTERED LAND SURVEYOR  
 NO 910024 STATE OF INDIANA

**MPA**  
 MELTON-PACKARD & ASSOCIATES  
 CIVIL ENGINEERS • LAND PLANNERS  
 8444 Castlewood Drive • Indianapolis Indiana 46250  
 PROJ 2314PT DWG - 09/17/04